

**Representations of Culture
and
the Expert Knowledge and Opinions of Anthropologists¹**

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They say there is an old Chinese curse, “May you live in interesting times”. We social anthropologists doing native title work do live in interesting times. It is not that the demand for our services exceeds supply and that it looks to set to remain that way for some years. Instead, our times are interesting because the range of native title work on offer provides contexts and situations in which we can do ethnographic and historical research which bears critically on some classical topics and questions of social anthropological theory. I have in mind here particularly what I like to call “property theory”. It concerns me that many of us have not yet taken seriously that in native title research, we are studying the phenomena of property and property rights and interests. It is not sufficient just to address matters of territoriality and attachment and to use trendy phrases like “the indigenous domain”.

Ken Maddock (1989:169-175) touched on the point in his “Involved Anthropologists” paper when he asked whether we were advancing anthropology through our land claims work. I am more optimistic than Ken was in those pre-Mabo days. We shared a history with comparative law and jurisprudence in the nineteenth century when forms of property were a common concern. There are also a number of contemporary academic lawyers whose work on property is comparative and – *e.g.* Bright and Dewar (1998), Harris (1996), Penner (1996, 1997), etc. There cannot be nor should there be separate legal and anthropological theories of property².

That said, I would not like to see us fail as anthropologists to rise to the opportunities and challenges of native title research for developing our knowledge and theory of property as Julian Steward and other anthropologists did during land claim research when the Indian Claims Commission operated in America.³

¹ Add background remarks and acknowledgments here: Jeremy Beckett, John Bond, Jo Brook, Ben Smith, Peter Sutton...

This paper had its origins partly during the hearings for the Wellesley Islands native title sea claim when John Bond, barrister for the Commonwealth, asked me, anthropological expert for the Commonwealth, to brief him on social anthropological epistemology and methodology in doing and writing up ethnography and assessing relevant literature, prior to cross-examining the claimants’ expert anthropologist witnesses (Nicholas Evans, Paul Memmott and David Trigger).

The paper is addressed to lawyers and anthropologists, and so I have included much background discussion and references in the footnotes, which exceed the main text in length.

² Maddock (1989:172, also see pp. 165-175) wrote:

A more consequential example is the concept of property. Anthropologists have often spoken of land being owned by groups of Aborigines... So it was argued ... [in the Gove land rights case] that the patrilineal clans of the area had a proprietary interest in land in a sense that Australian law could recognise. The argument failed, but it would not be satisfying to explain this as another example of lawyers and anthropologists having the same word, with anthropologists being free to go their own way except in a law case. As the concept of property comes from law, and lawyers have paid the most attention to it, anthropologists ought to take the Gove lesson to heart, unless ... Mr Justice Blackburn erred in his reasoning or that crucial evidence was not put before him. To do otherwise would be to deny that anthropology is a comparative science. Anthropologists might, of course, develop their own concept of property, but even so, would it not have to comprehend the legal sense known in our society?

Maddock appears not to have known of Stanner (1969), a paper prepared for the plaintiffs’ lawyers in *Milirrpum* as an attempt to present the indigenous traditional system of ownership in principles constructed with terms deriving from the Roman and common law traditions.

Do you recall those days in 1993 when Aboriginal leaders and spokespeople were negotiating with the Keating government about the Native Title Bill and the accompanying social justice package. We thought that perhaps five to ten percent of Aboriginal people in the country might be able to mount successful claims and that the rest would have to rely on federally-funded purchases to get land back. We were wrong. We underestimated the strength of feeling among Aboriginal people and communities generally about the dispossession of their forebears and their desire for recognition as traditional owners. Aboriginal people in settled Australia did not forego the route to recognition of native title through litigation and mediation in favour of land purchases to the extent anticipated. The result is that today there is a continuum of cases and situations ranging from Yorta Yorta at one extreme to Miriuwung-Gajerrong at the other, a continuum from where native title has been found to be extinguished to one where it has apparently got strong recognition.⁴

For us social anthropologists, no matter for whom we work, whether for the claimants, the state or federal governments or other parties, much of our native title research⁵ is focused on the ethnographic question whether there is a system of traditional law and custom⁶ operating among the claimant group such that it connects them to lands and waters and that under them people possess rights and interests in those lands and waters. Our research falls in that range from where one can say with some confidence that among themselves the claimants exercise proprietary rights in lands and waters, *i.e.* rights *in rem*, rights “as against the world”, to situations where what the claimants’ ancestors once enjoyed and exercised as exclusive rights have attenuated and become something else, perhaps or perhaps not recognisable as native title.

This is my take on the situation in which we find ourselves doing native title anthropology. I don’t want to pursue the topic of property theory with you now, but instead I want to discuss some more fundamental anthropological questions of epistemology⁷ and methodology⁸.

For contemporary anthropological work on property, see Hann (1998), Hunt and Gilman (1998), Rigsby (1998, 1999).

Property theory is also important to applied anthropology because it can help us move to thinking more clearly about property regimes which distribute rights and interests in the same lands and waters over a range of owners or parties, *i.e.* regimes in which the rights and interests of multiple owners co-exist. It is also not clear whether over the longer run, native title forms of property will be adequate to the needs and aspirations of Aboriginal people and groups in a wider market-based economy where much land is commoditised and if and as their links of shared spirit with the land attenuate and it becomes fungible.

³ A.F.C. Wallace (1957) was one of the few anthropologists who wrote with much knowledge of property matters, and it was no accident that he was a student and colleague of A.I. Hallowell at the University of Pennsylvania. To my mind, Hallowell’s (1955[1943]) paper, “The Nature and Function of Property as a Social Institution”, remains foundational and essential reading for anthropologists. See also my discussion of it, and of Steward’s role in the claims cases, in Rigsby (1997).

⁴ I ignore the current situation of appeals here.

⁵ We also research questions, among others, relating to the character and composition of the contemporary claimant group and its historical relationship with its antecedent group in the classical period.

⁶ See Rigsby (1996) for a discussion of law and custom.

⁷ Epistemology is one of those learned words whose meaning is not really so mysterious and obscure. Epistemology has two related senses in English. On the one hand, it is the branch of philosophy which deals with the nature and character of human knowledge and how it is acquired or constructed. In this sense, epistemology is the *study of an object*, namely, the study of the character and acquisition of knowledge, etc., and it is a kind of study which philosophers specialise in. On the other hand, epistemology has a second sense as an *object of study*.

Humans in all societies make use of implicit and explicit epistemologies as they go about their daily lives acquiring knowledge through experience and learning. Epistemologies are systems for constructing or making up knowledge, for establishing the details of the social and material worlds we

There is a great difference between the expert knowledge and opinion of social anthropologists and the evidence of untrained laypersons (see Wootten 1995:104-105), such as claimants⁹ who have an interest

live in, and they often are tacit, unconscious and not formalised at all. For example, the Sahaptin Indian people with whom I work in eastern Oregon in America say that it is in dreams that people acquire really important knowledge about the world and the beings who inhabit it. Anthropologists, as contrasted with philosophers, specialise in studying the epistemologies of other societies and cultures, but we also compare epistemologies with one another, and when we do that, we do much the same academic work which philosophers do.

⁸ Methodology is both a learned word and a technical term. A scientific methodology is a way of acquiring reliable information or knowledge about the world. We commonly distinguish methodology from theory and from techniques. Theory is a higher-level term, and a good part of anthropological knowledge about the world consists of our theories of how human societies and cultures are constructed and organised, *e.g.* our theories of kinship, social organisation, economic, political and religious institutions, property institutions, language and speech, etc. Another part consists of our substantive ethnographic knowledge about specific societies and cultures. Methodology provides us with methods and techniques for acquiring specific knowledge of societies and cultures, as well as for testing our theories. For their part, techniques are different ways of implementing a method, *e.g.* using a DAT (digital audio tape) recorder instead of a conventional cassette recorder to record an interview, using a Super 8 videocamera instead of a digital videocamera to record a ceremony, etc.

Some anthropologists confound methodology with their work schedule and the techniques they employ when they write proposals and reports for land councils.

⁹ Their knowledge of some matter or another may be based, explicitly or not, in whole or in part on their reading of the published anthropological, historical and other sources, in addition to knowledge they may have gained by oral transmission of relevant tradition from older people and peers. But as Beckett (1995:30) observed:

It is ironic that while anthropologists become creditable expert witnesses by writing, ‘natives’ render themselves inauthentic by reading. Tainted with literacy it seems they can’t go home again!

I do not at all dismiss indigenous people’s knowledge gained from written and other material sources (see also Walsh 1995). I consider that such written materials, tape- and video-recordings, artefacts in museums, home collections, etc. all are part of the contemporary body of Aboriginal tradition where members of the group read and recognise them as part of their tradition and perhaps have some control over them (*Cape Melville and Flinders Report 1994*, §§229-234, 236-237; *Lakefield Report* §§243-245, 247), but it is important to try to identify the sources of people’s knowledge and to assess and interpret the two kinds of knowledge differently.

The Chairman of the Queensland Land Tribunal, Graeme Neate, wrote in the *Cape Melville and Flinders Report* (1994:66-67):

[§]234. ...The evidence in this case suggested that *the relevant Aboriginal people must acknowledge, and possibly have some control over the use of, material in that [non-oral] form before it is accepted as part of the store of the group’s tradition...*

[§]236. It is readily accepted that written, tape recorded and photographic records can provide valuable additional forms of preserving the body of traditions, observances, customs and beliefs of a particular group of Aboriginal people. *The real issue is whether Aboriginal people who make a claim under the Act on the ground of traditional affiliation can establish the claim to the tribunal’s satisfaction by relying on such records. The answer can only be given on a case by case basis in light of evidence given by or about members of the group.* It would seem, however, that the possession of such records without anything more would be insufficient to establish that a group had common affiliations with an area of land. By analogy, a person could not establish that he or she was a Christian or a Muslim by only proving that he or she owned a copy of the Bible or the Koran. [Emphasis added]

in the answer to the question. Our expert knowledge does not and should not simply repeat and reproduce what the claimants say and assert, but it rests upon a complex process of assembling, surveying, ordering, comparing, assessing and interpreting evidence from a variety of sources.

Courts and judges rely upon our expert anthropological knowledge and opinion for understanding matters and questions which are not common knowledge. What makes our social anthropological knowledge and opinion different from that of other experts largely comes from our reliance on participant-observation methodology and from others' perceptions that we know what we are talking about because we have lived among Aboriginal people closely and familiarly.

In gaining and constructing expert anthropological knowledge about, say, traditional law and custom among some claimant group and how they operate to connect people to lands and waters and to give people rights and interests in land and waters during the classical and contemporary periods, we draw upon our knowledge of anthropological (and linguistic) theory¹⁰, our knowledge of Australian ethnography and linguistics, our command of several methodologies and our adherence to a set of principles for assessing and interpreting the work and knowledge of others, as well as one's own earlier work and knowledge.¹¹

We social anthropologists generally rely upon the methodology of participant-observation¹², as contrasted with archaeologists, who practice the methodology of controlled excavation and recording. Participant-observation requires us to do periods of fieldwork where we immerse ourselves in the daily life and affairs of the community we are studying. We do not just sit back as detached observers and watch what is going on around us in the community. Instead, we try to learn the local language and speak it with people, and we engage in social life and participate in activities with people. We spend a lot of time talking with people, asking them questions and listening to what they have to say.

We social anthropologists employ cultural relativism as a methodological principle. Cultural relativism is the position that we should try to understand other peoples and their societies and cultures in their own terms. We try to avoid imposing the standards and values of our own culture and society on other people's cultures and societies. Put another way, we try to avoid ethnocentrism, which is the unreflective judging of other societies and cultures in terms of one's own. We try to achieve (intercultural?) understandings which are not culture-bound, and it is these understandings which in part make up our expert anthropological knowledge.

Cultural relativism is one of our essential methodological principles. We adopt the cultural relativist perspective in our research because it helps us study other peoples' cultures and societies and to learn about them more richly, more sensitively and with more understanding than does an ethnocentric position. Just on the face of it, in fieldwork, the anthropologist who is open and sympathetic to other ways of doing things will be better accepted than one who runs them down and rejects them. Nonetheless, we are free to form our own personal views on what other peoples believe and do in their own societies and cultures. Cultural relativism as a moral precept¹³ is not a necessary part of our anthropological identities, perhaps not even a helpful one.

¹⁰ The interested reader can access some contemporary views on anthropological and linguistic anthropological theory in Barfield (1997), Barnard and Spencer (1996) and Duranti (2001).

¹¹ See Appendix 1 for the principles I use.

¹² We social anthropologists also use other methods than participant-observation, but it usually figures largely in our kitbag of methods. Participant-observation generally sets us apart from sociologists, who more often use questionnaires and do social surveys.

The process of doing participant observation fieldwork is also called doing ethnography, and the product of doing ethnography is a written analysis and description, which itself is called an ethnography.

¹³ I recognise that many social anthropologists assert their belief in cultural relativism as moral precept, but would they really accept the proposition, for example, that the society and culture of Pol Pot's

In the ideal situation, the anthropologist should do a year or more of uninterrupted participant-observation fieldwork in a community, so they can gain access to its range of social life, mundane and not-so-mundane. Many anthropologists also return to their communities of study for shorter or longer periods over their working lives, and this gives them insights and perspective on the social and cultural changes they observe and study. Multiple visits over the years can enrich our knowledge after the first long intensive field period, perhaps even substitute for it, and I have made repeated visits back to my three research regions over many years now.

My final comments today bear not so much on concepts of culture as on what I call representations of culture¹⁴. These are the representations or views of culture (including customs, traditions, laws, rights, duties, norms, values and the like) which people believe and present themselves as holding and observing. They are often highly stereotyped, and they relate to current knowledge and practice in indirect and complex ways. I speak here about the representations which people hold and assert about themselves, their ethno-Orientalisms and ethno-Occidentalisms as James Carrier (1992:198) called them.

The representations which our Aboriginal clients and claimants hold of themselves deserve our attention because they often differ considerably from the knowledge and views which we arrive at through our ethnographic fieldwork and social anthropological analysis. In fact, our claimants may be distressed, if not outraged, by some of the knowledge and views we develop about them, their society and culture. Nonetheless, our responsibility and duty as experts goes beyond simply repeating and echoing to the court what our informants have told us.

It is common for us these days to describe people's representations of their culture and society as "objectified" or "ideologised" or "fetishised"¹⁵. The popular representations of the bush, mateship, country people, etc. provide fetishised¹⁶ or ideologised¹⁷ examples of contemporary Australian culture.

Cambodia is equally worthy of sympathetic understanding and respect as that of our country in the same period?

¹⁴ It is not that representations of culture are not phenomena comprehended by the anthropological concept of culture. They certainly are part of culture or, better, of specific cultures, but they do not exhaust it or them. Nonetheless, through a diacritical, oppositional process (Thomas 1992:215), they come to stand for the whole, to be emblematic or indexical of whole cultures or societies or ethnic identities.

¹⁵ Beckett (1995:30), for example, observed:

As people become aware of the presence and the possibility of cultural alternatives, their consciousness of their own culture becomes reflexive and *their customs and traditions become objectified, even fetishised*. What were flexible principles become immutable laws which, ironically, become the screens behind which individuals and groups advance new interests. [Emphasis added]

¹⁶ Barnard and Spencer (1995:605) included this entry:

fetish, fetishism, fetishization A fetish is an object which is believed to have spiritual power, such as a magical charm... *Fetishization is the act of treating something as if it were a fetish. The term is often used to describe a process by which a culture or a social group irrationally overrates something (that which it fetishizes)*. In this sense, the object does not have to be material but may be, for example, a theoretical idea in anthropology [*or an ethnic group's romanticised view of some feature of their classical culture*]. In this sense, the term becomes an accusation which is levelled against theoretical opponents. [Emphasis added]

¹⁷ Barnard and Spencer (1995:293) wrote about ideology:

...[A]s far as anthropology is concerned only two senses of the term are important.

The representations of Aboriginal culture as centring on “caring and sharing” or as consisting mainly of the performance of ceremonies, painting up, singing, dancing and the like are likewise fetishised, ideologised or objectified¹⁸ examples of contemporary Aboriginal culture, quite at variance with the ethnographic situation in many Aboriginal communities.

I use these phrasings *fetishised* and *ideologised representations of culture* in a consciously pejorative manner because we need to watch out for them, identify them and expose them for analysis and comment wherever we can, among ourselves as well as among others. That is because they divert our attention, they befuddle us and they mystify important issues and questions.

The first use of the term refers to the system of social and moral ideas of a people; *in this sense ideology is contrasted with practice...*

The other use of the term ‘ideology’ in anthropology is inspired by Marxism. The best example of the concept in this tradition can be drawn from *Capital*. The aim of the book is to show how the capitalist system is exploitative in that it transfers the fruit of the work of the majority, the workers, to a minority, the capitalists. If this is so[,] the question of why the workers put up with this state of affairs then arises... Marx’s answer to this puzzle is ideology. A representation of the economy is present, no doubt favoured by those who benefit from it but partly accepted by all... Rather as a conjurer is able to perform tricks by making the audience pay attention to the non-essential, the image of a relation of capitalists and workers as non-exploitative and simply inevitable is created by diverting attention away from the allocation of the means of production to the market. *Such a representation is ideological.* [Emphasis added]

I hold no brief for Marxism, but I think it fair enough to characterise as “ideological”, normative statements which don’t fit with the patterns of behaviour which we observe. And in the courtroom situation, they divert attention from what something we need to speak about, namely, the situation on the ground.

¹⁸ For an excellent treatment of objectifications or substantivisations of culture, see Thomas (1992, especially pp. 113-114 and endnote 6, p. 129)

(Merlan (1989:106-107) wrote:

... There is developing a particular emphasis on ‘culture’ objectified as goods, products and performances, and upon these things as a distinctive repertoire which differentiates Aborigines from Europeans. From this has arisen an Aboriginal way of expressing their differences from Europeans by saying the latter ‘got no culture’. Hand-in-hand with this process of the objectification of Aboriginal culture goes the possibility of its definitive ‘loss’ or its retention...

[The process of objectification involves] the gradual factoring out of ‘culture’ from what then becomes an Aboriginal political and economic societal residue, de-emphasised and devalued partly as the result of [its] failure to be explicitly recognised as ‘cultural’.

Something akin to the objectification of culture process also operates in our own society. In a previous life as a university teacher, I often taught the introductory social and cultural anthropology course. Our modern anthropological concept of culture figured importantly in my early lectures. Before launching into an exposition of it, I always contrasted the anthropological concept of culture with the far more widely known and accepted humanistic concept of culture in which the term signifies the fine arts and the humanities, as well as knowledge of them or being accomplished in their doing or performance. For example, some might say there ain’t much culture in Woop Woop or that so-and-so has culture or is a cultured person.

The relationship between culture in the humanistic sense and culture in the anthropological sense is not that the former isn’t really culture and the latter is. Their relationship is that of part to whole. The phenomena of humanistic culture are part of the wider set of the phenomena of culture, whether one includes behaviour, action, artefacts and the like or not. The anthropological concept of culture is much broader and more inclusive than is the humanistic concept of it. Culture in the anthropological sense includes all the phenomena of humanistic culture, plus more.

In native title research, I have found that claimants and (sometimes) their lawyers often present ideologised representations of contemporary Aboriginal culture, and I say that we should attend to them carefully and critically. They do sometimes move and motivate people's behaviour and action, but they do not do so always or consistently. The point is not that they are not culture, but that they give only partial representations which are related in complex ways to the regular and structured patterns we can observe in behaviour and action.

We want to move beyond claimants' normative statements¹⁹. We want to learn whether the claimants do (attempt to) exclude others from their land and sea country, whether they do habitually exclude

¹⁹ Here is some material from two well-known introductory textbooks bearing directly on our ethnographic responsibility to do more than just listen to what people say and to report a fuller picture:

How does an anthropologist study culture in the field? *Culture, being a set of rules or standards, cannot itself be directly observed; only actual behavior is observable. The anthropologist must abstract a set of rules from what is seen and heard [including people's spoken accounts of what they are doing, why they are doing it and how they should do it – my expansion here] in order to explain social behavior, much as a linguist, from the way people speak a language, tries to develop a set of rules to account for the ways those speakers combine sounds into meaningful phrases.*

To pursue this further, consider the following discussion of exogamy – marriage outside one's own group – among the Trobriand Islanders, as described by Bronislaw Malinowski.

If you were to inquire into the matter among the Trobrianders, you would find that ... the natives show horror at the idea of violating the rules of exogamy and that they believe that sores, diseases, even death might follow clan incest. [But] from the viewpoint of the native libertine, *suvasova* (the breach of exogamy) is indeed a specially interesting and spicy form of erotic experience. Most of my informants would not only admit but actually boast about having committed this offence.

Malinowski himself determined that although such breaches did occasionally occur, they were much less frequent than gossip would have it. had Malinowski relied solely on what the Trobrianders told him, his description of their culture would have been inaccurate. The ... discrepancy between cultural ideals and the way people really do behave can be found in any culture... (Haviland 1999:46-47)

Haviland then provides another example of the discrepancy between what people say and what they do. It comes from the Garbage Project, conducted by the archaeologist Bill Rathje at the University of Arizona, where he found in a Tucson neighbourhood in 1973 that:

15% of respondent households affirmed [their] consumption of beer, but no household reported consumption of more than eight cans a week. Analysis of garbage from the same area, however, demonstrated that some beer was consumed in more than 80% of households, and 50% discarded more than eight empty cans a week... [S]uch findings are important, for they suggest *that ideas about human behaviour based on conventional interview-survey techniques alone can be seriously in error.* [Emphasis added]

Haviland (1999:46-47; see also Palmer 1993:966) cautions us that we need to attend to more than just what people tell us because their customary behaviour may differ:

...[A]nthropologists must be cautious if they are to give a realistic description of a culture. To play it safe, data drawn in three different ways ought to be considered. First, *the people's own understanding of the rules they share - that is, their notion of the way their society ought to be - must be examined.* Second, *the extent people believe they are observing those rules - that is, how they think they are observing those rules - needs to be investigated.* Third, *the behavior that can be directly observed should be considered* – in the Trobrianders example, whether or not the rule of *suvasova* is actually violated. As we see here, and as was shown in the Garbage project discussion, *the way people think they should behave, the way they think they do behave,*

themselves from the land and sea country of others²⁰ unless invited or licensed, whether they do ask permission of others to go onto their land and sea country to hunt, fish, camp, etc., whether they do share and exchange the products of their hunting and fishing, etc., whether the children of women of the group speak for it and participate in its affairs on the same basis as the children of its men²¹.

Please listen carefully to me – I do not say that we should attend to behaviour and action so that we can highlight or point to the discrepancy between the ideal and the real, the normative and the positive²². Instead, I say that it is behavioural and actional data which can carry the greater weight in our expert evidence. It is the uncovering of unconscious patterns of behaviour and action that we should be doing. We should be looking to see whether people exclude themselves from the lands and waters of others

and the way they actually behave may be three distinctly different versions. By carefully examining these elements, anthropologists can draw up a set of rules that actually may explain the acceptable behavior within a culture. [Emphasis added]

And in an older, but still outstanding textbook, Keesing (1981:7) says:

What informants can tell the ethnographer about their customs may be a similarly inaccurate and partial rendering of what they see, do, think, and feel. Sometimes their reports are distorted by the intent to deceive or by linguistic misunderstanding. In any case, what people tell the ethnographer about their way of life must be cross-checked, substantiated, and filled out by detailed records of actual events and transactions...

... Ideal standards are more uniform than patterns of actual behaviour. When deeply probed, the ideational worlds of different individuals in a tribal society show wide variation. Most anthropologists for years paid more attention to adult men than to adult women or children... Moreover, few anthropologists are actually well trained or highly skilled in detailed behavioral observation, and close study of the actual behavior and emotional states of people as they enact customs has barely begun. [Emphasis added]

See also Palmer (1993:966) and Rummery (1995:51).

²⁰ I suggest that evidence for exclusive possession and use is not so much to be seen in owners' attempts to enforce their rights and to exclude non-owners – see Penner (1997:71-72). It is mainly seen in Aboriginal non-owners excluding themselves from trespassing and going onto other Aboriginal people's land to hunt, fish, gather or whatever. The early records of explorers and the like contain much evidence that Aboriginal people resisted White invasion and trespass into their homelands with spears, fires and the like, but once the initial conflicts ended and White military and police power prevailed, Aboriginal people could not and did not enforce their exclusive rights to the land. When one looks at oral history materials on Aboriginal participation in the pastoral industry and at contemporary Aboriginal patterns of travel and land use in north Queensland now, there is much evidence that Aboriginal people continue to observe and respect the property rights and interests of one another in land and waters. My experience on much of Cape York Peninsula is that Aboriginal people do not just range over the land and visit anywhere and everywhere the bush roads lead in the same way that White fishers and tourists do. Aboriginal people generally go and visit only where they have traditional rights and interests or where they have got permission to go and visit and do whatever (see Rigsby 1996). Going onto other people's land without permission and without knowledge of site-specific traditional law and custom leaves a person apt to offend the Story-Beings and Old People's spirits who live there.

Hallowell (1955[1943]:240) concluded that property is universally found in human societies and one of its "primary contributions ... to a human social order and the security of the individual" is that "individuals are secured against the necessity of being constantly on the alert to defend [valuable] objects [of property] from others by physical force alone." This is because *in human (unlike animal) societies, we internalise norms and values with respect to property. Over and above the anticipation and fear that other owners will exercise force against us, we are motivated not to trespass by the wider "moral, religious, or legal penalties" that may operate if we do not do our duty.* [Emphasis added]

²¹ Comment here on descent and filiation ideology versus practice.

²² After all, we expect there to be a difference between the ideal and real in any society and culture.

unless there by invitation, permission, license, etc. We should attend to how people gain permission from owners to access their lands and waters through ways ranging from explicit direct requests to indirect signalling of one's wish and intent to access another's lands and waters. We should watch to see whether people attempt to bail up trespassers, warn them and expel them.

Justice Owen wrote eloquently (in *Ejai v Commonwealth* 1994) of the need to attend to the oral evidence of the claimants themselves, evidence which came from "the hearts and minds of the people most intimately connected to aboriginal culture". With apologies to Justice Owen, the behavioural and actional evidence lets us look into the hearts and minds of people perhaps more clearly than does just listening to them speak about their culture. Here I apply a traditional principle of English-speaking folk epistemology – "Actions speak louder than words".

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Appendix 1

Here follows a set of principles I follow in assessing and interpreting the past work and knowledge of others:

First, there is a need to identify all relevant past literature, photographs, tape-recordings, videos and the like in sufficient detail that readers can find and access them in the ideal situation. This means citing and referencing all items in a conventional format which contains information on the correct title, place and year of publication, etc. And for unpublished materials one usually gives an indication of where they are held or who has possession of them. It is also good to briefly identify and discuss any works which might at first appear to be relevant, but which on examination prove not to be. One's overriding concern should be to be as open and candid as possible about sources. There is no room for secrecy in science and other modes of academic research.

In most PhD theses, it has not been the practice to access and make use of other anthropologists' fieldnotes and journals, but to work with their published papers and books. Similarly, it has been the exception for anthropologists to access and make use of primary archival documents (government records, mission records, diaries, personal and professional correspondence, autobiographies and the like), although there have been exceptions. But in the native title era, most senior anthropologists would agree that it would be foolhardy to leave any stone unturned and not try to access and make use of the full range of primary documentation.

Second, one should clearly summarise the major conclusions or results of past research, whether those of a specific paper or monograph or those of a life's work. Depending upon one's focus, this might take the form of plain descriptive assertion or it might be more appropriate to go into detail and revisit the organisation of evidence and the argumentation of a past researcher. I find that it often enhances a critical review to quote and reproduce selected passages of the original researcher's text.

It is also good to try to put past research and researchers into the context of their times and the conventional research paradigms or orientations of the period. For example, while Norman Tindale did a considerable amount of fieldwork, much of it does not measure up to participant-observation when scrutinised. He camped and lived separate from the "natives", he kept his social distance from them and he fraternised and relaxed with missionaries, government officials and local "whitefellas", not with "blackfellas" and "half-castes". It is hard to imagine Tindale getting access to the backstage of social life in an Aboriginal group.

While Tindale certainly sought recognition as an anthropologist, he saw himself primarily as a natural scientist, not as a social scientist. He usually made natural science observations about the geology and geomorphology, botany, zoology and the like wherever he found himself, and he sometimes did these instead of talking with the "natives". He also was an internationally recognised entomologist, and he was an inveterate collector of butterflies, beetles, ants, etc. during his anthropological fieldwork.

It is necessary to keep these matters in mind when assessing Tindale's research. If he says something about the natural environment and people's knowledge and use of it or about items of material culture and their manufacture, I tend to credit him over a lesser trained person who writes to the contrary. But one simply does not find material in Tindale on, say, Aboriginal religion or social organisation which breaks away from stereotypes and the conventional. The pictures one can develop of his informants are less rich in personal detail and feeling than one can from, say, the work of Donald Thomson²³ (1935) on the peoples of Cape York Peninsula or that of John Haviland (1991) on people at Hopevale, near Cooktown. From what I know of her from reading her work and talking with those who knew her, I believe that Ursula McConnel too was a warmer, more sympathetic person than Tindale in her relations with Aboriginal people.

Third, one should clearly identify how and where one's own more recent research and thought differ from those of past researchers, then support one's own position with evidence. This can involve untangling an earlier argument and showing its contradictions or lack of logic or lack of fit with its own data or outright mistakes or errors of observation and interpretation, or it might also involve mobilising one's own more recent data to bear correctively on earlier conclusions or generalisations. There is a special case of the principle above – we researchers ourselves also change our views and opinions as we mature, become better researchers and gain more familiarity with field situations. In

²³ Thomson, like Tindale, was also a first-rate natural scientist and naturalist.

such cases, it is important that we clearly indicate when we have changed our views and / or got new data which contradict our previously held position(s).

Finally, in evaluating and interpreting the materials of other scholars and researchers, I have kept such questions in mind as:

- Was the person trained in what we would recognise as proper social anthropology or ethnography and / or linguistics?
- Was the person a good ethnographer and / or field linguist?
- Was the person a good language-learner and speaker of the local indigenous language(s) and / or pidgin-creole variety?
- How long did the person spend living and researching in the region? Under what circumstances, e.g. as missionary, policeman, anthropologist? Did they spend time with Aboriginal people in the bush away from the mission settlement?
- When, at what period of culture contact or history, did the person do research? Did the person do research in the pre-Mabo period before land rights and native title matters gained their current importance and value among Aboriginal people?
- Are we dealing with primary records, written in the field or shortly after, or are we dealing with published or similar materials which were written after a period of analysis and reflection?

No primary documents are without value and relevance to contemporary interests and concerns. Some have more than others, but that decision always requires careful reading and thought, not casual perusal or peremptory dismissal. It also demands paying attention to the biographies of past researchers, *e.g.* Roth (Reynolds 1988; Khan 1993), McConnel (O'Gorman 1993), Tindale (see the Tindale webpages at <http://www.samuseum.sa.gov.au/tindale/index.html>), where possible.