WOMEN IN SCIENCE CONFERENCE

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CULTURAL AND INTELLECTUAL PROPERTY RIGHTS OF TANGATA WHENUA

If one looks upon life as a series of journeys, which interconnect and weave the strands of your family, career, personality and relationships with all the 'external' influences around you, both positive and negative, then it is certainly no surprise that I, Aroha Te Pareake Mead, Maori woman of Ngati Awa and Ngati Porou descent should arrive at this particular point devoted to the protection of cultural and intellectual property rights of tangata whenua.

I am in one an optomist and a cynic, a local and a global thinker, a person who has had dreams come true but who also has lived through nightmares. I still cry in romantic movies or when I see or hear about someone 'a hero' who has overcome enormous obstacles to achieve what they wanted but I'm considered stroppy and cold and hard because I don't cry in meetings or in conflict situations at work or even in personal situations. I've paid a high price for my persistence in retaining my independence and applying my personal and cultural values to any and all activities that I participate in.

My personal life, which some might describe as "torrid" (that's how people refer to any woman's personal life if it isn't straightforward) has taught me the meaning of self-determination and my culture has taught me why self-determination is important for tangata whenua. It therefore stands to reason that cultural and intellectual property - which is both the physical and the metaphysical, the tangible and intangible - the mixing and the separation of resources and knowledge - should now be the central focus of my attention.

Self-determination can really only occur when you control both your resources and your knowledge. This is true for a woman. This is equally true on a collective basis for a people. Please note that I specified CONTROL and did not use OWN and/or MANAGE. These terms, contrary to what some might say, are not interchangeable. They underline very different 'journeys'.

Why the distinction? In order to place in context both the subject of cultural and intellectual property and to illustrate the difference between CONTROL and OWN and/or MANAGE let me use what for me is the most poignant example of exploitation of property rights. PREGNANCY AND CHILDBIRTH [1]

We are told that women 'own' their bodies (theoretically anyway) but certainly in the area of pregnancy and childbirth very few women are able to actually exercise "managerial rights' over how they nurture their unborn child and eventually how they give birth. The decision not to continue a pregnancy has even more complications attached to it.

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[1] Cultural and Intellectual Property Rights of Indigenous Peoples: A History of Denial" paper presented by author to the Association of Social Researchers, October 1992 discusses in more detail that exploitation of cultural and intellectual property of indigenous peoples takes two forms - denial of the validity of indigenous knowledge and outright exploitation of indigenous resources and knowledge. The same paper also discusses Pregnancy & Childbirth.

This situation is true of individuals and women collectively. We 'own' but the ownership is bittersweet because our ability to 'manage' is limited and affected by factors beyond our control. If we had control, then we would control both our bodies and the knowledge as to how we care for ourselves and our children and how we give birth.

For Maori women, this is also the case but there is an added dimension. It is hard to describe the complex congruent blend of collective identity. Basically, in the context of the issue I am discussing, add to the insult of everything else, being told that your cultural customs are unhygenic and unsafe and that if you really loved your child - you too would deny the validity of your ancestral customs.

This means that you are wrong, your mother, your aunties, your grandmothers and great mothers are all wrong. Imagine that and you might have some small idea of the extent of the damage. As well as being told you have limited control over your body, you are also being told your natural instincts are dirty and unsafe and those you should trust are actually untrustworthy.

In a very simplistic sense - this scenario both real and for many still hurtful - is what cultural and intellectual property rights is all about. Needless to say, the example I have given is but one on a wide spectrum of issues hich range from utilising the names and symbols of culturally 'tapu' ancestors, sites and customs for commercial purposes and/or purposes beyond the original intent of 'culturally safe' sharing, to the patenting of species of indigenous flora and fauna, and copyrighting of traditional pharameutical knowledge of plants which gains millions of dollars of profits to companies and absolutely nothing to the original indigenous informants. It also raises issues about the appropriateness of displaying ancestoral human remains and burial objects in Museums, or the commercialisation of indigenous art and music forms by non indigenous artists.

The issues are complex, it is not a simple 'them and us'`situation because the "them' changes with each situation.

As mentioned in my introductory comments, its about both the separation and the mixing of physical resources and the knowledge which brings to life those same resources. Maori call it MAURI. We call the 'process' of separation and mixing TAPU and NOA. The interconnecting thread between MAURI and TAPU and NOA is MATAURANGA MAORI - Knowledge.

You might note that I always refer to cultural and intellectual property. For tangata whenua these two are inextricably linked and any separation of the two is from our point of view un-natural and false. Its similar to the perceived difference between arts and crafts - one being a supposedly 'higher'`form and more bona fide than the other. One being 'taught' in an esteemed place of learning and the other being 'handed down' from mothers to daughters (generational/ ancestoral) and therefore lesser in status. In time, when there is greater understanding and respect, western and indigenous science will be seen as complimentary, but unfortunately, at this point in time, the two are poles apart. Indigenous science suffers the same monocultural and sexist arrogance as the other above examples. It is not at all coincidental that a vast majority of Maori scientific knowledge was traditionally, held, developed and taught by Maori women.

For Maori we can not separate our 'culture' from our 'intellect' anymore than we can separate our intellect from our heart, or our future from our past. If you learn nothing else from this workshop, please remember that cultural and intellectual property is one in the same and please don't allow monoculturalism or unsound professional biases to persuade you otherwise. While it might be an academic issue for some - it is an insult to us. It is yet another denial of the wholeness and fullness of our being.

The United Nations Sub-Commission on the Prevention of Discrimination Against Minorities in its recently published STUDY ON THE CULTURAL AND INTELLECTUAL PROPERTY RIGHTS OF INDIGENOUS PEOPLES stated "[2]

> "In preparing this report, the Special Rapporteur was compelled to the conclusion that the distinction between cultural and intellectual property is, from indigenous peoples' viewpoint, an artifical one and not very useful. Industrialised societies tend to distinguish between art and science, or between creative inspiration and logical analysis. Indigenous peoples regard all products of the human mind and heart as interrelated, and as flowing from the same source: the relationships between the people and their land, their kinship with the other living creatures that share the land, and with the spirit world. Since the ultimate source of knowledge and creativity is the land itself, all of the art and science of a specific people are manifestations of the same underlying relationships, and can be considered as manifestations of the people as a whole."

A very recent example of the 'clash' between indigenous and western science highlighting the resultant exploitation of the cultural and intellectual property rights of tangata whenua is the Human Genome Diversity Project (HUGO) or the VAMPIRE Project as indigenous peoples have come to refer to it.

At this year's 11th Session of the UN Working Group on Indigenous Populations[3] held at the UN in Geneva, the indigenous peoples of the world, brought to the UN's attention, the HUMAN GENOME DIVERSITY PROJECT. A US based and funded project involving 13 Scientists mostly from the East Coast of the States, have received $US25 million to "map the genetic structure of human beings". One of the activities of HUGO is to collect hair and tissue samples of over 700 'endangered indigenous communities'. Why you might ask? Because these great scientists have a view that should these indigenous communities become extinct, then 'science' can bring them back in the future. It's all so simple. If they die through racism then bring them back in 25 years. The racism will still be there but then science can't do everything!

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[2] U.N. Study on Cultural and Intellectual Property Rights of Indigenous Peoples (Reference E/CN.4/Sub.2/1993/28) directed by the Sub-Commission under the auspices of Professor Erica-Irene Daes, Chairperson of the Working Group on Indigenous Popultions,in Resolution: 1991/32 of 29 August 1991.

[3] The UN Working Group on Indigenous Populations (WGIP) was established in 1982 and has met annually since that time. A major focus of the Working Group has been the drafting of a Universal Declaration on the Rights of Indigenous Peoples. Maori have been actively participating in WGIP Sessions since 1988. Ngati Awa and Ngati Te Ata were two of the four original indigenous organisations who requested the United Nations at the 8th Session 1990 of the Working Group (WGIP) to undertake a Study on Cultural and Intellectual Property of Indigenous Peoples.

The DNA collection has already begun and we have had confirmed that the samples have been taken from unsuspecting 'victims' in local health clinics. The Project has not been explained and no transparent form of obtaining the free and informed consent of indigenous communities has been practised.

Animals and forests are better protected than indigneous peoples.

The naivety of the project is frightening as is the idea that the samples once collected could fall into the wrong hands. One can only ask, in a world facing such extreme poverty - especially in the very same targeted indigenous communities, can this whim be justified? Shouldn't the energy be focussed on saving indigenous communities rather than collecting their DNA samples.

The 'property rights' issues of this project comprise both physical resources and knowledge but as is prevalent in cultural and intellectural property rights negotiations, control and ownership of knowledge is the critical factor. Quite apart from determining whether the overall objectives of the HUGO Project are actually sound, the HUGO Project raises numerous professional ethical questions. One could easily argue that the major failing of the HUGO scientists is the lack of attention given to the development of ethical procedures which ideally should clarify, inter alia;

- the methodology used to obtain the free and informed consent of the indigenous participants;
- ownership of DNA samples once collected;
- control of DNA samples once collected;
- economic beneficiaries should the DNA samples be commercially exploited (e.g. pharamaceutical products, health research);
- access rights of indigenous communities to research and product results;

You might ask where is all this leading? How can one thread bring all of these issues together? The answer is THE MATAATUA DECLARATION ON THE CULTURAL AND INTELLECTUAL PROPERTY RIGHTS OF INDIGENOUS PEOPLES. Named after the Mataatua Waka Iwi who hosted the First International Conference on the Cultural and Intellectual Property Rights of Indigenous Peoples in Mataatua 12-18 June of this year, the Mataatua Declaration brought together all the recommendations of the seven days of Workshops held during the Conference. There were over 150 participants from 14 countries who participated in the Conference. [4]

Since that time, we from Mataatua have taken the Declaration to the UN Working Group (WGIP) in Geneva. A further 120 signatures were obtained making the Declaration relevant to indigenous communities from 60 countries in the world, including the Yanonmami from Brazil as well as most of the South and Central American countries, Canada, US, Asia, the Pacific and the Saami and Inuit from the Arctic Circumpolar Region.

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[4] Subsequent to the the Conference an INTERNATIONAL ASSOCIATION OF THE MATAATUA DECLARATION (IAMD) has been established (P.O. Box 76, Whakatane, Aotearoa) A professional organisation whose objectives are to implement the aims of the Matataatua Declaration at local, national and international levels. IAMD also serves as an international clearing house of information relevant to the cultural and intellectual property rights of indigenous peoples and produces a regular Newsletter to IAMD members.

At the Maori Congress Hui-A-Iwi held last month, 23 Iwi signed the Mataatua Declaration. Unlike the Sealords Agreement which will continue to entertain the Courts as lawyers deliberate on whether those who signed had an Iwi mandate to do so, the Iwi signatories to the Mataatua Declaration are undisputed.

Often in this country, the 'tall poppies' syndrome makes us downplay work achieved at a local level, but be assured that the MATAATUA DECLARATION is historical and significant at national and global levels. The Declaration is long overdue and leads the way in the international community for clarity of issues, purpose and aspirations. With the international support of indigenous communities from 60 countries, and the national support of over half of the Iwi in the country (so far) no profession or professional can afford to ignore its contents.

In summary, the Mataatua Declaration in recognising the right of indigenous peoples to self-determination affirms that indigenous peoples are the rightful exclusive owners and definers of their cultural and intellectual property and that the first beneficiaries of such property must be their direct descendants. All others, including (other hapu and Iwi as well as agencies (both governmental and non-governmental) at national, regional and international levels are "EXTERNAL USERS". The Mataatua Declaration requires hapu and Iwi in the first instance, to develop codes of ethical procedures to be observed by 'External Users'. This process will take time. I can assure you however, that if I succeed in my current journey, Iwi will eventually be able to quote articles of their 'codes of ethics' with the same familiarity and expertise as the Treaty of Waitangi.

In the meantime, it is important for professionals engaged in any form of research, be it social, scientific or other, to develop codes of ethics - transparent enough to be easily understood - in order to negotiate appropriate standards with hapu/Iwi for property rights to their knowledge and resources. The''innocence' of simply gaining collective knowledge from individual informants is maturing into a more credible research methodology.

In conclusion, it comes down to the self-determination that individuals can choose to exercise, be they tangata whenua or not. Individuals and the collective identities they might also possess have the ability to make decisions and implement within there sphere of activity, policies and practices which duly recognise and protect the cultural and intellectual property rights of tangata whenua. Government must ensure that its policies and legislation contribute to the solution rather than exacerbate the problem. At this point in time, there's a lot of work to be done.

> If you are caught with property that is not yours,
> then you are a thief.
> If you are caught with Cultural Property that is not yours,
> no one is quite sure what you are,
> but Tangata whenua are beginning to develop names for you.

Aroha Te Pareake Mead

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