BRIAN NOBLE

Justice, Transaction, Translation: Blackfoot Tipi Transfers and WIPO's Search for the Facts of Traditional Knowledge Exchange

ABSTRACT In this article, I examine the complexities and politics of enrolling one socially embedded form of transaction and knowledge into the terms or practices of another. I look at the correspondences and divergences in how the World Intellectual Property Organization (WIPO) transposed the "facts" of Blackfoot tipi-transfer practices in efforts to harmonize global intellectual property (IP) regimes and to achieve "justice" and "empowerment." WIPO's translation work is set against a case where Piikani Blackfoot tipi holders used relational transfer practices to effect a use arrangement, bypassing the means and ends of IP. I argue that looking at WIPO's practices helps us to see anthropology's own epistemological, instrumental, and political constraints, while looking at Piikani transfers helps us to conceive of alternatives. This has bearing across anthropology's disciplinary spectrum where problems of knowledge translation are commonplace. [Keywords: relationality, traditional knowledge, intellectual property, instrumentality, commensuration]

DURING A MEETING in Geneva in 2001 with current and former heads of state who act as policy advisors to the World Intellectual Property Organization (WIPO), WIPO Director General Kamal Idris was brimming with what may be read as neoliberal economic optimism. In his speech, Idris offered this spirited recommendation of the progressive value of the Intellectual Property (IP) system:

> In the patent system . . . lies the primary facilitator of human innovation and . . . in traditional knowledge lies the roots of our common culture and heritage. This is why, in our vision, the empowerment of people is a central role of this Organization. In empowering people we need to take into account that they should be able to produce, compete and trade, and for that we need justice and not charity, and full participation. [WIPO 2001b]

To this he confidently added his universalist view, "Intellectual property is foreign to no culture and native to all nations" (WIPO 2001b).

Idris appears to say that IP is traceable to holders of traditional knowledge (TK), which in turn is a primordial source of culture and heritage,[1] and because IP applies to all human societies over all their histories, it may be used as a universal essence or procedure for advancing justice, empowerment, innovation, and, indeed, trade liberalization. This accords with WIPO's mission: "To promote through international cooperation the creation, dissemination, use and protection of works of the human spirit for the economic, cultural and social progress of all mankind" (WIPO 2001b). All of this underwrites WIPO's well-intentioned efforts of the last several years to promote participation in UN "norm-building" exercises by marginalized nonstate actors, efforts that no doubt embolden Idris in making his claims. One aim is to develop a globally harmonized patent and IP regime that can address everything from transnational corporate genomic research to plant-use knowledges of "traditional" peoples. A key assumption is that transaction practices associated with IP regimes are already—or at least can be—commensurated with those of TK holders. For Idris, this de facto commensurabilty—flowing from unspecified practices of "justice" and "participation"—will empower people, enabling them to mobilize what WIPO sees as the productive potentialities of their knowledges.

Following Annelise Riles (2004, in press) and Marilyn Strathern (1999) on how property knowledges are put to work, and Elizabeth Povinelli's call for an anthropology of incommensurability (2001), one aim of this article is to contour the pragmatics and politics of actions, such as those of WIPO, that work by translating one socially embedded form of transaction into the terms or practices of another. I argue

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that such epistemological and bureaucratic techniques of property translation enroll (and effectively colonize) alternative non–property ownership practices, even while seeking "justice" and "empowerment." I discuss how alternate transactional practices can, by their own distinctive means, effectively mediate "TK" use arrangements, thereby avoiding such appropriations associated with translation. I do this by setting WIPO's case of Blackfoot painted tipi transfers, as one of their best cases for demonstrating the "IP-like" character of TK exchange,[2] alongside practices of Piikani Blackfoot people with whom I have worked over two decades, among them several rightfully transferred holders of painted tipis.

The analysis of instrumental politics offered addresses how, by radically different means, people enroll (e.g., variously to ally with, incorporate, translate, or appropriate) and redirect the practices of others to strengthen their own (cf. Callon 1986; Latour 1999). As Riles notes, analyses of instrumentalism emphasize how we "must begin from within the epistemological boundaries of the instrument—that solutions must be found in the means of technology" (2004:789–790). I consider one of WIPO's more explicit means—fact-finding missions—and how that technique works to produce outcomes that, contrary to intentions, actually miss the instrumentality of distinctive transactional practices such as those of the Piikani. So, rather than criticizing WIPO's political ends, I contour the political limits of its means and its legal knowledge-fashioning instruments as they interact with TK-related practices.

I do not aim to assess the viability of options for IP protection for TK per se (cf. Brown 2004; Coombe 2003; Hansen and VanFleet 2003; Posey and Dutfield 1996) but, rather, to review how knowledge practices may delimit—even eclipse—what is identified in the first place as TK. The tipi-transfer case in its own right—not in any essentialist or universalist sense—allows us to see how restrictive epistemological tools attending to property (even in sui generis formulations) may trip up community-situated transaction and knowledge practices. The Piikani case, therefore, speaks back as a potent model for rethinking epistemological, methodological, political, and moral issues arising in such encounters around "property."

My argument is presented in three parts, concluding with propositions for future, anticolonial anthropological practices. First, I review how the tipi-transfer case was transposed within a series of WIPO "fact-finding missions." This reveals dimensions of how WIPO's key instrumental practices enroll Piikani exchange, as TK, into the rubric of IP by means of translation. Second, I consider a specific case in which a Canadian archaeological heritage center sought the right to use a transferred Piikani tipi design. Here, IP translation was actually circumvented by means of Piikani adoption and transaction, a distinct instrumentalism that enrolled persons and institutional procedures into the rubric of Piikani relation making. I then consider the instrumental outcomes of UN fact-finding and norm-building exercises and their ethical imperative for "full participation" as against those of Piikani transaction with its ontological commitment to relation making. Third, I set the Piikani actions against WIPO's latest forays into studies of TK protections through customary law, discussing how those investigations resituate and link WIPO's efforts within a complex of UN agencies responding to indigenous peoples' rights claims. This prompts further analysis of whether and how "justice," "participation," and "empowerment" may be imagined differently than in Idris's formulation.

Finally, I consider the implications for anthropology of engaging in moments of radical correspondence—particularly, situations in which radically different knowledges and practices collide and correspond around a common rubric or discourse (here, Blackfoot transaction). I explore how this analysis comes into conversation with emerging anticolonial initiatives in archaeology, in which researchers are grappling with the politics of knowledge rights with "descendant" communities.[3] I ultimately argue that looking at WIPO's practices helps us to see anthropology's own epistemological constraints, while looking at Piikani transfers helps us to conceive of alternatives.

WIPO'S "FACTS" OF BLACKFOOT TIPI TRANSFERS: TRANSLATION AS MEANS OF ENROLLMENT

According to WIPO, Blackfoot painted tipi–transfer practices are strikingly similar to IP rights transfers. Tipi shelters with painted pictographs on their outer hide or fabric coverings have a long history among Blackfoot people, including the Piikani, many of whom today live on colonial land reservations in southwestern Alberta and northwestern Montana. The Blackfoot source tipi designs in different events in the past, some reaching back to Blackfoot Creation time. In 1934, Julian Steward summarized cumulative anthropological understanding of Blackfoot tipi designs:

> a variety of special designs and symbols may be found in the decorative field between the upper and lower borders. . . . They are generally an integral part of the ceremonialism connected with particular medicine bundles. . . . The bundles and privilege of decorating the tipi were generally acquired by purchase. . . . pictographic representations . . . [incorporate] a certain amount of tribal pictographic symbolism and the owner's medicine bundle symbolism. Such cannot be interpreted, however, without reference to the owner's explanation. [Steward 1934]

This description corresponds broadly with contemporary Blackfoot accounts but also suggests something like IP relations.[4] It is the notion of ownership and transactability of "designs" that came to capture WIPO's attention, and to which I return in due course.

Faced by more than a decade of pressures from indigenous peoples and NGOs to address the expanding and inequitably regulated appropriation of visual designs, songs, stories, names, medicinal knowledges, and genetic resources, in 1998–99 WIPO was mandated to consult with TK holders: state- and self-identified indigenous and rural "traditional" peoples. One component of this effort was a series of globe-coursing "fact-finding missions" (FFMs) to

> identify and explore the intellectual property needs and expectations of new beneficiaries, including the holders of indigenous knowledge and innovations, in order to promote the contribution of the intellectual property system to their social, cultural and economic development. [WIPO 2001a:19; see also WIPO 1998–99]

The final FFM report acknowledges but handily dismisses problems of how a strict IP focus is "compartmentalist or reductionist" (WIPO 2001a:209). Taking a stance of ethical transparency, the wider issues raised by indigenous and other participants are bracketed out:

> WIPO's representatives were provided during the FFMs with information on needs, expectations and concerns in political, economic, and social domains. WIPO respects them and believes they should be addressed in the appropriate forums. However, if WIPO's activities regarding TK are to remain tightly tied to their objectives and WIPO's overall IP mandate . . . as they must, an IP focus is necessary. [WIPO 2001a:209]

Although WIPO sees its IP mandate as promoting "social, economic and cultural development," it also sees it as excluding "concerns" in these same "domains," as though they had no relationship to "development." In terms of liberal ideology and practice, this mandate move suggests how institutional arrangements may generate the appearance of commensurability of practices, by simply setting aside those features that are incommensurate (even repugnant) to state and bureaucratic interests: most notably, the larger political and economic claims that often animate "development" aspirations of TK holders (cf. Povinelli 2001:326).

Although reciting mandate limitations is a familiar refrain in bureaucratic settings,I argue that there is still more at play. The work of bracketing off wider sociopolitical and economic concerns—and epistemological and pragmatic ones, for that matter—played out in the very conduct of the FFMs. WIPO not only identifies and translates "facts" of TK exchange, but it does so as part of its efforts to build new international IP norms, which then condition pursuant findings of fact. As such, the knowledge practices of "fact-finding" combine with "norm-building" as the instrumentalism for bringing TK holders into the international IP fold, to benefit from its purported opportunities and protections.

By *instrumentalism,* I refer to actions that deliberately mobilize or enroll resources (human, tangible, intangible, technical, etc.) to produce effects that usually, but not necessarily, entail specifically imagined ends.[5] Put simply, people use tools, or instruments, to do things, sometimes to generate specific outcomes: In the instances of WIPO, instruments are used to generate norms, which in turn may be used as tools for IP-practicing states to develop their own laws and policies.

This analytic of instrumentalism is in conversation with propositions of Riles (2004, in press) who makes a double call: to take up the study of instrumentality of property-related law and legal theory, and to do this by means of ethnography. This allows us to consider the purported ends of legal practice—legal knowledge and decisions—as dependant on its means, the techniques it uses to reach its ends. In the bargain, the mutual imbrication of practices of anthropology and law directed at issues of property may be more adequately articulated. The analytic of instrumentalism that I pursue—of means–effects, which can either entail or move around the figure of means–ends—draws on distinctions between WIPO and Piikani practices. I begin with WIPO's work to transform tipi transfers, as one of many diverse ownership possibilities, into a usable tool, suggesting how this hobbles WIPO in addressing that very diversity.

One of 16 specialized agencies of the UN, WIPO's goal is "to promote the protection of intellectual property throughout the world through cooperation among States and, where appropriate, in collaboration with any other international organization" (WIPO 1967:2). Acting in concert with over 180 member states, WIPO administers some 23 international treaties but also works on new norm-building actions. The relevant ones for TK are advanced by its Genetic Resources, Traditional Knowledge and Folklore (GRTKF) Division, under the auspice of an Intergovernmental Committee (IGC). This focal apparatus, however, articulates to a vast and complex technical and bureaucratic network of international civilian law and state law bodies, mobilizing widely distributed jurisdictional, policy, community, and legal experts. Underscoring the embeddedness of UN decision-making bodies, David Kennedy has noted that

> decisions which allocate stakes in global societies are not taken there (in global society) . . . [they] are taken by experts, managing norms and institutions in the background of this public spectacle—legal norms and private institutions, decisions rendered in technical vocabularies. They are taken not by the state, but by thousands of decision makers in the economy. [Kennedy 2004:349]

It is within this intricate terrain of rational international action that WIPO's even more focalized FFM work has been brought into play, animated by a rather persistent set of epistemological and instrumental practices that, in outline at least, are reminiscent of ethnographic fieldwork.

Working in pairs, WIPO officials traveled to some nine "world regions" and 28 countries and met in facilitated roundtables with "locally knowledgeable persons" and "TK experts" who had been apprised of the terms of reference in advance "to ensure that the purpose, nature and expected output of the FFMs were clearly understood by informants before they met with WIPO staff" (WIPO 2001a:19). Having delimited the sorts of facts they were seeking, their "informants" could readily return with comments like this one from a Blackfoot participant at one of the meetings held in Calgary, Alberta:

> As First Nations, we have our own IPRs and that's mainly coming from who we are and what we believe. [WIPO 2001a:58]

In the report chapter "Customary Laws and Protocols," Blackfoot tipi-design transfers feature as one of the best case parallels of customary practices with "IP-like provisions."

One extended text in the report describes tipi transfers of the Blood tribe, or Kainai, who, like the Piikani, are Blackfoot peoples and share with them strong kin, social, and ceremonial ties. Nonitalicized text in the passage highlights how the authors interpellate statements of IP-like norms into the (italicized) Blackfoot account:

> Elders of the Bloodtribe explicated IP-like provisions that apply to traditional tipi designs under their customary laws. *"The tipi designs can only be created through a vision, a spiritual dreaming or as the results of a vision quest. The designs are very limited and they were handed down from years and years ago. We know the original owners of the tipi designs, they transferred the ownership to family friends, who then transferred them to the current owners. Anything we have now was transferred and the design cannot be replicated unless it is transferred through a ceremony. Those designs are ancient and sacred."* According to the TK holders, the transfer ceremony is crucial since it symbolizes the assignment of exclusive rights over the design. *"In the ceremony, I give my rights over to her* [the transferee]. *Once I do that, I transfer to her the right to use it. I can't even use that design: I cannot make a replica. It's not mine anymore, it's hers. She is only allowed to make a replica if the first one is destroyed, but she can't pitch two or ten tipis with the same design. There is only one, there cannot be a mass production of the design."* The transfer ceremony appears to function as an assignment of the rights, since only the transferee can use it, and the transferee can prevent the transferor from using the design. [WIPO 2001a:59, emphasis added]

This account stands as a set of "facts." Each WIPO-authored insertion invokes the languages of IP qua IP, and several norms of IP transaction start to appear: the expression of ideas in tangible form, bundles of rights attached to these tangible expressions, transferability of those rights, exclusivity, and use limitations. Other IP norms do not appear so easily, such as a strict authorial notion of individual invention, limitations on the term of rights, the detachability of rights from the object, the notion of commercial transactability,[6] and with this latter the crucial matter of if or how the design might ever actually be alienated from its highly entangled social-material networks and genealogies—a key to which I return shortly. By focusing on the ostensible "fact" of IP assignment, the question of the social and value relations generated by the form of exchange, or their transformations in the course of translation, is put aside, despite long-standing anthropological discussions on the attendant complexities of such transformations in practices of exchange (cf. Appadurai 1986; Gregory 1982; Hann 1998; Strathern 1999; Verdery and Humphrey 2004).[7]

The report does refer to "customary" laws of the peoples informing the study, but it does little to situate those laws in practiced systems of exchange.[8] Referring to peoples' practices and protocols as "Informal Intellectual Property Regimes and Customary Law," the report enrolls TK holders simultaneously into the polarized and continually purified domains of modernity and tradition, noting "TK holders often live in the 'traditional' and the 'modern' world at the same time" (WIPO 2001a:57). Instrumentally, the authors seize on and further translate participants' discussions of commensurating spaces between practices:

> In recognition of the cross-cultural dimensions of intellectual property, numerous FFM participants distinguished between the formal IP system and informal IP regimes. They maintained that the IP needs, rights and expectations of TK holders are shaped by their contact with both these regimes. [WIPO 2001a:57]

Narrowing the frame to crossover spaces allows WIPO to hold to its norm-focused mandate, addressing only those dimensions of transaction that appear to be activated by "IP-like provisions" (WIPO 2001a:58–59).

What of the elision of politics, history, and the fuller dimensions of transactional practices? Pragmatically, WIPO's agents are straightforwardly following WIPO's project of advancing IP qua IP. The elisions, therefore, are effected by the epistemology of bureaucratic practices and legal reasoning in international civilian law. Legal theorist Timothy Murphy has called post-Enlightenment, rational law—whether in civil, common, or international law formulations—the "oldest social science." Like most modernist social sciences, rational law creates "a space of indecision as between the positive and the normative" (Murphy 1997:184): that is, between questions of positive fact and questions of normative law.[9] WIPO's work is to generate useful translations in this space of indecision, so that facts and norms may articulate, or at least to generate a workable appearance of articulation. In other words, the problem of elision resides not in the lack of will on the part of WIPO officials—indeed, they are astonishingly flexible and keenly concerned about social inequalities—but, rather, in their double technical adherence to particular ends (objectives) and to bureaucratic and epistemological conditions of practice, which together constitute the restrictive tools used to forge international civilian law. This then becomes a matter of means–ends instrumentality, perpetuating translational practices committed to extracting "facts" that are hybrid enough to dovetail with preexisting, if slightly flexible, norms. Progressive as it may be regarded, WIPO is practically constituted to translate systems of transaction into its own terms, to create useful parallels, so it may generate workable property norms.

As Strathern notes regarding those who implement—or, for that matter, resist—the extension of IP concepts into "traditional" domains, such paralleling is not unusual. According to Strathern, parties may search "for parallels and comparisons in 'local' and 'traditional' arrangements with which to deal with the new international imperatives. Custom is brought forward as a counterpart to common law" (Strathern 1999:171).

In modern liberal conditions, counterposing like this tends to begin with, and then amplify, an isomorphic relation and purification: in this instance, of customary practices, on the one hand, and property or common law, on the other hand. Following Bruno Latour's proposition of the "modern constitution" (1993, 1999), such continually purified polarities (e.g., nature and culture, "modern" and

"traditional" societies, facts and theories) are simultaneously generated and made commensurable by translation: that is, by the production of hybrids. WIPO's FFM report and findings are just such hybrids. The effect, therefore, of compartmentalizing within the rubric of IP-parallels is to impart a standardized set of terms so that otherwise discordant practices can be "harmonized" (to borrow the terms of neoliberal governmentality).[10] By means of translation, TK is first polarized against modern knowledge and then enrolled into the latter's domain.[11] I am in no way suggesting that the peoples that WIPO's work addresses are not engaged in contemporary worldly practices in continually blending fashions,[12] only that in its TK work WIPO is yet bound to a traditional–modern binary reconciled by means of translation.

As noted, WIPO deploys ethical transparency to secure the legitimacy of its techniques. By acknowledging the problem of reductive translation in the service of commensuration, it buttresses both its moral and epistemological position. It limits potential external criticisms by retreating into the pragmatic enclosures of its IP mandate, within which WIPO officials earnestly seek to find workable arrangements for TK holders. By ethical practice, WIPO creates conditions for liberal conversation, while securing the epistemological premises and frame of reference for that conversation (Povinelli 2001:326). What WIPO's stance does not consider, and paradoxically obscures, is that the practices engaged present striking incommensurabilities—most notably in the qualities of entanglement and inalienability animating Blackfoot ownership practices, ones that have endured despite neocolonial conditions. A consideration of the pragmatics of Piikani transaction, therefore, helps to underscore the distinctions in how WIPO and Blackfoot tipi holders instrumentalize Blackfoot "TK" exchange.

PIIKANI RELATION MAKING: TRANSACTION AS MEANS OF ENROLLMENT

The transfer of painted tipis continues today among many Blackfoot-speaking people in what are now Montana and Alberta. Awakasinna is a Piikani Blackfoot ceremonialist and transferred holder or keeper of several painted tipi "designs" who participated in WIPO's FFM in Canada. What follows comes both from conversations I have had with Awakasinna over the last 20 years and from my own exposure to tipi transfers. In accord with Blackfoot protocols, I may discuss transfers generally, but without rights to specific tipi designs, I cannot reveal details of practices. Nonetheless, the grosser contours I may represent make instrumental distinctions quite clear.

In using the terms *holder, owner,* and *keeper* interchangeably when discussing tipi transfers, I maintain an uncertainty regarding the suitability of any of these terms. I once asked Awakasinna if the term *owner* was the best word to describe rightful keepers of tipis or other bundles, to which he replied suggestively, "Think of it this way: Do you own your job description?" Strathern has pointed out how Jacob Simet of Papua New Guinea's National Cultural Commission has offered the alternate term *bestower* in that setting, to refer to those who are essential to transmission of rights, if not owners or heirs per se (personal communication, December 30, 2001). Strathern rightly signals the recent tendency toward an even more encompassing purification of "traditional owners" in TK discourse, which of course erases much of the heterogeneity and historicity in lived conditions of transaction. Whatever term used by the Piikani, it is the instantiation of distinct ranges of human and nonhuman relationalities through transaction—how attachments are made and unmade—that remains of analytic interest.

First, to speak of "design" transfers in relation to Blackfoot painted tipis is misleading. The design and the tipi are invariably transferred together in a ceremony within the very tipi on which the image is painted. There is a material integration of the design and the thing it is painted on, and it is only once the tipi wears out that a new tipi is made, painted, and renewed in a properly conducted ceremony. The tipi and the design are but two elements of a physical ceremonial bundle, which includes objects specifically associated with the design, its story, and attendant protocols. The design is transferred with this bundle, and reciprocal payment *(siikapistaan)*—such as money, horses, blankets, or other valued goods—is made. These are all inalienable components of *poomaksin,* the Blackfoot term for the encompassing, total practice of transfer (Noble in press).

The bundle has other intangible elements, apart from the image. Every tipi design has songs that are transferred with it and which are used both in the transfer ceremony and in everyday manners by the keepers—always a male and female together—and their kin. Persons may also be made kin to the bundle and its holders by means of adoption ceremonies deploying all these elements. One cannot separate the songs from the bundle, the design, or the tipi. Indeed, the songs are specific means of connecting people with both the tangible and intangible dimensions of the story or origin vision informing the imagery, the animals or beings in the story, and all the powers that accrue to these elements. As Awakasinna put it, "The song is the authority given by Creator to prove one's rights" (interview, June 10 2001). Singing specific songs, therefore, signals keepership rights. Still other rules are associated with each transferred tipi: For instance, one might be prohibited from making loud sounds inside or be required to walk in certain directions when entering the tipi.

So, such transactions are not so much transfers of a tipi design but of a tipi praxis that is a dense articulation of tangible and intangible, human and nonhuman elements, and of specific social means for continually extending the complex and incorporating people, things, and action into it. Indeed, the praxis embodies the rules and procedures of its transactability.

Following Strathern (1999) again, as with cases of highland societies in Papua New Guinea, divides between people, ideas, and things are not produced axiomatically

in transaction, whereas IP is predicated on generating axiomatic practice to ensure its normative coherence and harmonization potential. Rather than separating things from people from ideas, the tipi-transfer protocol actually increases the connections, multiplying social and material relations in the course of things. This extends in a genealogical sense as well: When the person transferring the tipi design becomes a "grandparent" or elder to that tipi, he or she is expected to be honored as such in future activities by, for example, being invited to ceremonies associated with the tipi, retaining privileges of entry, filling an advisory role, and being presented with appropriate gifts when attending ceremonies. Importantly then, "designs" never escape their attachments to the lineage of previous and current holders, nor to the material tipi and its entire praxis.

By now, an important issue should be clear: As the intricacy of tipi-transfer practices is contoured more fully, the "IP-like" character of these transactions becomes increasingly obscure. Furthermore, relations generated by tipi transfers are markedly different from those anticipated by IP. Although none of this discounts WIPO's efforts, it does demonstrate that they have been hybrid in a selective direction that still privileges the expansion of capitalist property norms.

To set this in higher relief, I turn to the practice of Piikani enrollment by means of transaction, in contrast to WIPO's enrollment by translation. Here Awakasinna mobilized Blackfoot ownership practice to enable a non-Blackfoot organization to use one of his transferred tipis.

In the late 1980s, the Government of Alberta opened an archaeological interpretive center at Head-Smashed-In Buffalo Jump, a UNESCO World Heritage site, located near the Piikani reserve. Advancing a community collaboration research and public programming approach—initiated by archaeologist Jack Brink—the center presents both archaeological and Blackfoot accounts of relationships with bison, hunting techniques, and other cultural practices (Brink 2002). Approached by the then-manager of the center, Awakasinna was asked if it was possible to obtain an assignment of an IP right for the center to use his transferred Buffalo tipi design, which recounted a story of the Buffalo hunt. Wanting to advance the existing strong working relationship between the Piikani and the center, Awakasinna consulted other transferred tipi bundle keepers, who agreed use could take place if a senior staff-member at the center was made kin to the tipi bundle. Bundle adoptions of non-Piikani collaborators, including archaeologist Brink, had worked to reinforce relations in the past. They proceeded with a ceremony within the Buffalo tipi to adopt the center's manager as a relative of the design and its bundle.

In the sociotechnical network terms of Michel Callon (1986), the manager had been enrolled into the transferred tipi's human–nonhuman complex. The practical effect for the center has been the engendering of further enrollments of tipi practices and the distribution of new competencies. Staff undergo ceremonial smudging when using the tipi and follow tipi protocols. The manager must join keepers and other kin of the bundle annually to "feed" and undertake renewals of the bundle. During such events, reciprocal giveaways including gifts of blankets and cash take place. In turn, the center may point to the tipi itself as signifying the relationships they had entered into with the Piikani, speaking of the protocols they follow in the relationship. The tipi is available for wider public use, whether in pow-wows, workshops, visitor programs, or for hosting dignitaries.

The relational and transactional network of the tipi bundle extended itself widely by means of its reciprocally animated adoption practice. Much as WIPO's hybrid facts enroll customary practices and then export into them the terms and procedures of IP, Awakasinna applied customary practices to enroll and export Blackfoot rights and entanglements into a Canadian heritage institution that would otherwise govern itself by adherence to conventional Canadian law and property rules.

This arrangement worked well for several years until the manager transferred to another center. Questions of use rights arose again, so Awakasinna was approached once more. This time, he proposed an even more flexible arrangement: to adopt the center's written mission statement as a series of tangibly recorded identity-defining concepts into the bundle, thereby conferring a kinship and use right on the entire center. Awakasinna described this as consistent with Piikani practices, as transferred tipis can equally enroll the tangible, intangible, or the human as part of the bundle's relational complex.

This moves into relations that are quite alien to IP discourse and practice to date. Indeed, these relations subvert modernist subject–object distinctions underwriting conventional "property" relations, by allowing for the enrollment of people or things—even networks of people and things as indexed by self-description documents such as a mission statement—into the relational network of the tipi and its owners. Any person or thing capable of generating relations may be subject to kin adoption as a tool of Piikani relation making.[13]

Although straightforward for the Piikani, the proposal proved to be a conceptual challenge for the center. Administrators suggested that only a specific-use right was needed, not the more far-reaching relationship that Awakasinna proposed, as concerns about legal certainty and enforceability were raised(center manager, personal communication, December 5, 2005). Strangely enough, such concerns did not encumber the ultimate decision to replicate the previous arrangement: Eventually another staff member was adopted into the tipi bundle.

The Piikani continue to approach the use issue as resolved by sustained relation making. Awakasinna remained puzzled, however, as to why the center would not take advantage of the more empowering mission adoption, which he said would give them "something like a whole bylaw for using the Buffalo tipi and its design in so many ways" (Reg Crowshoe, personal communication, December 6, 2005). Here the center and its staff simultaneously engage the Piikani relationship and yet continue to understand it, at

best, as a sort of hybrid of Piikani and IP practice. Not unlike WIPO, the center's officials cannot fully surrender their attachment to a dominant frame of property practice. Still, the parties produce a provisional accord. Politically, however, the center signals its cleaving to Canadian legal sovereignty, insofar as mission adoption is perceived as either legally incomprehensible or an overendorsement of Piikani power. Were a conflict to arise, it is uncertain how Canadian law, IP or otherwise, might address an arrangement predicated on the adoption of a staff member into the reciprocal complex of a painted tipi and its bundle. This may be inconsequential, because Piikani practices minimize conflict by means of relationship, regenerating relations at every turn.

Is there a specific ends to the flexible, instrumental approach deployed by Awakasinna and the Piikani? To be sure, the center achieves its ends of a use arrangement, but for the Piikani the interest is in sustaining a respecting relationship, quite literally of "making relatives" (cf. Noble in press). Over time, with changing staffing and use arrangements, the transactional relation-making practices are redeployed by the Piikani. What might be thought of as the ends of relation making is pragmatically the same as the means: relation making. For the Piikani's part, means and effects merge as means–ends instrumentality of IP assignment is circumvented.

So, the crucial and decidedly political point of instrumental difference lies in how the non-Piikani institutional use of IP-like rights via translation is set against the Piikani's use of relation making via transaction. Although both seek to enroll the other's practices, the former alters or hybridizes—and so colonizes—meanings of practices in pursuing a horizon of normative legal closure. The latter seeks to sustain and keep open what is already working: relationship. An instrumental and epistemological (if not ontological) divide emerges in both the WIPO and Head-Smashed-In encounters. Such problems of inequitability in knowledge and practice bring us full circle to the statement of Kamal Idris with which I opened, especially his propositions of "justice" and "full participation" as the requisites for empowerment.

TRANSLATIONAL JUSTICE, TRANSACTIONAL RELATIONS?

There are no statements in WIPO documentation of its vision of justice. This point was confirmed to me by officials in the TK section who agreed that one would have to draw a sense of what counts as justice by looking to the actions and initiatives of WIPO and its constituents. WIPO officials point to a variety of developments: a voluntary fund where member states support participation of TK players in IGC meetings; fast-track accreditation of observer status for NGOs(WIPO 2007); provision for written contributions through WIPO's website; formal dialogues with the UN Permanent Forum for Indigenous Peoples; and special sessions of the IGC chaired by representative TK groups (correspondence with GRTKF official, January 23, 2006).

From this, we can discern that WIPO's sense of justice is tethered to participation based principally on consenting to engage in liberalizing discourses of property. As such, it is IP participation—and its attendant instruments of translation—that are crucial in animating WIPO's justice: the promise that through dialogue and participation with the system, its presumed benefits and protections may be distributed more equitably, more justly, so to speak. This again recalls Povinelli's observations on how to participate in liberal orders of law and governance: Those on the radical margins must first accede to the conditions of liberal possibility—essentially, to deradicalize themselves. For Povinelli, liberalism seeks out and engages an "other" provided that this other accepts the "burden for social commensuration" demanded by liberal, pluralist interchange (2001:329–330). Arguably, to some degree, the Piikani adoption practice avoids the burden for social commensuration by shifting the practice (versus the terms) of engagement from translation to transaction, displacing liberal instrumentality with Piikani instrumentality. It is on this point that Blackfoot tipi transfer—as one case in a heterogeneous terrain of transactional possibility, not as some universal expression of "TK" or essentialized indigeneity—gives us important analytic cues for considering WIPO's "justice." Foremost, participation directed at selecting and translating practices into widely harmonized IP norms still privileges a singular knowledge practice, one that is stymied by distinct instrumentalities such as Piikani relation making. Contrastingly, Piikani Blackfoot tipi-transfer practices clearly suggest that socially distinctive and embedded "customary" approaches to transcultural protection and "use arrangements" can be achieved without IP law per se. Rather, such practices point to forms of transactional practice operating autonomously from state legal regimes and predicated on radically different relations among people, things, knowledges.

During the FFMs, WIPO met with strongly stated positions on the importance of practice-sourced customary law. Indeed, the Piikani tipi relation with the center is in line with the statement of Jacob Simet of Papua New Guinea's National Cultural Commission to WIPO's FFM to Port Moresby:

> We have had songs, traditional knowledge and so on for hundreds of years. . . . There were clear customary laws regarding the right to use the songs and the knowledge. We should begin with communities, and see how they protected their cultural expressions and knowledge. Then we should use the same customary tools or tools adapted from them. [WIPO 2001a:58)

As with the Piikani, Simet gestures to the heterogeneity and autonomy of practices meeting and engaging one another. Though WIPO began with IP rather than customary tools, its fact-finding work did lead to repeated calls similar to those of Simet. Now, more than five years after its TK missions, WIPO's attention is turning very tentatively to customary laws that can sanction distinctive exchange practices, at least contemplating the previously elided issues of

embeddedness and inalienability in transaction practices and how these are entangled with political, historical, and economic conditions.

A draft "issues" paper posted to WIPO's website shows a modest reorienting of IP and its "justice" role toward jurisdictional questions, admitting how indigenous peoples

> have expressed concern that the bare content of their distinctive cultural heritage and knowledge systems should not be considered in isolation from the customary community context . . . the form or representation of a cultural expression, and the content of knowledge, should not be appropriated without recognition of the legal and cultural context that helps define them. [WIPO 2005:2]

The document expresses a concern for the larger political stakes in

> the much broader debate about the recognition of indigenous or customary law, which can arise in the context of indigenous governance, the rights of indigenous peoples, the preservation of cultural identity and intellectual and spiritual heritage, and self-determination. [2005:5]

Although suggesting a widened purview in WIPO's participation framework to include political-jurisdictional recognition, the paper eventually reiterates its instrumental limits, noting it is only intended "to respond and contribute to this dialogue from one perspective" (2005:5)—that of IP norm building.

Anthropologists have argued that liberal politics operate insidiously, especially in international development projects in which "participatory" policy

> does not reverse or modify development's hegemony so much as provide more effective instruments with which to advance external interests and agendas while further concealing the agency of outsiders . . . behind the beguiling rhetoric of "people's control." [Mosse 2003:5][15]

This may occur in state-sanctioned international development projects, but it would be misleading to suggest that WIPO's officials are attempting somehow to "beguile" TK holders through participation. To the contrary, WIPO continually adjusts and reaims its expert technical activities in response to TK interlocutors: These are acts of "liberal self-correction" that, contra Povinelli (2001:326), could open up rather than close down consideration of alternatives to IP normativity. Although constrained by its instrumentalism and IP objectivism, one unanticipated effect of WIPO's "just" participatory engagement with nonstate TK actors is to have opened a door, however tentatively, onto a potentially enormous diversity of distinct, nonproperty transactional practices, and, indirectly, onto the histories of sociopolitical and economic inequalities underwriting them.

Considered internally, WIPO's participatory justice may well be delimited by its purview and its instrumentalism. The potential effect for its TK interlocutors may also be limited in that setting. However, recalling David Kennedy's observations on international legal bureaucracies, WIPO does not act independently of other bureaucratic and political agents. Much as the work of anthropology is complicated by its position in dominant and alternative knowledge-privileging circuits, WIPO's work in the UN is further complicated in navigating multilateral regulatory regimes, obligations to member states, interventions of civil society organizations, and shifting authority of UN agencies over IP—now occupied centrally by the WTO.

Many of WIPO's TK interlocutors are also active in these arenas. Rosemary Coombe points to how indigenous peoples and their NGOs use WIPO as one of several crucial UN venues for altering the regular circuits of neoliberal expansionism by strategically linking IP with human rights discourse (1998, 2003; Coombe et al. 2005). She writes that this " 'counter-current' in IPRs has still untapped potential for the creating of new forms of IP that may ironically 'defetishize' commodities and/or enable communities to refuse the logic of the commodity form altogether" (Coombe et al. 2005). Although recent turns by WIPO and other agencies could reinforce such a refusal or negating of the commodity form, it remains uncertain as to whether the complex networks in which transnational legal standards are developing could positively empower transactional practices in their extreme, distinctive forms (cf. Wendland 2004). Perhaps this is the ultimate limitation of a priori discussions of property or commodity forms, which, as Strathern remarks, elide the "rather different rhetorics of power, elicitation and the involvement of peoples in one another's lives" (Strathern 1999:203) that are present in nonproperty transactional practices.

Yet Strathern also stresses that neither can we, nor should we, avoid IP "precisely because it invokes property, it is a political slogan of (international) power" (1999:203). Similarly, Michael Asch discusses how invoking property becomes an instrument for northern Dene people seeking to reduce "distortions" about their autonomous, transactional relations with the land "by providing Canada and Canadians terms in their own language" (n.d.); that is, the Dene smartly appropriate "property" to counteract the ravages of its erstwhile translations.

In thinking of property as a tool in international power relations, therefore, Coombe's observations on the effectiveness of indigenous activism across the United Nations do come decisively into play. Andrea Muehlebach also points to this harnessing of bureaucratic tools in describing how

> indigenous activists have increasingly exploited the inconsistencies of the UN as a mammoth bureaucracy and have counted on UN expert bodies as allies whose progressive reports and recommendations they powerfully mobilize. Indigenous activists make up a highly functioning network through which they participate in the activities of various UN bodies in the human rights sector, as well as in the UN environmental sector, the World Intellectual Property Organization, the International Labor Organization, and so on. [Muehlebach 2003:254]

Muehlebach shows how the transnational indigenous movement activated across the UN has generated a politics of radical participation around malleable, partially

stabilizing categories of the "indigenous" and their distinctions and exclusions from dominant economic and political forms. Sharing Coombe's sense of possibility, she sees this as a "productive, and an ambivalent, but creative, terrain through which and with which indigenous delegates act to make radical claims to culture and territory at the UN" (Muehlebach 2003:244), much of this under the human rights rubric of self-determination. In yet another register of instrumental action, therefore, WIPO's justice and empowerment for TK holders—as translational participation in the IP system—becomes not an ends for many indigenous actors but, rather, a means contributing to wider efforts of setting conditions for new forms of self-determining relations for indigenous peoples, many of whom are the same players engaging WIPO on matters of TK.

In these wider circuits, WIPO's just participation is appropriated to projects seeking sociopolitical autonomy. Internally, however, WIPO continues to be challenged by autonomous, distinct practices of inalienable transaction that run counter to notions of alienable property. WIPO's actions line up with the reflexive ethics of the "skeptical Cartesian subject" spoken of by Karen Sykes where the very "fact of alienation" becomes "hard to see and hard to know from an experience of alienation itself" (Sykes 2005:184). This looms as WIPO's conundrum in its engagements with "traditional" forms of transaction, hobbled as it is by its instrumentalism, where alienation of people and things remains the predominant epistemology of transaction.

Set against WIPO's instrumentalism, the Piikani case issues an effective challenge to the transactional premises of IP. It is a relational challenge, not an adversarial one, in which Piikani relation making begins to unsettle universalizing notions of IP assignment as the presumed means for realizing a protective, positive-use arrangement for a transferable "design." For the Piikani, there are no ends of property nor justice per se; rather, there is the ongoing effect of transaction and relation making. In the final analysis, it is not the justice of participation but the relations of transaction that are crucial.

ANTHROPOLOGY AND RADICAL CORRESPONDENCE

Writing on how we might correct simplistic readings of Gramscian resistance and hegemony, William Roseberry (1994, 1998) suggests we look for "points of rupture" in everyday "popular culture" practices as a starting point for anthropological analyses. The tipi-adoption practice effects such a rupture, relaying a noncapitalist practice into capitalist domains. Roseberry notes how such ruptures make visible the processes of relational domination in expanding liberal "social fields of force" and so break down "the common discursive framework" disrupting "the language and precepts of liberalism" (Roseberry 1994:365). The Piikani action works even more pragmatically than Roseberry's discursive disruptions by actually exporting practices of material reciprocal relationship, prying open spaces of intervention in the liberal domain, such that actors begin to alter their practices to follow Piikani ones.

When confronted by a proposal to participate in (the hegemony of) the property system, the Piikani countered with a practice in which actors within the agency would consent to entanglement in the Piikani system of transaction and legal sanction. In contouring this practice and juxtaposing it against WIPO's translations, the politically charged notions of participation, justice, and empowerment are made strange. Indeed, it is the experiential strangeness of such actions that productively challenges presumptions of the neoliberal telos, underscoring Bill Maurer's point that "in a world dominated by strikingly uniform globalization slogans that proclaim there are no alternatives to neoliberalism, financial integration, or capital mobility, it is important to insist on the experiential metaphysics of this thrill of wonder, and to recuperate the uncanny within it" (2005:120).

For anthropologists working where indigenous and subaltern actors engage state and international bureaucracies—whether in critical analyses, consultative or community-based research, or in development-engaged research—our technical attention could productively turn to such surprising moments of radical correspondence. By means of identifying, counterposing, and tracing instrumental collisions and correspondences, we may expose the associated ruptures, politics, and potentialities. Working in both subaltern and institutional registers of action—as social analysts or as engaged experts—anthropologists position themselves to bring these correspondences and ruptures into view.

It is not only WIPO but also the broader discipline of anthropology that is challenged by translational impulses in encounters with radically distinct practices of transaction and knowledge relations. Archaeologists George Nicholas and Julie Hollowell have called for "postcolonial archaeological" practices to counteract knowledge domination and appropriation in research with "descendant communities" (in press). Citing archaeologists, anthropologists, and ethicists, they reflect on approaches such as "negotiated practice," "dialogic ethos," "critical multivocality," and "equitable distribution of research benefits" (cf. Saitta in press; Salmon 1997; Wylie 2005). Reminiscent of WIPO's GRTKF officials, or of Head-Smashed-In officials, these genuinely concerned archaeologists are seeking means for "reconciling the objectives and values of communities with those of archaeology at a meaningful level" by "reconceptualizing and reformulating research as part of a continuous reflexive process" (Nicholas and Hollowell in press). In many ways, WIPO's conundrum is anthropology's as well: Our knowledge practices and theirs, from fieldwork to fact-finding, meet similar instrumental and epistemological limits. The problems and politics of translation vex us at every turn, leading us to similar ethical responses.

Might there be a further lesson to be taken from radical correspondences? Can we conceive of alternatives to translation? Rather than the more regular tendency of seeking

translational parallels when alterior practices collide (which Strathern has correctly problematized), one might instead juxtapose indigenous forms of transaction as effective counterpractices to anthropological knowledge relations. The Piikani's tipi-adoption relationship with the heritage center operates in this juxtapositional, interruptive manner. By displacing the ends of IP assignment with the means of relation making, it holds translation at bay, permitting Piikani knowledge practices to be more effectively, adequately engaged.

The Piikani action demonstrates how juxtaposing alternative models of relational practice can produce significant change and movement across divides of difference, even in erstwhile bureaucratic settings. Arguably, such a committed "alongsidedness," to use Maurer's productive term, could aid in the radical rethinking of anthropological instrumentalism, caught up as it so often is with reifications of privileged versus subaltern knowledges or with relations of empirical and theoretic knowledges—that is, the social science cognate to WIPO's fact–norm instrumentalism. A move toward radical correspondences is consistent with recent calls by the World Anthropologies Network "to break the silent hegemony inscribed by modern regimes of knowledge production and open up alternative venues for *different kinds of knowledge* and their conditions of possibility *in their own right*" (Collectivo WAN 2003).[16]

Riles rightly suggests that studied engagements with differences in knowledge practices require an ever-more resolute technical involvement with institutional practices (such as those of WIPO or the Heritage Center), and indeed with our own knowledge-producing activities as anthropologists. Simultaneously, in radically correspondent terms, we might also take Piikani and myriad other nonproperty relational practices as models for knowledge engagement. As a matter of technique, anthropologists would do well to allow for the activating of transactional practices themselves, engaging in their textural richness and material, relational effects. Taking seriously what is often taken as inconceivable—consenting to the adoption of our "missions" into their "bundles"—may prove to be a more adequate means for creating effective, even "just" networks of knowledge relations.

Brian Noble Department of Sociology and Social Anthropology, Dalhousie University, Halifax, NS, Canada B3H 4P9

NOTES

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1. On the political contingency of ideas of "tradition," see Clifford 2004 and Mauzé 1997.

2. See WIPO 2001a, "Customary Laws and Protocols," which uses this prefixing throughout.

3. Such issues preoccupy anthropologists in all subdisciplines. See Meskell and Pels 2005; see also Bannister and Barrett 2004; Bray 2001; Brown 2003; Hayden 2003; and Marks 2005.

4. See Wissler 1912 on transferred bundles. For a cognate case of Kiowa tipi transfers, see Dreschler and Greene 1994.

5. See Strathern 2004, advancing her 1999 treatise on the "effects" of ethnographic practice: namely, the visibility of social relations.

6. These standards coincide with one area of IP law, copyright, as described by Malaro (1998:149–171).

7. Anthropologists still discuss the utility of the term *property* as encompassing a diversity of practices enabling "the distribution of social entitlement" (Hann 1998:7). Even this gloss is inflected by capitalist notions of property.

8. See Moore (2001) and Channock (1985) on colonial "customary law" in central Africa.

9. See Habermas (1996) for an extended thesis on the moral and communicative dimensions of the facticity–validity tensions of rational law.

10. Star and Griesmer (1989) discuss how hybrid "boundary objects" create sufficiently stable meanings among actors with different knowledges and interests.

11. Paul Nadasdy (1999) outlines a procedure of purification and enrollment in Traditional Ecological Knowledge (TEK)–related resource management projects in northern Canada.

12. See Conklin 1997 and Clifford 2004.

13. Also see Pottage and Mundy (2004) on the production of persons and things by way of property.

14. "Accreditated observers" are listed at http://www.wipo.int/tk/en/igc/ngo/ngopapers.html, accessed July 29, 2005.

15. Also see Li in press and Cooke and Kothari 2001.

16. Confer with Oguamanam 2003 on "epistemic pluralism."

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