Theme: Respecting and Protecting Indigenous Knowledge
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Cover Artwork:

Karen Mills – Artist, is an Indigenous visual artist who lives and works in Darwin, Northern Territory. Her family are from the East Kimberley region in Western Australia.

Karen’s artwork has been exhibited locally, nationally and internationally, including the Telstra National Aboriginal and Torres Strait Islander Art Award in 1998 and 2004.

In 2003 she participated in Communion and Other Conversations, an
international thematic residency for Indigenous artists at the Banff Centre, Alberta, Canada. In December 2005 Karen was selected as the inaugural recipient of the Wenten Rubuntja Indigenous Artist Fellowship, an eight-week artist residency in New York.

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ARTICLES:

Introduction

Robynne Quiggin – Editor, is an Aboriginal solicitor and consultant. Robynne is descended from the Wiradjuri people of central western New South Wales and currently works for Vincent-Quiggin Consulting.

This issue of the Journal of Indigenous Policy brings together eight women’s perspectives on ways in which Indigenous knowledge, Indigenous art, Indigenous heritage and Indigenous values may be protected and secured in the current legal and policy framework.

The articles traverse policies and laws relating to the arts, environment, ethics and science, but have a single strong common theme. They are all about how we carve out respect and protection for Indigenous arts and cultural objects, knowledge, knowledge systems and values in policy and law.

Nationally and internationally, there has been substantial work undertaken by academics, activists, lawyers and leaders which recognises and seeks to address the gaps in legal and policy protection for Indigenous arts, heritage and knowledge. Developments in science, the arts market, and changing land management practices have brought new challenges to this work. The women who have contributed to this edition of the Journal of Indigenous Policy bring insight, academic rigour, and a wealth of experience from their work participating in international forums, in legal practice, in Indigenous community organisations and non-government organisations.

Think Global, Act Local: Protecting the Traditional Knowledge of Indigenous Peoples

Sonia Smallacombe – Sonia Smallacombe is a member of the Maramanindji people in the Daly River region of the Northern Territory, Australia. Sonia is currently working for the Secretariat of the United Nations Permanent Forum on Indigenous Issues. Previously she held the position of senior lecturer and head of school at the School of Australian Indigenous Knowledge Systems, Charles Darwin University, Northern Territory.

Indigenous people’s struggle to protect their biodiversity resources intensified in the 1990s, when multinational corporations began to exploit for profit Indigenous peoples’ Traditional Knowledge, genes and biodiversity resources. As a result, Indigenous
people worldwide became concerned about biopiracy. In most countries, biopiracy is practiced by large corporations and governments, under various pretexts, on biological and genetic resources found mostly on Indigenous peoples’ lands and communities. Not only is the material taken but the collective knowledge systems which have evolved over centuries and is uniquely bound up with the practices, customs, traditions, lands and resources is removed from Indigenous communities, genetically manipulated, patented, and thus privatised and commercialised.¹

Once Traditional Knowledge is removed from Indigenous communities, the community loses control over the way that knowledge is used and the rights of these people are rarely recognised and protected. In addition, Indigenous people do not share, at least in a fair and equitable manner, benefits arising from the appropriation of their knowledge and its subsequent use in drug development.

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*When the Owl Screeches: Protecting Human Remains*

**Cherryl Waerea-i-te-rangi Smith** – Dr Cherryl Waerea-i-te-rangi Smith is of Ngati Apa, Te Aitanga A Hauiti and Ngai Tumapuhiarangi descent, and lives in Wanganui, her mothers tribal area. Dr Smith is a Maori academic/researcher who has been involved in writing and speaking on genetic issues, in Maori communities, and nationally and internationally since 1999. She is on the executive of Te Waka Kai Ora, the national Maori organics association and also on the executive of Te Runanga o Ngati Apa. Her Ph.D was written on *Maori Knowledge and the University*.

Within New Zealand, over 500 Maori chiefs signed the Treaty of Waitangi in 1840. In effect, the Treaty was a document that all owed British settlement of New Zealand. In subsequent decades of signing the Treaty, some Maori did go to war as the intentions of settlers became clearer that ‘sharing’ the land or according Maori governance over their own lands was not what settlers had in mind. The Treaty, however, remains as the most clearly recognized statement by Maori that hapu (sub tribes) of New Zealand remain as self-determining peoples today.

The purpose of this article is twofold. Firstly, it will identify and describe some of the new ways in which human tissue has become a research object for a variety of purposes. Secondly, it will investigate the implications and the challenges for Indigenous peoples in this era where new forms of political and economic value are attributed to human tissue.

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*The Right of Indigenous Peoples to Permanent Sovereignty Over Genetic Resources and Associated Indigenous Knowledge*

**Debra Harry** - is Northern Paiute from Pyramid Lake, Nevada, USA. She is the Executive Director of the Indigenous Peoples Council on Biocolonialism and is a doctoral candidate at the University of Auckland.

Debra is also Producer of an IPCB/Yeast Directions documentary film “The Leech and the Earthworm,” which documents the experience of Indigenous peoples whose tissue and blood samples were used without their consent or any benefit to them. It also includes commentary by Indigenous advocates who discuss the impacts of genetic technologies on Indigenous peoples. Debra’s areas of expertise include protection of Indigenous peoples’ genetic resources, Indigenous knowledge, and cultural and human rights.

Le’a Malia Kanehe – is a Kanaka Maoli (Native Hawaiian) attorney from Honolulu, Hawai’i currently working as a legal analyst for the Indigenous Peoples Council on Biocolonialism. Lèa’s areas of expertise include protection of Indigenous international and domestic rights in relation to genetic resources, biodiversity, Indigenous knowledge and human rights.

Biopiracy and biocolonialism by states, multi-national corporations and other research institutions violate Indigenous peoples’ inherent right of self-determination, which includes our right to permanent sovereignty over our natural resources. The commercialisation of genes through the application of intellectual property rights law as furthered by the World Intellectual Property Organisation (WIPO) and other United Nations (UN) processes, conflicts with Indigenous Knowledge systems of stewardship and management. The risk of corporate monopolisation over food and other plant genetic resources is further compounded by international trade agreements such as the Trade-Related Intellectual Property (TRIPS) agreement of the World Trade Organisation (WTO), which facilitates the patenting of genes. Indigenous peoples are heavily impacted in this area because they control and occupy lands that are rich in biodiversity, and also maintain Traditional Knowledge about the uses of these resources in their regions. Yet, Indigenous peoples are virtually invisible or marginalised in the global debates about our rights to protect our genetic resources from corporate control. Meanwhile, the Convention on Biological Diversity (CBD), initially hailed as a conservation and sustainable development treaty, has shifted its focus toward defining processes for access and benefit sharing of genetic resources, many of which are drawn from the natural resources that abound in Indigenous territories. Together these international instruments facilitate the theft of biological resources by allowing the ‘discoverers’ to take and monopolise life forms they had no hand in inventing.

This article will provide a general background on biopiracy in Indigenous territories – the theft of genetic resources and associated Traditional Knowledge – and biocolonialism – the extension of colonisation to the biological resources and knowledge of Indigenous peoples by highlighting case studies of biopiracy from several different Indigenous peoples around the world. Furthermore, this article will discuss the failures of the Convention on Biological Diversity to adequately protect the human rights of Indigenous peoples to permanent sovereignty over our natural resources.

Indigenous People, Biotechnology and Ethics

Robynne Quiggin – is an Aboriginal solicitor and consultant. Robynne is descended from the Wiradjuri people of central western New South Wales and currently works for Vincent-Quiggin Consulting.
The biotechnology industry is currently considered an important growth industry in Australia today. Initially, great expectations were held for the Australian biotechnology industry and while some of the gloss has gone for a number of reasons, the sector is still growing.

This paper provides some introductory information about the biotechnology industry, intellectual property systems, and the legal and ethical issues for Indigenous Australians.

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**The Rights of Indigenous Peoples to Water: International Environment and Human Rights Standards**

Neva Collings – Neva Collings is an Australian Aboriginal lawyer who has worked in international, national and local Indigenous issues, and who specialises in resource management and environmental issues for Indigenous people. Neva is currently completing her Masters of Laws.

The national water reform process has separated on-shore water from land by abolishing riparian common law rights and creating tradable property rights, a process that has for the most part excluded Australia’s Indigenous people in terms of their status as first peoples with customary decision-making protocols.

It is only in the jurisdictional roll out that Indigenous people are mentioned, in queue with other stakeholder interest groups, competing for allocations and priority access, and even then only in some jurisdictions not others. In fact some stakeholders groups have far greater decision-making power than Indigenous people in terms of selecting their own representation on catchment committees.

This overarching national exclusion and limited jurisdictional inclusion runs counter to international legal principles concerning the fundamental rights of Australia’s Indigenous people whose matrix of rights associated with water - spiritual, social, economic, cultural, civil and political - should take precedence over other commercial interests.

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**Captured Images: Film Archives and Indigenous Cultural and Intellectual Property Rights**

Terri Janke – is Solicitor Director of Terri Janke and Company a Sydney based law firm specialising in intellectual property, entertainment, cultural heritage and media law.

Leigh and Saunders note that Australia’s involvement with cinema began with the projection of films in Sydney in late 1894. They state that the first film to be made about Indigenous Australians was made by A C Haddon, a visiting academic from England. It was made on Mer (Murray Island) in the Torres Strait in 1898. Since then, the cameras have captured a lot of Indigenous content. This includes ethnographic accounts of culture; sacred ceremonial practices; personal histories and knowledge of Indigenous people about land, animals, plants and events.

As a result, the film archives have inherited a lot of films that have significant
Indigenous content and are of importance to Indigenous people. Issues now confront the archives about how to manage this material and to whom this material should be made available. Indigenous people are concerned that these film records hold much of their Indigenous cultural and intellectual property. They seek to have a say in how this material is made available.

When is a Forgery Not a Forgery?

Tania Johnson – is a solicitor with the New South Wales Office of the Director of Public Prosecutions. She has a strong interest in the administration of criminal justice and civil rights.

The examines the case of the DPP v O’Loughlin in which the question of whether paintings attributed to the high profile and celebrated Indigenous artist, Clifford Possum Tjapaltjarri, were passed off as being original work. The paper is structured as five sections: Section One outlines the rise of the Aboriginal art market, in particular Western Desert ‘dot’ paintings, and the conflict inherent in Indigenous and non-Indigenous notions of authorship. Section Two summarises O’Loughlin, identifying the key issues and proceedings, with brief consideration of the outcome. This leads to Section Three, which develops the observations of the preceding chapter, analysing the question ‘when is a forgery not a forgery?’ through a discussion of the difficulties and reasoning in the prosecution of O’Loughlin. This discussion concludes that law reform is necessary to address the anomaly in the law of fraud that is highlighted by O’Loughlin. Section Four considers the cross-cultural issues evident in O’Loughlin, illustrating the need for specific reform to acknowledge the complexities of Indigenous communication, and for the development of guidelines that require awareness by the judiciary and practitioners of the socio-cultural context of communication between Indigenous people. In Section Five, suggestions are made as to what reform is necessary and the issues that need to be considered in enacting such change.

Statement of the Indigenous Women’s Biodiversity Network (IWBN)

7th Conference of the Parties to the UN Convention on Biological Diversity, February 9-20, 2004 in Kuala Lumpur, Malaysia