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Lost Worlds

Environmental Disaster, "Culture Loss," and the Law[1]

by Stuart Kirsch

Indigenous claims about "culture loss" pose a problem for contemporary definitions of culture as a process that continually undergoes change rather than something which can be damaged or lost. This issue is examined in the context of hearings at the Nuclear Claims Tribunal in the Marshall Islands, which was established to adjudicate claims regarding damage and loss to persons and property resulting from United States nuclear weapons testing during the 1940s and '50s. The concept of cultural property rights is used to identify the referents of discourse about culture loss, including local knowledge, subsistence production, and connections to place. The problems caused by the taking of inalienable possessions are also considered. At issue is whether indigenous relationships to land are of ownership, belonging, or both. The definition and significance of culture and loss are increasingly debated in legal contexts ranging from tribunals and truth commissions to land rights hearings and heritage legislation around the world.

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Before the river was not like this;
it makes me feel like crying.
These days, this place is ruined,
so I feel like crying.

Where I used to make gardens,
the mud banks have built up.
Where I used to catch prawns and fish,
there is an empty pool. . .
So I feel like crying.

Before it wasn't like this.
We had no difficulty finding food in our garden or wild game.
We had everything that we needed.
Now we are suffering and I wonder why.

DURI KEMYAT, 1996

A significant counterpoint to the exuberant claims made for the benefits of globalization are native people's expressions of loss associated with the transformation of their societies, including relocation from traditional lands, threats to the continuity of their languages (Hill and Hill 1986, Kulick 1992, Nettle and Romaine 2000, although see Warren 1998) and the reduction of political autonomy (Cultural Survival 1993, Dean and Levi n.d., Gray 1997, Maybury-Lewis 1997, Ramos 1998). The sense of loss is especially pronounced in the wake of environmental disasters that damage local land and resources, including oil spills, exposure to nuclear radiation, deforestation, and the toxic impacts of mining.

In ethnographic research with people living downstream from the Ok Tedi copper and gold mine in Papua New Guinea, I have described how pollution has affected local relationships to the landscape (Kirsch 1997*a*, n.d.). Tailings and other mine wastes have poisoned local rivers, destroyed several hundred kilometers of rain forest, ruined rich garden land, and precipitated the decline of local fauna. These problems have forced many of the communities living downstream from the mine to depend on compensation provided by the US$500 million settlement of their lawsuit against the Australian corporation BHP, the majority shareholder and operating partner of the mine (Kirsch 1997*a*). Whereas local histories were once intimately associated with the landscape, the destruction of the places where these events occurred has prompted these communities to reformulate their narratives of the past in chronological terms. Their magic, which addresses the animals and the other beings with whom they share the rain forest, is now questioned given the disappearance of its audience. Local accounts of these changes convey a profound sense of loss, as is illustrated by Duri Kemyat's lament above (Kirsch n.d.).

The theme of loss has echoes throughout the indigenous world, often in association with damages to and/or displacement from their land. Deborah Rose (1996:

20–21), for example, describes the Aboriginal characterization of land that is no longer being managed by its caretakers as "a loss of life, a loss of life support systems, and a loss of relationships among living things and their country. For many Aboriginal people, this 'wild' [i.e., land that is no longer maintained through fire] has a quality of deep loneliness." Richard Baker (1999:179), also writing about Aboriginal Australia, quotes an informant as saying, "We have lost all our everything." Looking out across a changing landscape, the Fuyuge of Papua New Guinea anticipate the growing impacts of mining, including new social boundaries and the potential "loss of [their] way of life or culture" (Hirsch 2000). Verena Keck (1998) has considered the various threats posed to traditional knowledge in the Pacific, particularly knowledge directly related to the material world.

A distinctive feature of indigenous responses to dispossession and environmental degradation is the claim of "culture loss." The concept of culture loss poses a problem of analysis for anthropologists given contemporary definitions of culture as a process that continually undergoes change rather than something which can be damaged or lost. Marshall Sahlins (1993:4) points out that defining culture in this way "has the effect of erasing the logical and ontological continuities involved in the different ways that societies interpret and respond to the imperialist conjuncture. If culture must be conceived as always and only changing, lest one commit the mortal sin of essentialism, there can be no such thing as identity . . . let alone continuity." To completely naturalize change also obscures what is lost or forgotten.

In this essay I argue that the notion of cultural property rights can be used to address this critical blind spot of the culture concept, in which loss is unseen or undervalued. In particular, I will show how the concept of cultural property rights can help to identify the referents of indigenous discourse about culture loss. Cultural property rights, as Marilyn Strathern (1999*b*:177) observes, imply new forms of integration and new ways of organizing persons and collectivities. These rights are intended to prevent loss of property, knowledge, bodily integrity, or creation itself and of the value of the things that they may beget. Cultural property rights offer potential resources as ideas and things move into new contexts, orders of signification, and economic regimes of commodification. They can also make visible the losses experienced by indigenous communities.

Simon Harrison (1999:11) has suggested that concerns about cultural appropriation—the desire to protect "cultural practices and symbols against unauthorised use or reproduction by outsiders"—are a form of boundary maintenance parallel to defensive efforts that seek to minimize the intrusion of foreign ideas or practices. Michael Brown (1998) has raised concerns about the use of legal regimes to limit acts of cultural appropriation, most notably their implications for the unrestricted flow of information that is central to (certain domains of) liberal democratic society. Brown also wonders whether the extension of legal restrictions to cultural property might in fact facilitate its commodification and/or limit innovation and creation. Balanced against Brown's objections to cultural property rights, however, are the political resources that they might provide for indigenous communities, including enhanced control over what circulates, for property rights can restrict as well as facilitate distribution.

The examples of indigenous discourse considered here suggest that loss has recently become a critical site for the objectification of culture, raising questions that are distinct from the dilemmas of cultural appropriation. While there is a long anthropological history of discussion about culture loss, including the allegory of Ishi, the last of the Yahi Indians (Kroeber 1976), and Ruth Benedict's (1960:34) metaphor of a broken cup signifying "the loss of something that had value equal to that of life itself, the whole fabric of . . . [a] people's standards and beliefs," my argument is about the disappearance not of entire societies or ways of life but of particular things—knowledge, ideas, and practices of local value. The concept of cultural property rights can provide the means to identify these losses, which might otherwise be obscured or ignored. While the problems raised by questions about culture loss are particularly salient with respect to indigenous communities because of shared colonial and postcolonial experiences, they are by no means limited to them.

I develop my argument through the examination of recent court proceedings held in response to nuclear weapons testing by the U.S. government in the Marshall Islands during the 1940s and '50s.[2] In particular, I focus on the testimony of anthropologists, lawyers, and judges in the Nuclear Claims Tribunal in the Republic of the Marshall Islands, which was established to adjudicate claims regarding damage and loss to persons and property resulting from exposure to radiation and other destructive impacts of nuclear testing.[3] I also make reference to related courtroom debates about cultural property in Australia and environmental disasters in Alaska and Papua New Guinea. Central to all of these cases is the intersection of property, culture, and loss.[4]

The Nature of Loss

If property is a manifestation of social relations (Hann 1998; C. Rose 1994:227), then so is loss. What are the kinds of things or relations that can be lost, and what are the contexts in which loss is implicated? The notion of loss appears to have two primary registers. It may refer

2. The documentary film *Half life*, produced by Dennis O'Rourke (1986), provides an excellent overview of the Bravo test and the role of the U.S. government in nuclear testing in the Marshall Islands.
3. I do not claim ethnographic authority for the Marshall Islands; this argument is analytic rather than descriptive or interpretive. My intention is to explain how claims about culture loss might be understood rather than to promote a particular compensatory regime.
4. See Kirsch (1997*b*) for a discussion of indigenous efforts to locate the problems of environmental degradation in social and moral domains and Strathern's (1999*c*:229–33) comments on this process.

to possession—to the objects or property for which one might claim rights or ownership. Loss in this guise implies value and property relations; it may therefore be possible to gain new understandings of property by examining responses to loss. In other contexts, however, such as the intimate losses associated with grief, loss may be improperly referenced to property relations, as one does not necessarily hold comparable rights to persons as to things. Here it is possible to speak of loss in relation to the notion of kinship and belonging rather than possession. I suggest that the relationship implied by cultural property rights may be a form of belonging as well as a kind of possession. The case before us requires that we take as an empirical question the kinds of relationships that the Marshallese have toward their land: are they modeled after relations of kin, of property, or both? I will consider this issue with respect to local knowledge, subsistence production, and attachments to place. These examples raise questions about the alienation of property that is ordinarily regarded as inalienable.

Any discussion of loss must also take its productive possibilities into account. In order to form relationships, people must separate themselves from one another (see Strathern 1988), although differentiation in the social realm is not ordinarily conceived of in terms of loss. Yet in marriage, for example, people move into other categories of kin, other lineages. This is simultaneously a loss to their natal clan and the precondition for new kinds of social relations, for productive as well as reproductive relations of exchange. Similarly, the dynamics of memory and forgetting, the entropic tendencies of ritual knowledge, and the incompleteness of the intergenerational transmission of knowledge all pose questions about the possibility of loss. Yet loss may be integral to these systems in that it permits innovation and improvisation.

In the case before us, however, of nuclear testing in the Pacific and its consequences, it is difficult to conceptualize the losses experienced by the people affected by nuclear testing as productive. Their land was not transformed into something of value; rather, it was destroyed because it was only of value to the U.S. government in its potential loss.[5] This is negative reciprocity writ large across the landscape: the wholesale destruction of things (property, land, memory) and social relations organized through land, as well as the capacity for reproducing these relationships in place.

It might be argued that in compensation claims, people seek to establish relationships with the parties responsible for the loss or damage and to acquire a replacement for what has been lost. Yet in the Marshall Islands there is a fundamental incommensurability between what was taken and what might be given back in the form of compensation. When an exact equivalent is unavailable, the substitute is always inferior to the original, perpetuating the sense of loss (see Schieffelin 1976:109–12). The issue arises both in the payment of monetary compensation and in attempts to imagine the possibilities of compensation in kind.

Finally, it is necessary to consider the responses that narratives of loss can evoke in an audience given the proliferation of environmental and other disasters in the past century and our increased exposure to these events through the media. Bikini, Bhopal, Chernobyl, the *Exxon Valdez*, and Ok Tedi are iconic of the destructive capacity of 20th-century industry and military power, but situating these events too abstractly in time and space makes them perhaps too easily interchangeable, too easy to let go (see Strathern 1999*a*:54–63). By focusing on the problem of loss, however, and reembedding these events in social relations, it may be possible to slow the movement of images long enough and to reduce their scale sufficiently to carry out the necessary work of analysis.

Nuclear Wasteland

From 1946 until 1958, the United States tested 67 nuclear weapons in the Marshall Islands. The most powerful of these tests was the Bravo shot, a 15-megaton device (1,000 times the power of the bomb exploded over Hiroshima) detonated on March 1, 1954, at Bikini Atoll (Barker 1997:291). Bravo was engineered to maximize radioactive fallout, which was carried by the wind to the east, reaching the inhabited atoll of Rongelap (Alcalay 1992:48). A second sun rose in the western sky that morning, followed by the roar of thunder, winds at tornado strength, and earthquakes (Toyosaki 1986:49). Several hours later, radioactive fallout rained down on the island. People brushed the powder from their food and ate; they cleared it from their water cisterns and drank; children swimming in the lagoon put it in their hair and pretended that it was soap. Shortly thereafter, the 64 people on Rongelap that day began to suffer the ill-effects of acute radiation exposure: their hair fell out, their skin was burned, they began to vomit, and they suffered from a thirst that water could not quench (interview with Lijon Eknilang, 1999).[6]

Two days later, the U.S. Navy evacuated the people of Rongelap; they were later resettled on Ejit Island in Majuro Atoll, at the center of the Marshall Islands (Weisgall 1994:303). In 1957, three years after Bravo, the people of Rongelap returned home (Kiste 1974:194). They were assured that the background levels of radiation were within the limits of safety. A medical team from the Brookhaven National Laboratory visited the island annually to monitor the long-term consequences of their exposure to ra-

5. Commenting on the naming of women's two-piece bathing suits after Bikini Atoll, Teresia Teaiwa (1994:87) argues: "The sexist dynamic that the bikini performs—the objectification through excessive visibility—inverts the colonial dynamics that have occurred during nuclear testing in the Pacific, objectification by rendering invisible."

6. In addition to the 64 persons on Rongelap at the time of the Bravo test, another 18 were on the nearby atoll of Alinginae, including 4 pregnant women who gave birth during the period of relocation. Thus the total number of exposed persons, according to the U.S. government, including the 4 *in utero*, is 86 (Bill Graham, personal communication, 2000).

diation. Yet the people of Rongelap were never fully informed about their increased exposure to risk from the contaminated food and water that they consumed (Barker 1997:295). Today the Marshallese have the highest rates of certain types of cancer in the Pacific and unusual numbers of miscarriages and birth defects.

The incidences of cancer and childhood deaths from leukemia, combined with the release of additional information about their exposure to radiation, prompted the community to leave its atoll again in 1985, 31 years after its initial exposure. The Rongelap people currently reside in Ebeye, adjacent to the proving grounds for U.S. "Star Wars" technology in Kwajalein Lagoon, in Mejatto, and in the capital of Majuro. Funds have been set aside by the United States government to rehabilitate their home atoll, although there is dispute over the appropriate level of risk: the 100-millirem radiation standard used by the U.S. Department of Energy and the Nuclear Regulatory Commission, which may be achievable, or the more cautious Environmental Protection Agency standard of 15 millirems, which might delay resettlement for many years.

A formal agreement between the Marshall Islands and the U.S. government was reached in 1983 in which the United States formally accepted responsibility for loss and damage to property and persons resulting from its nuclear testing program.[7] As part of the negotiated compact between the United States and the Republic of the Marshall Islands, a claims tribunal with the jurisdication to "render determination upon all claims, past and future," was established in 1987. The tribunal has begun to pay compensation for the health effects of radiation and is currently hearing class action claims for property damage, loss, and suffering on Enewetak and Bikini, the two sites for weapons testing.

In 1999, I was briefly engaged as an adviser to the Public Advocate's office in the Marshall Islands to assist in the preparation of a report to the Nuclear Claims Tribunal regarding land values for Rongelap.[8] I draw on this research and on the comparable but more advanced claims presented to the tribunal by the people of Enewetak, who lived in exile for 33 years as a result of nuclear testing. Central to the hearings on Enewetak were written reports and oral testimony provided by the anthropologists Nancy Pollock and Laurence Carucci, acting on behalf of the Defender of the Fund for the Nuclear Claims Tribunal and the people of Enewetak respectively.[9] I focus on courtroom debate about the definition and significance of property, culture, and loss.

The Context of Claims for Loss

Indigenous claims about culture loss are increasingly associated with political and legal contexts in which communities seek reparations for past injustices.[10] The sociologist John Torpey (2001) has described the recent florescence of forums that address such claims, distinguishing between acts of violence and injustice committed during World War II, the transition to democracy in countries that have suffered from state terrorism and other authoritarian practices, and claims made by indigenous communities against states dominated by the descendants of European settlers.[11] Restitution is sought in terms of monetary compensation and the return of property, policies of rehabilitation, and/or the negotiation of novel accommodations between local autonomy and state sovereignty. The institutionalization of these forums and the legal statutes through which they are organized—tribunals, truth commissions, land rights hearings, and heritage legislation—influence the form and content of the claims that are advanced.

James Weiner (1999) addresses this issue in his analysis of the Hindmarsh Island controversy in southern Australia. He describes the legislative processes governing Aboriginal heritage claims as a form of elicitation that shapes the practices they seek to protect. The dispute in question concerned a claim regarding Aboriginal women's rituals (or "business") associated with a proposed site for commercial development. The courts did not recognize culture as a contemporary process of valuation, relying on the more restricted criteria of histor-

7. The agreement came into effect in 1986 (Bill Graham, personal communication, 2000).

8. The motivation for the project was given as follows: "In this unique and unusual quest for assessing the value of land in a nonmarket environment, for the purposes of awarding just compensation, claimants are not suggesting that the Tribunal ignore the transactional indicators that do exist. They are suggesting, however, that other factors such as tradition and custom must also be given due consideration to ensure that justice is done. It is therefore the intent of the claimants to involve knowledgeable anthropologists, sociologists, and others with experience and understanding of the importance of land in the Marshalls throughout the appraisal process to ensure that the valuations ultimately reached are truly relevant" (Graham and Lowe 1998). The other anthropologists involved in this project were Holly Barker and Barbara Rose Johnston, who have written separately on these issues (Barker and Johnston 2000).

9. Pollock (1992:20) is the author of *These Roots Remain*, a comparative study of food habits in the central and eastern Pacific, which draws on 15 months of fieldwork on Namu Atoll in the Marshall Islands from 1967 to 1969. Laurence Carucci (1997:xi) is the author of *Nuclear Nativity*, an ethnography of ritual and exchange on Enewetak, which draws on more than three years of ethnographic research between 1976 and 1996.

10. In her written submission to the Nuclear Claims Tribunal, Pollock (1999:1) described the historical and institutional dimensions of claims about culture loss in the following terms: "The issue of 'cultural loss' is currently a subject of much debate in international fields as indigenous people assert their claims against uninvited disruptions to their lives. Reparations sought include claims for loss of land and all its cultural meanings, loss of a way of life that had been passed down from ancestors, loss of social interactions leading to the ongoing viability of society, loss of the basis of indigenous belief systems and loss of the right to self-determination. The assumption [of the anthropologist] is that these elements of culture are not static but continually readjust to current and past contexts. But the contexts being highlighted in this debate are all ones where the loss was derived from impositions by major powers, colonial powers, that exerted their power over minority states to achieve . . . [their] goals, both economic and strategic."

11. Torpey (2001) has also suggested that contemporary claims for reparations made against states by historically victimized groups are an outgrowth of political responses to the Holocaust.

ical significance and continuity. When the Aboriginal women elected to protect their claims to secret ritual knowledge by refusing to testify in court, the developers were granted permission to construct a bridge on the disputed site.[12] The participants in the debate failed to recognize how heritage legislation evoked a response that was focused on political rights and interests.

Whereas Australian heritage protection requires Aboriginal communities to demonstrate the continuity of local traditions, the process is reversed in the Marshall Islands: the Nuclear Claims Tribunal, which provides compensation for damage and loss, obligates communities to demonstrate a break with the past. Much as Aboriginal culture is elicited in part through political processes in Australia, Marshallese claims about culture loss are influenced by the legal processes through which they are adjudicated.

While the protection of cultural heritage has assumed the guise of a universal imperative, culturally specific claims of loss are not necessarily as well received. The issue of culture loss, for example, figured significantly in courtroom debates about the impact of the 1989 *Exxon Valdez* oil spill in Alaska, which released over 11 million gallons of crude oil into Prince William Sound. According to the anthropologist Joseph Jorgensen's (1995) analysis of that case, social scientists testifying on behalf of the indigenous plaintiffs used a definition of culture that was later discredited by both the opposing anthropologist and the court. They argued (in Jorgensen 1995:2) that

> damage to any core element [of a society] (e.g., natural resource base or kinship system) damages the culture and the people. . . . Because subsistence is the basis of modern Alutiiq culture, the oil spill . . . damaged that culture in a multitude of ways . . . [and] to the extent that Alutiiq people's subsistence, the most fundamental basis of their culture and life, remains disrupted, they and their culture have been damaged.

Judge Holland rejected the reification of culture implied by this argument, determining instead that "villagers cannot collect damages for harm that was alleged to have been suffered by native culture" (p. 2). While acknowledging that "the *Exxon Valdez* was a disaster of major proportions," he concluded that "it did not deprive Alaska natives of their culture" (p. 5). He based his opinion on the view that culture is "deeply embedded in the mind and the heart" and is therefore undiminished by external events such as environmental disaster (p. 5).

The courts also ruled that the Alutiiq people had been deprived of access to resources, prompting a negotiated settlement with Exxon for US$20 million. However, Judge Holland refused to recognize cultural differences between native and nonnative fishermen with respect to the impact of the oil spill. His position was supported by the testimony of the distinguished American cultural anthropologist Paul Bohannan, who had been engaged by Exxon. In his deposition to the courts, Bohannan defined culture as a strategy for adaptation, "[a] basic device for surviving and prospering—a set of ideas and artifacts by means of which human beings adapt to the environment, including the social environment" (p. 9). He argued that Alutiiq culture and its core meanings were not substantially affected by the oil spill. Finally, he concluded that the impact of the natural disaster was equivalent for all of those persons affected, regardless of ethnic or cultural identity, declaring, "I believe the Alaska natives are no different from anybody else in the matter" (p. 11).[13] The judge agreed that there was no basis for distinguishing between the claims for loss of the two communities; cultural difference was irrelevant to his findings. "All Alaskans have the right to lead subsistence lifestyles, not just Alaska natives," Holland (1996:167) later explained.[14]

Legal Determination of Loss

The analytic challenge in the Marshall Islands case is to make visible the referents of claims about culture loss, while the political challenge is to do this with reference to existing legal categories. The latter task is framed by two opposing opinions. On one side is the view expressed by Phillip Okney (1999:17), the Defender of the Fund, who argued against the Enewetak claim for consequential damages, including hunger, deprivation, isolation, and physical distress, resulting from their relocation. He was equally dismissive of claims for what he character-

12. Consider Deborah Rose's (1996:2) comments on this subject: "During the course of my work in New South Wales, Aboriginal people have told me time and again that because they have lost so much, they are not prepared to speak publicly about their knowledge in any detail. They fear that they will lose control of that which remains."

13. In contrast, Jorgensen (1995) argues that there are substantive differences between the two communities, native and nonnative. He makes the following observation about native choices post–*Exxon Valdez*: "Packing up and leaving . . . is not the native solution to adversity. . . . Native cultural traditions, as instanced by the nexus of kinship and friendship obligations, facilitate remaining in place, while sentiments and ideas about place and space influence a person's resolve to stay" (p. 20). Jorgensen (p. 4) also argues that natives are "very different from nonnatives" in terms of the "ethics that they express and practice, . . . in the ways and extent to which they participate in their communities, in the networks and activities in which they engage, . . . in their family-household organizations, and, if class is an issue, in their education, occupations, incomes, political knowledge and participation in political affairs." He also demonstrates that there are substantial differences between the two communities in terms of "subsistence activities, knowledge of the environment, ideas about the environment, sentiment about the environment, and sharing activities," all of which are relevant with respect to the consequences of the oil spill (p. 56).

14. Berger (1985:64) argues that there is support for both positions on indigenous difference in Alaska: while the 1971 Alaska Native Claims Settlement Act extinguished "aboriginal rights of hunting and fishing," the Alaska National Interest Lands Conservation Act of 1980 "found it necessary to protect subsistence for Native people on a different basis than for non-Native people," citing a special relationship between subsistence and native "cultural existence."

ized as the "rather attenuated and ethereal injuries of 'mental suffering,' 'loss of cultural heritage and a customary and traditional way of life' and the 'loss of homeland.'" Okney asserted that these claims are "uncertain, speculative and disallowed" by the tribunal, given that they are not sufficiently associated with property. Rather, the claims "affix to the individual who makes up part of the whole which is claimed to have suffered the injury." He concluded that "the human being is not property such as one makes claim for in eminent domain or in the case of inverse condemnation."[15]

Okney's position on appropriate recompense for the people of Enewetak was governed by the application of the strictest possible test for determining the market value of property: "Only that which is capable of sale to a willing buyer can be properly considered for an award of damage." He presented the following fictional model of the "willing seller" and the "willing buyer" (p. 21):

> The willing seller is found, as held in *J. O. Powel et al. v. Shelby County*, 130 So 2d 170 (1961) to be a seller not forced to sell (to disallow reduced values) and the willing buyer is a buyer not required to buy (to disallow inflated values). Under the reasoning in *Powel* the willing seller is conceived to be a seller who would not be influenced by sentimental attachments to property and the willing buyer is also considered to be immune to the sentimental attributes of property. It is the fiction of the prudent buyer and the prudent seller that the courts employ and not the sentimental seller and the sentimental buyer. This rationale, as applied in *Powel*, dictate[s] that the sentimental value of the homestead [is] not allowed as an element of damage.

Okney acknowledged "that ethics demand that within the confines of negotiations for leaseholds that the government recognize the unique place of land rights in the life and law of the Marshall Islands. . . . The attendant changes in the lives of the lessors are obviously considered and taken into consideration when fixing the amount of compensation to be received by the lessors" (p. 2). While willing to consider the positive cultural values of land associated with its use, Okney rejected the possible (negative) values associated with its loss.

Okney's position must be taken seriously, because as Defender of the Fund he attempts to set limits on the compensation paid by the Nuclear Claims Tribunal. Yet it is not clear that the market provides an adequate measure of the value of land in the Marshall Islands. An alternative perspective on the potential scope of property claims was articulated in the case of *Eisenring v. Kansas Turnpike Authority*, cited in a property assessment for Bikini Atoll (KANSAS-*Eisenring v. Kansas Turnpike Authority*, 183 Kan 774, 332 P [2nd] 539 [1958], citing Treatise; emphasis added):

> The absence of market value, in the sense that there is a lack of evidence of comparable sales, does not prevent recovery by the owner in the event of condemnation. It occasionally happens that a parcel of real estate or a leasehold interest taken by eminent domain is of such a nature, or is held or has been improved in such a manner, that, while it serves a useful purpose to its owner, he would be unable to sell it at anything like its real value. Where the usual means of ascertaining market value are lacking, or other means must from necessity of the case be resorted to, *it is proper to determine the market value by considering the intrinsic value of the property, and its value to the owners for their special purposes*. The owner of the property taken is not required under such circumstances to make any pecuniary sacrifices. He is entitled to whatever the property is worth to him, or anyone else, for any purpose to which it is adapted. *These special uses, or purposes to which the property is adapted must be real—founded upon facts capable of proof—and not merely speculative or imaginary*. If the owner has adopted a peculiar mode of using the land by which he derives profit, and he is to be deprived of that use, justice requires that he be compensated for the loss to himself. *It is the value which he has, and of which he is deprived, which must be made good by compensation*.

The ruling creates an opening for determinations of value that exist beyond the scope of the market, including cultural property rights.

In his testimony before the Nuclear Claims Tribunal, the anthropologist and Enewetak ethnographer Carucci contrasted the values that Americans and Europeans "hold for their land" with the values of the Marshallese "about, with and for their land" (Nuclear Claims Tribunal 1999*a*).[16] He noted that Americans move on average six times during their lifetimes and treat land as a commodity, "something that is used, purchased and sold." Relationships to place are temporary, and land is "something that one can buy, utilize for a short period of time, and pass on." Our attachment to place, in Carucci's estimation, is "quite modest." In contrast, the Marshallese regard land as a "different kind of entity," an element "of one's very person" and an "integral part of who people are and how they situate themselves in the world." Their "sense of self, both personal and cul-

15. Eminent domain refers to "the inherent power of a governmental entity to take privately owned property, esp. land, and convert it to public use, subject to reasonable compensation for the taking," whereas inverse condemnation refers to "an action brought by a property owner for compensation from a governmental entity that has taken the owner's property without bringing formal condemnation proceedings" (Garner 1999:287, 541).

16. Unless otherwise indicated, all quotations from Carucci are taken from his oral testimony (Nuclear Claims Tribunal 1999*a*). See also Carucci and Maifeld (1999).

tural, is deeply embedded in a piece of land," their *weto* or land parcel.[17]

Carucci explained that land in the Marshall Islands is highly valued both because it is so limited in quantity[18] and because it "represents the collective labor of generation[s] . . . of human activity":

> Living persons are but a minor piece of those generations of time that link people through their land and through that land to an extended history. . . . Living in a place, working in a place, changing that land into a piece of one's own being makes [a person] one with that land. Equally, consuming the products of that land continues and completes the cycle through which one comes to take on a total identity as person and place that will exist not only momentarily . . . but in perpetuity. . . .

Carucci's testimony suggests that the people of Enewetak use the idiom of kinship and belonging to conceptualize their relations to their land.

In the following sections I consider several examples of loss experienced by the Marshallese as a result of damage to their land and prolonged exile from their home atolls. In particular, I focus on land and its significance for local knowledge, subsistence production, and relations to place. I will argue that these relationships reflect both ownership and belonging, raising questions about the alienation of property regarded as inalienable.

Property as a Way of Knowing

David Anderson (1998) has suggested that for reindeer herders in Siberia "property is a way of knowing," that "knowing the land properly . . . is what legitimated their right to take wood, water and animals from the land, whilst at the same time explaining their capacity to do so" (p. 69). Paul Sillitoe (1998*a*) has argued that the transition from capital-intensive to information-intensive technology and the emphasis on participation in development have created new demands for local knowledge, especially in relation to the environment, and recommended that anthropologists position themselves as knowledge brokers to facilitate this process. His respondents suggest that it may prove more difficult than Sillitoe envisions to convert indigenous understandings into other forms of knowledge, in part because they tend to be contingent and local rather than systematized and universal, but agree that alternative forms of knowledge have value even if not fully translatable. The most important dimension of local knowledge may not even be specific information per se but particular strategies for learning about the natural world and applying the resulting insights—practices which may themselves differentiate indigenous from scientific knowledge (Ellen 1998). Different ways of knowing may be not necessarily more or less accurate but more or less appropriate according to the context and the audience (Forsyth 1998).

In other words, indigenous knowledge is very much *local* knowledge in the sense that it is closely linked to specific environments. The people of Enewetak suffered greatly on Ujelang, a remote, uninhabited, and largely desolate atoll. In his testimony before the tribunal, Carucci referred to the absence of the species of pandanus used by women to weave mats and the lack of the mature breadfruit trees needed to build canoes: "Group organized tasks like building canoes fell apart. . . . This was an atoll that [lacked] the products that it was supposed to have." Absence from their home atolls and the environments in which their knowledge was applicable posed a challenge to its continuity. Judge James Plasman asked Carucci for clarification: "The question of sailing canoes and the loss of the means to traditionally maintain and operate and build these canoes . . . was [that] a loss of culture that people have suffered?" Carucci responded: "[The] real loss was the whole generation of young men who have grown up without the ability to practice under the most skilled of these men who knew how to shape a canoe properly. . . . Enewetak canoes are quite unique. I don't [know] . . . if there is a possibility of re-developing those skills."

The anthropologist Nancy Pollock, testifying for the Defender of the Fund, challenged Carucci's claims about the fragility of this knowledge during cross-examination by Davor Pevec, attorney for the people of Enewetak:

> Pevec: [If these resources] are not in existence or [can]not . . . be imported, people would not be able to maintain the traditional knowledge which you have described.
>
> Pollock: It does not disappear.
>
> Pevec: It does not disappear, but they are not able to actually practice it.
>
> Pollock: What is happening with canoe culture at the moment is that there is a lot of old knowledge which is being resurrected around the Pacific because of interest in canoes.
>
> Pevec: Unless you have the resources on your atoll . . . [He is cut off by Pollock].
>
> Pollock: No. People are very innovative. . . . Everywhere I go in the Pacific, I see small children, one of the things they love to do is . . . build little canoes, out of paper or whatever they've got. . . . It doesn't die, it remains. It is not easily replicated in the full size, but in the children's representations, the toy, that knowledge can be seen.

17. Annette Weiner (1992:104) has argued that "taking a possession that so completely represents a group's social identity as well as an individual owner's identity and giving it to someone outside the group is a powerful transfer of one's own and one's group's very substance."

18. As Barker (1997:293) notes, "In a nation with just 70 square miles of land, land is by no means expendable."

Marshallese canoes include the long-distance sailing vessel known as *walap*, as much as 30 m in length, which can transport 40 passengers and is built for travel on the open sea between atolls; the mid-sized *tipnol*, which carries 10 passengers and is used for rapid transport and fishing in the lagoons and the open sea; and the small rowing canoe known as the *korkor*, which may also have sails and carries 1–2 persons for fishing and traveling within the lagoon. In the past, every family owned at least one mid-sized canoe and a small rowing canoe. Construction of these vessels required mature breadfruit trees for the hull and outrigger and a variety of other woods. People planted and tended trees that years later would be used to build canoes. The complex requirements of canoe building, only hinted at here, raise questions about the effective intergenerational transmission of knowledge. In the absence of a robust tradition of literacy, such knowledge is reproduced through concrete acts of teaching and use, and the loss of access to the resources necessary for canoe building is of consequence for the communication of these practices across generational lines. Property can be a way of knowing, and local knowledge may depend on continued access to land and resources. Women on Enewetak no longer teach their daughters how to weave mats because the necessary varieties of pandanus are unavailable, and men no longer teach their nephews and sons how to build sailing canoes because they do not have the raw materials. Already the knowledge of how to construct and maintain the long-distance sailing canoes of Enewetak, unique in design, may have been forgotten (Nuclear Claims Tribunal 1999*a*). Such knowledge is cultural property, and its vulnerability in the sense of being local should not diminish its value in the courts. It is neither imaginary nor speculative.

The Value of Subsistence Production

During interviews on Majuro, informants described how they had become dependent on the cash economy since their relocation from Rongelap. Contemporary substitutes for subsistence practices require capital investment; whereas fishing grounds were once accessible to all without restriction, boats and fuel are now required in order to fish (interview with Johnsay Riklon, 1999). A man from Rongelap described the transformation in terms of the restrictions on personal autonomy: "If you live in town, you are like a guest in someone's house, [whereas] on your own land, you feel freedom" (interview with Ken Kedi, 1999). The loss of their subsistence economy has transformed local relations of production, generating new forms of socioeconomic inequality.[19]

In Australia, the courts have recognized the losses associated with damage to subsistence economies in hearings about the environmental impact of the Ok Tedi mine (Kirsch 1997*a*). The case against the mine did not address damage to property, because the courts were unable to hear claims about land held under customary land tenure in New Guinea (Gordon 1997:153). Alternatively, lawyers for the plaintiffs made the novel argument that people living downstream from the mine had suffered a loss due to its impact on their subsistence economy. Judge J. Byrne (1995:16) endorsed the underlying principle, determining that

> to restrict the duty of care to cases of pure economic loss would be to deny a remedy to those whose life is substantially, if not entirely, outside an economic system which uses money as a medium of exchange. It was put that, in the case of subsistence dwellers, loss of the things necessary for subsistence may be seen as akin to economic loss. If the plaintiffs are unable or less able to have or enjoy those things which are necessary for their subsistence as a result of the defendants' negligent conduct of the mine, they must look elsewhere for them, perhaps to obtain them by purchase or barter or perhaps to obtain some substitute.

The case against the Ok Tedi mine established a precedent for the right to engage in subsistence production. In the negotiated settlement of the case, a commercial fisherman was awarded financial compensation for lost revenues. Yet, in contrast to the situation in the *Exxon Valdez* case, cultural differences were taken into consideration with respect to the reliance on natural resources of subsistence economies in the form of financial support for the restoration of local sustainability. The Australian courts recognized in subsistence production a set of economic rights, relations, and values comparable to those which organize the ownership of property in capitalist societies.

Anthropologists have observed that land and kinship are often "mutually implicated" in subsistence economies (Hirsch 1995:9).[20] Sahlins (1999:xvii) has recently described the social and cultural continuities of indige-

19. Health risks posed by radiation create an additional paradox of place for the people from Rongelap. The risk in visiting the lagoons or islands affected by nuclear testing is minimal; Bikini Atoll, ground zero for many of the tests, now markets itself as an eco-tourism destination for scuba-diving (see www.bikiniatoll.com). The primary danger is from local foodstuffs consumed over an extended period of time. Radiation thus inverts the notion of property: while in the past their relationship to land implied exclusive use of its resources, today the risks of cumulative exposure to radiation prevent them from exploiting these resources, even though strangers who lack historical connections to Rongelap, including fishing boats from Southeast Asia, are not prevented from doing so (interview with Ken Kedi, 1999).

20. For Aboriginal Australians, "the relationships between people and their country are intense, intimate, full of responsibility, and, when all is well, friendly. It is a kinship relationship, and like relations among kin, there are obligations of nurturance. People and country take care of each other" (D. Rose 1996:49).

nous populations, especially northern hunters, in spite of widespread economic and political change:

> Their long, intensive and varied engagements with the international market economy have not fundamentally altered their customary organizations of production, modes of ownership and resource control, division of labor, or patterns of distribution and consumption; nor have their extended kinship and community bonds been dissolved or the economic and social obligations thereof fallen off; neither have social (cum "spiritual") relations to nature disappeared; and they have not lost their cultural identities, not even when they live in white folks' towns.

Hunters and gatherers still actively engage in these pursuits, he points out, and these practices have become central to their identities much as they have remained essential for their social relations. In what he describes as the "indigenization of modernity," these communities have put capitalism in service of their subsistence practices. Yet these activities are contingent upon their continued access to land and resources, which elsewhere has been jeopardized or impaired by the destructive consequences of modern technologies of warfare and development (see Brody 1988). The division of people into social categories through their relationships to land and resources is the basis of relations of production in many indigenous societies and an important means through which these relationships are reproduced; a community's capacity to support itself through subsistence production is simultaneously a matter of belonging and a matter of possession.

Place and Community

The anthropologist Roger Keesing (1989:19) once argued that Pacific interest in land rights was a postcolonial invention, part of a broader creation of "myths of ancestral ways of life that serve as powerful political symbols." "Land, and spiritual connection to it, *could not* have, other than in a context of invasion and displacement and alienation, the ideological significance that it acquires in such a context" (p. 33). While land has acquired new significance throughout the Pacific, comparable to the changes in Aboriginal valuation of their own traditions described by Weiner (1999), Keesing has been criticized for ignoring the value that land had for people in the past (Trask 1991), particularly for island communities where land is limited and population densities approach local carrying capacity.

In their testimony to the Nuclear Claims Tribunal, Carucci and Pollock offered contrasting interpretations of the relationships between people and land in Enewetak. Like Keesing's critics, Carucci argued that the relationship between past and present was the most salient for the people of Enewetak. When they returned to their home atoll 30 years after it had been used to test nuclear weapons, they were stunned by its transformation: "all the markers of [their] sense of place and history, and their sense of their own person [were] transformed." Carucci also described the disjunction between the "new" and the "old" Enewetak, which now exists only in their memories: the "sacred landscapes ha[ve] been destroyed . . . all of the embedded stories . . . [of] their own past [and] the activities of their ancestors going back to the first moment in time [are] no longer attached . . . to the physical locations with which they are associated in people's minds." The resulting "dissonance between what once existed and what [now] exists . . . presents people with a problem in terms of establishing a meaningful Enewetak identity."

While Pollock acknowledged Carucci's claim that "land anchors people in place . . . and gives them identity," she disagreed with him on the nature of this relationship, arguing that "identity and . . . land exist beyond the economic, beyond the surface layer, beyond the map that we see here [in the courtroom]. It is a spiritual tie to land and it is a tie to land that can never be broken. . . ." Relations to land are a "very important continuing factor that was not severed as Dr. Carucci argued . . . because the spiritual tie persists over time and over space, no matter where you are."

Pollock supported her claim to the spiritual primacy of ties to land in two ways. She referred to her conversations with people in Majuro: "[When I] asked 'Where are you from?' . . . they would [name their home atoll]. They . . . may not have ever been there, but they still have very strong ties to land." Pollock also argued that the "Marshallese people are very proud of their history of movement. . . . They move constantly and the resurrection of the canoe and current interest in canoe building is all part of that. They've always moved freely using sailing canoes and linking up with the lands where they have kin relations."[21] The debate between the two anthropologists hinges on competing views of culture, although they do not make their positions on the subject explicit.

To clarify these issues, I suggest a lateral shift to an alternative set of definitions. Arjun Appadurai (1995:209) posits a distinction between neighborhood, which he defines as a "context, or set of contexts within which meaningful social action can be both generated and interpreted," and "ethnoscape," his neologism for collective identities that transcend place, as in the case of diasporic cultures. While an ethnoscape is independent of place, a neighborhood is a thing which can, of course, be destroyed. The dissolution of a neighborhood—a histor-

21. Pollock also suggests that relocation has a cultural precedent in the Marshall Islands: "[The] Iroij or chief of the Marshalls . . . had the power to [order people] to relocate. Relocation, as I understand it, is a part of Marshallese culture" (Nuclear Claims Tribunal 1999*b*). Here she conflates two very different processes—the authority to ostracize members of the community by forcing them to relocate, which is effective as a form of punishment precisely because these persons are separated from their social group, and the power to remove the entire community from its home atoll, which has no local precedent.

ical accumulation of experience and identity—not only represents a concrete loss but also affects the production of local subjects. A spiritual attachment to place is not the same as living on one's home atoll, nor are travelers the same as migrants; prior to the bomb, Marshallese sailors had homes to which they could return at will.

The distinction between ethnoscape and neighborhood must be qualified, however. Research on diaspora communities emphasizes the costs of disrupting local relations to place (e.g., Lovell 1998, Olwig and Hastrup 1997). Diasporic experience is always suffused with nostalgia, itself an awareness of loss, and accompanied by new strategies to preserve memory and identity. The severing of connections between people and place always entails loss.

Property and Alienability

In the debates before the Nuclear Claims Tribunal, the issue of cultural difference emerged most significantly in relation to property.[22] The legal scholar Carol Rose (1994:296) has argued that "seeing property is an act of imagination—and seeing property also reflects some of the cultural limitations on imagination."[23] She describes how the concept of property is constrained by assumptions about economic value and governed by commodity logic that assumes the detachability of persons and things. This limitation of Anglo-American property regimes is particularly telling in the Marshall Islands case.

Largely concealed from view at the Nuclear Claims Tribunal, albeit implicit in Carucci's arguments about Enewetak relationships to land and place, is the assumption of alienability—the view that all forms of property are inherently convertible into other forms of property. Annette Weiner (1992:4) has emphasized the significance of inalienable possessions in Pacific societies, arguing that certain forms of property provide continuity to social relations by presenting an alternative to the ephemeral nature of human existence. The importance of these objects transcends their exchange value, and their loss poses a threat not only to their owners but also to the group of which they are members because their historicity preserves memories of the past (p. 6).

Margaret Radin (1993:197) identifies alienability as the central paradox of Anglo-American property theory. On the one hand, "property is necessary to give people 'roots,' stable surroundings, a context of control over the environment, [and] a context of stable expectations that fosters autonomy and personality" (p. 197). On the other hand, economic considerations require that property be subject to market forces. To resolve the contradiction, Radin proposes the disaggregation of the concept of property, arguing that "some categories of property rights do justifiably become bound up with persons and then ought not to be prima facie subject to rearrangement by market forces" (p. 197). Like the legal precedent in *Eisenring v. Kansas Turnpike Authority* discussed above, Radin's view provides an opening for the consideration of cultural property rights, for the designation of what is and what is not properly alienable is a cultural rather than an analytical matter.

This observation is significant with respect to the Marshall Islands case. In her testimony before the Nuclear Claims Tribunal, Pollock asserted that material conditions (including market forces) do not affect the relationship between persons and land in the Marshall Islands. Her position is comparable to the view expressed by Judge Holland in the *Exxon Valdez* case that culture is located in our "minds and hearts" and therefore unaffected by external events. Furthermore, she ignored the problem of alienability in the Marshalls; whereas individual blocks of land may, subject to local restrictions, be leased to others, there is no historical precedent for the alienation of an entire atoll (Zorn 1993:126–29). When inalienable possessions are treated as alienable property, as occurred during nuclear testing in the Marshall Islands, the resulting loss is social as well as material and thus inadequately represented by its market value alone.

The alienation of land is of general concern for indigenous peoples; as I suggested earlier, the loss of otherwise inalienable homelands can jeopardize not only the material conditions of survival, including subsistence practices, but also the requirements of social reproduction as embedded in kinship relations. Local knowledge and relations to place may be affected as well. The concept of loss, with its dual registers of belonging and possession, provides an alternative understanding of property, helping to bridge what Rose (1994:5) has described as "the peculiar gap between property-as-thing and property-as-relationship."

It is worth asking why the discussion of loss in the Marshall Islands should be framed in terms of property models at all.[24] One might propose alternative strategies to analyze their losses. For example, Carucci describes Enewetak experiences of anomie, as expressed by the Marshallese idiom of *jebw we*, a term that means to drift at sea and is used to describe the "conceptually and emotionally disconcerting state of 'having no direction'"

22. Carol Rose (1994:50) asks provocatively: "What are we trying to accomplish with a property *regime*? If we know the answer to this most general question about property, we can begin to understand what we include in property and why, and what we leave out and why, and thus what kinds of governmental actions we deem to take property and why we so deem them. Though these questions clearly involve issues of theory, they are also intensely practical; and practice itself should yield some information about which theory or theories best inform our general vision of property."

23. Carol Rose notes (1994:295; see also D. Rose 1999) that in Australia, "many European settlers simply did not see anything at all that signified indigenous entitlement, . . . [and] many justified their moves [onto Aboriginal lands] . . . by what they said was the emptiness of the land."

24. Consider what Deborah Rose (1999:16) writes about the *Mabo* court decision in Australia as an inadequate remedy for colonial injustice: "The peculiarity of the case was to establish the existence of a form of property; while any number of terrible things happen in colonisation . . . people cannot be deprived of their property without certain legalities being in order."

(Carucci and Maifeld 1999:3–4).[25] This idiom clearly expresses some of the pain, loss, and suffering experienced as a result of nuclear testing and relocation. Yet the Nuclear Claims Tribunal requires an interpretation that corresponds to Western models of property and loss. Even judges sympathetic to the claims of people from Rongelap and Enewetak will find their options limited—and their analogies wanting—unless anthropologists provide them with the tools of analysis necessary to rule on these issues.

Conclusions

I want to present a final image, of a tribunal hearing held in the High Court of the Republic of the Marshall Islands, the back benches crowded with interested plaintiffs from Enewetak, the front of the room occupied by three justices (one Marshallese and two American) and the opposing lawyers seated beside the anthropologists whom they have engaged as expert witnesses. I quote Judge Plasman, who addresses the implications of Carucci's testimony (Nuclear Claims Tribunal 1999*a*):

> When we talk about culture loss . . . are we to some extent faced with a *Humpty Dumpty* situation where the pieces are broken and in some respects [it will not] be possible to put Humpty Dumpty back together again? . . . The tribunal obviously has to struggle with this question. To the extent that the claim is that there has been a loss of culture, to what extent is the cure going to be worse than the sickness? People don't want to go back to the primeval garden of Eden. . . . Culture changes and accommodation has to be made between the old and the new. Where do you see that balance? Perhaps [Carucci's] comment that [this] needs to be done by the people of Enewetak themselves . . . [is the right answer].

Culture has a new set of interlocutors and new contexts for its deliberation as judges, juries, and expert witnesses deploy alternative definitions: something which can be lost or damaged, something embedded in our minds and hearts, a mode of adaptation, a process of change. In the *Exxon Valdez* case, Bohannan's emphasis on the human capacity for adaptation prevented him from recognizing important cultural differences. By arguing that culture is largely independent of the material world, Pollock presented an essentialized view of Marshallese culture. Carucci persuasively argued the case for cultural relativism, identifying fundamental differences between Enewetak and American conceptions of property. There is no anthropological consensus on how to describe the complex histories of indigenous communities and the problem of culture loss. In one of the most widely read accounts of how the concept of culture is deployed in the courtroom, James Clifford's (1988:277-346) analysis of the unsuccessful application for federal recognition by the Mashpee Indians of Cape Cod, metaphors of holism and continuity prevented the courts from appreciating their history of accommodation, political negotiation, and cultural innovation. Anthropological arguments about culture must be able to account for the contradictory demands that the courts placed on the Mashpee and the people of Rongelap: to recognize change while simultaneously acknowledging loss.

The proliferation of legal proceedings about culture raises other important issues for anthropologists to consider. Legal forums that adjudicate claims of loss might be seen to further commodification by establishing monetary values for cultural property which previously existed outside of economic domains. Money is hardly an ideal substitute, although it can be the means to other ends—to decontaminate Rongelap Atoll, for example—which cannot be achieved in any other way. Legal activism can provide important political and economic resources for indigenous peoples, as the Ok Tedi case illustrates, particularly when the terms of the debate are set and the mechanisms of justice controlled by nonindigenous bodies. Nonetheless, not all losses are compensable or even judicable. The acknowledgment of loss, however, along with appropriate acts of commemoration, historical documentation, and, where relevant, acceptance of responsibility, and the implementation of reforms designed to prevent past wrongs from recurring are partial but legitimate responses to claims of culture loss.

The problem of culture loss raises questions about agency and responsibility. What distinguishes between man-made disasters and their natural counterparts, such as the seasonal typhoons that can inflict heavy damage on fragile Marshallese atolls and force temporary relocation? Carucci's answer to this question during the tribunal was that the Marshallese are well adapted to the risks and challenges of atoll life. Of course, the scale and scope of the transformations wrought by the weather and by nuclear weapons differ tremendously. Yet it may well be that claims about culture loss will arise more frequently in the context of assigning social responsibility for negative events.

Why privilege the Rongelap claim or indigenous claims more generally if the experiences are not unique? In a general sense, claims of culture loss may be a diagnostic feature of our time, given the unprecedented pace of technological change and its social consequences. The shift to a postindustrial economy in Europe and America, for example, has greatly reduced or even eliminated entire economic sectors, including small-scale farming and coal mining, often at considerable cost to the associated communities, including impoverishment, displacement, and a profound sense of loss (Read 1996,

25. Pollock disputes Carucci's reference to anomie, which she describes as being "very much taken from Western ideas and trying to account for [the] response to the cash economy." She argues that the concept is inapplicable in the Enewetak case: "People felt that [their relocation] was beyond their control, but they tried their best to adjust. That does not mean that they suffered any anomie" as a result. She implies that because people are able to adapt to challenging circumstances, they do not incur any loss.

Charlesworth 2000). Yet claims of loss are particularly salient for indigenous communities, which frequently have special ties to land and place that, while they have analogues elsewhere, differ in relation to the way that these societies organize and reproduce themselves (Kirsch n.d.). The analysis of the contemporary predicaments of indigeneity may provide the impetus for a general rethinking of the theoretical challenges associated with culture change, cultural property rights, and loss.

Anthropological debates on cultural property rights (e.g., Dove 1996, Brush 1996, Brown 1998) have focused primarily on the issues of cultural appropriation, commodification, and potential restrictions on the circulation of knowledge and creative processes. I have chosen an alternative starting point, suggesting that ethnographic studies of loss may enrich our understandings of property and, conversely, that the concept of cultural property rights may inform ongoing debates—legal, indigenous, and anthropological—about the problem of culture loss.

Finally, I hope that this paper has been able to still for a moment the circulation of images of environmental disasters like Bikini, Bhopal, the *Exxon Valdez*, and Ok Tedi. Only by reembedding these events and their consequences in a network of social relations and thereby reducing their scale is it possible to address them both analytically and politically.

Comments

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Kirsch shows that different definitions of culture used by anthropologists in court have real-world repercussions on indigenous peoples who have been impacted by human-made disasters. Wisely, he doesn't call for a unified definition of culture but instead proposes a consideration of cultural property rights, which includes loss. However, as anthropologists we recognize that culture is integrated in that how people make a living and use their environment has direct ties to their ideas, artifacts, core values, and meanings. When people lose their ability to make a living, they experience major changes in their ideational realm. All aspects of their culture will change, and in my fieldwork people who had experienced such change certainly expressed feelings of loss (Biery-Hamilton 1993). In fact, in the Tucuruí-Marabá region of Pará, Brazil, in the Amazon, many *caboclos* were relocated in the 1980s (Mougeot 1986) because of the Tucuruí Hydroelectric Dam and a transition to private property. In the process both relocatees and people who did not move lost access to critical river and forest resources necessary to sustain their former lifeways (Biery-Hamilton 1993, 1994). *Caboclos*—Amazonian riverside peasants of mixed European, Amerindian, and African descent—employ indigenous strategies for subsistence and collect forest resources for the market (see Parker 1985). Although they are not considered indigenous people, it has been argued that they should be given special accommodations, such as recognition of common land tenure, because their economic activities are relatively more sustainable than those of other social groups given their special knowledge and methods of resource use (cf. Anderson 1990). In fact, Nugent (1993) argues that they should be regarded as a distinct group. If we accept Nugent's argument, then they are like the groups Kirsch discusses with regard to cultural property rights.

For at least 100 years *caboclos* in the region had gathered rubber and Brazil nuts, mined for diamonds in the Tocantins River for the market, and gardened, hunted, and gathered other forest products for their subsistence. The diamond mining and most of the Brazil nut gathering were market-oriented via patron-client relations whereby *caboclos* received access to resources in exchange for the product. However, in at least one place the people themselves controlled access to a large area of Brazil nuts that they held in common and controlled by community sanctions that ensured a level playing field (Biery-Hamilton 1994). The extractive industry was almost entirely destroyed during the 1980s by the development projects initiated by the Brazilian government, which made no provisions for the *caboclos'* economy because they were not indigenous. Some people received indemnification from the power company for the land they had in production at the time, their houses and other buildings, and their orchards, but the money they received was a small amount and was eaten up by inflation in the 1980s. However, no lump sum of money could sustain them in the long run in the same way as their former subsistence strategies. They lost their traditional means of making a living, experienced economic specialization and stratification, and were no longer in control of their economic options or political process (Biery-Hamilton 1994, 1996). Moreover, since locals were no longer making their living using these traditional strategies, the younger generation was not learning about them experientially, and specialized knowledge about horticulture, hunting, wild plants, and water currents was being lost.

As in other places where people lose access to land and resources from development and relocation projects, these *caboclos* lost former strategies of subsistence production, connections to place, and local knowledge. Their previous economic strategies were associated with their common access to resources and land, and the loss they experienced meant their cultural impoverishment economically, politically, socially, spiritually, and experientially. *Caboclos' ideas* of common access to resources and social sanctions were necessary aspects of their *subsistence* strategies. Kirsch points to the fallacy of separating ideas from economy. If anthropologists cannot agree on a definition of culture, perhaps we can agree on the usefulness of his notion of cultural property rights

in integrating the ideational and material realms of culture.

Anthropologists who assist in court cases like the ones Kirsch describes are forced to make culture something that is legible (Scott 1998) to a judge who will decide. The basis of the decision is going to be a simplification of what is a very complex understanding of culture, for example, whether culture is in the head and heart or grounded in the physical world and the way people make a living. Judges, influenced by anthropologists, have the power to decide what culture is and what it is not, and thereafter people can claim a loss and be indemnified for it only if it fits that definition. Kirsch's definition recognizes the complexity of local history and culture but provides a way of articulating particularistic aspects into a broader framework that might be intelligible to nonanthropologist decision makers. Further, his concept of cultural property rights has the potential to give anthropologists and indigenous groups a way of influencing litigation and policy in their behalf. The concept is promising, too, for groups like *caboclos*, so that they can protect their livelihoods and contribute their expertise to the critical effort of developing a more sustainable resource management program in the Amazon.

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Kirsch's essay is an important contribution to the widening circle of work that registers the reification of culture, its transformation from an abstraction largely derived from belief and behavior into something that a given population "possesses" and can therefore "lose." This turn of events has led some anthropologists to renounce the culture concept altogether. But culture has become a social fact, one that is readily reconceived as a form of property. It is too late to disown this child of our discipline, however discomfiting its current behavior.

The cases that Kirsch uses to support his argument are convincing. I suspect that few readers will challenge his assertion that egregious wrongs were done, serious losses suffered. Still unspecified by his analysis, however, are the limits of culture-loss claims—the outer boundaries beyond which the culture-loss concept loses its force.

Kirsch presents a plausible case for seeing indigenous peoples as uniquely vulnerable to cultural disruption when environmental disasters affect their communities. From this he concludes they they merit special consideration in processes of remediation. But exactly who is indigenous? As John R. Bowen (2000) has shown, definitions of indigenousness that have emerged from global human-rights forums are often misleading when applied to populations outside of regions reshaped by European settler colonialism (e.g., North America, Australia, and New Zealand). Even in places where First Peoples should be easy to identify, intermarriage and cultural blending make it increasingly difficult to define the boundaries of the indigenous (Gonzales 1998). What are we to make, for instance, of the emergence in the Mexico-U.S. borderlands of the Mexica movement, whose members have jettisoned an identity as Hispanics or Latinos in favor of reconnection with their Indian roots? "We are not Spaniards. We are the Mexica of Anahuac!" declares one of the movement's websites. "Artificial European boundaries on our land can never sever our ties to our common Olmeca mother civilization and our shared Maya, Teotihuacan and Nahuatl-Mexica culture, or our shared oppression and exploitation" (Chicano Mexicano Mexica Empowerment Committee n.d.). Even if we accept that people are free to reinvent their identities as they like, it is hard to justify giving this group the same special standing that existing law grants to the Hopi or the Pitjantjantjara.

More vexing still is the question of when claims of culture loss would expire, if ever. We live in an era when demands for slavery-related reparations are taken seriously by some in the United States (see, for instance, Barkan 2000) and when a judicial struggle over ownership of gold salvaged from an 18th-century shipwreck can give rise to the suggestion that the booty be returned to South American Indians rather than repatriated to Spain (Broad 2000). Kirsch proposes no statute of limitations for culture-loss claims, leaving the door open to a panorama of litigation mining the darkest chapters of human history. Although the turn toward revisiting ancient wrongs opens new career opportunities for lawyers, it is hard to see how it will help us confront the political, economic, and ecological challenges of the future.

The search for a workable framework for culture-loss claims is further hampered by the overblown rhetoric to which published work on the subject of cultural rights seems fatally inclined. An example, by no means exceptional, is Tove Skutnabb-Kangas's (1999:8) insistence that discriminatory language policies qualify as genocide. The logic of Skutnabb-Kangas's claim runs something like this: (1) the United Nations Convention on Genocide recognizes the forcible relocation of children from their families to another group as a form of genocide; (2) coercive language policies alienate children from their own group and orient them to another; (3) ergo, state practices that favor one language over another constitute genocide. Such twisted casuistry does little to advance the legitimacy of cultural damage claims in the minds of legislators, jurists, and the general public.

Kirsch's admirably measured approach to these complex issues doubtless reflects his experience in the applied world. Although I am generally convinced by his argument, I hope that he will develop it further by tackling knottier questions about the social and temporal boundaries beyond which claims of cultural damage or loss may be discounted. A clear definition of the limits of his approach will immensely strengthen the position of groups with legitimate grievances. Without it, I fear, the culture-loss concept can be too easily dismissed as another example of the politics of victimization.

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15 XI 00

Kirsch invokes the concept of property but fails to ground his discussion of culture loss in a theoretical or historically informed vision of property as a social institution. He neglects the important dichotomy of property as a utilitarian construct versus property as a natural right. This dichotomy underlies much of the current conflict over extending property rights to areas such as indigenous knowledge and cultural expression. The view of property as a social contract underlies much 20th-century social analysis and is derived from Hohfeld's (1913) seminal article. In this formulation, property is understood as a set of social relations that are explicitly acknowledged and sanctioned. Recognition has different sources, but the social utility of privileging a particular group is nearly always present. Implicit costs to other parties are likewise acknowledged. It is precisely this construction that has driven the legal decisions that Kirsch laments. An individual, group, or anthropologist may embrace the concept of cultural property, but this notion has little value unless it is also embraced by other social groups and institutions. The tragedy of colonized people such as the Marshallese and Native Americans obscures the fundamental theoretical issues of assigning or withholding property rights from novel domains. A property contract in these situations involves both the dominant and dominated parties that confront each other in the cases reviewed by Kirsch. Under Hohfeld's (1913) reasoning, recognition of cultural property must be beneficial both to those who "own" culture and to those who recognize that ownership. Unilateral declarations do not suffice because they do not generate the obligation to respect another's rights. There are other formulations of property that might be entertained to allow something like cultural property, but these need to be laid out and weighed against the prevailing theory of property involved in the cases reviewed by Kirsch.

The negotiation over what is and is not property inevitably must confront the issue of the public domain (Brush 1999), a concept that is absent in Kirsch's paper. A large, theoretically rich, and relevant literature exists on social impact analysis and the internalization of "costs" that have hitherto gone unrecognized (e.g., Coase 1960). Anthropologists who wish to propose new forms of property would be well served by addressing that literature. Again, the extremity of double victimization under colonization and nuclear testing may obscure the issue of the wider social benefits and costs that are at play in recognizing culture as property and culture loss as deserving compensation.

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Kirsch does an excellent job of identifying a critical theoretical and practical problem for anthropology—that contemporary definitions of culture as fluid and dynamic make it extremely difficult to assess and redress cultural loss by indigenous communities as a result of biophysical, economic, and social globalization. His method for "the work of analysis" required to address this problem is twofold: (1) reembedding indigenous loss in social relations in order to "slow the movement of images" and "reduce their scale" and (2) using a concept of "cultural property rights," which includes knowledge of things as property and of people as relationships. He is successful in demonstrating that indigenous loss of physical place is often also loss of cultural property in the sense of subjective or mental loss.

I have two suggestions to complement his proposal. First, I think that we need to take more seriously possible problems with attempts to grant rights to indigenous cultural property in terms of Western property rights. For example, on the basis of research in Indonesia, Dove (1993) has suggested that the introduction of Western intellectual property rights regimes will likely only worsen the situation because of the destruction of local resources not only by outsiders but by local people themselves. The long struggle for recognition of Native Americans' water rights and for compensation for their loss of these rights has resulted in legal remedies based on the dominant society's standards, which equate rights with the level of resource "use." In many cases this has strengthened large-scale commercial irrigation development on Indian land, with subsequent loss of indigenous knowledge and landscapes connected with traditional small-scale, family-based irrigation (Cleveland 1998).

If instead we are to attempt to construct alternative "rights" that interface between indigenous and Western rights, we return to the original problem as stated by Kirsch, because rights are also fluid in cultural time and space—they are culturally constructed. In a world of 6 billion humans that may well be environmentally unsustainable, there are multiple claims of rights to increasingly limited resources, and any attempt to construct new rights regimes must consider these absolute limits. Therefore, the social construction of rights will also be to some extent contingent on the empirical relationships between culture and the conservation of place. We must not *assume* that indigenous peoples necessarily either destroy or conserve their own local "places" and cultural properties, because there are no valid theories from which to deduce either position and there are examples of both. Rather, we need to document what conditions are correlated with conservation of place by both indigenous and outside actors and investigate potential causal relationships. While the results of

this research cannot determine rights, they can help to inform their social construction.

Second, it is unnecessary to conclude that if indigenous knowledge is dependent on local, physical place it is therefore completely defined by it and thus essentially different from Western knowledge (Agrawal 1995). There is a need to develop a coherent intellectual framework in which indigenous knowledge can interface effectively with Western science (Sillitoe 1998*b*). Just as we have moved beyond definitions of indigenous knowledge as static and bounded, so we need to move beyond defining it as essentially different from Western knowledge. Anthropologists have documented the ability of indigenous cultures to float free of their physical places to form virtual communities (Appadurai 1990), using the tools of modern Western technology to perpetuate themselves on a global scale. In the same way, indigenous peoples may benefit not only from modern technology but from the data and theories of modern science (just as scientists can benefit from indigenous knowledge). For example, understanding the conceptual similarities and differences of the plant-breeding knowledge of farmers and scientists may facilitate collaboration between them that results in improvements in farmers' own terms (Cleveland, Soleri, and Smith 2000, Soleri et al. 2000).

This is important, because if local peoples are to maintain their cultural properties and physical places collaboration with outsiders based on the similarities and differences between indigenous and Western knowledges may be critical. If we find similarities, this does not mean that the power of the scientific over the indigenous will necessarily increase. The results will depend on how this information is used and within what power structure, and therefore we need to understand this power structure to facilitate an equitable status for indigenous knowledge in discussions about future development and in the social construction of rights.

We can make important contributions that complement Kirsch's suggestions by encouraging the discussion and social construction of rights in which indigenous peoples participate as equals and by documenting the similarities and differences between indigenous and scientific knowledges and the power structures in which they operate to contribute to the social construction of rights and to provide the empirical basis for implementing those rights in the context of locally controlled change.

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Kirsch's discussion is important for pointing to a question that goes beyond anthropology in its implications: the importance of politics even as the political is interpellated into the juridical. If this question is to receive the attention that it deserves, it is important not to dissolve it into abstract disciplinary problems of culture such as cultural universalism or relativism and essentialism or hybridity but rather to investigate the political implications of disciplinary disagreements. Kirsch is conscientious in his search for a concept that can be helpful to those in search of justice, and he offers "cultural property rights" as one such concept. But I think that his respect for disciplinary protocols prevents him from going a bit farther to raise questions about the political meaning of the case under discussion, its implications for problems of domination in the contemporary world, and the part anthropologists (and others) play in it.

There are two aspects to the question. The first is the assumption that claims to culture (or cultural authenticity) may be adjudicated in courts in order to be compensated for "culture loss." This may seem a strange question, since courts may be the only venue in which those who have suffered at the hands of colonialism, capital, and the military can seek compensation. The Marshall Islanders who suffered radioactive colonization at the hands of the United States military can hardly be blamed for seeking compensation through the courts. It is confusing the issues, however, to state as Kirsch does that "indigenous claims about culture loss are increasingly associated with political and legal contexts in which communities seek reparations for past injustices." We ought to know better than to refer to the "political and legal" in the same breath, especially in a context in which both politics and legality need to be questioned in light of claims to cultural difference. In a case such as that of the Marshall Islanders, the "legal context" serves to cover up the political, resignation to which may well be an expression of their ultimate helplessness, especially where issues of cultural autonomy are in question. They can make their claims for justice only in the language of the jurisprudence and property-rights regime of those responsible for their plight in the first place. It may seem a benign act on the part of the United States to allow them into the courtroom, but the price of admission is to abide by the very culturally determined assumptions, rules, procedures of that courtroom, which already indicates a further erosion of any claims to cultural autonomy. From this perspective, the legalization of political issues signals a consolidation of hegemony that remained an incomplete project under formal colonialism or even neocolonialism. It may be argued that the restriction to litigation of opposition to the legacy of colonialism testifies to the ultimate victory of colonialism. A concept such as "cultural property rights" may sharpen disciplinary distinctions over issues of culture and may provide the plaintiffs with a weapon in the courtroom, but it also further deepens the hegemony.

A Japan-specialist colleague of mine is fond of observing that the Japanese could never have a revolution because it was against the law. The remark is important for considering issues of politics in the contemporary world, where it has become nearly impossible to conceive of radical options because such options are indeed against "the law"—which, although it is a systematic product of modern capitalism and nationalism and therefore founded upon Euro-American cultural norms, is

transnationalized with universal claims as the regime of modernity is globalized. It would obviously be counterproductive for Marshall Islanders to walk into a courtroom to declare their opposition to such laws and procedures on the grounds that they were culture- or system-bound or that they represented a more refined form of colonialism. They would simply be abandoning their hopes for compensation—or even recognition. The legally unthinkable also sets limits on what is politically thinkable. That is what hegemony is about. This totalization of hegemony may also provide a clue to why opposition to Euro-American hegemony is so often expressed in the language of fundamentalist essentialism.

This is not just a problem for the Marshall Islanders or the formerly or currently colonized. Ours seems to be an age of reparations. What is important is that whereas in the past the legacies of slavery, colonialism, Nazi atrocities, the internment of (Japanese) American citizens, genocide of indigenous peoples (including through nuclear radiation), etc., produced political oppositions calling for systemic changes to prevent their recurrence, they now appear as court cases demanding recompense for past wrongs—on the assumption that these are indeed past wrongs that an improved present can provide compensation for. It is not very clear what we are to do with the memories and legacies of these past wrongs once they have been settled in court. Of more immediate concern is their relegation to the past when, in some cases, as in the case of the Marshall Islanders, they may represent not the end but the final victory of colonialism.

This is what I mean by the interpellation of political into legal questions. Common to all such litigation is an assumption that any deviation from liberal norms of politics is punishable by law, which means, in effect, no politics outside that which is specified in the legal procedures of the neoliberal state. The Marshall Islanders deserve all the help they can get, but the particular route they follow through the courts itself indicates helplessness before a world of domination that cannot be challenged for what it is, if not dissolution into its hegemony.

The second aspect of the question is the assumption that claims to cultural authenticity in a case such as this one may be authenticated by expert testimony, which is further evidence of the extent to which colonial practices persist, armed by postcolonial arguments against cultural authenticity. Depoliticization of the issues at hand is at work in the very notion of "expert" testimony. But knowing what we do about past collusion between colonialism and anthropology, we need to inquire whether such depoliticization serves to disguise a continuing relationship between them, especially where the anthropologist's testimony is given priority over the self-images of the natives—as if only the natives' memories were subject to constructedness and not the anthropologists' scholarship. The issue here is not the privileging of native self-images or some multiculturalist relativism but rather a need to question the priority given to so-called scientific expert testimony.

The account that Kirsch offers is testimony to the old adage that "the more things change, the more they stay the same." The interesting thing about the notion of the "expert" is that what distinguishes one expert from another is technical problems of sources and interpretation rather than politics—which involves ideologies of culture and property as well. If I may take issue with Kirsch, "the debate between the two anthropologists (Carucci and Pollock, who were involved in this court case)" that he describes "hinges" not just on "competing views of culture" but also on two different political sympathies and appreciations of culture. This may well be the reason that they never made "their positions on the subject explicit," politics obviously being inadmissible as a supporting argument in a court of law. Pollock in this description appears as an academic who makes opportunistic use of facile analogies to justify old-fashioned colonialist arguments. However, the more liberal arguments of Carucci and Kirsch, unable to deviate from the restrictions of the law and making a political case of the whole issue, are possibly more revealing of the workings of power in our times, since they are no more willing to challenge the value of "expert" testimony.

Kirsch's account is reminiscent of the story that when Columbus landed in Hispaniola he read to the natives a proclamation in Spanish of his takeover of the lands indicated in the name of the majesties who had sponsored his conquest, to which the natives are supposed to have nodded in happy assent. The Marshall Islanders are not the inhabitants of 15th-century Hispaniola, which makes their case more disturbing; in their case, the subjection to a legal procedure that is the product of a Euro-American capitalist definition of rights and property is an assent not to an incomprehensible language but to a painfully familiar one that, however it may undermine native practices, must now be accepted as the only language in which dissent can be expressed. It is the conquest of culture and politics by a juridical language which no longer recognizes an outside to its domain. What we need to keep reminding ourselves is that juridical language itself is founded upon political and cultural assumptions—which may at least caution against the reduction of political questions to technical or disciplinary ones. Kirsch's essay does not raise this question, but it provokes the thought.

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Kirsch grounds his argument for the usefulness of the concept of "cultural property rights" in its ability "to identify the referents of indigenous discourse about culture loss." Using the records of a legal tribunal that has struggled to make sense of particular indigenous claims to "culture loss," he explores "several examples of loss experienced by the Marshallese as a result of damage to their land and prolonged exile from their home atolls" against the challenge of working within a legal framework. While I can imagine responses to this essay that

focus understandably on the pros and cons of translating the broader issue into a language of legal rights, I think it is the concept of "culture loss" itself that Kirsch wants us, the anthropological community, to discuss—at least in part because so many of us shape our professional work in terms of a concept of culture and are called upon to serve as expert witnesses for competing sides.

My own response focuses on a question I find myself asking: When is a loss "cultural"? Or to reframe it, what is it that leads particular people to call *some* losses "culture losses"? Clearly, this happens in a minority of cases and, I suspect, in a minority of places or communities. People experience loss all too often, but they rarely call it "culture loss" or label what they have lost their "cultural property." Much of the time we lose something that matters little or matters a lot for a short period of time—a bet or a set of keys or even a credit card. It may be inconvenient, even worrisome, but rarely is it life-changing. People also lose loved ones to disease or through accidents, forced displacement, and family breakups. Rarely do I hear these called "culture losses," though the loss is often intense and long-lasting. It is true that an anthropologist might be moved to label a particular response to loss cultural, but the point is that people experiencing loss rarely see it as "culture loss." It is personal. It may be a serious blow to a family or even a self-identified community, but it isn't "culture loss."

Calling a loss *cultural* clearly signals something else—something of different dimensions, more akin to devastation or group extinction. The phrase names a feeling, a fear, a sadness—even though it is easy to hear it as a legal neologism introduced in court battles today to gain both additional compensation and the high moral ground. I think its paradox is that in court battles it can easily be undermined because both inside and outside anthropology people use the term "culture" to mean significantly different things, thereby leaving judges and jurors with no clear referent, whereas outside the courtroom it may evoke much more sympathy and enlist many more supporters precisely because so many people around the world today use some concept of "culture" and consider it a good thing. Hence, calling a loss "culture loss," I would think, heightens the possibility of empathy and through empathy at least some form of satisfaction, if not social justice itself.

Kirsch is right in suggesting that monetary compensation, though useful, is often not the main goal. Charles Taylor would say that the real issue is recognition, and I would add that it is recognition in two senses: (1) recognition of a presence that has often been made invisible and (2) recognition of wrongs that need to be acknowledged. Rhetoric matters, but, as Nancy Pollock writes in her 1999 report to the Office of the Defender of the Fund, Nuclear Claims Tribunal, quoted by Kirsch, we are not talking about a random collection of local groups invoking a notion of "culture loss" but, rather, about contexts "where the loss was derived from impositions by major powers, colonial powers, that exerted their power over minority states to achieve [their] goals, both economic and strategic." Something very specific is being said even when the reference to culture makes it seem diffuse.

I am, however, interested in extensions that Kirsch implies but does not elaborate on. I am thinking of "culture loss" as an object of public discourse and even of legal discourse in settings not involving indigenous groups or other underempowered communities experiencing serious population decline. What is its sociological topography? Has it indeed spread beyond indigenous communities, or has it now become so closely associated with indigenous movements that we fail to see its "cousins" elsewhere? When French cultural and political elites, for example, take actions to protect "French culture" from linguistic and other "intrusions," many anthropologists roll their eyes in mild amusement, but aren't these actions, in fact, paralleling indigenous claims in more ways than all may want to recognize?

We do tend to react differently on the basis of our tendency to champion the causes of underempowered groups and to critique structural, symbolic, and physical forms of violence. The point is evident here as well. When "culture loss" (or fear of it) is invoked by people with the social, political, and economic power to affect millions of lives, I doubt that many of us would struggle to choose a side in a legal dispute the way we do now when we confront the dilemma of how to respond when it is invoked as a strategy for recognition (or even compensation) by others. Kirsch's notion of cultural property rights can, indeed, sharpen our eye here. A powerful social group proclaiming the need to prevent "culture loss" may claim exclusive *rights* to many things as its "cultural property"—and the impact is not on hundreds or thousands but on millions or billions.

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Kirsch's "Lost Worlds" is an intelligent, constructive, and courageous intervention in the anthropological debates on globalization and culture. Behind it there is no trace of the long-discarded paradigm of salvage anthropology, nor does this piece reinsert anthropology into the "savage slot" by discussing issues of indigenous cultural loss (as, unfortunately, the American Anthropological Association's handling of the Neel/Chagnon affair tended to do). On the contrary, Kirsch seeks to return the avant-garde of the discipline to the long-standing issue of culture change that anthropology has skirted for the past two decades while devoting its best efforts to developing a powerful approach for the study of the production of culture under globalization. I think that this is a theoretical and political project of great importance to the discipline. Anthropologists have seldom shied away from discussing the political context and implications of their work. In recent years, however, we seem to have become enthralled with the very sophistication of our analyses—intent on showing in detail the contes-

tations, impurities, hybridities, and fluidities of culture and the traveling, border crossings, and diasporas of cultural production—to the extent that our sense of politics has become diluted. That our analyses show that power is negotiated at every level makes us unsure where we stand vis-à-vis our subjects. This has been particularly true in North American anthropology, which has motivated reactions in other parts of the world. Far from suggesting that Kirsch's argument is less complex, what I mean is that this piece, along with others that want to return the discipline to a more engaged approach to issues of cultural politics, proposes an alternative model and set of concerns for anthropological work. Models of "good work" in anthropology come and go, as in any good normal science. At some level, Kirsch's paper calls on us to pluralize those models once again.

We may, for instance, take on again an unfashionable issue such as "culture loss" and ask what new and perhaps original problems it poses for anthropology, our understanding of culture, and the world at large. We may also be less reluctant to investigate who is making claims today about "culture" and how. In other words, we may want to investigate how claims to truth are made in the name of culture outside anthropology in ways that legitimize particular agendas with which we may or may not be in agreement. And we may also take a seat by the side of peoples whose claims to "culture loss" we can help to conceptualize and defend, perhaps against the claims of more powerful actors such as judges or even colleagues on the other side of the fence. Some of these issues may seem perilously "applied" to some of our more academic-minded colleagues, but this is precisely the point: that in another model the boundaries between "academic" and "applied" and between "knowledge producers" (experts/anthropologists) and "users" (local people, social movements) are no longer neatly construed. What we learn, for instance, is that if we take some people's claims about culture, place, and nature seriously we need to rethink our by now strongly naturalized conception of change (Kirsch's main claim); that in this age of seemingly inescapable mobility and deterritorialization people's sense of belonging and attachment to place continue to be important sources of cultural production and mobilized politically to various ends (and there are more and more anthropologists, archaeologists, and geographers interested in place); and, finally, that there are discussions about alternative conceptions of property and personhood in circles outside of anthropology. In other words, there is a complex cultural politics around contested notions of person, nature, property, subsistence, and place that we would do well to incorporate into our own studies and take a position on. And as the example of anthropologists Pollock and Carucci demonstrate, these positions can be quite different, which goes to show that our conceptions of culture count. (I do not think, however, that Pollock's conception of culture is necessarily essentialist. Rather, it is a narrower understanding of culture as things people hold in their minds, which lends itself to being thought about as endlessly transformed in the manner of the works I have mentioned. Carucci's, in contrast, is a more phenomenological and practice-based conception of culture as embedded in bodies and places and, thus, eminently susceptible of being lost.) What are the political tasks we are called upon to assume as experts in these situations, and how do these political tasks relate to subaltern strategies for the defense of place and culture or, conversely, to dominant attempts at cultural reconversion?

As Kirsch says, loss has become a critical site for the objectification of culture (one might think in similar terms about the loss of biodiversity in relation to nature and culture). The language of loss displays incommensurability of cultural backgrounds and practices (as in the example of property developed in the paper); publicly debated contrasting cultural conceptions in turn suggest the possibility for a pedagogy of alterity in international and intercultural negotiations that could be further developed out of studies such as this one. There is an entire cultural politics at stake in globalization that we need to highlight and document ethnographically. I would go farther than Kirsch in saying that at issue in the cases he discusses is not just alternative conceptions of property and place but different conceptions and practices of nature and the economy. These conceptions may be important as we think about the defense of place-based worlds and, beyond this, contribute to their re/construction.

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How could anything so seemingly "academic" as culture theory tie anthropologists up in such tangled knots? Musings about how people invent their cultures may make good sense to theorists but appear insulting, accusatory, and misinformed to those whose cultures are so labeled. Now anthropologists with opposing cultural readings are clashing in court over whether the Marshall Islanders suffered grievous cultural loss over and above the fictional market value of their atolls when the U.S. government blew up their islands and/or saturated them with radioactivity.

Upon returning from the Marshalls to Hawai'i in October 2000 I discovered Kirsch's cogent paper in my mailbox. Since I had gone to the Marshalls to discuss with the Bikini Council a project to revive ancient ways of navigating, I was jolted to discover from the paper that the significance of the decline of canoe voyaging had been contested in expert testimony given by a pair of anthropologists before the Nuclear Claims Tribunal. In my discussions with Bikini Council members they had bitterly charged that their forced exile from Bikini Atoll to Kili, a lone coral rock without a central lagoon or sheltered beaches for launching and landing canoes, had condemned their children and their children's children to a life without canoes and skills in ocean sailing and navigation, seafarers no more. In testifying before the

Nuclear Claims Tribunal, the anthropologist Laurence Carucci had made virtually the same point concerning the exile of the Enewetak people from their atoll to another, less well endowed one and their consequent loss of seafaring skills. Yet Kirsch tells us that Carucci's fellow anthropologist Nancy Pollock denied this loss under cross-examination by the Enewetak attorney. Instead, she stressed that such cultural knowledge never totally disappears and cited the recent revival of canoes and voyaging elsewhere in the Pacific as a supporting example.

As someone who has been working in East Polynesia over the past four decades to revive ancient voyaging canoes and skills and test these over long sea routes and has witnessed the tremendous cultural impact of this effort, it seems apparent to me that the Marshallese have suffered a grievous cultural loss of seafaring skills (among others) and along with that a vital part of their former identity as seafaring farmers and fishers. But it also seems possible that they may be able to recover some of that loss with positive cultural and social effect. That the revival of voyaging could be cited to deny cultural loss has never occurred to me and my colleagues in Hawai'i, Tahiti, the Cook Islands, and Aotearoa. Voyaging canoes and their navigators had disappeared from East Polynesian seas long before we started. Using ethnohistorical and ethnographic sources, and with the help of the master navigator Mau Piailug (from Satawal Atoll, Federated States of Micronesia), we set out to re-create the old sailing canoes and ways of navigating as well as we could, recognizing that because of the discontinuity with the old Polynesian masters some skills and techniques might well be lost forever. In this respect the Marshallese are in a somewhat better position than the Hawaiians and other East Polynesians. As recently as the 1960s some of them were still sailing their large deep-sea outrigger canoes (*walap*), and although these fell out of use soon thereafter this loss has been recent enough that there are still some aged masters alive today who once built, sailed, and navigated them. Over the past dozen years Dennis Alessio, Alson Kelen, and others of the organization Waan Aelan in Majel (Canoes of the Marshall Islands) have been taking advantage of this situation by having these living treasures work with Marshallese youths, teaching them as together they build and sail these magnificent canoes.

Lack of regular funding, spells of official indifference, and a loss of confidence on the part of some Marshallese in their ability to build, sail, and navigate their traditional canoes has made progress slow. However, a number of canoes have been built, and the vanguard of a new generation is now beginning to sail again. The next step—before the last of the old navigators pass away—is to revive the unique Marshallese system of navigating from island to island by reading the way the deep ocean swells are deformed as they pass around and between the atolls.

Rather than argue over the extent and meaning of the Marshallese loss of voyaging, let us admit that this key technology has been endangered to the point of extinction and consider that just compensation would help the Marshallese to revive it in all its former glory. However, such a program should not be developed as a sop to divert attention from all that needs to be done to make these islands livable again and their people whole. If the Hawaiian experience is any guide, a voyaging revival could contribute to the realization of these larger goals. Though not overtly political, the Hawaiian revival of voyaging has played a key role in the current sovereignty movement and the uneven progress the Hawaiians have been making. The pride gained by re-creating their canoes and methods of wayfinding has encouraged young Hawaiians to challenge their de facto status as a subjected minority in their own islands and to work together for common goals.

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21 XI 00

Kirsch has made an important, compelling, and impassioned argument about culture, property rights, loss, and compensation in the context of environmental disasters. He seeks to elaborate a concept of culture that allows us to "recognize change while simultaneously acknowledging loss" by accounting for notions of property as rights in things, people, knowledge, and places. I admire Kirsch's quest for a legally defensible definition that will compel courts to compensate people in the Marshall Islands, who have suffered horrendous, incalculable losses from nuclear testing in the 1940s and '50s. I also believe that his reconceptualization of culture can be useful in some contexts, but because he shelters particular concepts and relations from historical change his argument may not have the wide applicability that he seeks. In order to strengthen his formulation, he needs to account for the historical processes by which people produce, debate, and give meaning to categories of "indigeneity," "local knowledge," and "loss."

Kirsch takes the meaning of "indigeneity" to be self-evident. "Indigenous" people may be easy to identify in the Marshall Islands, but elsewhere this category has been profoundly shaped by historical (and political) processes. In Africa, for instance, the meaning of "indigenousness" has varied substantially over time and space and has most often been constructed *against* other categories of people—not simply Western scientists but also geographically mobile agricultural, urban, or "modern" people. The historical creation of "indigenous peoples" in some parts of West, Central, and Southern Africa has relied on arbitrarily delineated spatial and temporal boundaries that fail to account for the long-term, widespread geographical mobility of all populations (Richards 1996, Giles-Vernick 1999, Crapanzano 1985). And the purposes of imposing or claiming indigenousness have varied, from building state power to claiming or allocating rights to particular resources (Giles-Vernick 1999). In various African countries, some groups of Africans have self-consciously adopted the label "indigenous" as

part of a political effort to gain special rights and protections from African states (Peters 1996, Hitchcock 1994). Historical change, then, can render the exercise of identifying "indigenous people" a treacherous one.

As a way of rethinking cultural loss, Kirsch employs the concept of cultural property, arguing that ways of knowing, subsistence production, and a sense of place are about both belonging and possession. Here he makes some especially convincing contributions, but I do wonder about his insistence on sheltering certain features of "local" or "indigenous" knowledge from historical change (see also Sahlins 1999). Such knowledge can change not only in its content but in its epistemologies. There is ample evidence that people can appropriate both practices and ways of perceiving and thinking about themselves, their cosmologies, and their environmental relations. Michelle Kisliuk's (1998) study of BaAka (so-called pygmy) performance in the Central African Republic shows that these forest dwellers have appropriated from outsiders not only knowledge but also ways of seeing the world. Ajay Skaria's (1999) environmental history of the Dangs in western India reveals that forest-dwelling communities' engagement with British colonial agents produced profoundly altered ways of understanding themselves, their political power, and their environments.

Finally, it would be useful for Kirsch to interrogate further the concept of loss in a broader range of social and historical contexts. "Loss" can have a multitude of meanings, can pervade a wide range of historical narratives, and can be associated with highly conservative nostalgia for mythical origins and unity (Chakrabarty 1992, Skaria 1999, Giles-Vernick 2000). A more fully elaborated and historicized concept of loss might permit us to distinguish the destruction of cultural property about which Kirsch writes from a nostalgia that permeates wide-ranging narratives about the past.

Kirsch's essay takes important steps toward developing a more legally useful definition of culture, but embracing rather than selectively shying away from historical change would make his contributions even more compelling in parts of the world where we cannot accept so much at face value.

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Kirsch's interrogation of the legal aftermath of the U.S. nuclear tests in the Marshall Islands and related cases of displacement of indigenous peoples is most welcome and opens up a series of questions of the greatest importance. The tests are part of a chilling story of U.S nuclear imperialism. One of the charges in Tierney's (2000) *Darkness in El Dorado* is that the U.S. Atomic Energy Commission, which funded Chagnon's research, used the Yanomami Indians as a control group in research in which people were injected with radioactive iodine to measure mutation rates and other responses to radiation (pp. 297–300). Kirsch similarly draws attention to the way in which the Marshall Islanders have been used as guinea pigs in radiation research.

There are many issues at stake here, but let us concentrate on the questions Kirsch raises for discussion. How can peoples like those of Rongelap Atoll be compensated for the sufferings and loss caused by nuclear tests or other "environmental disasters"? (I put "environmental disasters" in quotation marks to indicate that the term is somewhat problematic and could perhaps gain from a bit of unpacking.) How should their suffering be measured or valued? Does displacement or loss of land also imply loss of culture? And, finally, what have anthropology and anthropologists to offer in cases like this? Kirsch addresses these questions in relation to court cases in which compensation claims have been raised by indigenous peoples and anthropologists are engaged as expert witnesses both for and against the recognition of such claims. He suggests that by focusing on "cultural property rights" one can identify losses which otherwise might be "obscured or ignored" and that by examining indigenous discourses on cultural loss we (anthropologists) can "gain new understandings of property."

Cultural and intellectual property rights have become important sites for indigenous struggles, and Kirsch's article does help us think about these complex issues. Even so, I am not fully convinced by his argument. First, whereas he presents his article as an engagement with cultural loss as an indigenous discourse, in fact he mainly discusses anthropologists debating cultural loss. Anthropologists may have theoretical difficulties in analyzing cultural loss "given contemporary definitions of culture as a process," but this is a completely different matter from whether indigenous communities objectify culture and describe their predicament as that of culture loss. It seems to be the institutional setup of the Nuclear Claims Tribunal itself that makes cultural loss an issue of central importance. That "Marshallese claims about cultural loss are *influenced* (my emphasis) by the legal and political processes" certainly seems an understatement. But, again, as we lack indigenous voices, it is hard to tell how the Marshallese see things. In the quotation from an interview with a man relocated from the Rongelap Atoll, it is the loss of freedom and economic self-reliance that concerns him, and the poem from New Guinea with which the article opens speaks of loss of land and all that they could grow on it or extract from it (fish and prawns from the river, wild game, etc.).

Secondly, is the idea of "cultural property rights" really the best that anthropology can come up with for assigning value to that which cannot (easily) be translated into a market value/price? Here I would insist on the question that Kirsch raises towards the end of the article—why the Marshallese losses "should be framed in terms of property models at all." Expanding the notion of property might indeed be a way of working the "system" in favor of marginalized groups, and, to be sure, compensation claims by indigenous peoples are always articulated in situations of domination. But in the Marshallese case I

think that more is lost than gained by such a move. Kirsch was appointed as adviser to the Public Advocate's office, which was required to determine appropriate compensation levels, to examine how land was valued by the people of Rongelap. I suppose that he wanted to find a way to help them strike as fair a deal as possible at the tribunal. But rather than translating their profound sense of loss into the language of property, an alternative political strategy of the concerned anthropologist might be to keep insisting on the inalienability of land and to provide a thick ethnography of how this loss is experienced and expressed. This together with further investigations into the gross human rights violations caused by the nuclear test program and advocacy for a new type of tribunal focusing on Marshallese grievances rather than nonexistent market values would probably have been a more effective use of anthropological authority. In the end, it is the people of Rongelap themselves who ought to be listened to.

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Kirsch's thematically rich paper is explicit about the social-justice impulse underlying the project of relativization he advocates. Definitions of culture in terms of capacity for continuous change obscure the visibility of loss and damage, he argues. Contemporary arbiters need to be provided the tools for analysis of loss and the delivery of social justice; ways need to be found to put the interests of disparate societies into relation. Understandings in terms of "cultural property" make relativization possible. In Kirsch's account, the designation "cultural" seems to mark difference, that which remains incommensurable, and "property" the basis for commensurability. "Loss" in this context refers to those aspects of relations, concepts, and operations that drop out of the cultural system to which they have belonged.

Placing evidence of damage and loss from other cultures in relation to Western models of property brings to light paradoxical connections between the authoritativeness and the historical constructedness of the latter. Western property notions are a part of the broader system of uneven development and unequal distributions of resources and power to which the disadvantaged (both within the West and between it and other recognizable sections of the world) now appeal for the resolution of issues of loss and damage. At the same time, the confrontation helps to make visible the extent to which stereotypical Western economistic understandings of property arise from centuries-long processes of subordination of human lifeways to various forms of objectification and regulation (e.g., to the market [Polanyi 1944] and the historical constitution of law [Baker 1971]) and thus the extent to which such understandings are susceptible to deconstruction. There is nevertheless some irony in the appeal to institutions built upon such "cultural constructions" as a way of trying to gain recognition for forms of relations which exist or once existed outside of them.

Kirsch argues that we must re-embed the events of loss and damage in the context of social relations in order to reduce their scale and slow them sufficiently to carry out analyses which will allow relativization. To that end he examines subsistence production, place, and local knowledge. But when we seek to argue the judiciability and compensability of impacts, questions arise with regard to their immediacy and longer-term temporality, as well as their greater and lesser scale and specificity of effect, that begin to suggest considerations of degree and call into question notions of cultural formations as "integral" in the conjuncture. There can seemingly be few impacts as immediate and radical as the bomb blasts visited upon the unknowing Marshallese. One wonders at the kind of argument made by Pollock for the "continuity of culture" in view of the scale and immediacy of impacts for those directly affected, in circumstances in which any capacity they may have had to act was rendered irrelevant by being radically disabled. The formulation of "culture" here as "embedded in the mind and heart" and thus beyond the reach of immediate circumstantial change appears to have been appropriated to an interested language and logic of the struggle in which the assessment of impact was being worked through. Yet we find that in relation to much longer-term processes of articulation, for example, of Fourth World peoples within dominant societies, Sahlins also argues for an essential continuity of a cultural formation in the notion of the "indigenization of modernity." Similar kinds of arguments have been made, for example, in some Australian land claims cases, where successful outcomes have depended upon demonstration of some kind or degree of continuity in the case of apparent change. But all those participating in such processes are aware of aspects of social life that such formulations keep beyond the immediate field of vision, however these are to be analysed. In contrast, the Marshall Islands Nuclear Claims Tribunal has required people to demonstrate loss and rupture, and culture here appears as the object of assault.

Although these arguments differ in some ways and are deployed in different circumstances, what they share is some kind of integral notion of "culture" as more than the sum of concepts, relations, and practices—as an entity that these together constitute. What is needed is concepts that do not obscure what changes, what is lost or damaged, but also enable us to theorize more adequately than this cultural holism does the role of continuity and change in the ongoing social and imaginative life of the people involved.

In other words, the realization of Kirsch's project will have more than one kind of practical implication and outcome. It will show ways in which people's lives have been more and less drastically affected, but it will also contribute to the deconstruction of cultures as holistic entities in terms of which such assessments can be made.

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Ironic as it may seem, it is comforting to see the thorny issue of anthropologists as expert witnesses come to the fore, and I congratulate the author for this rare occasion and for his treatment at once unbiased and committed. His careful analytical response to the events he describes matches the severity of the suffering imposed upon native peoples by fits of absentmindedness on the part of world powers. The careful unfolding of cases and concepts is far more effective for our ethical sensibility than the familiar denuciatory style. Particularly felicitous is his focus on loss to highlight cultural property rights. Equally fecund is his association of possession with belonging and property with knowledge as analytical tools to counteract the Western ethnocentrism that is still firmly moored despite the century-old doctrine of cultural relativism.

But although analytical density and ethnographic depth are necessary they are not always sufficient conditions for furthering the cause of interethnic justice. Ethnographic knowledge is often reduced to impenetrable jargon, incomprehensible renditions of strange customs, or cursory generalities. The capacity to turn detailed ethnographic knowledge into legal evidence is seriously undermined when generic notions about the locus of culture win the battle as in the *Exxon Valdez* and, especially, the Marshallese case. In both situations, the imbalance of power is so great that it allows the accused's defense to question the legitimacy of the plaintiffs' grievances in the face of manifest crimes. The right to cultural difference is called into question under the guise of universalist justice. Such cases drive home the disquieting realization of how often native peoples are at the mercy of the rhetorical virtuosity of anthropologists and how often their own voices are covered over by those of their surrogate experts.

Concepts such as culture are potential weapons in political and legal disputes, confirming once again the often obscured fact that anthropology is not a neutral enterprise. To reinforce this sober lesson one might invoke the delayed effect of Radcliffe-Brown's seemingly innocent concept of the local descent group as it was applied to Australian Aborigines. Decades after Radcliffe-Brown coined the term, Australian courts were using it as a criterion for granting land to Aborigines. Claims that could not be proved authentic by displaying local descent groups would not be contemplated (Meyers 1986*a*:147).

Although the participation of anthropologists in legal cases is not new (Rosen 1977, Meyers 1986*b*), serious discussion of the professional, ethical, and political implications of being an expert witness is surprisingly scarce. In some American countries with permanent arenas of interethnic conflict the requirement of anthropological witnesses in legal cases has been institutionalized. In Brazil, for instance, the Brazilian Anthropological Association signed an agreement with the Attorney General's Office in the 1980s for the official appointment of experienced professionals to specific cases. Even so, ignoring this agreement, now and again unqualified people are hired as experts to testify on behalf of local political or economic interests to the detriment of indigenous rights. When such actions are not denounced in time, irreparable damage can be done to native peoples.

Central to Kirsch's concerns seem to be the consequences of anthropology in its applied and implicated undertakings (Albert 1995). While the former points to the unequal power between providers and receivers of aid, the latter points to the inevitable ethical obligation inherent in anthropological work. While in some national contexts commitment to indigenous causes is a matter of individual choice, often sneered at by one's peers, in other settings the professional community exhorts anthropologists to assume their role as political actors (Ramos 2000). But the disposition to act as expert witness is one thing and being sufficiently fluent in legal discourse to be effective is another (Dallari 1994, Oliveira 1994). An emotion-laden report often jeopardizes the defense of indigenous rights because it diverges from the forensic principle of impartiality (Gonçalves 1994). Emotional detachment, ethical commitment, and analytical depth are not easy to combine. If one of these ingredients is missing, the outcomes may be similar for different reasons: a judge may reject overtly pro-indigenous bias, may interpret ethical indifference to mean desirable impartiality, or may be unimpressed with a shallow report. In any case, the burden of the anthropologist's inadequacy falls on the native people who are the object of legal argumentation. Kirsch's article clearly confirms this predicament.

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When one sets out to construct a legal remedy, several very careful distinctions need to be drawn. One must, for example, specify the harm that is to be avoided or compensated, the theoretical grounds on which the remedy is to be constructed or analogized, and the rationale upon which compensation is to be regarded as making up, in whatever material or inchoate way, for the loss incurred.

In the case of an indigenous group's loss of habitat or way of life, several theories for compensation suggest themselves. The loss may be analogized to a property interest, the idea of what constitutes "property" being extended well beyond its prior range of examples. Before the invention of the water mill Europeans did not conceive of water as capable of being owned, and hence it lacked compensable property interest. Nowadays, such unusual items as frozen sperm, the air around oneself, or one's "zone of personal privacy" may be regarded as forms of property. Kirsch rightly regards the loss of a

group's territory and even its way of life as a kind of property and even suggests that the knowledge they have relating to their specific adaptation is a kind of property interest. But while this analogy, like others in Western legal history, is logically supportable, it may not constitute the best ground for righting the asserted wrong.

First, it is unclear whether all aspects of a people's culture are equally valuable or by what criteria—to say nothing of by what agency—that shall be determined. One does not want to have to argue that, having lost the opportunity to take the heads of their enemies, a group should receive compensation for loss of knowledge and culture. Similarly, situations of clear destruction, intentional or not, by outsiders must be distinguished from loss that arises from competitive pressures. Kirsch's examples from the Marshall Islands or the loss of a limb that could not otherwise be sold may lead to logical difficulties for the very situation one hopes to assuage; there are cases of overt destruction or losses that could never be converted to a sale, and therefore both their nature and their valuation become extremely problematic. Moreover, one cannot both assert that the loss is capable of valuation and deny the applicability of market mechanisms without undercutting one's ultimate goal of compensating indigenous peoples for their losses. In short, for all its intellectual and moral appeal, the idea of knowledge as property is supportable only if the mechanisms for its assessment are addressed with adequate conceptual rigor. And if one is to make a claim to compensation for loss of knowledge, a far more rigorous argument will have to be made than the assertion, so resonant among many anthropologists but so lacking in real content, that the situation of indigenous communities is distinctive because of "the way these societies organize and reproduce themselves."

A more useful argument might be constructed not in terms of property law but in terms of the law of torts. Tort law is about injury—harm—rather than loss of the corporeal alone, and it has the advantage of long experience in acknowledging that the immaterial has genuine value for both its uniqueness and its meaningfulness. Thus, in both the common and the civil law concepts have been developed for compensating emotional harm or various forms of pain and suffering that are beyond medical calculation. In each instance one must begin with a theory of what is compensable and why, just as one must build analogies for new kinds of property interests. Here it may be well to think carefully about the idea of cultural integrity as an interest which, if intentionally harmed, may be compensable (see Rosen 1991). Difficulties may still arise. Will the simple loss of a way of life to a superior technology be regarded as harm? Probably not, since the loss of a horseman's way of life to the culture of the automobile, for example, may be no different from that which affects native groups in the face of competition. And the fact that competition is seldom worked out on a "level playing field" demonstrates how hard it would be to apply such a concept. But one may well be able to sustain a logical argument in tort for loss of a way of life when it has been taken by force, just as one may then be able to include in the compensable the knowledge that made that life meaningful (see Coombe 1998). In no case will financial compensation replace the loss, but the logic of the theory may permit the extension of remedies beyond the monetary that a simple reliance on property concepts alone may fail to address. The result could be, at both the theoretical and practical levels, a more realistic and creative appreciation of the needs and entitlements of those deprived of that which made their world make sense.

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New arguments for property rights in culture face an uphill battle in today's academy and in courts, both of which are more receptive to postmodern theories of property and culture. In the law schools, property professors have deconstructed traditional property theories to reveal a fundamental paradox: while an important justification for property rights is that land and personal objects can be integral to our personalities, the paramount right to transfer our property in market exchanges encourages us to alienate that property which is most essential to us and harm our personhood in the process (Radin 1982). This insight suggests that property rights in culture may be counterproductive because they would encourage the alienation, not the preservation, of culture.

Intellectual property professors, too, would be wary of proposals for creating new property rights in culture (e.g., intellectual property rights in local knowledge held by indigenous peoples), bemoaning such proposals as yet another step toward the enclosure of our public commons and the propertization of knowledge and ideas historically held in the public domain (Benkler 1999, Lemley 1999, Lessig 1999). Postmodern intellectual property scholars might further argue that justifying intellectual property rights on theories of authorship—here, the claim would be that cultural groups create their own stories, knowledge, symbols, and songs and thus should have exclusive rights to these cultural artifacts—romanticizes creativity as spawned by isolated genius and fails to recognize that cultural creation is in fact a dialectical process that involves interaction between cultures (Boyle 1996; cf. Coombe 1993).

Outside of law, as Kirsch points out, postmodern anthropologists and cultural studies theorists have unwittingly erected their own barriers to cultural property claims by complicating traditional definitions of culture itself. Postmodern definitions of culture as something that travels and transforms without necessarily being lost or destroyed (Clifford 1997, 1988) pose serious problems for cultural property rights claims in court, which rely heavily on the expert testimony of anthropologists. Ironically, the problem is not that courts are unable to understand postmodern theories of culture but rather that in accepting anthropologists' antiessentialist anal-

yses of culture courts conclude that cultural change is natural and inevitable and, therefore, not appropriately redressed through property rights or damages for cultural loss. Claims that particular cultures are connected to particular places are similarly challenged by postmodern theories, such as diaspora theory, which view culture and place as distinct.

In describing courts' reluctance to recognize "culture loss" because it is "attenuated and ethereal," Kirsch's analysis is not unlike traditional critiques of the law's inadequacies in addressing intangible harms, such as the harms of sexual harassment. But Kirsch goes farther, highlighting how theories from the left, which I classify here as "postmodern," are also to blame for the failure of courts to recognize the problem of culture loss. Though unstated, embedded in Kirsch's argument is a critique of postmodernism itself: that postmodernism's deconstructing theories fail to recognize real harm and real loss. In response to this problem, he proposes that cultural property rights "can be used to address this critical blind spot of the culture concept" by making "visible the losses experienced by indigenous communities," specifically, the loss of "knowledge, ideas, and practices of local value." His thesis is compelling: that the property concept can help us to understand culture in a more complex way—namely, as both ethereal and real.

I am not so sure that the property concept alone will do all the work of helping us to recognize the complex nature of culture, but I do think that Kirsch's critique of postmodernists' easy acceptance of cultural change, without concern for the causes of change, is important. Admittedly, in today's world it is increasingly difficult to distinguish what cultural changes are part and parcel of modernity and what changes are spurred by a culture falling prey to cultural imperialism (Sunder 2000). That said, I think that Kirsch is right that we need not throw out the baby with the bathwater. If what concerns cultural property rights critics most is that property rights would restrict the free flow of information, ideas, and culture within and between cultures, this concern does not rule out the possibility of designing law that would narrowly address the problem of unnatural cultural changes coerced by external forces (e.g., oil spills, nuclear weapons tests, or language restrictions).

On the important issue of "why property?"—rather than, say, a tort claim—to protect culture, a quick review of the differences in legal remedies may be useful. A tort claim for culture loss would require the person who causes that loss to pay damages equal to the fair market value of the loss (with the possibility of punitive damages). In contrast to a tort claim, a property right would present the option of allocating damages based on the subjective value of the property, which, as Kirsch points out, could take into consideration an individual's feelings of belonging and possession. Yet a third option would be to declare cultural property inalienable (Calabresi and Melamed 1972), which has some initial appeal because inalienability would prevent both the commodification and the exploitation of a culture. However, an inalienability rule would likely prove unworkable, as the *Exxon Valdez* disaster illustrates. In the end, if we assume that a subjective evaluation of the harm of culture loss is higher than an objective, free-market evaluation of that harm, then a property rule would seem to create stronger incentives to avoid such harms. That said, any remedy based on property approaches would have to address its potential negative consequences, including problems of commodification (Radin 1982) and conflict within cultural groups over who owns the culture (Sunder 2000).

Revealing the relationship between property and postmodernism helps us understand how, despite the best of intentions, the postmodern lawyer, collaborating with the postmodern anthropologist, might leave minority cultures at the mercy of the forces of commerce and colonialism.

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The key to Kirsch's essay is that the claim of the Marshall Islanders in the matter of culture loss has been overridden in the courts. This is the pivot on which turns an immense philosophical issue. What are things, property? Is the positivist assessment of what a thing is to be considered absolute? Is tribal history or culture not a thing? What does the world actually think about American property law? Has the U.S. legal system painted itself into a corner, and has its service to the big corporations separated it from credibility in the eyes of human beings as human beings? Kirsch pointed out that the way to convince the public and the judges in such cases is with particulars—the particulars of the natural-cum-cultural need of the unfortunate exiled islanders and their loss of opportunity to fulfil that need. The natural and cultural needs can in no wise be separated.

Here I want to insert some personal history that confirms what Kirsch describes more generally. In 1958 in Manchester, England, where I was living with my family, there occurred what is now termed the Sellafield disaster, in which an experimental atomic pile about 11 miles from the city leaked radioactivity. At the time, the British government announced with great assurance that the danger was very slight. In 1959 I gave birth to a Down's-syndrome baby, Lucy, who died after five months. This event, of course, affected my husband, Victor Turner, and me deeply. I had no idea that the baby's death was caused by radioactivity and felt that there was something wrong with me, and for years I undervalued myself.

In 1987 I spend a year in Point Hope, Alaska, studying healing among the Iñupiat. Puzzled by the prevalence of cancer there, I and others began to inquire into the cause, both during that year and during subsequent short visits that I made to the village. In June 1992, Dan O'Neill of the University of Alaska at Fairbanks, conducting archival research on the Project Chariot activities of 1958–63, discovered documents about the illegal dump-

ing at the Chariot site, under the cover of the withdrawal from the site, of 15,000 tons of radioactive soil deliberately transported for the purpose of experimentation from the Nevada test sites and secretly positioned near Point Hope without the necessary legal containers. In the middle of August the nine villages of the North Slope learned what O'Neill had revealed. Rex Tuzroyluk told me that when the news came out he went around to his mother's, and she just sat and wouldn't talk to him. Her daughter Tuzzy, a brilliant university student, had recently died of cancer. Rex's wife, Pikuq, who had not been well, sounded in shock too. This was the general mood. Jack Schaefer reported that on October 9, 100 angry and fearful residents of Point Hope met at their community center and George Kingik made a speech in which he compared their situation to the Holocaust.

When I visited Point Hope again the mood was black. All the white authorities were denying that the dump had anything to do with the people's ill health. The people had begun to doubt that the government would actually move the material. Jacob Lane, who had been an important man, could no longer run a whaleboat and had had to give up the captaincy. He was now unshaven; many of the men had let their beards grow. There was more trash lying about in the village. None of the villagers seemed able to lift up their heads. There had been insult—the government had been found to have played them false. These people embodied the oldest village in America—did no one honor that? No one from outside cared about it, and nuclear waste had been dumped on them that would kill them.

During the investigations I discovered more about the Sellafield disaster. It seemed that news had been released in 1974 that there had been many thousands of Down's-syndrome and other abnormal births in Manchester during the 1958–59 period. It dawned on me that the loss of my baby had not been my fault but the result of the atomic pile disaster. Since then I have discovered that contaminated material is still flooding into the Irish Sea and causing radioactive conditions in Drogheda, with the result that the calcium in schoolchildren's teeth shows abnormal radioactive contamination. The British government has not moved to correct the problem at Sellafield and argues that it is impossible to do so. Little is heard about any compensation for these various forms of loss.

Clearly, losses due to radioactivity are not truly to be satisfied with money. I know this is so with regard to the loss of my own child. What all such crimes against humanity require is simply complete truth and reconciliation—forgiveness on the part of the injured in return for true caring for the powerless on the part of the authorities and of all those who are powerful. This is the principle of subsidiarity—in a way, the principle of dharma, of the Japanese *amae*, also seen in the Native American principle of generosity, in the idea of human rights, and in the notion of the necessary moral unity of humankind. The term may be defined as the law (beyond and including the law of mystical participation) that the life's work of those in authority is to *serve* those under them. This may eventually be seen as the only healthy relationship in economics, politics, industry, science, family, and all human interactions.

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Since culture is no longer conceived of as a fixed entity that can only be lost and not retained in a changed form, it has been conceptualized as a dynamic practice embracing constant change. The naturalization of change in contemporary conceptions of culture, however, raises the question how claims based on "culture loss" may be acknowledged. Kirsch is to be commended for addressing this increasingly important issue.

To resolve and redress the loss of culture, Kirsch advances the concept of cultural property rights, which has been developed particularly in Fourth World societies. He argues that the concept of loss refers not only to material possessions but also to immaterial matters such as culture and everything for which it stands. Salient in indigenous discourses is, of course, the loss of land, but apart from being a material object land is also considered a spiritual asset and as such symbolizes a sense of belonging. For that reason, too, the concept of cultural property should be defined not only with reference to things but also with reference to relationships. The intrinsic link between things and relationships, between possession and belonging, has been incorporated skillfully into Kirsch's definition of cultural property, but to my knowledge it is by no means recognized in the legal regimes that are to provide for claims on culture loss. This is clearly the weakness of Kirsch's argument. He cogently contends that our understanding of loss should be broadened and, accordingly, that the concept of cultural property rights should be extended, but he does not seem to be taking into account that generally the law does not change as fast as anthropology's paradigms.

Kirsch substantiates the legal aspects of his argument with reference to two interesting innovations in law. First, he refers to a court ruling that might have opened up the avenue for determining value beyond the scope of the market, including cultural property rights. Secondly, he endorses the view developed by Radin, who has disaggregated property by arguing that some categories of property are inextricably bound up with people and therefore not convertible into other forms of property that may be alienable by market forces. This astute academic view, however, is diametrically opposed to the restricted definition of property used by the courts addressing indigenous claims of "culture loss." And when a judge appears sympathetic to indigenous grievances, as in the case mentioned by Kirsch, this does not imply that he has resolved the ambiguities arising out of attempts to define culture in legal terms.

In this context, I think it is telling that all the examples elaborated by Kirsch are based on the loss of land,

whereas the concept of cultural property has been developed primarily in relation to claims on knowledge. Knowledge claims have frequently been formulated in cases in which specific forms of knowledge have allegedly been misappropriated and applied to pecuniary advantage, for example, by pharmaceutical industries. Few of these claims, however, have been successful for the simple reason that cultural property rights or, in this case, intellectual property rights are generally claimed to be the collective property of communities, clans, or tribes, whereas Western property regimes recognize only property rights that are held by individuals.

It is equally significant that as part of the reformed General Agreement on Tariffs and Trade most Western governments have eagerly signed the Agreement on Trade-Related Aspects of Intellectual Property Rights, which facilitates the transfer of knowledge to global companies, which, in turn, counteracts indigenous aspirations to protect their cultural knowledge. Of course, the United Nations is working hard to seek protection of indigenous knowledge systems in a Declaration on the Rights of Indigenous Peoples, but it is unlikely that this declaration will ever be ratified, at least in its current form. One of the main reasons for this is that there is no consensus on the concepts of cultural and intellectual property. A colourful spectrum of local traditions and legal procedures forms a decisive obstacle to negotiations on the issue of cultural property rights. In fact, Kirsch also shows the complexity of cultural property rights at the level of international politics by comparing, for example, countries in which people are asked to demonstrate continuity when lodging a claim on "culture loss" with countries in which they are invited to prove discontinuity. Unfortunately, however, this insight has not prevented him from advancing the concept of cultural property rights as a panacea for claims about "culture loss." Cultural property rights are indeed on the agenda of indigenous politics, but the next step should be to work out precisely what is understood by cultural and intellectual property rights in different legal contexts and traditions.

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In *The Predicament of Culture* James Clifford pointed to two kinds of narratives of culture: narratives of homogenization and loss and narratives of emergence and invention (1988:17). A narrative of homogenization becomes one of loss when homogenization means the loss of indigenous tradition. There are frequent references in the literature to the disappearance of "authentic" cultural traditions because of the impact of modern Western civilization, colonialism, or Coca-colanization. I have become skeptical of this kind of narrative through my study of the relationship between culture and tourism in Bali (Yamashita 1999). In fact it is often incorrect because it presupposes cultural essentialism or primordialism. As Hobsbawm and Ranger (1983) have shown, "tradition," as we know it, is mostly recent invention. Culture is always something constructed in history; it should be seen not as a static thing but as a dynamic, evolving process.

Kirsch's account revolves around the narrative of loss. The "entropic" images of the loss may be all the stronger because it was the result of the environmental disaster caused by the U.S. nuclear weapons tested at Bikini Atoll. The author's approach to the theme is, however, quite fruitful for the study of culture. He notes that his intention is "to explain how claims about culture loss might be understood." I agree, then, with his view that "studies of loss may enrich our understanding of property and, conversely, that the concept of cultural property rights may inform ongoing debates—legal, indigenous, and anthropological—about the problem of culture loss."

Kirsch focuses upon the courtroom debate over compensation claims. Analyzing the debate, he argues that the loss of property and, in particular, land should be understood not only in the material sense but also in the context of social relations. Therefore, the loss of land means the loss of subsistence and of indigenous knowledge and the technology related to it, such as pandanus mat making or canoe building—in a word, the loss of a culture rooted in the specific environment of a specific territory. The narrative of loss, thus analyzed, paradoxically reveals the nature of the loss and the concept of culture involved in the narrative.

The concept of culture at stake is what Jan Nederveen Pieterse (1995) has called "territorial culture." It contrasts with that of "translocal culture," in which culture is understood as a kind of "software" that transcends territory. The two concepts have long existed side by side: there are no "territorial" cultures that function only with a single closed system or "translocal" cultures without a place. In this age of global cultural flows (Appadurai 1998), everybody on earth is experiencing the problems of being unable to compete with local/indigenous knowledge alone. Returning to the culture rooted solely in a particular territory may be impossible. The problem ultimately is how people handle the process of accommodation to a system wider than their own territory. In this respect, the Marshall Islands do not seem to be exceptional, even though the original loss was caused by nuclear tests. Kirsch's analysis of Marshallese culture loss, then, may be valid only when he can specify the loss of particular elements of territorial culture such as the indigenous knowledge of pandanus mat making or the technology of canoe building.

Kirsch writes wisely that his argument is analytic and that his intention is to understand claims about culture loss rather than to promote a particular compensatory regime. His intention may be all right for the study of culture, but if legal intervention in culture is inevitable in the contemporary predicament of indigenousness it may be necessary to feed the results of his analysis back into the courtroom. It may be in the courtroom that the real value of anthropological understanding will be

tested and assessed, and this exposure may enrich and enlarge our discipline.

Reply

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I thank the respondents for producing a rich and stimulating set of commentaries that underscore the need for more discussion of the challenges posed to indigenous peoples by globalization and the problem of culture loss. Nearly all of the comments and questions raised in these responses address one or more of the following themes: culture, loss, indigeneity, cultural property rights, and politics.

Brown begins by astutely observing that culture has been transformed into a social fact which can no longer be withdrawn from the public domain. Escobar points out that we need to investigate how culture is used to fashion truth claims, especially outside of the discipline, and make explicit the consequences of conceptualizing culture in particular ways. Merlan points to the difference in the way culture is used in Australian land claims, to emphasize continuity while obscuring losses, and in Marshallese claims for compensation, where it appears as the object of loss, and suggests the need for alternative conceptions that can transcend this figure-ground reversal.

Dominguez suggests that the notion of culture loss signals a particular kind of sadness. These are losses which can never be made whole, losses of relations between generations and connections to place that were conceived of as fundamental and enduring, and they could not have been imagined prior to colonialism. Local vocabularies are ultimately inadequate to account for these experiences, and therefore they have found expression in terms of culture. Giles-Vernick points to the importance of distinguishing between the sense of loss and other forms of nostalgia, which can be profoundly conservative. Yamashita suggests that some losses (and some aspects of culture) may be associated with territoriality and others with translocality, a relationship that I tried to invoke. However, he also historicizes these concepts, suggesting that globalization requires people to address both a local and a translocal notion of culture (or understanding of themselves), although the latter notion may well have been present, albeit less self-consciously, in the past.

Dominguez observes that whether a particular loss is judicable or compensable may be subsidiary to the act of recognition—calling attention to something which had been invisible and identifying the wrongs that have been committed. Drawing on personal experiences as well as those of the Iñupiat, Turner emphasizes the importance of truth and reconciliation in response to losses which cannot be remedied with money. In her view, what is critical is that persons with power and authority accept their responsibility to "serve those under them." Directly challenging Pollock's claim about the conservation of seafaring knowledge in the Marshall Islands, Finney provides compelling examples of both loss and potential revitalization.

The clear limits and statutes of limitation on the recognition of culture loss requested by Brown and the operationalization of concepts that Yamashita recommends are secondary, in my view, to the identification of the general principles involved. Practical solutions to these problems will have to be negotiated on a case-by-case basis. Dominguez asks how anthropologists would respond to majority groups' claiming the same cultural property rights as those proposed here on behalf of minority groups, but assumptions of universality and sameness are not the only basis for equality (see Kymlicka 1995, Anaya 1996).

Several respondents (Brown, Giles-Vernick, Biery-Hamilton) question the generalizability of the concept of indigeneity, which has a particularly thorny history in Africa (Giles-Vernick). Biery-Hamilton draws on her research in the Amazon, where peasants have been denied access to land because the Brazilian government refuses to recognize common-property regimes except for indigenous peoples and therefore have suffered losses comparable to those which I have described. I agree with Giles-Vernick that it is important to historicize the process through which people "produce, debate, and give meaning to" the concept of indigeneity. Rather than a natural social category, indigeneity should be seen as a political discourse about rights—not unlike, for example, the concept of the nation—which connects people to a global politics beyond the state (see Li 2000). It is, as Escobar notes, one of the ways in which "people's sense of belonging and attachment to place continue to be important sources of cultural production and mobilized to various ends." Along with culture and the nation, however, indigeneity has become a social and political fact and in many cases a legal status as well. What is important is to indicate the limits of its applicability, as these commentators have usefully done.

Rosen and Sunder, the two legal readers of the argument presented here, take opposite positions on whether claims about culture loss are best argued in terms of property claims or in terms of tort law. Sunder agrees that property claims may provide significant opportunities for addressing the subjective evaluation of loss, including culture. Rosen argues that tort law is the more promising avenue for redress, suggesting that harm to "cultural integrity" may be compensable. His invocation of the holistic notion of integrity, however, seems likely to cause more problems than it resolves (see Merlan above). Given broad differences in forum and historical circumstances, however, and in whether statutory authorities are primarily concerned with the valuation of loss or the demonstration of continuity, having recourse to more than one legal remedy seems desirable rather than problematic.

Brush, van Meijl, and Rosen express skepticism regarding the willingness of the courts to recognize cul-

tural property rights. Brush argues that "unilateral declarations of novel property rights" are insufficient. Van Meijl notes that most debates about cultural property refer to the appropriation of cultural knowledge, whereas the claims addressed in my essay all refer to land. Brush also argues that the "extremity of double victimization under colonization and nuclear testing may obscure the issue of wider social benefits and costs that are at play in recognizing culture as property and culture loss as deserving of compensation." In a related context, however, William Pietz (1997:108) has described how new monetary values may be established in response to traumatic losses, a process which is suggestive for the domain of cultural property rights:

> It may be that the historical limits of capitalist relations appear in those traumatic events that fall outside the economic realm of commercial exchange and contractual agreement, but whose material impact on individual human lives, in the cases of accidental injury, and on whole peoples, in the form of war, nevertheless valorizes new debt relations that modern social orders must somehow realize in the form of monetary value.

In cases of culture loss like those described here, it may be possible to see more clearly the need for a remedy that involves the concept of cultural property rights.

Also at issue is whether legal precedents of the variety discussed here are necessarily established from the top down through agreements negotiated by multilateral organizations, as Brush and van Meijl suggest. Legal precedents might also be created through small-scale innovations at the level of case law, as plaintiffs' lawyers and judges respond to novel problems associated with cultural difference and claims regarding the grievous harm suffered by indigenous peoples. Sunder apparently endorses this view, suggesting that even though the notion of cultural property rights may be rejected for some domains, it might still be used to fashion a constructive remedy to the problems of culture loss.

I support van Meijl's call for comparative research on cultural and intellectual property rights, although it seems necessary to address the general while working out the local. Cleveland observes that all declarations of rights are culturally (and historically) constructed. He argues that we must also consider absolute limits on rights, referring in particular to unsustainable demands on the environment, but this insight is equally valid with respect to contexts in which there are competing or overlapping property claims. He also suggests that solutions to these problems are likely to be hybrid in nature, combining, for example, indigenous and scientific knowledge in the practice of conservation or environmental reclamation.

Dirlik, Finney, and Ramos raise questions about the role of anthropologists as expert witnesses and the transformation of ethnographic knowledge into legal evidence. Ramos identifies "emotional detachment, ethical commitment, and analytical depth" as the three requirements of successful testimony, and she is rightly concerned about the indigenous people who bear the burden when anthropologists fail to meet these requirements. Furthermore, she questions the legitimacy of legal proceedings in which the imbalance of power "allows the accused's defense to question the legitimacy of the plaintiff's grievances in the face of manifest crimes." Comparable reasoning prompts Karlsson to recommend the familiar and reasonable strategies of documentation and protest, including continued insistence on the inalienability of land and ethnographic description of loss.

Similarly, Dirlik argues that judicial systems like the tribunal impose structures of meaning on the participants, with the result that by following its rules and procedures they necessarily submit to its power. Furthermore, he maintains that any attempt to posit alternatives within this hegemonic framework can only reproduce the existing relations of domination. That the courts operate "as if only the natives' memories were subject to constructedness and not the anthropologists' scholarship" was precisely my point. As Merlan points out, it *is* ironic that claims about loss should be made with reference to Euro-American concepts of property implicated in those losses, but that is still where the power lies. Carucci's aim was to instruct the courts *not* to assume that their views, particularly the assumption of the inherent alienability of all things, are universal. Furthermore, the concept of cultural property rights was proposed to make the referents of local discourse about culture loss visible *to the courts*. Straightening out the intercultural debates on these issues, as Escobar suggests, is not only a worthy academic project but also a politically compelling one.

Escobar observes that the "boundaries between 'academic' and 'applied' and between 'knowledge producers' (experts/anthropologists) and 'users' (local people, social movements) are no longer neatly construed." I would like to conclude by illustrating this claim with a final image drawn from my experiences working with the people living downstream from the Ok Tedi mine. It is a substantially different picture from that of the courtroom, although it is part of the same sphere of indigenous political action. When Rex Dagi, a leader in the political and legal struggle against the mine, attended the 1992 Earth Summit in Rio de Janeiro, he was invited to speak to a group of journalists assembled aboard the Greenpeace *Rainbow Warrior II* in the Rio harbor. When I later asked him about the press conference, he said that he had read from a paper that I had written on the basis of interviews with him and other people affected by the mine. Dirlik might say that once again anthropology has been used to silence the voice of the "natives," but such a claim would radically underestimate Dagi, a charismatic and articulate orator, and his strategic decision to (re)appropriate my text. The challenges of intercultural communication are significant, and anthropologists occasionally have resources to offer. This example also runs counter to Dirlik's claim that *plus ça change, plus c'est la même chose*: 500 years after Columbus read a proc-

lamation in Spanish to the "natives" declaring sovereignty over the New World, Dagi arrived in Rio from Papua New Guinea to protest corporate-sponsored environmental degradation. While power and hegemony have by no means disappeared from the world in the intervening five centuries, the varieties of resistance and the possibilities for political engagement have certainly multiplied.

Escobar argues that our sense of politics may have become diluted by the very sophistication of our analyses. Anthropologists seem most comfortable searching for political solutions in notional spaces that are free of the domination of capital, binary dualisms, neocolonialism, and other forms of hegemony rather than through engagement. What is at stake in the cases considered here—in addition to the interests of the people themselves—is not only getting it right anthropologically or even fashioning an academy that is continually challenged by rather than isolated from the world but ultimately a politics that acknowledges a wider range of analytic possibilities.[1]

1. In a memorandum of decision and order on April 13, 2000, the Nuclear Claims Tribunal determined that claimants from Enewetak Atoll are entitled to US$ 324,949,311 in compensation as a result of the impact of U.S. nuclear weapons testing and their relocation. This figure includes $199,154,811 for past and future loss of use, $91,710,000 to restore Enewetak to a safe and productive state, and $34,084,500 for hardships suffered as a result of relocation and loss of access to their land. In explaining its decision, the tribunal noted that the Marshallese Constitution stipulates that just compensation must be based in part on the "unique place of land rights in the life and law of the Republic." It chose restoration rather than compensation for the difference in the value of their land before and after it was damaged, justifying this decision by making reference to claims made by Carucci that land in the Marshalls is viewed as "a part of one's person and one's entire identity." The tribunal also acknowledged that land in the Marshall Islands is inalienable and therefore no market value for the sale of land can properly exist, arguing that "a market approach would not provide a true measure of loss because it would not account for the deeply personal reasons of the Enewetak people for restoring their land." It admitted the category of hardship damages despite the objections of the Defender of the Fund because they were "so closely related to the underlying subject matter of land damages." In conclusion, the tribunal noted that "the claimants have suffered damage beyond that which money can compensate. The destruction and disruption of their community and the attendant life style and values cannot be compensated with an award of dollars. The passage of time and changes in culture preclude a return to the way things were half a century ago. While that which was lost may be priceless, it does not mean that it was without value; nor does it justify an award which is not firmly based in fairness and reasonableness" (Nuclear Claims Tribunal 2000). The Republic of the Marshall Islands has petitioned the U.S. Congress to provide additional funding for the Nuclear Claims Tribunal so that it can make this award. Among the many factors that will influence Congress's response is its desire to maintain the base on Kwajalein Atoll, where the U.S. military tests the accuracy of its antiballistic-missile system.

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