

**Bioprospecting and Access to Indigenous Flora:  
Policy Implications of Contested Ways  
of 'Knowing' and 'Owning'**

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## SYNOPSIS

This thesis critically explores the issue of access to biological resources and Indigenous knowledge. Historically, biological resources collected and documented, and knowledge associated with their use, have been considered the 'common heritage of mankind'. The Convention on Biological Diversity (CBD) changed this understanding to rights of states over biological resources, but also gave rise to issues of equity and justice, especially with regard to Indigenous Nations encapsulated within First World states—so-called 'Fourth World Nations'. A central concern of Fourth World Peoples is their marginalisation within access negotiations, despite their claims of connate (birth) rights to resources and knowledge they identify as their own. Increasing global Indigenous activism over their concerns, has in turn raised an increasingly important policy gap that is becoming recognised in fora and processes with regard to access to biological resources.

My thesis addresses this policy gap. I explore some of the complex historical, political and cultural dimensions that led to the emergence and resilience of this policy problem. The failure to address the concerns of Indigenous peoples, and Fourth World Nations in particular, is more important and problematic now because of contemporary biotechnological developments and the emergence of bioprospecting. Bioprospecting refers to the practice of appropriating biological resources, and Indigenous knowledge of those resources, and incorporating them into biopharmaceutical processes.

Literature on bioprospecting as a problematic issue for Third World States has been emerging steadily over the last decade under the impact of the commercialisation of biodiversity, which has become big business for biopharmaceutical companies. The unique interests and experiences of Fourth World Nations are not recognised within this literature as significantly different to that of the Third World, and of their encapsulating states. This study has addressed this significant gap by utilising and developing an analytical approach that uses Fourth World theory, synthesised with elements of Foucault's analytics of power.

When combined, these two theoretical approaches provide a new and rich understanding of how dominant 'ways of knowing' and 'ways of owning' have been privileged, while other knowledge and ownership systems have been, and continue to be, marginalised. Foucault's understanding of discursive power as having the capability to be either, or both, dominant and resistant is important to my analysis, as it accommodates the Fourth World as a discursive site of resistance to dominant power. I posit that richer insights are gained through the development and application of this theoretical framework to the issue of fair and equitable access to biological resources, than other approaches offer. I demonstrate the framework's utility by applying it to a case study on bioprospecting in Australia.

Important findings have emerged while tracking the activities of Fourth World peoples on the international stage, and their attempts to challenge dominant power/knowledge structures within political institutions. For example, participation at the international

level has enabled Fourth World peoples to apply pressure on their encapsulating states to accommodate their interests. This has been furthered through forming alliances with, for example, environmentalists, and through the adoption of the language of effective participation within international fora. Overall, however, the study found that the participation of Fourth World peoples within international, central state and local state policy processes is not always empowering in challenging dominant interests. Instead, the more accurate impression is that at this stage of the discursive policy terrain, it may only create an illusion of participation that actually serves to entrench their disempowerment. This places pressure on policy processes to address and resolve this access issue equitably if social turbulence is to subside, justice be served, and certainty provided for all

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## **STATEMENT OF ORIGINALITY**

I certify that this work has not previously been submitted for a degree or diploma in any university. Further, to the best of my knowledge and belief, the thesis contains no material previously published or written by another person except where due reference is made in the thesis itself.

Monica Michelle Seini

## TABLE OF CONTENTS

	Page No.
Synopsis	ii
Acknowledgments	iv
Statement of Originality	v
Table of Contents	vi
List of Tables	x
List of Figures	x
Abbreviations	xi
1. Introduction	1
Background to the Study	2
Research Problem	4
Contemporary Theoretical Framework	7
Core Analytical Concepts	
Ways of Knowing	11
Ways of Owning	11
Ways of Resisting	12
Methodology	13
Foucault's Genealogy	13
Social Constructionism	15
Colonial Legal Framework	17
Construction of Indigenesness	17
Indigenous knowledge	18
Note on Research Ethics	19
Outline of Chapters	21
Endnotes	25
2. Prospecting for Bioresources	31
Introduction	31
Plants as <i>Materia Medica</i>	33
'Folk' Medicinal Knowledge	35
Indigenous Medicinal Knowledge	36
Contemporary Interest in Indigenous <i>Materia Medica</i>	39
Hoodia and the San People of the Kalahari	39
Sharman Pharmaceuticals	40
Ethnobotanical Leads	42
Modern Bioprospecting Techniques	43

Intensified Interest in Bioprospecting	49
Technological Innovations	49
Commercial Viability of Bioprospecting	52
‘Disappearing’ Knowledge and Practitioners	53
Conclusion	57
Endnotes	59
3. Contemporary Theoretical Perspectives: From Fourth World to Questions of Power	70
Introduction	70
Situating ‘Undecolonised’ Indigenous Nations	72
The Global Political Divide	73
The Fourth World Nation in the World System	75
Theories of Power	82
Foucault and Power	83
Techniques of Power	86
‘Ways of Knowing’ as a Technique of Power	86
‘Ways of Owning’ as a Technique of Power	89
Fourth World as a Site of Resistance	93
Emulating Escobar’s Foucauldian Approach	95
Conclusion	97
Endnotes	99
4. Nature, Science and ‘Ways of Knowing’	112
Introduction	112
Knowledge Perspective	114
The Social Construction of Nature and Knowledge	117
Core European Thinkers on Nature and ‘Knowing’	119
The Scientific Revolution	121
Science as Technology	122
Dualism and a Mechanical Universe	124
Rethinking the Canon	127
Enlightenment Interpretations of the Scientific Revolution	129
Science and the ‘Other’	131
Linking Science with ‘The Useful Arts’	133
The ‘Triple Helix’ Academic-Industrial-Government Complex	136
Conclusion	139
Endnotes	141

5.	Property, Intellectual Property and ‘Ways of Owning’	154
	Introduction	154
	Western Legal Framework	156
	Foundations of Western Legal Philosophy	156
	Individualism and the Legal Framework	159
	Legalism and Property Rights as Techniques of Power	160
	Intellectual Property law as a Technique of Power and Ownership	162
	Copyright as a Technique of Ownership	164
	Patents as a Technique of Ownership	166
	International Techniques of Power and Ownership	169
	GATT, TRIPS And The WTO as Agents of Power and Ownership	170
	The CBD as an Agent of Power and Ownership	173
	Ownership and State Legislative Responses	181
	Conclusion	185
	Endnote	187
6.	Bioprospecting and Indigenous ‘Ways of Resisting’	200
	Introduction	200
	The Concepts of ‘Fourth World’ and ‘Indigenous’	202
	Construction of the Indigenous Other	204
	The Colonial Disempowerment of Fourth World Nations	216
	Indigenous Practices of Resistance	220
	Complexities Inherent in Engagement with Bioprospecting	211
	Documentation, Intellectual Property and Biological Resources	213
	Education and Representation	217
	Emergence of Indigenous Peoples as International Actors	219
	Inclusion in International Discourse	220
	Indigenous Discourse of Resistance and Empowerment	225
	An Indigenous Environmental Ethic?	227
	Symbolics in Indigenous Representation	229
	Conclusion	231
	Endnotes	233
7.	Australia: Trends in the Global Terrain	244
	Introduction	244
	Australia as the Only Mega-Biodiverse ‘Developed’ Economy	245
	Aboriginal Political Activism	247
	The Construction of Australia and Its Indigenous Peoples	250
	Historical and Contemporary Bioprospecting Ventures	252
	Current Bioprospecting Ventures	255

Queensland's Smart State Approach	258
Normalising Biotechnology as a Dominant 'Way of Knowing'	259
Normalising Dominant 'Ways of Owning'	263
Documentation: A Vulnerable Practice of Resistance	270
Moves to Self-Determination and Positive Outcomes	274
Conclusion	275
Endnotes	277
8. Conclusion	281
Introduction	291
Summary and Critique of Theory	292
Thesis Findings	293
Dominant 'Ways of Knowing' as a Technique of Power	293
Dominant 'Ways of Owning' as a Technique of Power	295
Fourth World Resistance as a Technique of Power?	297
Reflections and Suggestions for Future Research	299
Conclusions	300
Endnotes	302
Bibliography	303

## LIST OF FIGURES

	<b>Page</b>
1. Diagram of the Thesis Structure	22

## LIST OF TABLES

	<b>Page</b>
1. McCall's Power Model (1980) of Global Political and Economic System	77
2. Queensland State Government Funding for Biotechnology (2001-2003)	260

## ABBREVIATIONS

ABS	Access and Benefit Sharing
AIDS	Acquired Immune Deficiency Syndrome
AIMS	Australian Institute of Marine Science
AMRAD	Australian Medical Research and Development Corporation
ATSIC	Aboriginal and Torres Strait Islander Commission
AZGU	AstraZeneca Griffith University
BCA	Queensland Government Biodiversity Collection Authority
CALM	Western Australian Department of Conservation and Land Management
CBD	United Nations Convention on Biological Diversity
CBRs	Community Biodiversity Registers
CDEP	Community Development and Employment Program
CEFIC	European Chemical Industry Council
CERD	Committee for the Elimination of Racial Discrimination
CIEL	Center for International Environmental Law
COP	CBD Conference of the Parties
CRC	Cooperative Research Centre
CSIR	Council for Scientific and Industrial Research (South Africa)
CSIRO	Commonwealth Scientific and Industrial Research Organisation
CTE	Committee on Trade and Environment
DATSIP	Queensland Department of Aboriginal and Torres Strait Islander Policy
DFAT	Department of Foreign Affairs and Trade
DIIE	Queensland Department of Innovation and Information Economy
DNA	deoxyribonucleic acid
DNRM	Department of Natural Resource Management
DOGIT	Deed of Grant in Trust
EPA	Environment Protection Agency
ETC	Erosion, Technology, Concentration
FAO	Food and Agriculture Organisation
FFM	WIPO Fact Finding Mission
GATT	General Agreement on Tariffs and Trade

GBF	Global Biodiversity Forum
GBIF	Global Biotechnology Information Facility
GEF	Global Environment Facility
GRAIN	Genetic Resources Action International
HIV	human immuno-deficiency virus
HTS	high-throughput screening
IBAMA	Environment Agency Brazil
ICBG	International Collaborative Biodiversity Group
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
IGOs	Intergovernmental Organisations
IIPR	Indigenous Intellectual Property Rights
IISD	International Institute for Sustainable Development
ILO	International Labour Organisation
ILUA	Indigenous Land Use Agreement
IMF	International Monetary Fund
IP	Intellectual Property
IPRs	Intellectual Property Rights
MEAs	multilateral environmental agreement
MNCs	Multinational Corporations
MTAs	material transfer agreements
NATO	North Atlantic Treaty Organisation
NCI	National Cancer Institute (US)
NGO	Non-Government Organisation
NHMRC	National Health and Medical Research Council
NPA	Natural Products Australia
OAU	Organisation of African Unity
OECD	Organisation for Economic Co-Operation and Development
QIMR	Queensland Institute of Medical Research

QLD	Queensland
PBR	Plant Breeders Rights
PBRs	Peoples Biodiversity Registers
PIC	Prior Informed Consent
PPP	Public Private Partnership
PRECIS	Pretoria National Herbarium Computerised Information Network
R&D	Research and Development
RAFI	Rural Advancement Fund International
S&T	Science and Technology
SABONET	Southern African Botanical Diversity Network
SCBD	Secretariat of the Convention on Biological Diversity
SRISTI	Society for Research and Initiative for Sustainable Technologies
TKDL	Traditional Knowledge Digital Library
TEK	Traditional Ecological Knowledge
TK	traditional knowledge
TRIPS	WTO Agreement on Trade Related Intellectual Property Rights
UN	United Nations
UNCED	United Nations Conference on Environment and Development
UNCTAD	United Nations Conference on Trade and Development
UNESCO	United Nations Education, Scientific, and Cultural Organisation
UNEP	United Nations Environment Program
UNESCO	United Nations Educational, Social and Cultural Organisation
UQ	University of Queensland
US	United States of America
USDA	United States Department of Agriculture
VCU	Queensland Government's Venture Capital Unit
WA	Western Australia
WGTRR	Working Group on Traditional Resource Rights
WIPO	World Intellectual Property Organisation
WTO	World Trade Organisation