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Comment: Got Language? Law, Property, and the Anthropological Imagination

ABSTRACT This comment reflects on the legal (specifically, proprietary) tropes of linguistics, and the linguistic tropes of legal anthropology. It suggests analogies between discussions around “language rights” in contemporary political struggles, and discussions around the delineation of objects and subjects in anthropological theory. Such analogies may help side-step the relativism-universalism impasse that has beset the critique of rights and the critique of the objectification of language. [Keywords: language, law, anthropological theory, value]

THE EMERGENCE OF “language rights” as a new field of struggle for diverse linguistic groups seeking political recognition raises pressing questions for contemporary anthropology. The articles collected here document the changing contours of language rights discourses and analyze them in terms of certain important trends in linguistic anthropology—namely, theories of language ideology (see, e.g., the contributors to Brenneis and Macaulay 1998; Kroskrity 2000; Schieffelin et al. 1998). Those who enlist language rights for political projects (either their own, or others’) demonstrate a central precept of this scholarship, namely, that ideologies of language “envision and enact ties of language to identity, to aesthetics, to morality, and to epistemology” (Woolard 1998:3). People seeking language rights on their own or others’ behalf are not always concerned with language per se but with other political or moral goals. In short, they enlist language for ideological ends. Sometimes, the ideologies of language emerging from this process put into play theories from linguistics long since abandoned by the discipline. This migration of theories into political domains and back again makes for a specific kind of reflexivity that tugs on some of the authors who report their research here. This reflexivity has broad implications for disciplinary conversations over the impact of liberal legal orders as they seemingly go global. It also calls to mind debates that have been taking place in the anthropology of law for some time now, and has analogues in other anthropological discussions, such as the debate over the politics of recognition for liberalism’s others or how to represent “the gift” without relying on capitalist notions of economy and value. The latter is relevant because of its reconsideration of the dynamics of

personification and reification, twinned processes that are also at issue in the domains of law and language.

In this comment, I would like to flag the relevance of the new anthropology of law to the analysis both of rights-talk in the world and of ideology-talk in linguistic anthropology. This is a two-way street: The anthropology of law could stand to learn a lot about its object of study by paying more attention to linguistics. Indeed, the work offered by linguistics may afford a rapprochement of sorts between two distinctive, though interrelated, movements in legal anthropology: that which attends to microlevel interactions in legal settings like courtrooms (in which anthropologists with linguistic training have been key players, e.g., Brenneis 1988; Conley and O’Barr 1998; Hirsch 1998; Mertz 1994; Philips 2000), and that which attends to macrolevel processes like the forging of colonial and postcolonial societies (in which linguistically trained anthropologists mostly have not been key players—with a few exceptions such as Hirsch 1998; Philips 2000).¹ Linguists, having found that their subjects are increasingly forced to contend with the law—itsself a rather particular linguistic production—have suddenly discovered “the law” itself. Their subjects, meanwhile, have at the same moment discovered “language.” In so doing, both present familiar questions to the anthropology of law and the discipline more generally. I am speaking specifically of the relativism-universalism problem, as well as the rights-relationships and individual-collective dichotomies that have animated (and plagued) anthropological knowledge in its legal and linguistic guises.

Taken collectively, this cluster of articles presents three overriding concerns. One is a sense that members of minority linguistic communities in multicultural states are

not being given fair treatment under the law or in other domains of their lives, and that “language rights” may provide redress for past and present wrongs. The second is a sense of urgency caused by the rapidity at which languages of the world are disappearing. The newly available tool of language rights, whatever its problems, may provide the only means of saving such languages by granting their preservation the warrant of international law. The third is a sense that linguistics as a field may ultimately fail to generate new insights if its objects of study—the diverse languages of the world—either disappear or find themselves so transformed by their encounter with powerful others (from states that attempt to quash them to intellectuals that attempt to codify them) as to be utterly unrecognizable as truly distinct linguistic structures and systems.

Language rights pack a number of powerful language ideologies, as amply documented by the articles in this cluster. I would like to limit myself here to their property ideology, since it is central to the reification of language itself described in some of the articles here. Such reification is taken for granted in documents like the draft Universal Declaration of Linguistic Rights (UDLR), as well as in the cultural and political practices of people seeking language rights or trying to develop them for others. This is not surprising, since rights themselves have historically been figured in terms of property and since property rights are the model for other kinds of rights in societies structured by liberal law (Collier et al. 1995; Pashukanis 1989). Documents like the UDLR assume that reified languages belong to the people who speak or once may have spoken them. “The people” is understood to be a singular collectivity: one people, one language. And the language may be a present reality or may be a past potentiality, part of an imagined heritage whether or not it is currently part of the quotidian experience of the people. The politics of possessing an identity and claiming recognition based on it (Coombe 1993) is here subsumed into the politics of possessing a language and demanding that it be recognized. This objectification of language makes language a good claimed by discrete communities rather than a practiced or lived milieu, a noun rather than a verb, mirroring the objectification of culture that has been at issue in debates over the universality of human rights (Wilson 1997:9).

Relativist critiques of rights that assume cultural incompatibilities with universal doctrines often stabilize and thingify “cultures” in much the same way that language rights discourses reify “languages.” As it does with culture, this objectification makes language the subject of public claims. Indeed, language rights and cultural rights, like property rights, presuppose publicity. The enjoyment of one’s goods in private is dependent on having previously established exclusive claims to them in public through the institution of contract and its precontractual bases: the separation of the world into possessors and possessions, agents and objects. Whether imagined as individual or collective, private or public, properties recognized in and

constituted through contract pivot around a precontractual axis that places agents on one end and objects at the other. Entities considered to be in-between (historically, entities like women, babies, genes, slaves, labor, culture, ideas) have been among the most vigorously contested objects of property. Language now joins them.

Language, according to language rights ideology, is a collective property owned by specific groups and is to be made available for the use of individuals within those groups: “All languages are collectively constituted and are made available within a community for individual use as tools of cohesion, identification, communication and creative expression” (UDLR Article 7.2). At the same time, peoples are to be guaranteed “the right for their own language and culture to be taught” and “the right to an equitable presence of their language and culture in the communications media,” among other rights of publicity (Article 3.2). Here, the right to a group’s exclusive ownership is disentangled from use: Groups’ interest in education or other forms of publicity seems to require that states or other powerful agents also use their languages. The flip side is that these powerful agents can then also objectify language as a repressive tactic—eliminate the language and you eliminate the group.²

Given the seemingly inexorable trend toward understanding language as property, one analytical strategy might be to accept the thingification of language, its sundering from its lived contexts, and the codification that actively institutes its thingness. Languages are disappearing fast, and while the reification of languages as such may not be the best or most epistemologically clean tool for linguists to pick up in the effort to save them, it is the only one available. Besides, the subject-communities of languages often are themselves engaged in this kind of reification, too. A related analytical option might be to borrow from broader rights discourses in order to hone and refine the claims of language rights. Supplementing that discourse with attention to the durability of linguistic structures (as opposed to their thingness) may help subject-communities make a claim on their own pasts, their own cultural or identitarian resilience in the present. Resourcing language in this way permits a resourcing of the past through invented traditions that may sustain future political goals or other social projects that may seem at first brush to have nothing to do with language. Sustaining those goals may also have the beneficial side effect of sustaining the languages, albeit in objectified form.

I cannot help but to think that we have been here before. Legal anthropologists involved in other assertions of rights—rights in land or cultural resources, for example—have similarly ripped particulars from cultural fabrics in order to help create new ways of protecting the lifeways of disempowered groups. With the same tacking back and forth between the normative and the relativist, they have also noticed that their subjects have been objectifying their own cultures in an effort to “save” them from destruction, sometimes in advance of their encounter with

anthropologists and often with anthropologists at their side. Legal anthropologists have worried that this objectification represents the triumph of the hegemonic forces that would flatten or erase cultural difference. Like the linguists, the legal anthropologists, after noting the problem of rights, end up in much the same position: Rights may not be the best tool for the job, but, at present, they are the only tool we have. Setting aside the missionary tenor of the imperative to “protect” and the ecological tone of “preservation,” I would like to focus here on the quandaries that objectification apparently produces, and the interrelationship between objectification and rights. There are two problems here, and I will overdraw them for the sake of argument.

The first concerns the state of the world and its effects on theory: Is it becoming more and more the case that peoples everywhere are making of their lived experiential patterns and linguistic structures objectified “things” such as “cultures” and “languages?” Is there, as Richard Handler claimed, a growing “culture of cultural objectification” (1988:195)? If so, then what should anthropologists do about it? Is our charge to preserve and protect distinctive lifeways—even if those doing the objectification have no interest in being preserved or protected or if their objectification actively destroys that distinctiveness, or if that destruction is what they seem to want (i.e., is ours a missionary task)? Or, is our charge simply to document and lament the worlds lost, the falling silent of different voices in an emerging metamonoculture where there is only one model of difference—difference as the “choice” of a commodifiable “culture” or “identity” or “language” (I have my culture, and you have yours, the statement affirming “culture” as an object and cultural life as property)? This is as much a moral, normative problem as an interpretive and epistemological one.

The second problem concerns the state of theory and its effects in the world: Do our critical apparatuses more and more make of the world a collection of objects detachable from contexts and that reify the flow of cultural life? Do our categories of analysis merely reflect our own position inside the hegemonic force that is propelling the transformation and, possibly, destruction, of other cultural worlds? Might it be, further, that our critical apparatuses themselves, as metalanguages, will redound into the world and make it in the image of our theories, thus contributing to the homogenization of cultural difference? After all, our categories of analysis and the languages of theory through which they operate are themselves “suffused with the ideological moment of the semiotic processes in which they figure” (Silverstein 1998:130). This is also as much a moral problem as an interpretative and epistemological one.

There is a long tradition of anthropological reflection on the character of modern, liberal legal orders, and an important subtradition of anthropological work on the language of the law and its associated rhetorics of possession and property. These rhetorics seem especially signifi-

cant given the subject matter of each of the articles here, and the manner in which they hinge on questions of ownership and the publicity of property claims in liberal societies. As Joseph Errington (this issue) suggests: You have to get (procure) a new totality called language in order to get (procure) language rights; at the same time, you have to get (understand) “language” as a particular kind of *property*. You also, of course, have to get (understand) rights if you want to claim them as your procurement. The problem for anthropology is that the metalanguage of analysis and the object language of law are one and the same in this instance (after Lucy 1993:28). Property, for example, is both an analytical category and a legal category, and the analytical categories available for the analysis of property recapitulate the legal categories of person, thing, and relation implicated in liberal orders. Procurement, for example, is at one and the same time the thing acquired, the action through which it is acquired, and the legal instrument for doing so. Furthermore, modern law uses itself reflexively as its own metalanguage. In addition, the law continually comments on itself. Indeed, this metacommentary *is* the law, affording it its myths of transcendence and universality (Fitzpatrick 1992).

The anthropology of law has tried to understand how liberal legality constitutes individuals and rights as it foregrounds the individual as owner of its capacities (e.g., Collier et al. 1995; Coombe 1993; Merry 2000). It has extended and criticized C. B. Macpherson’s (1962) classic discussion of possessive individualism and offered trenchant analyses of the manner in which modern legal orders presuppose and constitute the individual as owner of its capacities and possessor of a unique “voice.” The capacities can be sold in a “free” market underwritten by contract. The voice can express the unique interests of the individual in the public sphere via recognizable speech acts. Some legal anthropologists have attended to the “failures” as well. These failures include the moments when the capacities go unvalued and unmarketable. They also include the moments when voice is incomprehensible because of incommensurabilities between legal regimes that demand speaking subjects voicing private interests and other social modalities that do not, or do not do so in quite the same way. The paradox here is that liberal legal orders rest on the differences among selves, as well as excluded others, as the law’s raw material—whether law is conceptualized as a domain for reconciling contending interests, as tempering the vagaries of capitalism (Durkheim 1933; see Collier 2002), or as warranting “civilization” itself (Maine 1917). Liberal law seems to say to its others, “Be other so that we will not ossify [and] make yourself doable for us” (Povinelli 2001:329), since liberalism’s others provide it with the difference that warrants law’s power as transcendent arbitrator and mediator.

Like the articles in this cluster, legal anthropology and law scholarship more generally have worried about the implications of the critique of rights. Because rights assume an individual who “has” them and are founded in a model

of property, they cannot capture a whole host of social contingencies (collective properties, nonproprietary claims to land or whatnot; see, e.g., Gledhill 1997). Furthermore, they institute *property* as the key claim above all others. Yet rights are increasingly the only game in town, and property is rather desirable to those who do not have it or cannot get their claims to it legitimated and recognized by law. Many worry that if critics deconstruct rights, then they delegitimize peoples who have finally, after long and often bloody struggles, gained access to them (e.g., Williams 1991). Critical race theorists in law have been developing ways of using rights-talk contingently, without taking on all of its individualist or proprietary baggage (e.g., Crenshaw et al. 1995; Delgado and Stefancic 2001).

The crux of the matter is what to do with the universalist pretensions of rights without falling into the traps of relativism. When relativists declare that rights are not part of this or that cultural world and so have no place there; or, that if rights are accorded a place, they can only do harm by commodifying relations or things that were once integral to people's lifeways, relativists reinstitute cultures as definable, objectifiable entities that their critique of rights as objectifying "culture" sought to challenge. Similarly, when relativists seek to discover "local" or "indigenous" conceptions of rights, or to find a least common denominator shared by all the world's cultures that will ground a new conception of rights (such as the *lex talionis*, or the eye-for-an-eye conception of justice; see Renteln 1990), they undermine their own claims of cultural incommensurability (Wilson 1997:7).

Rather than linger over the relativism debate, I would like to draw attention to how some anthropologists of liberal law have actually sidestepped it. Their maneuver calls to mind the linguists' attempt to square language rights with its own ideologies. It may also in itself be of interest to linguistic anthropologists, because that maneuver is to embrace language.

Jane Collier (2002), for example, argues that in spite of her appreciation of cultural difference and incommensurability, she is "not alarmed by the spread of human rights discourses around the world" because human rights is "a language of argument" (2002:73). Human rights contains innumerable contradictions and inconsistencies, not to mention their uneven enforcement (or enforceability), and so Collier turns her critical and ethnographic attention to the "languages of argument" that constitute "human rights" rather than assuming there is any unified coherence to this supposedly universal and hegemonic discourse. Furthermore, like Elizabeth Povinelli (2001), Collier observes that the tension between enforcing universal rights and respecting cultural difference is internal to liberal legal orders. Rational people must possess their own distinctive "traditions" in order to make their claim to self-determination and against the yoke of others' laws. Collier notes that self-government demands distinctive selves to be governed. Similarly, Sally Merry (2000) leans on a language metaphor when she argues that to decry the

spread of human rights as a universal discourse is to miss the point that people around the world are using legal discourses in ways never intended by the liberalism's architects. "To some extent," Merry writes, "the law mobilized in indigenous rights movements is becoming vernacularized, analogous to the way languages become vernacularized over time" (Merry 1997:29). She then compares liberalism's vernacularization to the process of the separation of imperial languages into pidgins and cites Anderson's account of the vernacularization of Latin and the subsequent erosion of the power of educated elites in early modern Christendom (Anderson 1991:40–42). Earlier, Clifford Geertz noted that we live in a "confusion of legal tongues" (Geertz 1983:220, quoted in Wilson 1997:11).

It is remarkable that these language tropes have gone relatively unremarked in legal anthropology. It is also remarkable that the proprietary logic of law and law's mythic metalinguistic transcendence has gone little noticed in linguistics. Language and property come to the fore for legal anthropology and linguistic anthropology respectively when these fields take on the problem of rights, human or otherwise. One might then ask, what is the language ideology of legal anthropology, and what is the legal ideology of linguistic anthropology?

Again, to overdraw so as almost to caricature the matter for sake of making other things explicit: The language ideology of legal anthropology appears to have affinities with 19th-century philology. Dominant languages of law speciate, as it were.³ They separate and divide and differentiate into new idioms as they vernacularize. That vernacularization introduces new (legal) possibilities, even if it leaves the linguistic ones intact. A language's dominance—here, the language of rights, or the language of liberalism—is presupposed, as is the fact that speciation is what happens to language over time. The mode of reasoning is teleological, and the facts mustered have the same ontological qualities as the persons and properties of law: discrete, separate, empirically observable, and potentially commodifiable (one might even say bourgeois).

The legal ideology of linguistic anthropology seems to have affinities with myths of law's transcendence. Language ideologies are metalanguages, language about language, as is the law. Like the law, language ideologies can describe language as referentialist or as pragmatic, as constative or performative. Indeed, it is striking that the examples of performative linguistic utterances with which most anthropologists are familiar involve the law constituting the objects it names (e.g., "I now pronounce you man and wife"). Legal speech is the signal example of performative speech (e.g., Butler 1997). And what better example than legal proceedings or a procurement, as discussed above, would serve to illustrate Michael Silverstein's point about the "special position of certain institutional sites of social practice" that are "both *object* and *modality* of ideological expression" (Silverstein 1998:136)? When John Searle substituted the promise for J. L. Austin's oath of marriage as "paradigmatic of our ways of 'doing things

with words,' " as Michelle Rosaldo long ago pointed out, Searle authorized the "sincerity and integrity of the one who speaks" and thereby conjured a world "where privacy . . . is what gives rise to talk" (Rosaldo 1982:211). As Rosaldo further noted, "our very entry into (THE, or any) 'social contract' constitutes such a 'promise,' thus mitigating the need to voice commitments in our day to day affairs" (1982:231). Her point, of course, was that not all peoples live in worlds that presuppose the divergence and contestation of private interests. I would add that the reference-action dichotomy in linguistics recapitulates the thing-relation dichotomy in law, both securing the stability of objects and privately motivated speaking subjects.

I am moving to one side of the discussions presented in the articles in this cluster now, for it seems to me that coming to grips with the legal ideology of language ideology theory, and the language ideology of legal anthropology, might afford an occasion for anthropology to "stop thinking about the world in certain ways" (Strathern 1988:11). Rather than trying to adjudicate between the legal ideology of language ideology theories or the language ideology of legal anthropology, allow me to suggest an analogy in another domain.

The anthropology of so-called gift societies foundered on assessments of value. In the classic view, if capitalist economies conceived exchange in terms of the relative worth of the items traded, gift economies did so in terms of the worth of transacting parties. The problem, however, was that this model of the gift merely transposed the terms of value from things to persons, holding steady the assessment of value as well as the discreteness of persons and things themselves. Such discreteness, Marilyn Strathern noted, "seems evident enough" (1992:172): "Yet their abstraction as units belongs to a particular cultural practice which assumes the priority of individual identity. We can call it empiricist or bourgeois or a derivative of commodity logic" (1992:172–173, references omitted). Termining the traditional view "the barter model of value," Strathern argued that it transposed the logic of enumeration and comparison at work in capitalist value formation "from things to persons" in order to explain gift societies (1992:172). Setting issues of enumeration and, therefore, quantity to one side, however, so as not to be "dazzled" by all the counting that goes on in gift exchange (1992:171), she finds that the value in the gift hinges not on the measurement and commensuration of differences between things but instead "a substitution of units" (1992:185). These units are conceived "as body parts, from bodies (persons) which . . . must first be construed as partible" and also, therefore, as encompassing other things as well (1992:185). For Strathern, because this process does not conjure objects separate from subjects, but partible persons/things and abstractable units substituted—not, importantly, compared—with one another, this is not reification of the bourgeois kind. Comparison introduces numerical ratios between different goods to commensurate value, and the problem of the adequacy of a repre-

sentation (value) to its object. Substitution, by contrast, creates analogies, and equivalence in the exchange of gifts "will always (can only) appear as a matching of units" made to become analogues of one another (Strathern 1992:171), not a comparison of ratios between different kinds of items. The operation does not depend on "how many ones make up 20 or 30" in an exchange of fish for sago or pig for pig or whatever, but "how many ones make up the *right one*" (1992:187, emphasis added, parentheses omitted).

My aim is to prod the anthropological imagination. Legal anthropology and language ideology theories persistently meet the world with typologies and comparative frameworks and find the same therein. The litany is familiar: countering possessive individualism with possessive collectivism; rights with relationships; property as a thing with property as a set of rights; the referential functions of language with the pragmatic or performative functions of language; object language with metalanguage; and metalanguage with meta-metalanguage, ad infinitum. Contrasts within a set and comparisons via the contrasts generate new knowledge and add to the stock of knowledge at anthropologists' disposal. Note the quantitative commodity logic. Measurement of deviation from a norm or a dominant form lends the operation empirical weight (over here is the vernacularization of liberal law; over there is the liberal property form in the objectification of "language" by language rights). Instead of freezing when confronted with reification of the cultural or linguistic kind discussed here, anthropology would do well to not decry, defensively react, nor resign to its inevitability, its local tweaking or reconfiguration notwithstanding. The abstraction of reification itself in this manner assumes the private figures of contract and the priority of individual identities of persons and things as separate toward which Rosaldo gestured (see also Strathern 1992:173). I am calling for a substitution of this kind of bourgeois empiricism with the form of analogic substitution in order to dilate the anthropological imagination of reification. "Getting real," Deborah Battaglia reminds us, "goes beyond the properties of things as matter or their forms as property. . . . Getting real means examining the imaginary, as it is revealed and reconfigured in social practice" (1994:641; see Coutin et al. 2002). Or, as Ludwig Wittgenstein wrote, "Not empiricism yet realism" (1983:325).

The engagement of liberal law and its languages by concatenations of persons and things whose separation as such does not necessarily precede that engagement may indeed produce something that sounds like vernacularization or looks like bourgeois reification. Simply accepting that it is so is to accept this same logic of abstraction and reification as a *fait accompli*, a foreordained outcome, and an analytical apparatus, and to ignore the stretching of the anthropological imagination provided in other quarters on precisely the question of reification and personification. I am simply arguing that people/things may be doing or saying something that looks and sounds empirically

"the same" as the forms of liberalism but is not necessarily so.⁴ Just because people use rights does not mean that rights have "won"; by the same token, it also does not mean that people are putting into play creative recombinations or whatnot, although it might. It may simply be that there are other elicitations of other persons/things going on in the world, as well as recombinations of persons and things (and persons as things, things as persons, and parts and such).

The kind of engagement I am after is not, then, a quest for a critical metalanguage. It is rather a parallel endeavor to the knowledge productions of others, a paratactical language, if you will, that affirms relation but does not specify the quality of that relation in advance.⁵ It points toward the manifold elicitations of the regard of the other that take place through the divisions within and outside of liberal legal languages and worlds.⁶ Such divisions require and presuppose relations but leave open their objects, subjects, character, and origins. Not empiricism yet realism; not metalanguage yet paralanguage.

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NOTES

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1. I am well aware that subdisciplinary specializations are often identity formations, and so here, and throughout, please consider my nomination of "linguistic anthropologists," "linguists," "legal anthropologists," "anthropologists of law," "anthropologists," and so forth to function in this text as heuristics. A fuller consideration of identity formations of disciplinarity would push this commentary in a slightly different direction from the one it has taken—but probably only slightly.

2. I would like to thank Susan Coutin for pointing out the repressive dimension of the objectification of language.

3. The logic echoes August Schleicher's (1983) 19th-century "test" of evolutionary theory by the "science" of philology.

4. I was writing this during a reading of Webb Keane (2003) on objectification, agency, and anthropological knowledge. Keane relates Charles Taylor's arguments against the metalanguages of positivist social science and in favor of people's own metalanguages for actions shared with and accounted to others. Keane wants anthropology to recognize the "ground of the ethnographic particular" as characterizing a "space of encounter in which people seek or deny one another's recognition" (Keane 2003:242–243). These encounters are shaped by a "dialectic between estrangement and intimacy": We objectify and move away, yet our engagements "return us to them" (Keane 2003:243). This resonates with my gesture toward the importance of the regard of the other, yet reinstates a Cartesianism my comment here is chafing against (why only people? why "whole" people?). It is also reminiscent of the language of bourgeois love. The dialectic of intimacy and estrangement may not capture social fields in which people may "know that they share" (2003:231) but their metalanguage guiding their actions with a description of what they are doing may not jibe at all with that of the people with whom they share. For an example, see Boellstorff 2003.

5. Deleuze replaces "hypotactic subsumptions" with "paratactical conjunctions" (Boundas 1991:8). By this, he means to substitute the relation of opposition and dialectical tension followed by synthesis with the unspecified and open-ended "relation" of mere conjunction—the "and," the principle of seriation that neither supposes nor denies relations of opposition, causality, analogy, homology, resemblance, or any other among its terms, "making possible convergence and compossibility as well as . . . divergence and resonance" (1991:8). Although not writing in the Deleuzian vein, Marcus and Holmes (n.d.) explore the "para-ethnographic" in a convergent manner in a recent essay, from which the present endeavor has benefited.

6. This statement tracks Strathern 1992:188 and Munn 1986:272.

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