

COMMENTARY

COLLABORATING IN REPRESENTING: ALWAYS POSSIBLE? ALWAYS DESIRABLE?

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ABSTRACT

Reflections are offered on personal participation in two cases in which anthropological actions and expertise were regarded as playing a prominent role in actualizing indigenous rights. Case number one concerned the Navajo-Hopi land dispute. Case number two involved documenting ancestral uses of river resources in response to Shoshone and Paiute assertion of water rights. In each of these cases, tribal stakeholders urged anthropological collaboration with their goals and strategies. Collaboration has become much more prominent in applying anthropological expertise in developing and actualizing human solutions to human problems in the last twenty years. Discussion reflects on the degree to which the collaborative imperative was desirable and possible in these cases.

KEY WORDS: land and water rights, tribal history, ecology, Native Americans

I want to pose two conundrums for anthropologists representing the perspectives and life situations of Native Americans. Case number one concerns a legal case set up by historical circumstances, government neglect and inaction, and tribal government agitation for restitution. This case pitted one tribe against another. The second case concerns a legal case set up by historical circumstances, government neglect and inaction, and tribal government agitation for restitution. This case pitted the U.S. Government against itself.¹

CASE NUMBER ONE

In 1989 I was asked by the American Anthropological Association to participate as a member of the Panel on the Navajo-Hopi Land Dispute, formed as an ad hoc committee in 1984. I replaced Fred Eggan who resigned from the panel when he was elected to the AAA Board of Directors, noting possible conflict of interest.² I was already more familiar with the situation than I ever wanted to be, and my sympathies lay with Hopis of the "traditionalist" persuasion who not only opposed everything the Hopi Tribal Council did and also any attempt to interfere in Hopi life on the part of the U.S. Government on principal (see Clemmer 1994; 1995:166-202), but who also truly hoped that their unsanctioned negotiations with some of the more adamant communities of Navajos living on Hopi land, such as the Big Mountain community, would result in a compromise solution to various problems. Hopefully this would address the primary issues—grazing, jurisdiction, and religion (see Clemmer 2005)—mediated by themselves and not by a federal court, or decided by the U.S. Congress.

But in fact it was a series of federal court decisions that brought the situation to Congress, which finally did decide the issue.³ Without embroiling discussion in a complicated set of historical detail, suffice it to say that, in response to a lawsuit brought by the Hopi Tribal Council's lawyer, John

Boyden, back in the 1950s, the federal district court in Arizona assumed jurisdiction over the issue. Boyden argued on behalf of the Hopi Tribal Council that Navajos had invaded and trespassed on the Hopi reservation after it had been created in 1882. The Navajo Tribal Council's attorney argued that Navajos had been there all along in 1882, and that no matter, the Department of the Interior had essentially recognized Navajos' rights to the reservation when the BIA created grazing districts and committees for the Hopi and the surrounding Navajo reservations in 1942. Only one grazing district on the Hopi Reservation was designated as exclusively Hopi, although one grazing district on the Navajo reservation was designated with grazing rights for some Hopis as well as Navajos. All the rest of the grazing districts on the 1882 Hopi Reservation were designated as "Navajo".

The Court basically agreed with the Navajo attorney's arguments, declaring that the Hopi and Navajo had joint and equal interest in, and ownership of, the surface and subsurface, that is minerals, of the 1882 Hopi Reservation outside of District Six. It created what amounted to a separate reservation, the "Joint Use Area" (JUA). But in 1971 Boyden went back to the Court and argued, successfully, that neither Navajos nor the Navajo Nation nor the Department of the Interior had initiated any "good faith" initiatives or regulatory action to implement the Court's ruling. Navajos, he argued, had almost exclusive use of the "Joint Use Area". They had increased not only their use of the Joint Use Area but also their presence on it through population increase on the part of humans and livestock. The only evidence of "sharing" was a lease orchestrated by Stewart Udall, the Secretary of the Interior that gave Peabody Coal Company *carte blanche* to exploit coal and water resources in, what was for a while, North America's largest open-pit mine. The exploitation resulted in wholesale destruction of prehistoric pueblos and

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kivas, floral and faunal habitats, and the homes and grazing areas of several hundred Navajos.

This time, the Court agreed with the Hopi Tribal attorney. Largely due to the efforts of then-congressman John McCain, the Navajo-Hopi Land Settlement Act of 1986 essentially partitioned the JUA into two equal acreages: one exclusively Hopi and the other exclusively Navajo. Minerals remained in joint ownership. Navajos and Hopis living on the "wrong" side of the dividing line would have to move. The Act established a Relocation Commission to implement relocation.

Simple, wasn't it? If you are a Hopi or a Navajo in the wrong place, just move. Well, it was not so simple. Relocation was a quagmire of frustration, suffering, intransigence, accusations and counter-accusations, and generally escalating conflicts. Into this quagmire waded the American Anthropological Association. Slowly becoming aware of the work of applied anthropologists outside of academia, the association acknowledged a considerable body of "gray" literature and anthropological expertise on forced relocations, including a report commissioned by the Navajo Nation by anthropologist Thayer Scudder (1979). This tardy (and perhaps slightly guilt-ridden) acknowledgement of forced relocation as an anthropological problem, combined with a considerable number of association members who had done research among the Navajo, resulted in passage of the following resolution at the 1983 annual meetings:

The Association, ... mindful of the potential human cost of the proposed solution to the Navajo-Hopi land dispute, urges a solution to this conflict by negotiation between the two tribes, with a minimum of intervention by the US government. To this end, we ask the Board of Directors to establish a commission to study the situation and report ... on ... the role ... the AAA should play to help facilitate the above described situation. (American Anthropological Association 1984:1)

This resolution seemed to anticipate an active anthropological presence in the situation, but fell short of authorizing action by the "commission" (later called the "panel"). Nonetheless, partisans within the association and without urged partisanship on the part of panel members, and certainly the panel embraced an obligation to present the viewpoints of Hopis and Navajos along with reporting on the statistical facts of the relocation process and the degree to which negotiation was proceeding and succeeding. (It was neither proceeding nor succeeding.)

Ultimately the 1986 deadline for relocation came and went without any forced relocation. This was largely due to the fact that the Act had provided for additional land to be added to the Navajo Reservation for the relocates, but as of 1986 no land had been provided. By 1989 that land had, in fact, been identified and Navajos who refused to relocate were regarded as having no excuse.

Consider this 1989 testimony by the Chairman of the Hopi Tribal Council to the House Interior Appropriations Subcommittee: "The first and overwhelming priority of relocation must remain the relocation of Navajo physically residing on Hopi partitioned land." Now consider Navajo testimony to the same subcommittee:

We stand before you to state our opposition to the relocation of Navajo people from the lands which have been their homes for many, many generations. Suppose, you who are Christians, that there were only certain places where Jesus could hear your prayers or help you, and that anywhere else, you were at the mercy of Satan. Suppose that ... someone were to expel you from the lands ... and that you could never go back to the place where your prayers could be heard (Navajo Nation 1989).

Again, the perspective of the Hopi Tribal Chairman, just prior to the anticipated, but un-enforced, 1986 deadline: "What if a stranger moved into your back yard using violence and declared to the world, 'Your house is now my house, and I will never leave.' ... What if this same stranger had sheep and goats which ate your crops and did extensive damage to your badly needed land" (Sidney 1986:1).

The range was now, in large part, overgrazed and damaged, but the effects of forced relocation were not one-sided. Hopi Tribal officials also accused Navajos of ignoring directives to move their livestock from Hopi land, smashing and vandalizing machinery, shooting at and chasing Hopis, harassing and intimidating them with verbal threats, dismantling Hopi corrals, cutting fences, and destroying vehicles. "The Meek Shall Inherit the Earth Unless They Are Hopi Indians" proclaimed a multi-colored pamphlet issued by the Hopi Tribal Chairman's office (Sidney n.d.). In counterpoint, a Navajo woman targeted for relocation lamented, "Our way of life is our religion, and our teaching. If we are relocated by force, we will all die slowly. The people would not be in balance with Mother Earth and Father Sky and the spiritual people. In every way, here we are connected to the land. We belong here" (Veterans Peace Convoy 1990). Further, an advocacy group in Denver invited sympathizers to "join in a charge of genocide in the forced removal of Navajo people" and to ask the Department of Justice "to investigate and prosecute those responsible under ... the Genocide Implementation Act passed by Congress" (Denver Big Mountain Support Group 1989).

So who were the real "good guys"? The gentle people connected to the land, threatened with death and spiritual destruction (but who smashed cars and waved pistols around)? Or the "meek" who were being trespassed on and intimidated by alien foreigners (but insisted that people be forcibly disconnected from their life and religion and put at the mercy of the Navajo equivalent of Satan)? Surely this is a classic case of a colonizing power turning two groups of the colonized

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against one another. But anthropologists within the association and outside partisans urged activism in the service of ameliorating the "human cost." It was just not clear whose cost was greater.

One commenter presented a paper at the 1987 meetings charging, "Anthropologists are ... providing a partial view of the dispute, through ignorance or suppression of data supportive of the other party to the dispute.... Anthropologists have ... presented almost exclusively the Navajo position.... Anthropologists have lined up with... the Navajo" (Washburn 1989:738, 739). Another commenter alleged in the Newsletter in 1989, [the panel's] "implicit claims to neutrality are a disservice to the Association, its members and the Hopi people...The lack of information on Hopi viewpoints is attended by a scarcely veiled bias in favor of Navajo relocates and against Hopi opinion" (Whiteley 1989; cf. Colby et al 1989).

The panel replied, in part, "Since Navajo relocates outnumber Hopi by a ratio of 100 to 1, the reports tend to deal extensively with that relocation" (Colby, Aberle and Eggan 1989). But that did not satisfy yet another commentator, who complained in a subsequent Newsletter that simply because Navajo relocates outnumbered Hopi ones did not justify giving more space in the panel's reports to the problems and issues of Navajos (Lieberman 1989).

Should the panel have given equal word counts to the Hopi and Navajo perspectives? Or should the panel have joined in the accusation of genocide against Navajo people? In the end, the panel was certainly always the bearer of bad news in its reports, undoubtedly satisfied no one, and surely made everybody grumpy. In the words of panel member David Aberle, "...the description of conflicts in value-neutral terms is probably impossible. The inclusion of all the facts that anyone might consider relevant is certainly impossible. The Panel's account of the Navajo-Hopi conflict was as objective as we could make it...." (Aberle n.d.).

CASE NUMBER TWO

The second case is much different. It involves representing a group of people's ancestral subsistence activities in the near absence of ethnographic data – or even, it might be said, in contrast to ethnographic data. The case involved Western Shoshones living on a reservation that were studied by two anthropologists in the 1930s. Jack Harris⁴—was most interested in acculturation and Julian Steward was, it might be said, almost obsessed with subsistence. But Steward only seemed obsessed with subsistence of one kind: the hard-scrabbling efforts of groups of Western Shoshones and their ability to wrest a living from unpredictable pine-nut harvests and occasional locust drives, the pursuing of elusive antelope herds, and the trapping or clubbing of rabbits and packrats.

This group of Western Shoshones and their Northern Paiute partners, in contrast, had mounted a case that focused on

water and water-based resources, specifically, fish. Under its trust obligation, the Government's Justice and Interior departments took on the case against off-reservation water users on the one hand, and the U.S. Government itself on the other, for failing to protect the tribes' water. The case entailed documenting Shoshone and Paiute rights to water that had been diverted off the reservation by non-Indian users in the early years of the 20th century and also documenting how Shoshones and Paiutes had used water-based resources, that is, fish, from the Snake River and its tributaries where salmon spawned (see Netboy 1974:265). The BIA eventually constructed a dam on one of the streams flowing through the reservation in the 1930s to capture water for irrigating pasture. At the same time, the Bureau of Reclamation began plans to build four 100-foot-high dams on the lower Snake River, completed between 1962 and 1981, adding to a series of smaller dam constructions begun in the early 1900s. The effect of these dams was to irrevocably bar salmon from running the Snake as well as the smaller tributaries feeding its upper reaches (McClure 2000). The tribe wanted acknowledgement of its ancestors' use not only of water, but also of the fish in it, looking toward the possibility of restoring the fishery on the basis of an anticipated settlement.

I was called in as an expert witness. The challenge was to assemble information supporting claims not only to the lost water but also to the fish that had once swum in it. Doing so entailed documenting that ancestors of the Shoshones and Paiutes on the reservation had not only formerly used the water that had been diverted off the reservation, but also had relied on fish from the Upper Snake and its tributaries for subsistence in the earliest times of the reservation and for decades prior to the reservation's creation.

Here is the sole mention of fishing in a reservation stream made by Jack Harris (1940:39-40, 88):

"In pre-reservation times Western Shoshones had lived in small communities along the Humboldt River in the winter months and in summer they became migratory, ranging from southeastern Oregon to the middle Snake River in Idaho and to the north. They set traps and nets in the river to catch fish as well as gathered seeds and hunted. The area on the Snake River between its confluence with the Owyhee and Bull Run was regularly inhabited each summer by the same man and his family."

Julian Steward (1938:165-9) devoted all of thirty-one sentences to discussing salmon in the seven-page section on the Snake River in his Basin-Plateau Aboriginal Sociopolitical Groups. He gave almost no details on capturing, consuming or preserving them, aside from saying that fishing was their "principal subsistence." He stated that Shoshones "cached" "stores of salmon" (Steward 1938:165); took them with nets, hooks, dams with weirs and spears (Steward 1938:167, 168-

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9); and that four or five families cooperated in construction of a dam that was owned by the director of the construction.

In his general discussion of subsistence, Steward devoted two and a half pages (1938:40-43) to a detailed discussion on types of fish and where they occurred, but evaluated in his summary section on "Ecological Determinants" that Western Shoshones' primary subsistence activity was "plant harvesting" (Steward 1938:232). In his half-paragraph discussion of Snake River resources, he said only that although the salmon "afforded considerable food" and the catch was "dried for winter," the salmon catch was rarely enough to keep families "in plenty" for the rest of the year. Steward (1938:168) did confirm Harris' noting of seasonal transhumance: "Sometimes, if the salmon catch were good, people from both the Snake River and the Humboldt River wintered on the South Fork of the Owyhee River...."

So I had to supplement Steward—that is, I had to reconstruct this northerly group of Western Shoshones and Northern Paiutes in terms of what one of their most important resources had been. The resource was not pine nuts, nor pack rats, nor grass seeds, but rather, *fish*. Steward had quoted from five sources—explorers' and trappers' journals from 1811-1845. They presented short but richly ethnographic descriptions of Indians living and fishing along the Snake River, as well alluding briefly to a report by an ichthyologist from the 1890s (Steward 1938:166,168). These trappers' and explorers' journals turned out to be a cornucopia of information. For example, although Steward quoted from John C. Fremont's diary, it was Fremont's cartographer, Charles Preuss (1843:91-93) who provided a telling description:

Below [Shoshone] Falls, the fish rise in such multitudes that the Indians can pierce them with their spears without looking.... One hears nothing but the word *hagai*, "fish".... On the opposite shore these "fish Indians" are singing their inarticulate and unmelodious songs.... They are as fat as hams; it must be the salmon.... Their bellies and behinds are so fat and round that they can hardly navigate.

I suspected that emigrant diaries would also mention fishing Indians. I had researched diaries of emigrants taking the Humboldt road to California and reasoned that there must be diaries of emigrants headed to Oregon along the Snake River road. Sure enough, there were. This description by Father Honore-Timothee Lempfrit, travelling in 1848, noted at "Little Salmon Falls":

Today several Indians came to visit us, bringing with them an enormous quantity of salmon. I bought one weighing nearly thirty pounds for six fishhooks.... Salmon is their staple food and one sees this spread out to dry in every part of their cabins.... The Indians catch their salmon in those parts of the river where the water flows most swiftly. They build a

kind of dam over which the salmon must leap in order to make its way up river. The Indians keep watch for them, and at the precise moment that the salmon readies itself to spring forward they spear it (Lempfrit 1848:148).

The Reverend Father was offered native caviar salmon eggs that had been dried and "firmed up in the shape of loaves so that they can be eaten during the course of the year." He "tasted some of this confection but could not bring myself to swallow even the little that I had in my mouth so revolting was its stench" (Lempfrit 1848:114). I found nearly forty diaries mentioning Indians fishing for salmon within the territory designated by Steward as "Western Shoshone."⁵

CONCLUSIONS

What conclusions can be drawn from these two cases? First, we should not presume that baseline ethnographies necessarily represented the totality of "aboriginal life." Or if they did so, then they should be taken as a product of that particular historical moment, including the anthropologist's participation in that moment and his/her agendas and priorities.

Second, while representing the viewpoints, goals, positions and life situations of a community or group of people might seem straightforward, it becomes much less so when it turns out that there is another community or group that sees its situation as equally compelling and competing with it, and cries out for representation of that viewpoint and situation. It is naïve of us to think—as many anthropologists did well into the 1970s and 1980s—that colonized people such as "Native Americans" are of one mind and that there are not disagreements, divisions, and conflicts among them about those agendas and priorities.

Third, we must be aware that our consultants, our clients, have their own agendas and priorities. They are not now, and probably never were, artless pursuers of a simple life constructed without awareness or knowledge of the industrializing, colonizing and imperializing world that surrounded them. "Representing the Other" was never a straightforward enterprise, and we should acknowledge it as a continuing problematic and inconsistent pursuit, even where we manage not to peer around the corner to see the described situation from a different side.

Bearing these ruminations in mind urges some degree of reflection on what is meant by "collaboration." In the last few decades, collaboration has come to mean a melding not only of the goals of the anthropologist and the "subject community," but also a hammering out of the strategy and the research design – thus developing recommendations and ways to implement them in dialectical, mutually reinforcing actions. This kind of collaboration has become especially prominent since passage of the Native American Graves Protection and

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Repatriation Act (1990) and the lobbying for adoption by the United Nations General Assembly of the Declaration on the Rights of Indigenous Peoples (2007). Was this kind of collaboration, then, desirable in the water rights case in which I was expert witness? Absolutely so! Was it possible? Again absolutely so! Continual dialogue amongst expert witnesses, attorneys for the Department of the Interior, Department of Justice and the tribe, in conjunction with periodic meetings with Tribal representatives, resulted in a continually evolving strategy for reclaiming the water rights that the tribes had by law. But here is a caveat: collaboration does not mean "sympathy with...." All the sympathy possible with the goals of the tribes could not have substituted for a rigorous and critical investigation, informed by all the methodological requirements available within the framework of the anthropological enterprise.

Was the kind of precisely defined collaboration outlined above desirable in the reporting and negotiating role of the AAA panel members? Absolutely! Was it possible? Yes, but only if a much broader conceptualization of "collaboration" is acknowledged. It was evident that the Navajo Nation would develop goals, strategies, recommendations and the implementations thus required, and that these were diametrically opposed to those of the Hopi Tribe. Within the Hopi communities themselves, there was strong disagreement. It was absolutely impossible to honestly and legitimately claim that the work of any of the AAA panel members was "collaborative" in the more narrow sense.

However, in a broader sense – both before and after I came onto the panel – the process accomplished what neither of the tribal bureaucracies were able to do. It interfaced with the primary hegemony controlling on-the-ground implementations, the Navajo-Hopi Relocation Commission, in ways that affirmed some of the Commission's implementations and critiqued others. In the political economy of global relocations, that interface still constitutes one of the few instances of anthropological work that promoted attention to the rights of two groups of indigenous peoples long before such rights were officially and widely acknowledged.

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NOTES

¹Based on a paper presented at the High Plains Society for Applied Anthropology annual conference, Denver, April 24, 2010.

²The panel produced annual reports that were published in the *Anthropology Newsletter*.

³President Clinton signed S. 1973, The Navajo-Hopi Land Dispute Settlement Act into law on October 11, 1996.

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⁴For background on this very interesting but little-known anthropologist, see Price 2004:154-163 and Yelvington 2008, 2011.

⁵The Western Shoshone area also included the "Bruneau" Shoshones (Murphy and Murphy 1986).

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