CONTESTED PROPERTY CLAIMS

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What Disagreement Tells Us about Ownership

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ROUTLEDGE

Chapter 9

Property as a technique of jurisdiction

Traplines and tenure

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This chapter examines how Indigenous subjects are produced and marked as capable of belonging to property law through the apparatus of jurisdiction. It survey some of the ways the machinery of jurisdiction operates through property relations, property law, and discourses of proprietary ownership, unfolding through a range of instantiations and by a variety of institutions, in response to the ongoing valiance of Indigenous tenure, jurisdiction, and proprietary interest in Canada.

Anishnabe legal scholar Dawnis Kennedy reflects on how when settlers came to these Northern American lands they brought with them their own distant memories of tradition that they wished to find space for. "However," she writes, "since Indigenous peoples already governed these lands, settlers could not create such a space except by way of their relations with Indigenous peoples" (2007, p. 177). Insofar as they pursued peaceful means, settlers needed to establish meaningful relations with Indigenous people. One form of these dealings was by establishing a relationship between the legal orders of settler societies and Indigenous societies. Kennedy recognizes that there was a time of mutual respect between settler societies and many Indigenous nations, when settler law *by agreement* did not apply to Indigenous peoples. This shifted over time, evident, for example, in gradual interpretations of treaties as a "burden" on the Crown. But even where Canadian authorities reject or deny Indigenous legal orders, they must define themselves and their law through this rejection. After all, colonial laws were developed to colonize Indigenous peoples and their lands. Therefore, the role of colonial law in affirming Indigenous orders is still only affirming colonial law. But, as Kennedy explains, this incorporation acknowledges that, "the development of the Canadian state and its legal orders *within Indigenous territories* is at issue" in that it seeks to transform Indigenous law into "forms of relation based on Euro-derived statist models" (2007, p. 179). Nowhere is this enmeshing more clear than in the Western property system.

The meaning of the property right in a settler society, as Kennedy conceives it, is always already in relation to the Indigenous territories on which it is applied. In my chapter, I examine how Indigenous subjects are produced and marked as capable of belonging to property law through the apparatus of jurisdiction. I survey

some of the ways the machinery of jurisdiction operates through property relations, property law, and discourses of proprietary ownership, unfolding through a range of instantiations and by a variety of institutions, in response to the ongoing valiance of Indigenous tenure, jurisdiction, and proprietary interest in Canada.

Among other strategies of perfecting settler sovereignty, the imposition of Western property rights onto Indigenous forms of landholding has been pivotal to colonization and has produced a rich field of scholarly attention.[1] When I first began writing about colonialism in Canada, property rights seemed to offer the most cogent explanatory power for how the social relations of land were transformed in the "New World" by settlers. Certainly, there is compelling evidence to support this framework.[2] But through my work with the Algonquins of Barriere Lake – a small Anishnabe community located in the northern region of the Ottawa River watershed in Quebec – I found that the imposition of property rights onto Indigenous lands already presumes the state's authority to govern, whereas it is *the apparatus of jurisdiction* that determines which laws will apply in a given context.

In other words, the problem that colonization introduces is not just the leasehold, the fee simple estate, or the government's regulatory land management system that institute new social relations on the land. The problem is the machinery of jurisdiction that authorizes these proprietary regimes. The utter confusion in the literature around how to define Indigenous peoples' basis of ownership in contrast to Western property rights partly stems from this conflation between property and jurisdiction. Because the issue in property literature has moored on whether property did or did not exist in Indigenous societies prior to contact, what tends to follow is a narrow debate about whether colonialism could actually *dispossess*. Even where the debate comes down on the side that Indigenous conceptions of property pre-existed contact, this approach still fences the debate into a rigid understanding of territorial belonging. Moreover, it elides the fact that in either case Indigenous forms of *jurisdiction* govern the social relations of land on the territory, not a set of property rights or rules. *Just as* on the other side of the ledger, claims to settler jurisdiction authorize Western property regimes.

This chapter illustrates the order-, knowledge-, and space-making practices of jurisdiction on Barriere Lake territory by conflicting land-use patterns produced by provincial regulation and through Barriere Lake's tenure system. The Algonquin tenure system differentiates the landscape into spaces of care to ensure self-preservation and to protect the land base for future generations. Comparing this land tenure system to a provincial beaver preserve system and the introduction of two government-regulated trapline regimes on the territory shows how provincial and Algonquin proprietary systems overlapped to produce a complex interlegal space. These layers, like shifting tectonic plates, eventually crashed into each other in real time, materializing in conflict between Algonquins, park authorities, logging companies, and other visitors to the territory.

I argue that at stake in these conflicts is the way in which jurisdiction is exercised by the provincial state and the band towards different respective ends of

comportment: *supply* and *care*. I examine how the production of social scientific knowledge around Indigenous "property" has radically circumscribed, in a range of ways, the Algonquin legal order that governs land allocation and responsibility on Barriere Lake's territory, including the agency of other-than-human beings.

What is Indigenous territory?

One evening, Clayton Nottaway told stories late into the night about the incredible hunting skills of his grandfather, Joe Ratt. One story involved Joe and his hunting partners, who saw a moose stumbling along, its belly big against the snow, falling a bit, from side to side. One hunting partner thought it was a pregnant moose, but Joe knew it was a healthy moose that was not pregnant, and he shot her. He turned out to be right, and the families feasted. Another time, Joe saw six moose walking together, and one was walking over on the side. This sixth moose was eating different plants than the rest, and Clayton's grandfather knew it must be sick because the leaves he ate were medicine. Joe killed the moose and piled up the meat and bones to leave on the trail as a signal to let others know of the sickness.

These stories that have been passed on to Clayton convey important information for survival in the bush. They also signal the importance of kinship relations in land-use management of the territory. Algonquin tenure is vested in the political community of the band and actualized by the consensual deployment of families and trapping partnerships on the land. Clayton will pass along these stories to his children and their partners and to his grandchildren and extended family. Algonquin kinship is defined by bilateral (blood) kinship; post-marital residence in flexibly constituted extended families and affinal (in-law) alliance that binds the community together through a network of reciprocal relationships (Roark-Calnek, 2004a, p. 4). These networks represent points at which accumulated knowledge is passed along: knowledge passes directly down from grandparents to children to grandchildren, but also across families to cousins, brothers-in-law, or through a woman's new family ties soldered through marriage (Roark-Calnek, 2004a, p. 4). As Fabris writes in his chapter, property relationships do not just embody struggle over the land but bring to light the kinds of relationships that are at stake in the making.

Key characteristics of Algonquin kinship include respect for elders (Algonquin *ketizidjek*), who have authority as tradition bearers. There is also an expectation of sibling solidarity and generational complementarity, where the youth repay the care of their elders through their own contributions of labor and material support. Gender complementarity is a defining characteristic of Algonquin kinship, too. Women and men have different roles, as they are raised to provide specific household and political and ritual roles or to play key roles in community decision making. Relations through marriage are also key, because this is the main form of expansion to the kinship nexus – through marriage Algonquins learn both family territories, matrilineal and patrilineal, and gain affinal access to resources,

ecological knowledge, and skills (Roark-Calnek, 2004a, p. 4). These extended family alliances persisted after Barriere Lakers settled at the reserve in the 1970s and 1980s, but there were changes to the kinship nexus: arranged marriages came to an end, there was a greater expansion of kinship through migration to nearby towns, and dense kinship networks were affirmed through housing shortages, where it was not unusual to have twelve extended family members sharing a two-bedroom house. New challenges were also ushered in by changes on the territory, such as the contracting land base, making it more difficult to maintain relations between families, gender, and generations (Roark-Calnek, 2004a, p. 4).

These kinship principles apply to three major components of the Algonquin social regime: household, task group, and territory (Roark-Calnek, 2004a, p. 5). While these social regimes are interlocking, territory is jurisdiction's most visible currency. The family territorial system co-developed with a highly adaptive land management and conservation system. The Algonquin word for hunting territory or ground is *ânokî(w)akî*. In its prepositional forms, -akî is generally understood by Algonquins to mean "an area used by one or *more* persons for one or *more* harvesting purposes, an area that he/they know particularly and for which he/they have particular responsibility" (Roark-Calnek, 2004a, p. 34). Access to areas of the territory is structured through the kinship and friendship nexus: because large game are migratory, hunting parties may ensure individuals access to moose and bears that will not travel through their own family hunting territories that season. But for smaller game, such as marten, rabbit, or fox, that do not tend to migrate far distances, individuals hold and share traplines where they know the land well and where their families may have been trapping for generations. These land-holding practices balance the need for responsibility without requiring exclusive forms of ownership. As Roark-Calnek puts it, the advantages are "social as well as economic/ecological, over *either* a wholly unpartitioned 'commons' *or* the 'unsociable extreme' of rigidly privatized territories" (Roark-Calnek, 2004a, p. 38). Located somewhere between these extremes, a unique system developed over time to accommodate the ecological conditions and the values of Barriere Lake society. It is a system that continues to evolve to this day.

This tenure system also has an external dimension: treaties, agreements, assertions, and mobilizations have secured this tenure across a range of time and against a variety of encroachments. Trespass laws represent what is often the key marker of territoriality from an outsider's perspective, since they conform to Western understandings of property as an exclusive right. Trespass was historically met with a variety of sanctions if interference was detected, such as confiscation of prey or amicable negotiation (Roark-Calnek, 2004a, p. 39).

But Barriere Lake's laws of trespass were also subject to the adaptive technologies of their tenure system. Following the impact on land shortages stemming from the registered trapline system, one hedge against the emergence of a strict ownership regime for the remaining traplines was "free areas" introduced to mitigate against excessively privatized land holdings (Roark-Calnek, 2004a, p. 33). Today, the highways are considered an open access area where anyone can hunt.

Marylynn Poucachiche and Clayton Nottaway told me that a lot of people are afraid to shoot moose on the highway, though, because they are afraid tourists or locals will call the cops. Apparently, game wardens sometimes do charge people. For example, Marylynn reported that Jackie Keyes got lured with a decoy only to have a game warden pull a gun on him and his children and give him a big fine. Jackie fought the charges in court without a lawyer, arguing that hunting is his traditional way of life and that he hunts to survive. He won the case, but Marylynn tells me that everyone wins these cases. Clayton chimed into explain, "We used to hunt moose when we traveled, that's the Algonquin way, now we take the highway instead of the lakes, so that's where we're going to meet the moose. Our travels have changed since they dammed the rivers and built all the roads." Later, they tell me stories about shooting moose in front of tourists, who are invariably shocked, and how the Algonquins try to politely wait until the photos are taken before lifting their rifles and aiming.

Ultimately, family hunting territories ensure conservation and social cohesion; there are social, economic, and ecological advantages to structuring access to territory in this way. The collective survival of the community is ensured through this system, as a knowledge pool of regional experience is passed lineally and laterally throughout the community. A web of intricate relations secures an expansive reach of jurisdictional oversight and responsibility.

Traplines and maplines

One approach to understanding the differences between Indigenous and Canadian expressions of jurisdiction is through Bradley Bryan's work, which offers insightful reflection on *property as ontology*. Bryan's work stands out in the property literature on colonization because he comes closest to describing the respective social relations of jurisdiction I witnessed at Barriere Lake. He theorizes that English ontologies of property are based on a conception of the world as "standing reserve" (2000, p. 16).[3] As Bryan explains: "Technology . . . makes a demand of nature, and that demand is one of supply" (2000, p. 16). This Heideggerian concept that describes a world of instrumental modern comportment can be contrasted to an Indigenous comportment that I have been calling an ontology of care. To specify for this context, I mean for "standing reserve" to pertain to two interrelated proprietary systems: the provincial leasehold system that permits resource extraction on Barriere Lake lands and the conservation regime that legislates restrictions on extraction and exploitation. Both the leasehold property right and the conservation regime express a technique of provincial jurisdiction whereby Barriere Lake lands are managed as *supply*. Jurisdiction at Barriere Lake is exercised by the provincial state and the band towards these different respective ends of comportment: *supply* and *care*.

Jurisdiction inaugurates property, and through its actualization as care at Barriere Lake, expressed in a proprietary form through land tenure, we can see how jurisdiction embeds the community in particular relations of mutual reciprocity

on the land. In contrast to Indigenous jurisdiction, the commodity form of land in liberal capitalist society aims to erase value other than that which can be expressed in market terms (Polanyi, 1957, p. 73). As David Harvey notes, "The exchange process is . . . perpetually abstracting from the specifics of location through price formation. This paves the way for conceptualizing values in place-free terms" (2007, p. 338). Of course, despite the premise of abstraction, value can never actually be disembedded from land. That is what led Karl Polanyi to label land as a *fictitious* commodity at the heart of capitalist crisis: the market seeks to treat it as supply, despite its unpredictable and finite nature. Polanyi recognizes the value of land, irrespective of its fictitious properties. Brett Christophers underscores this point, arguing that perhaps it is time to reevaluate the meaning of "fictitious" in the context of contemporary capitalism, where land is more valuable than ever to the political economy of nations, for example, concerning resource extraction (2016). Land is *real* as a commodity, and it literally *supplies* the geographic context for the political economy of the settler state. Even as a principle of conservation, *supply* is a key goal of maintaining wildlife populations, for the purposes of human consumption, survival of the species, and recreational hunting.

What is the ontological basis of life that property expresses at Barriere Lake? I spent a summer learning Anishnabemowin in the bush at Barriere Lake. Curious about the language of property and jurisdiction in Algonquin society, I asked Toby Decoursay one day if there was a word for ownership in their language. *Kadthaben-duck* or *debendan*, he answered. What about a word for belonging or "to belong"? I asked. "Same thing almost," he said. "*Debendaygayzik* or *debendan*." "To own and to belong are almost the same?" Toby answered affirmatively: "Yep, ours is *tibenindiziwin*, or *debdendan* or *benjigaywaynan. Nin-diki-bendan. Debendeegayzik*" (2009). The land is *ni(n)daki* – it means my responsibility/autonomy/belonging while referring to everything there: the moose, the sun, the stars, the trees, the eagle, the beaver, the moon, the earth, and even the planet. Literally, *aki* is "ground" while *nin* would mean "my."

I did not know exactly what a trapline was when I first started working with the Algonquins of Barriere Lake. I thought it was literally a line in the snow, made of rope or something, maybe a long snare. A trapline is a route or circuit along which a series of animal traps is set. There is no word for trapline in anishnabemowin, though nearly every adult in the Barriere Lake community has a designated place to catch mink, rabbit, marten, muskrat, fox, and beaver. One can say, "I am going to set my traps": *inglendo onige* or *on-donige*, and one can even specify what kind of trap one is setting – *wapsheshu onige* if one is going to check a marten trap or *ameku onige* for checking beaver. There is a verb for "trap" (*onige*), but there is no noun to describe the place one traps specifically. It is part of one's hunting grounds, and these hunting grounds are distributed by a system of aboriginal tenure embedded in the Mitchikanibikok Anishnabe Onakinakewin.

The fact that the Algonquins have no word for "trapline" in their language is indicative of their orientation towards land distribution. A trapline is made up of the places where you trap on your hunting grounds, but it was never something

that could be calcified in maps, since people cycled through various areas and then areas were left to rest through various seasons. In the 1920s, the word "trapline" entered into the Algonquins' vocabulary. A trapline system was introduced by the provincial government at the insistence of the federal Department of Indian Affairs due to the massive shortage in game and subsequent starvation on the territory. Following a joint federal-provincial conference on Wildlife and Fisheries, two Indian-only game preserves were established on Barriere Lake's territory (Elias, 2002, p. 22). A Quebec Order-in-Council created the Grand Lac Victoria (GLV) Beaver Preserve (6,300 square miles) and Abitibi Beaver Preserve (4,000 square miles) in 1928. These preserves covered much of the hunting and trapping territory in the Algonquin communities of Grand Lac, Lac Simon, some lands from Winneway and Wolf Lake, and some lands of Barriere Lake (Conn, 1942).

The beaver preserves seemed at first to be a positive step towards returning exclusive rights to the Algonquins over their hunting grounds, but the initiative turned out to fall short on meaningful implementation. Quebec had apparently no interest in enforcing these boundaries from settler encroachment. Until 1941, only two game wardens patrolled more than 10,000 square kilometers of land, and so, predictably, the poaching continued unabated (Di Gangi, 1986).[4] That year, a provincial game warden, René Lévesque,[5] was hired to oversee the management of game. He introduced the tallyman system into the beaver preserve, requiring every Indigenous trapper to map their trapline territory along with the numbers and locations of beaver lodges. In return, the residents would receive a license (and later tags) validating their right to trap beaver on the territory within the beaver preserve. Trappers would also receive a nominal yearly payment from the Department in exchange. The tallyman system was designed as an elaboration of a form of Indigenous land tenure, based loosely on the decentralized system of family hunting grounds. But it was based on Cree land tenure, where a system of *Ndoho Ouchimau* – male leaders – were responsible for the land in different areas of their territory (Feit, 2005, p. 278). Barriere Lake land tenure was similar, but decision making was community based, and Chief and Council governed land allocation under the laws of the Mitchikanibikok Anishnabe Onakinakewin – their sacred constitution – therefore the tallyman system conflicted with Barriere Lake customary governance.

The tallyman system had originally been established in 1927 in Rupert's House (now the Waskaganish First Nation) Cree territory, about a fifteen-hour drive north of Barriere Lake's territory. A parallel set of responses to beaver depletion in Cree territory had been adopted there. The Department of Lands gave the Rupert's House Cree an 18,500-square-kilometer beaver preserve, which the Cree would manage under a state-mandated program of beaver conservation. In short, the tallyman system was implemented, and the program was a success: beaver populations were restored, and the government boasted internationally about their management control of the north. But by the 1940–1950s, the tallyman system had developed into a state property and governance system instituted

through a new bureaucracy that claimed control over the Cree and James Bay region (Feit, 2005, p. 273).

The gradual government oversight of Cree territory, where previously there had been little, meant that the occasional visits to the territory by doctors and Royal Canadian Mounted Police (RCMP) officers were expanded in the 1940s to include a professional staff of Indian Affairs agents and officers to take charge of the federal and Quebec beaver preserves (Feit, 2005, p. 273). Harvey Feit concludes that

> The beaver reserves were exercises in governance that reduced Cree control of the land and of their hunting, asserted the competing claims of governments and fur trade companies for authority, jurisdiction and control of the region and enhanced the legitimacy of their claims of northern rule more generally.
> (2005, p. 273)

He further notes that the more knowledge the government collected about the Cree and their lands, the better they could claim management authority over these lands. The induction of the Waskaganish band into Canadian jurisdiction took only the maplines of a new system of management through which the land could be governed and the people could be surveyed and, ideally, controlled as a population.

Sensing this danger, between the early 1940s and 1950s the Algonquins of Barriere Lake adopted an attitude of non-cooperation with and resistance to the Department of Indian Affairs. Instead of complying with the tallyman system, the Barriere Lake men took out hunting licenses yet refused to make the maps for trapping permits, knowing that this information would cede the remaining control they had over their land base.[6] Resisting the logic of mapmaking, Barriere Lake community members found outside buyers for furs and other ways to circumvent the system that penalized them for refusing to map their territory for the government. They trusted only their own resource management system, and so they ignored designated "seasons" of harvest, and they did not cooperate with game wardens who carried out patrols.[7]

No cooperation meant no beaver tags, and so community members were persecuted for hunting and trapping on their own lands; Barriere Lake members were searched and their spoils of subsistence seized. Despite the consequences, the community fought back with non-compliance and physical resistance. One game warden report documents the fierce resistance of Algonquin women, who hit back with paddles and whatever else they had when attempts were made to search and confiscate their hunting and trapping spoils. Leveque reported, "I was lucky to see one squaw who was getting ready to hit Cont [Constable] Christe [Christie] with an axe and stopped her."[8] The resistance seemed to be effective, even against the threat of RCMP violence. Lévesque found that the RCMP demurred from arresting and charging the Algonquins, concluding that, "in the future, we may as well leave those Indians do whatever they want because if a

Mountie has not got any authority with them it is not safe for a game warden to mix up in their business."[9] The lack of enforcement the RCMP and game wardens could exercise with the Algonquins demonstrates how settler laws lacked authority at Barriere Lake and set the limits of state sovereignty. Exasperated, Lévesque lamented to the Fur Supervisor at Indian Affairs that "we don't seem to be able to control that Barriere tribe" whereas "all the other Indians seem to try to cooperate with us for the protection of their Reserve."[10]

The trouble continued. Another trapline system was established in 1945 for lands just outside of the GLV Beaver Preserve but that still fell inside the border of what is now Parc La Verendrye. While this attempt to regulate non-Indigenous land use was an overt money grab by Quebec to permit hunting and trapping in the region, attempts at regulation were generally welcomed by the community (Di Gangi, 1986, p. 13).[11] Unfortunately, once again, this effort was undermined by the province's indifference toward the Algonquin land tenure system of the region and its boundaries. The traplines arbitrarily divided Barriere Lake's traditional territory that fell outside of the GLV preserve into fixed territories of no more than 50 square miles. Lands within these registered trapline areas "required payment for annually renewed leases, in return for exclusive trapping rights" (Roark-Calnek, 2004b, p. 21). If the trapper did not trap each year, failed to follow regulations, or defaulted on payments, the license could be lost.[12] In all cases, the GLV preserve was excluded from the registered trapline system, but some Barriere Lake lands outside the preserve were subject to this new registered trapline regime, and many of these lands were eventually lost, leased out to white trappers, or to Algonquins who lost leases, thus family lands, due to defaults in payment.

While Barriere Lake were resentful of white interference, they gradually came around in 1942 and agreed to participate in conservation efforts led by fur conservationist Hugh Conn by estimating the number of beaver colonies in the preserve and promising to count beaver lodges in the spring (Conn, 1942). These compromises, or interlegalities, over trapline jurisdiction meant that authority was being shared between parties, however tentatively. But even efforts by Conn – who tried to ensure some measure of protection for Barriere Lake's tenure system – suffered from the uneasy "pluriverse" of two systems of governance, in Walter Mignolo's terms, "a world entangled through and by the colonial matrix of power" (Mignolo, 2016).[13] Conn was influenced by anthropologist Frank Speck's fairly rigid account of family hunting territories, stating that "each family head is appointed as guardian on his own hunting grounds" and largely ignoring the broader kinship nexus I have described (Conn, 1942). This outside expertise displaced the Algonquins from being the regulators of their own tenure system. As Audra Simpson writes in relation to the anthropological disciplining of her own community of Kahnawá:ke, this production of knowledge is what forms the attention of anthropologists around "culture" rather than "the scene of object formation – ongoing land dispossession" (2014, p. 67). The complicity of anthropologists is a key social process that has had significant agency in shaping the means and matter of colonization in the territory.

Here come the anthropologists

Whether Algonquin land tenure is a system that reflects nomadic, proprietary, or jurisdictional interests is a question (for outsiders) that has been around for a long time. Placing the discussion of Algonquian land tenure into a disciplinary context, we can see long threads of controversy in the profession of anthropology for almost a century. Frank Speck was an early observer of what he called the Algonquin "family hunting territory" system (*nok'i-'wak'v'*), comprised of fixed tracts of land with natural boundaries to accommodate extended social units of kinship (Speck, 1915). These social units, he observed, were composed of patronymic families, with a system of land allocation distributed across kinship lines (Speck, 1915, p. 4). Speck reports that family territories were pretty rigid, though he goes on to show many examples that break with the strict enforcement of paternal family territories, such as sharing territory in bad years, visiting the wife's territory during poor seasons, and hunting on common lands during the spring gatherings. It is notable in Speck's work that little connection is explicitly made between governance and land tenure. For example, the Chief's responsibilities are not laid out at all in relation to resource and land allocation. There is also a virtual silence on jurisdiction, though implications of a relationship between tenure and jurisdiction exist, for example, through reference to trespass regulations.

Underscoring his interpretation of Algonquian land tenure, Speck's work in the first quarter of the twentieth century challenged the accuracy of Marxist anthropology and argued for a more nuanced understanding of "primitive" societies. Where Marx argued that hunter-gatherer societies held their land and resources communally, Speck and Lowie described "family hunting territories" in Algonquian communities as a direct challenge to this thesis, due to their quasi-private form. Indigenous societies, Speck pointed out, were comprised of decentralized social units of discrete land-holding areas for the purpose of hunting. In 1920, Lowie concurred and strongly advised against the "blunt alternative" between communism and individualism, dismissing as "evolutionary dogma" the teleology of property from collective to private (Lowie, 1920, p. 210).

Speck's work was influential, particularly on D.S. Davidson (1928), John Cooper (1939), and Robert Lowie (1920), but it was by no means universally accepted. As Adrian Tanner notes, many anthropologists were convinced that these territorial allocations resulted from the fur trade rather than from long-standing Algonquian social norms of organization. Tanner explains that Europeans were believed to have infected the Indians with an idea of property that soon took root in their society (1983, p. 312). By far the most influential of these counter-theorists was Eleanor Leacock, who first cast doubt on Speck's conclusions in her monograph *The Montagnais Hunting Territory and the Fur Trade* (1954). Leacock dislodged the influence of Speck in the 1950s with her thesis that the fur trade gave rise to individualized and privatized forms of territoriality on the land. Her work supported anthropologist Diamond Jenness's earlier 1925 criticism of Speck and furthered ideas of Indigenous peoples' tenure system as a sign of assimilation into European modes of production rather than as an Indig-

Debates continued to wage into the 1970s and 1980s between Leacock and Speck supporter Edward S. Rogers, and the discussion continues with Harvey Feit recently suggesting that pre-contact hunting territories were a distinctly plausible historical theory.[15] The controversy also has ideological traction in non-anthropological political spheres. Right-wing pundit and Conservative Party advisor Tom Flanagan recently used Leacock's work to deny any collective nature to Indigenous society, therefore any basis for sovereignty or self-determination on cultural grounds (Flanagan, Alacantra, & Le Dressay, 2010, pp. 38–39).

Scholars have struggled to defend – ideologically, ethnographically, and historically – cases for *either* a private or communal system of property enacted in Algonquin tenure systems. Perhaps this is because an ambiguity in the definition of property cuts across both Speck and Leacock's camps. After all, do "private" hunting territories mean the same thing as "private" property in Canadian society? Are there any commonalities between fee simple ownership of residential homes in urban centres and the allocation of hunting territories among kinship units on native territory? A major hook for Speck's anthropological work hinges on a faulty brace of ethnocentricity, where property is transformed into ideal types rather than understood in social context. As Tanner writes: "In the cases I am aware of, Algonquian territories are never 'owned' by anyone other than those who work on them; they cannot be sold, accumulated, or used by the owner to accumulate surplus production. Labelling them private property in 'our' sense of the term thus tells us very little and is actually misleading" (1986, p. 28). Though Leacock and her followers move towards an acceptance that hunting territories are a response to external material conditions – ecological, economies of fur trade, coercive influence of traders and missionaries – their methodology is focused more on the "function and operation" of hunting territories post-contact rather than their relation to Indigenous social structures and cultural values (Tanner, 1986, pp. 21–22).

This anthropological knowledge informed conservation regimes on Barriere Lake's territory and continues to inform discussion today on whether Indigenous peoples can actually claim land if they do not possess systems and ideations of "property." Linking Indigenous governance systems to tenure regimes is a crucial step towards understanding how Canadian proprietary regimes can operate as a technology of colonial jurisdiction.

Property as a technique of jurisdiction

Akin to anthropology, a prevalent tendency in liberal theory has been to subordinate the legal orders of Indigenous societies through a series of typologies concerning property rights, constructed to formulize Indigenous demands into the sovereign claims of the state (Nichols, 2013, p. 175). In brief, liberal theorists conflate *imperium* and *dominion* in social contract theory, which assumes that Indigenous people make demands on society in the register of property rights and ownership rather than in the register of governance and jurisdiction

(Nichols, 2013, p. 175). The danger of the social contract theory is the way it can elide questions of legitimacy around its proprietary regime. In Robert Nichols's incisive critique of what he calls "settler contract theory," he exposes the fictional product of the alleged contract between founding members of society when it is invoked to "displace the question of that society's actual formation in acts of conquest, genocide and land appropriation" (2013, p. 168). In the Rousseauian formulation, the contract is the deliberative procedure that distinguishes modern life from the *state of nature* that preceded agreement and was brought into being the state.

However, as we can see in the case of Barriere Lake, Indigenous people often primarily make demands on the state by calling into question the state's *imperium*. That is, claims *about* property differ from claims *to* property. The conflation between *dominion* and *imperium* presents the question of Indigenous property rights "as though they may be adjudicated *within* the already assumed prevalence of European legal and philosophical *imperium*" (Nichols, 2013, p. 175). This kind of reasoning and argumentation invokes the civilizing discourses of Hobbesian sovereignty that did not acknowledge that Indigenous people could have exercised leadership over their people prior to state formation, but it also echoes assumptions of more recent anthropological work that denies a relationship between governance and tenure, as I have tried to show.

What a closer look at Indigenous tenure arrangements shows clearly is precisely how *proprietary* systems cannot be separated from questions of *rule*. Before the "white man made the counties" or began to subdivide the land into various jurisdictions, it was the customary council that determined the distribution of band lands. In 1991 at Chestnut Lake, community members discussed this practice of allocation:

> The Chief looked at how the land was to be used. Before registered traplines, everyone had a territory. People would rotate use of their territories in partnership with other community members: A would trap his area one season, and then partner with B on B's territory to allow his own to regenerate. Then, the following Season, A and B would go to A's territory . . . Set during the meeting [the feast] the people would decide who to go with, decide who to ask, [say to one another] who are you trapping with?
>
> (Di Gangi, 1996)

Feasts took place in the fall and spring, and it was there that the Chief would deal with issues of over-crowding or shortage of game on the land and move people around accordingly.

Toby Decoursay remembers David Makokos, the life Chief who governed for most of the twentieth century, ensuring that there was not excessive overlap of families on the land. For instance, if two families were already heading towards La Bouchette (an area in the park), Makokos would tell the third family to find another place. There were no property lines, but the territory was clearly

delineated by Algonquin place names that contained in their language the geological boundaries and toponymies of a particular area. Toby recalled that people were generally less strict or more respectful of each other's territories in the past. "That's what they say, me I'm going to *kamashgono-gamak* or *gasazibi*, they just say the name of the territory and the Chief is going to take care of that. And they know what direction to go and where is the name of the place. And that's it" (Decoursay, 2009). The traplines at Barriere Lake reflected this governance system, at piece with the tenure regime of land management.

While traplines always existed in practice, their regulation by provincial authorities dug them up from an embedded system of tenure and governance and laid them neatly on the land like two-dimensional lines on a map. In an interview in June 1994 done with Toby Decoursay and Maggie Wawatie, they discussed the marginalization of the Chief by outside agencies in the establishment of registered traplines:

> It was up to the Chief to decide [where people would go]. Everyone would come together in a big feast, make basket[s]. That's where they were told [where] to trap. That's why the Indians didn't fight long time ago among themselves about the trapline. Since the white man made the counties – how big the trapline going to be – that's when the trouble started.
>
> (Di Gangi, 1996)[16]

The government trapline systems mapped over the existing system of aboriginal land tenure and political governance. Dorsett and McVeigh cite maps as one of the easiest technologies of jurisdiction, because one gets an instant picture of the spatial extent of law (Dorsett & McVeigh, 2007, p. 15). The disciplinary strategy of mapping has long been studied as systems of territorial surveillance that assimilate space into Cartesian grids. But the ways these representations overwrite Indigenous ways of knowing and recording space create specific parallaxes of language, place, and law (Goeman, 2013).

Trapline systems formed a new technique of colonial power that scarred the land with such disjuncture. They constituted a complex set of regulations and jurisdictional claims that impacted the Mitchikanibikok Anishnabe Onakinakewin and inculcated novel ideas of propertization into the governance system. As a result, the new tenure system of traplines wrought unprecedented changes in social relations in the territory. Former customary Chief Jean Maurice Matchewan described the impact of the traplines system on the community's communal ethics:

> Families were pretty much fighting over their territory and with their neighbours and neighbouring communities, as well. So that's how the trapline came to be. Before that, they didn't really have a trapline. They just had a territory that they occupied, but it wasn't really specifically given to them, [just] to manage.
>
> (Matchewan, 2009)

What had begun as a conservation effort in fact worked to undermine the jurisdiction Algonquins exercised over their lands. Whereas Barriere Lake traplines could be shared across a number of kinship relations, the government trapline system forced individuals to take ownership of individual traplines in order to secure tenure and avoid confiscation and redistribution of lands to settlers by the government. Essentially, the registered traplines solved a problem of dispossession that the provincial government itself created by creating another mode of dispossession.

At Barriere Lake, much as people did not own individuated plots of property, aboriginal tenure secured some of the advantages of proprietary regimes. As I have described, customary or traditional users of the range would have spent many years on that land, and therefore they would have built up an extensive fund of knowledge about the area, making them more successful hunters and gatherers and building families' historical attachments to particular areas. These historical attachments then led to some measure of responsibility (*tibenindiziwin*) for the areas, ideally managing their resources for other users and future generations, requiring recurrent (not necessarily continuous) occupancy and use. This jurisdiction of care could not be replicated through bureaucratic regimes of ownership.

Partly what outsiders could not perceive was the flexibility in Algonquin social relations of belonging. As Jean Maurice Matchewan illustrates,

> if there's one family, if at their trapline there's no animals there, pretty much, another family will take them into their area when their animals are growing. So those are the kinds of thing they would do to accommodate other families. Cause I remember when I was young my grandfather was a great trapper, he used to go out to somebody else's territories, with permission, and there was no problem that way.
>
> (2009)

The Barriere Lake trapline system represents a set of social relationships between community members that respects boundaries between ecological areas but also corresponds to the dynamics of a hunting and trapping economy and the overarching value of ensuring sustenance for all. This flexibility has invoked what often seems like the central question for settlers studying the land interests of Indigenous peoples: is it property? Bryan contends, however, that the main issue should not be whether Indigenous peoples "have conceptions of property and what those are, but rather how an analysis of other cultures' ways of life, using our own terms, serves to rationalize that other way of conceiving of the human's relationship to the world-at-large in our own terms" (Bryan, 2000, p. 5). The beaver preserves and trapline systems served to re-order Algonquin society along the lines of Western understandings of ownership, even in the best-intentioned efforts. To re-make Algonquin land as individual property was to deny or distort the ways of life that embodied and enacted the community's legal and political order.

The trapline system reveals how the alienation of Barriere Lake lands through multiple regulatory plans and authorities impacted the community's jurisdiction. Unevenly applied and enforced, legislation meant to protect wildlife and habitat for Indigenous use ended up carving up the territory into restrictive zones, eventually facilitating recreational sport, and running up constantly against other planning authorities for the region that built transportation corridors and flooded reservoirs throughout the preserve in pursuit of commercial enterprise and energy generation. Foreign systems of land allocation – even the tallyman system that was based on Algonquin tenure – undermined the traditional roles of the Chief and Council through these new differentiations of space, and perhaps more importantly, through disruption to the expansive kinship nexus that facilitated land use on the territory. It is on this final point on which I would like to focus my final argument on Indigenous jurisdiction.

Reproducing life

Land use clashes are inevitable and widespread throughout the country precisely because Indigenous land-holding systems are subject to imposition, incursion, and outright denial, violating Indigenous laws and trampling on invisibilized turfs of Indigenous responsibility and belonging. As Peter Usher, Robert Galois and Frank Tough put it so well, "The state system of resource tenure and management exists as an *overlay on*, not a *replacement of*, aboriginal systems – hence the frequency of land and resource conflicts" (1992, p. 122, *emphasis added*). These overlays are not mere lines on a map. They produce the materiality of the region, partially generated through the technologies of settler property rights that attempt to render Indigenous land tenure obsolete.

This act of overlay affects not only human beings but also the "other-than-human" beings on the land (Todd, 2016). Here we uncover another insight into the failure of Conn's good intentions to replicate Indigenous principles of land management that caused the profound loss experienced by the Algonquins. As Kim Tallbear describes, "Indigenous peoples have never forgotten that nonhumans are agential beings engaged in social relations that profoundly shape human lives" (2015, p. 235). "Objects" and "forces" such as stones and thunder form part of this "ecology of intimacy" between all living things on the land.[17] Where Indigenous peoples assert jurisdiction through protection of their tenure system, they are also extending this care to other-than-human "tenures" or ecosystems. In the passage that follows, for example, Jean Maurice Matchewan describes the impact on animals by dams, invoking the problems the animals are having as the community's own:

> There's no beaver once they lower down the water. They lowered down the water 10 feet – that means the beaver has to walk 10 feet to get to the water and it's under ice. And they have no food – the food they store in front of their cabans – it's in the ground it's supposed to be in the water, that's why they put it in the water, and a lot of time, they're on the ground, especially on the reservoir here. And the moose sometimes, will just go through the ice. Those are some of the problems we have with everything they're doing. (Matchewan, 2009)

The Algonquins' preoccupation with the impacts of colonization on the animals is a critical intervention into studies of property and jurisdiction. Human–animal interactions are not just objects of colonization: these relations are colonial subjects that enable colonial expansion (Belcourt, 2015). A case in point, the dogged efforts pursued by provincial authorities to collect data on beaver habitat and populations not only enacted a loss of land and subsistence for the Algonquins but radically changed the world of the beaver, whose living conditions were increasingly produced by way of the empirical and scientific knowledge used to manage their homelands.

Vanessa Watts explores these ideas in her writing, where she observes that colonization is not just about dispossession or displacement from their lands but the theft of the "ability to act and govern" when Indigenous homelands are damaged and their epistemic frames are subject to ignorant misinterpretation (2013, p. 23). According to an Indigenous point of view, governance is intimately tied to how agency is circulated through human and other-than-human worlds in the creation and maintenance of society. It is the connections with the living land that form the societies in which Indigenous peoples thrive. These other-than-human lifeworlds "have ethical structures, inter-species treaties and agreements . . . Not only are they active, they also directly influence how humans organize themselves into that society" (Watts, 2013, p. 23). Human thought, in turn, expresses the thinking of particular places, drawing obligations to maintain this balance and remain in communication with its desires, will, intent, and labours. Colonization corrupts Indigenous peoples' capacity to exercise care, but this form of dispossession also affects the other-than-human world in the exercise of its own reciprocal agency.

The kinship system at Barrier Lake has changed a lot over time. Norman Matchewan said it used to be that there were no family territories – people would move around from place to place. I asked when that changed, and he said maybe with the traplines (Matchewan, 2010). Then he showed me his grandfather's trapline on a map where he and his cousin Benjamin Keyes trap together. His uncle gave the trapline to him and showed him all the best places to catch marten when Norman was broke and could not afford to pay his bills. Fortunately, while the rigidity of the government trapline system reified these family territories due to sudden "shortages" of land, trapping has been a flexible system to begin with, containing room for adaptation to changing circumstances, to which the families, Chief, and sub-Chiefs would attend. Today, the trapline system calls less upon the customary government for adjudication and allocation, but it is still entrenched in the territory of Barriere Lake's ecological boundaries and within the purview of the customary government's jurisdiction. It is attuned specifically

to the movement of animals and the needs of families. One thing for certain is that control of "populations" – human and other-than-human – is always subject to forces of resistance on the ground. A trapline is only as colonized as the maplines in which its jurisdiction falls.

Notes

1 See, Joseph Singer, "Re-Reading Property," *New England Law Review* 26 (1991–1992): 719; and Cheryl I. Harris, "Whiteness as Property," *Harvard Law Review* 106:8 (June 1993): 1721.
2 See for example, John C. Weaver, "Concepts of Economic Improvement and the Social Construction of Property Rights: Highlights From the English-Speaking World," *Despotic Dominion: Property Rights in British Settler Societies*, John McLaren, A.R. Buck, and Nancy E. Wright, eds. Vancouver: UBC Press.
3 The shift towards modern conceptions of property took place during a period when Anglo-Norman England was rationalizing its governing structure away from the feudal mode towards a more Lockean model of "use" and exchange" tailored to the market economy (13).
4 Cited in Leigh Ogston, "Algonquins of Barriere Lake Historical Report," November 1987, document unnumbered.
5 Not *the* René Lévesque (founder of the Parti Québécois).
6 See, for example: Diary of field investigation from René Lévesque, Quebec Game Warden, Senneterre. NA RG10 Vol. 6753 File 420–10–4GR-1: Quebec Fur Conservation – Correspondence re: the Grand Lac Victoria Preserve of the Maniwaki Agency (Maps) 1947–1950.
7 See, for example: 1948: Annual Report for Grand Lake Victoria Hunting Reserve, 1948 from Rene Levesque, Quebec Game Warden to Indian Affairs. NA RG10 Vol.6752 File 420–10–1–3 Reel C-8107; NA RG10 Vol. 6754 File 420–10–4GR3 – Grand Lac Victoria Annual Report 1950).
8 See: November 1947: Diary of field investigation from René Lévesque, Quebec Game Warden. NA RG10 Vol. 6753, File 420–10–4GR-1: Quebec Fur Conservation – Correspondence re: the Grand Lac Victoria Preserve of the Maniwaki Agency [Maps] 1947–50.
9 Ibid.
10 Ibid.
11 To recoup millions of the highway costs, Quebec took advantage of the preserve for tourist purposes. No commercial fishing would be allowed.
12 As Stu Herbert notes, "Plans showing the location of the territory were to be submitted for each license. The license could be lost if the territory was not trapped each year or if the trapper failed to follow the regulations. An annual inventory and report was required from each trapper (see: #1641 (14 Sept 67))" (Summary of Quebec Orders-in-Council (1928–1980). September 16, 1988, 6).
13 This pithy definition comes from Mignolo's blog, http://waltermignolo.com/on-pluriversality/ (accessed April 6, 2016), but to read a scholarly book on this subject, see Walter D. Mignolo, *Local Histories/Global Designs: Coloniality, Subaltern Knowledges, and Border Thinking* (Princeton, N.J.: Princeton University Press, 2000).
14 See, for example: Diamond Jenness, "Origin of Copper Eskimos and Their Copper Culture," *Geographical Review* 13:4 (1923): 540–551. Another early and influential critic of Speck was Alfred G. Bailey, *The Conflict of European and Eastern Algonkian Cultures, 1504–1700: A Study in Canadian Civilization* (Sackville, NB: Tribune Press, 1937). For a good overview of this literature more generally, see Charles A. Bishop and Toby Morantz, "Who Owns the Beaver? Northern Algonquian Land Tenure Reconsidered," *Anthropologica* 28:1–2 (1986): 7–9.
15 See also: Edward Rogers, *The Hunting Group-Hunting Territory Complex Among the Mistassini Indians*, National Museum of Canada Bulletin (Ottawa: Department of Northern Affairs and National Resources, 1963), 195. For a deeper discussion into these debates, please see: Siomonn Pulla, "A Redirection in Neo-Evolutionism? A Retrospective Examination of the Algonquian Family Hunting Territories Debates," *Histories of Anthropology Annual* 7 (2011): 170–190.
16 The feast baskets they refer to here presented food offerings for bush spirits associated with game renewal and change of seasons, customs of the Onakinakewin.
17 The reference to "objects" and "forces" as living is from Tallbear, "An Indigenous Reflection on Working Beyond the Human/Not Human," and the phrase "ecologies of intimacy" was borrowed from Leanne Simpson, "Anishnabe Nationhood," *Nation to Nation Now: The Conversations*. Symposium. Toronto, March 23, 2013. Simpson uses this phrase in her talk to describe Indigenous nationhood.

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Chapter 10

Decolonizing neoliberalism?

First Nations reserves, private property rights, and the legislation of Indigenous dispossession in Canada

Michael Fabris (Krebs)

This chapter focuses on contemporary proposals to implement private property regimes on First Nations reserves. First, I examine the arguments used by proponents of the First Nations Property Ownership Act to motivate support for this legislation, demonstrating how it represents a rearticulation of past proposals, albeit as a 'restoration' of precolonial property rights regimes. Second, I discuss how this legislation informs contemporary discussions within academia concerning Marx's theory of primitive accumulation. Finally, I discuss how disputes over First Nations property rights demonstrate that both settler colonial subjection and continued assertions of Indigenous identity are inseparable from relationships with land.

In recent years there has been increased momentum to implement private property regimes on First Nations reserves in Canada. In 2006, for example, the First Nations Tax Commission launched a new project to expressly advocate for federal legislation, the proposed First Nations Property Ownership Act (or FNPOA), to establish fee simple property rights on reserves (the form of tenure that allows for the sale or transfer of property under British-derived common law). This project, known as the First Nations Property Ownership Initiative (FNPOI), is headed by Manny Jules, former chief of the Kamloops Indian Band, and receives direct financial support from Aboriginal Affairs and Northern Development Canada (also known as the Department of Indian Affairs and Northern Development, or DIAND).

To date, the most concrete action taken by a federal government towards supporting the FNPOA involved mentioning the legislation in the 2012 federal budget, where the then-Conservative government announced its intent to 'move forward with legislation that would allow private property ownership within current reserve boundaries' (Flaherty, 2012, p. 171). The Ownership Act was also discussed in the Conservative Party's 2015 platform, and, if they had been re-elected, their stated plan was to make this a key part of their Indian policy (Conservative Party of Canada, 2015, p. 149).

The proposed FNPOA faced strong opposition from First Nations communities and individuals. Leaders from the Assembly of First Nations (AFN), the