“Ownership, Reciprocity, and Indigenous Territoriality: Land as a Matrix for Responsibilities”

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Abstract:

In the literature on territorial rights, Indigenous peoples are often framed as small nations captured into relationships with larger nations. Because nations generally claim rights to be represented by specific states, and states generally claim rights to control specific fixed territories, it has seemed natural to conclude that Indigenous peoples as nations should have clear and fixed statelike borders, if perhaps on a smaller scale. Many Indigenous political actors have worked very hard to articulate this model of political territoriality and to put it into place. Yet there are dangers that such arguments, taken up for understandable strategic reasons, can occlude deeper Indigenous views of territoriality. Drawing the work of Glen Coulthard, Leanne Simpson, Kyle Powys Whyte, and John Borrows, this paper argues that terms such as “land” or “territoriality” are stand-ins for a much more complex and flexible set of relationships between human communities, non-human animal communities, and knowledge practices that are intended to create patterns of mutual flourishing. Given the interrelationships between continually moving humans, non-human animals, water, plants, and so on, indigenous territories often cannot be appropriately mapped as property-like territories with clear and fixed boundaries. Rather, they are best conceived as networks of relationships which may shift over time or with the emergence of new knowledge. This suggests that indigenous conceptions of territoriality require a more textured notion of connections to land than is often found in the literature on territorial rights.

Explanatory note: This paper was originally developed for a workshop on territory and Indigenous rights at Queen’s University, Kingston, ON. The primary purpose of this paper was to unpack and critically examine some common normative arguments in North American Indigenous politics. Readers are likely to approach the topic with different degrees of unfamiliarity, so please ask for further explanation where key background ideas, policies, facts, etc. aren’t clear.

I. Introduction

Although this is somewhat non-standard, I would like to begin this paper with a caveat: I am not sure that anything in this paper is correct. The topic I want to address seems nonetheless...
worth pursuing. I want to seek to reconstruct what seems to me a theme that appears in the work of many North American Indigenous writers, in which land is invoked primarily as a matrix on which relationships take place, rather than as something with fundamental moral status of its own. This view of land as a matrix of relationships suggests, I will argue, a different view of what is required politically to reflect Indigenous relationships in political form. In particular, it suggests that many understandings of state acknowledgement of Indigenous territoriality may be too wedded to a statelike model of fixed, contiguous territories to capture important aspects of Indigenous attachments. The model I want to articulate here is likely to be less demanding of states in some ways than the models usually envisioned, but more demanding in others.

The paper proceeds in five sections. First, it tries to outline claims about strong fixedness to place or territory of the kind that I want to push back against throughout the paper, drawing on both US and Canadian doctrines to frame my concern. Second, it turns to the examination of arguments about “grounded normativity” as articulated by Glen Coulthard. Third, it shows the ways in which Coulthard’s arguments can be given more depth, and their territorial implications more detail, by examining the work of Leanne Simpson and, as a brief adjunct, John Borrows. Fourth, it seeks to put these portrayals of territoriality into a broader framework of ecological flows and knowledge-production as articulated by Kyle Powys Whyte. Finally, it seeks to sum up the results of this inquiry, and to think about its broad implications for discussions of Indigenous territoriality in relation to at least some North American communities.

II. State-Like Territories and Property Ownership

I am concerned in this paper to argue against a certain model of Indigenous territoriality that entails hard, contiguous territories and fixedness to particular locations. I want to suggest that
this model of territoriality has emerged for understandable historical reasons, but that it may not capture the conceptions of territoriality held by many Indigenous peoples, even if many Indigenous political claimants have over time to come accept its plausibility.

In the literature on territorial rights, Indigenous peoples are often framed as small nations captured into relationships with larger nations. Because nations generally claim rights to be represented by specific states, and states generally claim rights to control specific fixed territories, it has seemed natural to conclude that Indigenous peoples as nations should have similar statelike borders, if perhaps on a smaller scale. Many Indigenous political actors have worked very hard to articulate this model of political territoriality and to put it into place. In the United States, for example, Cherokee political theorists sought to extend concepts drawn from the European law of nations (especially the natural law works of Emmerich de Vattel) to their own political claims. In 1832, the United States Supreme Court accepted the basic Cherokee portrait of Indigenous peoples as small allied nations in the case of *Worcester v. Georgia*:

The Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights as the undisputed possessors of the soil from time immemorial…. The very term "nation," so generally applied to them, means “a people distinct from others”…. The words “treaty” and “nation” are words of our own language, selected in our diplomatic and legislative proceedings by ourselves, having each a definite and well understood meaning. We have applied them to Indians, as we have applied them to the other nations of the earth. They are applied to all in the same sense (1832, 559-560).

The basic territorial scope of Cherokee Nation as a political entity was set by the transactions found in earlier treaties, and formed a kind of territoriality familiar from the law of nations. While the
United States had relationships with this nation, the individual states did not, and they must thereby cease any interference into the Cherokee Nation’s territorial spaces:

The Cherokee Nation, then, is a distinct community occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter but with the assent of the Cherokees themselves, or in conformity with treaties and with the acts of Congress. The whole intercourse between the United States and this Nation, is, by our Constitution and laws, vested in the Government of the United States (1832, 561).

Although the United States has persistently violated this model in practice, while the Supreme Court has narrowed its implications in various ways, the doctrine of *Worcester* has never been officially repudiated, and continues to be central to many aspects of existing Indian law (Pevar 2012, 81-85).

Unsurprisingly, most Indigenous peoples in the United States have worked hard to push American law back toward the *Worcester* model of a nation-to-nation relationship. In doing so, they have worked very hard to counter portrayals of Indigenous peoples as natural nomads, loosely attached to the land and therefore easily removed without causing a great deal of suffering, and therefore without colonizing states engaging in wrongdoing when displacing them in this way (see e.g. McQueen and Hendrix 2017). Indigenous writers have often sought to show, not only that Indigenous peoples are strongly attached to particular territorial spaces, but that they are *more* attached to them than are other peoples (see e.g. Deloria 2003, chs. 4 and 16). Appropriate state responses to Indigenous claims must thus be profoundly respectful of and attentive to the fixedness of Indigenous territorial attachments.
Within Canadian law, Indigenous claimants have not been able to assert effective claims to sovereignty, but tests of Aboriginal title continue to insist on and presume that Indigenous peoples have strongly anchored claims to particular territorial spaces. Indigenous claimants who hope to win findings of Aboriginal title must show long-standing, consistent, and (mostly) exclusive use, with findings resulting in property rights that are then expected to be fixed in place and law (see e.g. *Tsilhqot’in Nation v. British Columbia*, 2014, para. 25). Aboriginal title is framed in Canadian law as a property interest (*Tsilhqot’in Nation v. British Columbia*, 2014, paras. 10-15), and Canada routinely insists on clear and fixed ownership boundaries for Indigenous territories at the end of land claims negotiation processes. This is a powerful reinforcement to the idea of Indigenous territoriality as locked into permanent locations. Indigenous peoples likewise have good reasons to insist on their strong and permanent attachment to place: Canadian courts hold that even recognized Aboriginal title can be infringed upon by the Canadian government so long as this does not undermine the basic cultural attachment of the Indigenous group to this territory (*Tsilhqot’in Nation v. British Columbia*, 2014, paras. 120-125). There are thus strong motivations for Indigenous communities to insist on the comprehensiveness of their attachment to particular territorial spaces as wholes (cf. *Tsilhqot’in Nation v. British Columbia*, 2014, paras. 24-44), so that infringement is more difficult to justify within any of their areas of recognized Aboriginal title.

Despite the reiterated character of arguments about the fixedness of Aboriginal attachment to territory, and about the nature of attachments to territories – *land* – as a whole, there are other elements within many recent Indigenous descriptions of territoriality that suggest a somewhat different portrait. While the state- or property-like vision of attachments to contiguous, fixed territorial spaces is likely essential to Indigenous self-defense at the present time, this may not
always be true: what is required for self-defense may change, or states may become more willing to take textured Indigenous claims into account in real ways (see the final section). In what follows, I thus want to shift from a view that supposes that Indigenous attachments are primarily to land, toward a view that sees land primarily as a matrix or substrate upon which other relationships of primary value take place. I will likely overstate the case in this exposition, but it seems worth the risk to do so in probing this view’s structure and implications.

III. Glen Coulthard’s “Grounded Normativity”

I want to begin with a work that gives a central role to land itself, while at the same time suggesting intellectual resources for seeing beyond the centrality of land to that for which it may serve as a matrix or substrate. Drawing on the work of Vine Deloria Jr. (2003), Glen Coulthard has argued for what he describes as “grounded normativity”. Although Coulthard’s discussion in Red Skin, White Masks (2014) is not extensive, it provides valuable tools for unpacking a conception of “land” as something more than just land. Coulthard (2014, 60) holds that Deloria sought to articulate “the position that land occupies as an ontological framework for understanding relationships.” Coulthard (2014, 60-61) argues that “it is a profound misunderstanding to think of land or place as simply some material object of profound importance to Indigenous cultures (though it is that too); instead, it ought to be understood as a field of ‘relationships of things to each other’.” The relationships involved entail the myriad kinds of beings found in particular spaces:

In the Weledeh dialect of Dogrib (which is my community’s language), for example, “land” (or dé) is translated in relational terms as that which encompasses not only the land (understood here as material), but also people and animals, rocks
and trees, lakes and rivers, and so on. Seen in this light, we are as much a part of the land as any other element (Coulthard 2014, 61).

Coulthard argues that this implies a distinctive ethical stance that is associated, as well, with particular account of causality:

Ethically, this meant that humans held certain obligations to the land, animals, plants, and lakes in much the same way that we hold obligations to other people. And if these obligations were met, then the land, animals, plants, and lakes in would reciprocate and meet their obligations to humans, thus ensuring the survival and well-being of all over time (Coulthard 2014, 61).

Non-oppressive relations (Coulthard 2014, 62) require this kind of careful attention to the full range of human duties to place and those inhabiting it so that all have opportunities for mutual flourishing.

Coulthard’s discussion of grounded normativity is relatively brief, because his primary goal is to draw a contrast with industrialism and capitalism, which focus on the extraction of goods for preferential use by some humans rather than on the mutual flourishing of all. Coulthard (2014, 66) argues that Canadian ways of “recognizing” Indigenous peoples permit them to be culturally different in thin ways, without allowing for methods of organizing productive material life differently than that pursued by the state’s dominant actors. Canada allows “one mode of production – namely, capitalism” (Coulthard 2014, 66). The primary goal of his discussion is thus to give a sense of what is being foreclosed when Canada requires Indigenous peoples to work in its preferred frameworks, with all the limits entailed.

Despite its briefness, Coulthard’s discussion bears unpacking. While Coulthard does hold that land has intrinsic value of its own, the separate role attributed here to land as “material” is
evocative. Although he describes human obligations of reciprocity to land, he does not seem to hold that there is “something that it is like to be the land” (cf. Nagel 1974). Many of the elements that are located on the land unambiguously do have an experience of what it is like to be them (people and animals), however, and others are often understood to have such a sense within Indigenous ontologies as well (plants, lakes, rivers, rocks). If humans are “as much a part of the land as any other element” as “animals, rocks and trees, lakes and rivers, and so on,” then it seems to follow that land – “understood here as material” – has a fundamental role as a substrate or matrix on which other kinds of relationships occur. If humans “are as much a part of the land as any other element”, then there is a kind of asymmetric relationship between land and all of those things that take place on it. This suggests a kind of potential separability between the relationships between beings that take place on a particular portion of material earth and the relationships that these beings have with the underlying substrate itself. Insofar as relationships to land itself exist, they seem relatively abstract, in ways that might be met in multiple locations, with none obviously favored over others. Relationships with other experiencing beings that exist on land’s matrix, however, seem to entail greater geographical specificity: animals, plants, lakes, and so on can only receive engagement in specific places rather than on “land” in general.

The point I’m seeking to unpack may not be transparent yet, but I hope to make it so when discussing the work of other Indigenous theorists below. Examining Coulthard’s ethical claims about relationships may also help with this exposition. Coulthard’s argument links together the ethical requirements of good relationships with claims about the causal effects of these relationships. Coulthard’s suggestion seems to be that the various experiencing agents distributed across a landscape can mutually flourish when the relationships between them are actively maintained by their own careful efforts. Humans, at least, need to focus on the active maintenance
of mutually flourishing relationships with other agents, whether they are animals that are readily accepted as experiencing beings, or plants, rocks, or rivers that may or may not have an experiential status attributed to them. (I am not sure what Coulthard’s position is here.) This argument, as I interpret it, represents a mix of empirical and normative claims. It asserts as a factual claim that humans can only flourish when other beings do as well. As a normative claim, it asserts that humans must act on obligations to ensure this mutual flourishing. This latter claim could be understood as instrumental – if humans want to flourish, they should meet these obligations – but it is probably better understood as categorical. Humans are supposed to behave this way, even if this is also to their benefit.

Because it can matter for conceptualizing the territorial implications of claims about mutual flourishing, it seems essential to see the range of positions that one might take on how exhaustive the requirements of reciprocity might be. One position is what we call the strong interdependence view. It holds that humans are part of complex ecosystems that continue to function only when they are in equilibrium (broadly understood), and that the predominant bulk of the activities that humans engage in should be oriented toward meeting these obligations. On this view, there is not much that humans can appropriately do beyond maintaining these relationships, since other kinds of actions are likely to harm the interests of other beings in objectionable (and ultimately unsustainable) ways.

A weaker alternative position is what might be called the partial interdependence view. This position holds that the field of human responsibilities to maintain relationships with other beings is substantial, but not in a way that approaches exhaustiveness. There are many things that humans must do to meet their duties, but there are also areas in which they can act carefully to improve their own flourishing without thereby endangering the flourishing of other beings.
Humans rely on their relations with other experiencing beings, but their actions are only partially constrained by what is necessary to maintain these relationships. One could, of course, imagine a spectrum of positions in this regard. I am not sure which option Coulthard intends, though I believe it is the strong interdependence rather than the partial interdependence view.

Endorsing one position rather than another may have implications for how one conceptualizes the nature of Indigenous territoriality. Both the stronger interdependence view and the partial interdependence view focus on the causal importance of human actions to maintain relationships with other beings, but they allow different scope to human-centric decisions. The strong interdependence view suggests, roughly, that the world is already producing the full amount of value for beings possible, such that departures from strict adherence to duties are likely to become suboptimal for all concerned. The partial interdependence view, on the other hand, suggests that humans can innovate particular practices that will create greater value for themselves as a species (in the form of e.g. pleasure, fulfilling activities, character development, or something else) without thereby worsening the conditions of other beings in substantial ways. A partial interdependence view is thus likely to make more room for what we might call “human centered spaces” – geographical areas in which changes to the land often referred to as “development” are permitted.

Whichever position one takes on strong vs. partial interdependence, it seems clear that a focus on responsibilities among diverse species and beings will have implications for how we conceptualize land use patterns and accompanying laws and institutional structures. If the flourishing of humans and other beings must take place on a matrix of land, and the spatial relationships of these various beings are tightly woven to their flourishing, then it seems essential to ensure that these beings are able to move freely so that relationships among them are maintained.
Salmon must be able to swim to the right locations to spawn, while bears must be able to get to the right locations to eat the salmon, and carrion animals must be able to get to bears after the end of their lives, and so on. In light of these flows and relationships, it is easy to see why human claims to exercise control over particular territorial spaces are conditional: humans can lose rights to act in particular locations on the matrix of land if they fail to permit or facilitate the appropriate movement of other beings within it.

The view of territoriality that results from a focus on obligations of this kind is rather different than that associated with the state-like ownership view of territory implicit in Worcester or the property-centric view that runs throughout many aspects of Canadian jurisprudence. Rather than geographical spaces being the possession of a particular human group, the legitimate exercise of human action in these spaces comes about for those who act to fulfill the appropriate duties. Indigenous claimants operating on this view may have plausible grounds for arguing that all attempts by states and others to claim Indigenous lands with the goal of exploiting those lands are self-defeating: they are assertions either that relationships with other beings do not matter – a normative error – or acknowledgements that they do, coupled with erroneous descriptions of the empirical realities.

IV. Leanne Simpson and Non-Contiguous Obligations

I want to move now to elements of Leanne Simpson’s book As We Have Always Done (2017), which provides additional tools for thinking about Indigenous territoriality. Simpson’s work illustrates further elements of a territorial ethic that seems implicit (to me) in Coulthard’s work, while also helping to unpack some of the entailments of this ethic. Like Coulthard, Simpson is concerned about the harms of colonialism and industrialism have done to Indigenous relations
to land, but her examples of how to respond to this are often quite interesting. I will suggest that Simpson’s work articulates what might be referred to as non-contiguous responsibilities to place, which require that Indigenous peoples fulfill responsibilities in locations to which they lack consistent access or legal title recognized by states.

Simpson’s work sometimes shows elements of a straightforward ownership view of territoriality not out of place in the logic of Worcester or the Canadian courts. Consider for example Simpson’s use of the word “our” here:

Over the past two hundred years, without our permission and without our consent, we have been systematically removed and dispossessed from most of our territory. We have fought back as our homeland has been stolen, clear-cut, subdivided, and sold to settlers from Europe and later cottagers from Toronto. The last eels and salmon navigated our waters about a hundred years ago. We no longer have old-growth white pine forests in our territory. Our rice beds were nearly destroyed. All but one time piece of prairie in Alderville has been destroyed. Most of our sugar bushes are under private, non-Native ownership (Simpson 2017, 4).

The terminology of ownership inflects that argument, in ways that seem straightforwardly explicable to those versed in non-Indigenous property theories. This portion of the text seems deeply human-centered and based on claims to exclusive ownership of geographical spaces.

Simpson’s invocation of rice beds, sugar bushes, eels, and salmon points toward a more interdependence-based interpretation, however, and many aspects of her argument lean more heavily in this direction. In engaging directly with Coulthard’s discussion of grounded normativity, Simpson outlines some of the features of her own understanding of Nishnaabeg
relations to place and the being who inhabit it. Her focus is on complex patterns of interdependence that cannot generally be captured by simplistic models:

I don’t know it [the Nishnaabeg approach] so much as an “ethical framework” but as a series of complex, interconnected cycling processes that make up a nonlinear, overlapping emergent and responsive network of relationships of deep reciprocity, intimate and global interconnections and interdependence, that spirals across time and space. I know it as the algorithm of the Nishnaabeg world (Simpson 2017, 24).

Although Simpson does not make a distinction between land as such and the beings that enter relationships of reciprocity on its matrix, such a view seems implicit within what she describes. Given the centrality attributed to cycling processes and non-linear emergent relationships, it seems that most of the fastest flows and the most complex interrelationships will be between animals and ecosystems. For these kinds of relationships, “land” would seem to matter primarily as the matrix on these events occur.

Simpson generally rejects industrialism and resource extraction, with a view that seems close to that of strong interdependence as outlined above:

[Life in the pre-colonial period] sounds idyllic, because compared to now it was idyllic. Our knowledge system, the education system, the economic system, and the political system of the Michi Saagiig Nishinaabeg were designed to promote more life. Our way of living was designed to generate life—the not just human life but the life of all living things (Simpson 2017, 3).

Simpson argues that Indigenous knowledge practices are deeply embedded in patterns of Indigenous life, so that the information necessary to determine what would create more life was
generated in going about daily life practices that include ceremony and attempts at reciprocity with other experiencing beings:

We know that place includes lands and waters, plants and animals, and the spiritual world – a peopled cosmos of influencing powers. We know that our practices code and reveal knowledge, and our knowledge codes and reveals practices (Simpson 2017, 22).

These practices associated with reciprocity and the creation of knowledge about how to undertake it appropriately are not fixed in place, but subject to alteration and reform over time, as new evidence or outcomes come to the fore: “It is not a set of teachings or laws or protocols; it is a series of practices that are adaptable and to some degree fluid” (Simpson 2017, 24). Meeting obligations of interdependence takes a sensitivity to the results of one’s effort, and sometimes recalibration over time.

Given the focus on practices and relationships, Simpson argues that many actions that gather knowledge and ensure reciprocity continue even on territories that are not currently recognized as Indigenous in US or Canadian law:

I hunt anyway. We hunt anyway – on small patches of “crown” land, with permission on private land, without permission on “private land”, and in the places where our people have always hunted. Just like we do ceremony in campgrounds, in interpretative centers, and in church basements, in the places our people have always done ceremony. Just like we pick medicine in ditches, in farmers' fields, and in tiny forests, where our people have always picked medicines. Just like we rice, launch canoes on the sides of roads or from private docks or lawns, and spearfish in the spring, in the places we always have (Simpson 2017, 40).
While Simpson sees this as a vastly inferior option to a world where Anishnabeg people have control over the broader and contiguous territory, these kinds of non-contiguous actions are nonetheless seen to have a great deal of importance.

This seems to me most easily explicated on the matrix view of territoriality and relationships. Insofar as land is a matrix in which relationships with other beings take place, it is possible to maintain those relationships even on lands to which one has sporadic access, and even when they are potentially non-contiguous from one another in profound ways. The basic goal is to maintain the relationships and their associated knowledge practices at whatever nodes of interbeing contact make this necessary or available.

My people are out on the land, even if we are criminalized, even if we have to ask settlers for false permission, even though the land is not pristine, even though, even though. This is in part because within Nishnaabeg thought, the opposite of dispossession is not possession, it is deep, reciprocal, consensual attachment. Indigenous bodies don’t relate to land by possessing it or owning it or having control over it. We relate to land through connection – generative, affirmative, complex, overlapping, and non-linear relationships (Simpson 2017, 43).

Even when lands are damaged, there are spaces in which these connections can be pursued, and in which appropriate forms of interbeing reciprocity can result.

Simpson often suggests that full access to all traditional lands is necessary to meeting these obligations of reciprocity. As noted above, given the flows of species across space, it is easy to see why this position has plausibility, particularly for those who take a strong interdependence position. It seems nonetheless that some nodes within the matrix of land are more important than others in Simpson’s account because of the kinds of connections that they allow and the intensity
of the relationships embodied in particular spaces. Insofar as Indigenous practices give greater attention to actions in some locations rather than another, it seems that there should be a rankable set of spaces on the matrix with different degrees of normative urgency. Those with a geographic bent might be able to draw or conceptualize maps of where the most important of these nodes are to be found, and to show how they fit together as part of a broader system of relationships distributed in key locations.

While many kinds of spaces are already acknowledged as sacred spaces to varying degrees in US and Canadian law, the need to make connections with particular species suggests that the matrix is likely to be more complex in structure than state policies usually envision. They may also not be in the same locations at all times. Insofar as what matters is human access to locations in which animal or plant species gather, it may be that geographical spaces that are widely spaced will matter most, with many less pressing areas for human action in between them. At one level, this might suggest that doing justice toward Indigenous conceptions of territoriality could be approached even in territories that are heavily checkerboarded by non-Indigenous lands, so long as those non-Indigenous lands did not fall into particular spaces on the grid. On the other hand, the necessary flows of animal species, whether by land migration, rivers, or air suggest that such checkerboarding would be plausible only insofar as access corridors are strongly maintained across it.

The defensibility of a checkerboard outcome of this kind seems to depend on whether one accepts the strong interdependence view or the partial interdependence view. Because Simpson seems to hold the strong interdependence view, it seems best to treat her focus on particular locations as a kind of triage in profoundly damaged conditions. Ranking some locations on the matrix as more pressing than others nonetheless might make a difference in various ways, by for
example helping Indigenous leaders or activists to prioritize their proximate goals. It may also make a difference for e.g. the operation of particular governmental branches within these countries (for example the Environmental Protection Agency in the United States), which sometimes have substantial leeway to pursue policy choices of their own. Even on a strong interdependency view, then, there might be reasons of the second best (Heath 2013) to engage in mappings of particular relationship nodes and to lobby for adjustments accordingly.

If the partial interdependence position is correct, on the other hand, the territorial requirements entailed by this view may be less holistic. On the partial interdependence position, there is likely to be more slack within natural systems, such that there is quite a bit humans can do without hampering the flourishing of other beings. If this is the case, then it seems that Indigenous peoples would have the strongest normative claims to nodes where actions to maintain relationships are required, and weaker claims to nodes where they are not. This suggests good reason to envision Indigenous territories not as straightforward territorial boxes around which contiguous boundaries can be drawn, but as more complex territorial grids that will plausibly be checkerboarded with Indigenous territories that are used in other ways (e.g. for resource extraction), or alternatively with non-Indigenous territories that have similar use. The ramifications of endorsing either the strong interdependence view or the partial interdependence view thus matter a great deal for envisioning what just outcomes look like over the long term.

It is worth stopping to take stock of the view of territoriality that has emerged so far. The literature on territorial rights at the international level, and legal doctrines of Indigenous property within the United States and Canada, often presumes an ideal of contiguous territoriality that can be frustrated by discontinuous spaces but not enhanced by them. Insofar as Indigenous connections to place are thought of primarily as nodes within a broader grid as on the partial
interdependence view, however, it may be that discontinuous territories will be appropriate for many purposes. Discontiguous territories would entail different kinds of governance challenges, however, and may require moves away from envisioning Indigenous territorial units as roughly akin to those of small countries. It may be instead that one needs to think of more complex overlays of territoriality, in which what matters is the nodal spaces that are important to the practices of both Indigenous and (where non-harmful in appropriate ways) non-Indigenous peoples.

It is in light of concerns about nodal spaces of this kind that I understand John Borrows’ argument about the need for Indigenous spaces to stretch far beyond current reservation boundaries into broader spaces to which Indigenous peoples have connections:

To speak only of Aboriginal control of Aboriginal affairs would disenfranchise most Aboriginal peoples from their traditional lands. Measured separatism would separate many from places they hold dear. Why should an artificial line drawn around my reservation bar me from a relationship with the vast areas my ancestors revered? The marking of such boundaries could prevent the acknowledgment and strengthening of continued Aboriginal reliance, participation, and citizenship with the lands they use outside the lines…. [I]nsisting on these boundaries could conceal legal relationships, rights, and obligations indigenous to this land. Aboriginal peoples still honour the places made meaningful by an earlier generation's encounters. They still travel through these places and rely on them for food, water, medicine, memories, friends, and work. They still remember the stories and laws that guide their conduct towards these lands. Many are hesitant to relinquish their relationship with this territory in the name of Aboriginal self-government merely
because non-Aboriginal people now live and rely on this land (Borrows 2002, 157-158).

Reading Borrows’ argument through Simpson’s and Coulthard’s can help to see how one might determine the spaces that matter most beyond existing reserve boundaries. Insofar as one thinks in terms of nodes where different kinds of species and beings come together in particular kinds of relationships, there may be more just solutions that do not require any changes to the locations of current non-Indigenous people. On the other hand, a focus on the locations where these relationships take place may show that something much more demanding is needed, because many of the spaces that might be “left over” from those controlled by non-Indigenous peoples may not be appropriate for relationship maintenance. It seems hard to get a sense of what matters here by thinking of land as something that is of equal importance everywhere. Rather, one must look at where the specific nodes are, and how they are connected to other nodes (e.g. by the movements of animals or water), and to examine the ways in which responsibilities to act at those nodes are understood. For those of us used to thinking of Indigenous territories on the model of small contiguous countries, the change of viewpoint is likely to be substantial.

V. Kyle Whyte and Changing Territories

Before turning the paper toward its conclusion, I would like to examine a final set of arguments about grounded normativity by Kyle Whyte that, in my view, become most easily transparent only after working through arguments of the kind already considered. While Coulthard, Simpson, and Borrows work primarily in the areas of political theory, resurgence politics, and constitutionalism respectively, Whyte is a philosopher deeply engaged with Federal wildlife and ecology agencies in the United States, with a central focus on tribal resource practices
against the backdrop of a changing climate. Whyte is particularly concerned with the ways in which Indigenous territories may move over time, in ways that are likely to seem especially peculiar if one focuses primarily on territorial attachment to space itself rather than to nodes of connections that take place within it.

For Whyte, Indigenous territoriality has (at least for many communities) long been loosely connected to specific land spaces themselves:

The broad issue of adaptation to environmental change is not new for many indigenous peoples. At least in the case of the indigenous peoples with whom I collaborate, or of which I am a member (Potawatomi), they see their societies as having had to adapt constantly to shifting environmental conditions since time immemorial. Indigenous families, clans and political institutions had to be sensitive to seasonal variations and fluctuations and had to follow and adjust to alternations in patterns of animal and plant population movements (Whyte, nd., 7).

For Whyte, this basic flexibility and readiness to adapt marks fundamental aspects of Indigenous social and knowledge-collection practices:

Scholars are increasingly claiming that indigenous peoples’ cultural and political systems are based on moral norms, cosmologies and family, social and political structures that are intentionally designed to facilitate adaptation to environmental change (Whyte, nd., 7-8).

Climate challenges are thus different in extent and particular texture, but their broad outlines are nonetheless familiar within long-standing Indigenous traditions and toolkits:

I see indigenous peoples today as continuing an ongoing conversation about adaptation to environmental change that started in time immemorial. In this
conversation, indigenous peoples have had to think through a range of institutional
systems of cultural and political self-determination in terms of their responsiveness
to environmental variations (Whyte, nd., 8).

The nature of this adaptation, I believe, is most easily seen by thinking in terms of the matrix model
discussed above, rather than thinking of Indigenous territoriality on the nation- or state-like model.

Because nodes of connection are potentially mobile, then “Indigenous connections to
territory” may also be geographically mobile in certain cases. Whyte notes, for example, that
existing political boundaries may often cause connections to be severed if species move in
substantial ways:

Indigenous peoples, then, find themselves in situations where they must adapt to
climate change that does not respect certain boundaries and where they do not have
the sovereign status in the international community to assert cross-boundary
jurisdiction. Consider cases where a culturally significant species moves off of a
reservation area that is located within U.S. borders to an area that is within Canada
(Whyte, nd., 18).

While this may first seem to be a problem straightforwardly caused by the stiffness of the United
States-Canada border, on further consideration it seems that more is involved.

The problem is not this particular border as such, but the fixed nature of any
cartographically marked space that animals and other beings may move across. This is a problem
around any sort of fixed reservation boundaries, for example, even when these may have been
created by treaty:

The [needed] radical repairs would mean that entire political relations frameworks,
such as treaties or reservations, would have to be rendered flexible enough for
supporting indigenous adaptation. Treaties, for example, would have to include mechanisms for indigenous peoples to change the terms of harvesting rights to be able to track habitat changes, which would represent a substantial change in legal understanding of what treaties are supposed to do… Additional jurisdictional capacities would have to be developed in addition to ones such as reservation boundaries (White, nd., 31-32).

While this is a potential territorial problem intensified by climate change, it is not reducible to it.

At the risk of presenting Whyte’s words in too long of a block, it seems that many of his concerns are usefully summed up in the following pair of paragraphs:

Anishinaabe ways of life also stress the importance of future planning in order to live adaptively throughout the year, given metascale forces such as seasonal changes and shifting ecological trends that affect economies and trade, the availability of first foods and medicinal plants, and the timing of ceremonies. Anishinaabe and other Indigenous peoples have built knowledges of how to live adaptively with nonhumans and the environment, lessons that are shared and imparted most often through oral and performative means, including stories, ceremonies, and intergenerational and family activities. These knowledges represent valuable capacities for adaptation planning because they are community-based and, perhaps for that reason, are trustworthy. They also contain insights, conservation and environmental governance strategies, methods of analysis, and decision-making processes that arise from hundreds of years of collective memories, experiences, and trial and error in adapting to metascale forces, from historic climate change to the trans-atlantic fur trade.
Though Indigenous peoples have rights and responsibilities to plan, and useful knowledges for doing so, in the context of US and Canadian settler states, long-term planning for sustainability issues such as climate destabilization is challenging to put in practice for Ojibwe, Odawa, and Potawatomi peoples and other Indigenous nations and communities sharing the region and beyond. As settler states are here to stay, they have instantiated and enforce laws, economic policies, and practices of cultural and political domination that leave Indigenous peoples with little space to plan both creatively and practically about what to do in the future. Consider just a few examples. Settler states are often firm in their legal and policy commitment to enforce Indigenous jurisdictions as fixed and inflexible, such as treaty areas, reservation boundaries, and subnational (e.g., state or provincial) borders and transnational boundaries (e.g., US/Canada). One consequence in some cases is that Indigenous peoples cannot practically plan to shift their seasonal subsistence and economic activities if a valuable plant’s or animal’s habitat moves outside of a treaty area or crosses a transnational border, because settler states would oppose such plans as “illegal” even when the plans are within Indigenous ancestral territories; flow from established Indigenous commercial, subsistence, and cultural practices; and are consistent with Indigenous interpretations of the purpose of treaties or with the fact that some Indigenous peoples never consented in the first place to the instantiation of a transnational border bisecting their territories (Whyte, 2017, 59-60; original references removed).

The basic portrait that emerges from Whyte’s work is, I hope, now clear. Although his focus is on adaptation to climate changes, the basic set of concerns are broader. Indigenous peoples have
knowledge-gathering systems that operate through and on relationships with animals and other beings, and these will often require movement to continue functioning, as well as often indicating that movement will be necessary. States that prevent Indigenous peoples from pursuing nodes of connection as they shift are thus prevented not only from pursuing things that they value, but also from pursuing relationships that they regard as essential to necessary forms of interdependence. Indigenous “territoriality”, so to speak, is not fixed in place at all times. It may instead involve patterns of movement, and the network of connections of importance to Indigenous practices and peoples may potentially come unmoored from the landscape on which it currently exists. Indigenous relationships to land sometimes involve traveling substantial distances across it, or using it in new ways that were not previously done. Insfar as states block adaptation of this kind, they block Indigenous peoples from continuing their connections with other species and thereby meeting their responsibilities.

IV. Reconceptualizing Indigenous Territoriality

There is a great deal that could be said about the portrait of Indigenous territoriality that emerges from the consideration of these portrayals in conjunction, presuming that the portrait I have created is plausibly defensible (of which I am not at all certain). It seems to me that this set of authors are broadly in agreement with one another’s understandings, even if they have different emphases and are likely disagree on many particularities. (Borrows (2002, 32-33) has shown greater skepticism about the sufficiency of Indigenous environmentalism in work not described here, for example.) This shows that there are recognizable patterns across the work of Indigenous authors that may provide mutually reinforcing and textured tools for thinking about attachment to territory. It may be, of course, that drawing on the work of a different set of Indigenous writers
might lead to a differing conception of Indigenous territoriality, especially if these writers come from peoples (e.g. Hopi communities) with more limited traditions of seasonal migration than those of the Anishnabeg and Dene writers discussed so far. So the arguments here should be considered as tentative, and unlikely to represent positions all Indigenous peoples could endorse. They nonetheless seek helpful to those of us thinking about Indigenous territoriality from the non-Indigenous side, and perhaps for some of those thinking about it from the Indigenous side as well.

Presuming for the purposes of argument that something like the conception of Indigenous territoriality here is defensible, what portrait emerges of territory? The key idea is that land itself – land as geographical space – is not so much what matters, but instead the flows and nodes that take place within land as a kind of matrix. Our mental picture of nodes and intersecting flows may form a very dense field when the interactions of all creatures involved are envisioned (e.g. those of all animal species with one another), but it is likely to have more easily comprehended features when we look patterns of intentional and important human interactions with certain species or non-species beings. If we envision a map with multiple overlays that trace patterns of inter-animal interactions, the human overlay dimension will likely be relatively cognizable and clear at particular time periods, with the overlay looking different throughout the year and over longer time scales as other species interactions shift, and perhaps as the climate itself shifts.

The density of nodes within this overlay and the possible migration of their locations over time will tell us a great deal about the degree to which Indigenous territorial connections will collide with or safely slide past the territorial connections of non-Indigenous people (or of Indigenous people who are pursuing lifestyles and values characteristic of non-Indigenous peoples). It may be that a map and accompanying hypothetical system of ownership and jurisdiction could be structured in such a way that Indigenous territorial spaces would largely
coexist in a kind of parallel to non-Indigenous spaces, so that a maximal or near-maximal degree of Indigenous territorial attachment could be ensured by social arrangements that only slightly revise those that now exist. On the other hand, it might turn out, as seems likely, that many of the important nodes important to Indigenous peoples and the resources claimed by non-Indigenous peoples will overlap, such that the relative exclusivity of one understanding of a particular node will have to win out over the other. Justice and accompanying reconciliation in these conditions is likely to involve harder choices than the non-Indigenous citizens of countries like the United States and Canada would like to face.

Moveable relationship nodes also pose challenges for achieving effective public administration by either non-Indigenous or Indigenous peoples, insofar as this is carried out within state forms roughly like those that we know. Exactly what it might mean for states, with all of the stiffness characteristic of bureaucratic bodies, to respond to shifts and changes of this kind is less clear. That does not mean that there are no immediate responses that states could make to territoriality when conceived in ways like those described, however. It does not seem exceptionally difficult to interpret treaties more capaciously, to be sensitive to changing territorial boundaries when interacting with Indigenous nations via land use and other agencies, and to exercise great care when planning ahead for future climate change and other matters of this kind. Whyte is already working with Federal agencies in adopting policies of climate adaptation, so a sense of how states should behave is likely to better emerge via practice than by theory, as one discovers what is possible and what is not.

The upshot of the full portrait of territory that emerges most strongly from the discussion is this: insofar as one envisions Indigenous peoples as territorially akin to states and the nations that usually seek to control them, one is likely to misunderstand the priorities held by some
Indigenous peoples for access to some geographical spaces and nodes of connection rather than others. It does not follow, of course, that it would be a good idea for political theorists, non-Indigenous or Indigenous, to lobby for revised legal doctrines on Aboriginal title or American Indian trust lands along these lines. The potential consistency of these kinds of attachments with checkerboarded territories, however thin the affinity between what states would propose and the actual nodes valued by Indigenous peoples, makes this a potential recipe for state deflation of Indigenous claims in improper ways. Not that they need this permission from political theorists and others to continue their current practices of this kind, of course, but it is worth taking seriously the strategic efforts of the Cherokee Nation in the 1820’s and 30’s to extend the law of nations to Indigenous nations in US law and popular discourse, and the efforts of Indigenous peoples in both the United States and Canada to pursue these kinds of hard and clear political boundaries. Even if the claims made in this paper are correct, we may be dealing with theoretical tools for the margins, to be deployed only when politically non-harmful. Given Whyte’s concerns about the future movements of species under the conditions of climate change, however, these frameworks may be necessary to invoke politically sooner than we might wish.
Works Cited


