“Property” and Aboriginal Land Claims in the Canadian Subarctic: Some Theoretical Considerations

ABSTRACT Many of the world’s aboriginal peoples are currently engaged in struggles over land and self-government with the states that encompass them. In Canada, aboriginal people have effectively used the concept of “aboriginal title” to force the government to negotiate land and self-government agreements with them. Such agreements, however, along with the notion of “aboriginal title” itself, are based on the European concept of “property”; they grant First Nations “ownership” of certain lands and spell out the rights they possess in relation to those lands. This means that aboriginal people have had to learn to think and speak in the “language of property” as a precondition for even engaging government officials in a dialogue over land and sovereignty. Yet the concept of property is in many ways incompatible with many Canadian First Nation people’s views about proper human–animal/land relations. In this article, I argue that the land claim process—because it forces aboriginal people to think and speak in the language of property—tends to undermine the very beliefs and practices that a land claim agreement is meant to preserve. [Key words: property, First Nations, aboriginal land claims, Canada, Subarctic]

NOT LONG AFTER MY ARRIVAL in the southwest Yukon, Joe Johnson, then the elected chief of Kluane First Nation (KFN), told me the following story. Back in the 1970s, in the early days of Yukon land claim negotiations, he had been out in the bush inspecting a piece of land that KFN was considering for selection as part of its land claim. His grandmother had accompanied him; she was sitting by the fire sewing while he walked around with a map trying to decide on an appropriate boundary for the land selection. After a while, she called him over, offered him tea, and asked what he was doing. He told her he was working. She looked at him and asked, “What do you mean ‘working’? You’re just walking around with a map.” He explained the land claim process to her, and she became upset when she learned that he was trying to figure out which land belonged to Indians and which to the white men. She told him that was a crazy thing to do, for no one can own the land—not even white men nor Indians. The land is there; we move around; we die. How can anyone own it? She said that she had thought that “land claims” meant that the government and native people were getting together to try to figure out how to keep the land and animals safe for their children and grandchildren. She was very disappointed to find out what was really going on. Joe told me that he had felt very uncomfortable while she was telling him these things. He had wanted to run away but had found himself unable to do so. Finally, she dismissed him, telling him to go back to “work” figuring out who “owns” the land. He had walked away feeling like a child, happy to be away from her disapproval. But, he told me, after reflecting on her words for a while he realized that everything she had said was true.

The view expressed by Joe’s grandmother in this story certainly would not surprise most Yukon First Nation people. Nor is it likely to surprise anyone well versed in the history of aboriginal treaty making in North America. Certain aspects of KFN people’s way of thinking about the world and their place in it are indeed difficult to reconcile with commonly held notions about land and property—notions that have their roots in European legal traditions. The same can be said for many other aboriginal peoples as well. Yukon First Nation people have historically seen themselves as part of the land, rather than separate from it (McClellan et al. 1987). Though they have drawn and continue to draw their sustenance from the land, they did not—until relatively recently—think of their relation to the land in terms of “ownership.” Instead, they were, and in many cases still are, enmeshed in a complex web of reciprocal relations and obligations with the land and the animals upon it. Although they have long made use of the
land, that use is completely contingent on their fulfillment of certain obligations to both land and animals. The legal (and cultural) concepts of “ownership” and “property” recognized by Canadian courts and lawmakers cannot adequately represent the complexities of this relationship. Yet these same concepts are fundamental to the very idea of aboriginal treaty making. This means that to even engage in the process of negotiating a land claim agreement, First Nation people must translate their complex reciprocal relationship with the land into the equally complex but very different language of “property.”

Elsewhere (Nadasdy 1999) I have examined the political ramifications of attempting to incorporate KFN people’s beliefs, values, and practices into existing bureaucratic institutions of the state, particularly those of wildlife management. In this article, I look at the northern land claim process and show that it possesses a dynamic very similar to that which I have already described for the process of cooperative wildlife management. The negotiation and implementation of land claim agreements amount to an attempt to incorporate aboriginal people’s unique relationship to the land into the existing legal and political institutions of the Canadian state. This kind of incorporation requires a translation of cultural beliefs, values, and practices into a language that can be understood and acted on by Euro-Canadian bureaucrats, lawyers, and politicians (in this case, the legal language of “property”).

Yet, despite all this, First Nation people across British Columbia and the Canadian North have signed, or are in the process of negotiating, land claim agreements with federal and territorial/provincial governments. Like Joe Johnson, many of them feel that there is something deeply wrong with the whole process, but they forge ahead because they see it as the only viable option for their survival as a people. But what effect is this having on them? How do they have to change their ways of thinking just to engage with government officials in an argument about who “owns” what land? And what are the implications of such changes?

In this article, I take up these questions by examining the concept of property and its relation to the land claim process in Canada. Relations between nation-states and the aboriginal people they encompass have historically been structured around European notions of property. This has influenced the way in which anthropologists and others have understood and used this concept, so that efforts by anthropologists to find (or demonstrate the lack of) “property” among aboriginal peoples around the world have been closely linked to actual political struggles over land. Accordingly, I begin this article with a discussion of anthropological understandings of property in general and in the Subarctic in particular. I then show how these understandings have both shaped and reflected political struggles over land in the Canadian North and elsewhere. From this discussion, I propose an alternative way of thinking about property, which I then use to analyze the land claim process in the Yukon and, by extension, the rest of Canada.

The article is based on three years of fieldwork carried out between 1995 and 1998 in Burwash Landing, a village in the southwest corner of Canada’s Yukon Territory. The village has a year-round population of about 70 and is located on the Alaska Highway approximately 280 kilometers northwest of Whitehorse, the territorial capital. Nearly everyone in the village is a status Indian (that is, enrolled under Canada’s Indian Act) and a member of the Kluane First Nation. KFN is presently engaged in comprehensive land claim negotiations with the governments of Canada and the Yukon.

“PROPERTY” IN THE SUBARCTIC?

“Property” is the fundamental concept on which the Canadian state has based its relationship with aboriginal peoples (this is also true of many other states). It is therefore impossible to understand the relationship between aboriginal people and the state in Canada without an examination of how different people (including both government officials and aboriginal community members) understand and act on this concept. In Canada, the concept of “aboriginal title” forms the legal basis underlying First Nation people’s claims to land. Although the Canadian courts have been reluctant to define the term aboriginal title, they have made one thing abundantly clear: aboriginal title is a form of property—real if somewhat mysterious in nature. According to Canadian law, this unique form of property arises either from First Nation people’s prior occupancy of the land or from legal and political systems that preexisted the Canadian state. Either way, aboriginal title is not contingent on the authority of the state, and—at least since the Constitution Act of 1982—it cannot be extinguished unilaterally by government legislation (Slattery 2000:204–206).

Actually, the relevant section of the Constitution Act (Section 35) does not refer to aboriginal title at all. Instead, it recognizes and affirms existing “aboriginal and treaty rights.” Aboriginal rights are those possessed by Canadian First Nation people by virtue of their aboriginality, including—but not limited to—rights in land. The exact relationship between aboriginal title and aboriginal rights in Canadian law is complex and unclear. Recent decisions by the Canadian Supreme Court have treated aboriginal title as a particular category, a subset, of aboriginal rights (McNeill 1997a). On another level, however, it can be argued that “Aboriginal title is the basis of all the other Aboriginal rights; that all the other political and property rights flow from the doctrine of prior occupancy and the [aboriginal] title to land that the doctrine implies” (Kulchyski 1994:10). That this latter view has legal significance is clearly evident in debates over the source of aboriginal rights to self-government (see, e.g., Isaac 1995:343–352; Slattery 2000:214–215).
In an important sense, then, all aboriginal rights (and any treaty rights for which they may have been exchanged) are dependent on the assumption that First Nation people somehow "owned" the land before Euro-Canadians arrived on the scene. Historically, however, assertions to this effect have often been denied—especially in relation to nomadic hunting peoples, such as those who inhabit the North American Arctic and Subarctic.

In 1915 Frank Speck published an article in *American Anthropologist* that called into question long-standing assumptions about the relationship between hunting peoples and the land. His work among Algonquian people in the northeastern United States and Canada (especially in northern Quebec and Labrador) led him to conclude that "the Indian tribes of eastern and northern North America did have quite definite claims to their habitat" (1915: 289). Furthermore, he showed that families and neighboring peoples respected one another's claims, that trespass was a punishable offense, and that these hunting territories were inherited along family lines. He concluded from all this that "such features characterize actual ownership of territory" (1915:289).

As we shall see below, Speck's work had repercussions throughout the discipline of anthropology, but its effects were most strongly felt within the field of Subarctic anthropology, where it sparked a controversy that lasted for decades. While Speck and his supporters (see, e.g., Cooper 1939; Speck and Eiseley 1942) maintained that the family hunting territory he described was an aboriginal institution, his critics (e.g., Jenness 1935; Leacock 1954, 1986; Murphy and Steward 1956; Rogers 1963) argued that it was a relatively recent response to the fur trade. As a result of this debate, researchers began to look elsewhere in the Subarctic, most notably among the Algonquians' neighbors to the west, the Northern Athapaskans (included among whom are the people of Kluane First Nation) for evidence of family hunting territories like those described by Speck. It soon became evident that this institution was almost completely lacking among Northern Athapaskans, except among those who had significant contact with their Algonquian or Northwest Coast neighbors or those whose recently developed notions of private hunting territories were clearly a direct result of colonization and the fur trade (e.g., Cooper 1939:81; Jenness 1929: 22, 1937:44; McKenran 1959:128; Speck and Eiseley 1942:238; Steward 1941:501, 1960).

For a time, Speck's critics seemed to have won the day, but recently scholars have begun to revise or even reject their conclusions. For example, Arthur Ray (1991) has disputed Julian Steward's claim that hunting territories among the Stuart Lake Carrier were a product of the fur trade. Using archival evidence, he argues that the Carrier system of land tenure actually predated the fur trade. Harvey Feit (1991), however, has rejected the terms of the debate altogether. Though he acknowledges the importance of the fur trade in the development of the family hunting territory among the Cree, he argues that these territories cannot be understood as a foreign institution imposed on them by external forces. Though Cree hunters did develop the hunting territory in response to the pressures of the fur trade, they did so in a manner that was consistent with their beliefs about the land and animals and that allowed them to maintain some degree of control over wildlife in the area and defend their interests against encroaching Euro-Canadians. Rather than being mere testaments to their increasing acculturation, then, hunting territories are tools that Cree hunters continue to use successfully in their struggle to maintain a degree of control over their lives within the context of the Canadian state. This suggests a different and more constructive way of thinking about property in the Subarctic, one that focuses on the political dimensions of its "creation" and use.

"PROPERTY" IN ANTHROPOLOGICAL PERSPECTIVE

Speck intended his work on the family hunting territory to be, at least in part, a refutation of the social evolutionary thinking of Lewis Henry Morgan and others, who held that ideas about property in land had not developed until well after the invention of agriculture. By demonstrating the existence of "property ownership among the lower hunters," Speck was explicitly attacking this evolutionary framework. Indeed, he felt that his work "must inevitably be troubling to those who, like Morgan, and many present-day Russians, would see the culture of lower hunters as representing a stage prior to the development of the institution of individualized property" (Speck and Eiseley 1942:238).

Anthropologists from around the discipline were quick to pick up on the significance of Speck's work for refuting evolutionary theory. In *Primitive Society* (1947), as well as in his influential article on "incorporeal property" in non-European societies (1928:551–552), which were themselves both partially intended as refutations of Morgan, Robert Lowie cites Speck's writings on the Algonquian family hunting territory. Similarly, Melville Herskovits (1940:294–295) specifically cited Speck in his own writings about property, which he saw as a critique of the evolutionist approach (1940:291).

Interestingly, however, participants in the debate over the family hunting territory imported several key evolutionist assumptions into their thinking about property. Speck and his critics argued over the degree to which the hunters of Labrador possessed property rights in land and the historical origins of those rights. In the process, however, neither side ever questioned its own conception of "property." Instead, much as the evolutionists did, they applied their own contemporary Euro-American concepts of property to the ethnographic data from northern Canada. This is evident in the sharp distinction they drew between private and communal ownership of land.

Though Morgan had acknowledged that people in hunting societies might own tools and other movable objects,
he argued that "lands[,] as yet hardly a subject of property, were owned by the tribes in common" (1907: 537). Such communal ownership of land does not constitute "property" because no individual hunter had any right or claim over specific lands vis-à-vis other hunters. It was only with the rise of agriculture, and the investment of individual labor in land that it entailed, that individual rights to land could develop. Thus, for Morgan, "property" in land is essentially synonymous with European-style notions of "private property."

Speck never questioned this assumption; his central point was that the hunting societies of the Northeast did possess "individuated" rights to specific hunting territories. Thus, they possessed not only a concept of "property" (read: private property) but a fully functioning system of property rights arising from individual hunters' (or their families') possession of hunting territories. John Cooper, who supported Speck's position, argued even more strongly that the hunting territory represents "true" ownership "in our sense of the term" (1939:70-71). Thus, though highly critical of the evolutionists, Speck and his supporters shared with them the assumption that a society can only have "property rights" in land if it has institutions resembling the European ideal of "private property." To prove Morgan and the evolutionists wrong, then, Speck and his supporters had no choice but to demonstrate that hunting societies did possess an institution closely resembling "private property."

Significantly, Speck's critics also implicitly accepted the distinction between communal and private ownership. Eleanor Leacock, for example, argued that "such private ownership of specific resources as exists [among the hunters of Labrador] has developed in response to the introduction of . . . the fur trade" and that "it was these private rights—specifically to fur-bearing animals—which laid the basis for individually inherited rights to land" (1954:1-2). She (1954:1-2) did not see these rights, however, as fully individuated even in places where the family hunting territory was fully developed. This led her to conclude that "what is involved is more properly a form of usufruct than 'true' ownership" (1954:2).

Unlike Leacock, Edward Rogers (1963) did see Algonquian hunting territories as constituting a form of private property, but, like Leacock, he saw these territories as a direct response to the development of property rights in fur-bearers resulting from the fur trade. He argued that under pressure from the fur trade, the hunting territory system developed from what he refers to alternately as the "hunting area system" or the "hunting range system" (1963:82, emphasis added). Under this system, hunting groups had "return[ed] to the same general area each year but pos-sessed no exclusive rights to the resources. The [hunting] area [had] no sharply demarcated boundaries" (Rogers 1963:82). Though hunters returned to the same general areas each year out of convenience and habit, they had no formal claim to specific hunting territories. Rogers's use of the term hunting range, which he admitted that he "adapted from ecology, where the meaning is roughly comparable to that given here" (1963:82), gives us insight into his ideas about how pre-fur trade hunters related to the land. A pack of wolves, too, has a fairly well defined hunting range, but it makes little sense to talk about the wolves "owning" it as "property." The implication is that until the hunters of Labrador had developed a notion of private property through their involvement in the fur trade, they—much like those wolves—had no institution of property at all.

Though they disagreed over the extent to which hunting territories constitute a form of property (i.e., private property) and over how and why the institution had developed in the first place, all of those who took part in the debate over the Algonquian hunting territory took it for granted that property rights in land are only possible in a society that has developed institutions compatible with the European ideal of private property. In retaining this strict distinction between private and communal land ownership, however, they ignored entirely another strand of anthropological thinking about property. In 1864, Sir Henry Maine (see 1986) argued that collective ownership of land by kin-based village communities in India constituted a legitimate and eminently workable system of property. Later, Bronislaw Malinowski (1935) and Max Gluckman (1943, 1965) also argued against the overly simplistic distinction between private and communal land ownership. Both of them produced detailed ethnographic accounts of non-European systems of land tenure. They argued that these systems, though fundamentally different from those of contemporary European countries and fitting on neither side of the private-communal divide, nevertheless provided Trobrianders and Barotselanders, respectively, with coherent and rational systems for deciding who has what rights to different plots of land. Furthermore, they argued that such systems cannot be understood except in the wider context of cultural beliefs and practices that give them meaning (Malinowski 1935: 320).

As it turns out, most anthropologists trying to theorize property have followed Maine and attempted to expand the concept of "property" so that it can be applied analytically across cultures. Starting from the basic assumptions underlying Western property law (i.e., that property is either a relationship between people and things or a relationship between people mediated by things), anthropologists have sought to expand the notion of property by reexamining what can qualify as a "thing," a "person," and a "relationship" in the constitution of property relations. Lowie (1928) and Harrison (1992), for example, each exploded the term thing by showing how aboriginal and other non-European societies had well-defined ideas about the ownership of incorporeal "things" such as songs, magic, and ritual. Other anthropologists, such as Anderson (1998), de Cuyper (1981), Myers (1989), Williams (1986), and Scott (1988), to name but a few, have examined non-European ways of relating to the land.
(which Western jurists would not recognize as constituting relations of "ownership" at all) and have argued that we must recognize that these relationships, like "private property," grant those engaged in them certain rights to the land on which they live. Finally, Strathern (1984, 1988) has argued that European notions about property are contingent on a Western distinction between subject (the owner) and object (the owned). It is therefore inappropriate to apply this concept in cultural contexts where such a distinction does not apply. Though at times Strathern seems to reject the use of the term property altogether, in the end she stops short of this. She argues, instead, that we need to take into account the radically different ways in which humans construct notions of personhood in our attempt to theorize about property and that we need to expand our notion of "person" before we can understand how "property" works cross-culturally.5

These arguments are all well taken, but they leave us with a problem. It seems that anthropologists want us to see "property" everywhere. Irving Hallowell (1955) argued that all societies possess some institutionalized set of social relations, legal or otherwise, that perform the same function that legal property relations do in European society. Indeed, he goes so far as to claim that "property rights of some kind are in fact not only universal but . . . a basic factor in the structuralization of the role of individuals in relation to basic economic processes" (1955:247) and that "property as an institution is a unique as well as a ubiquitous human institution" (1955:248). In other words, "property" is an integral part of what it means to be human beings living in society. Chris Hann continues in this tradition when he argues that property should be seen as "a vast field of cultural as well as social relations, . . . the symbolic as well as material context within which things are recognized and personal as well as collective identities made" (1998:5). If we define property in this manner, it is clear that all people everywhere have and have always had property. There can certainly be compelling political reasons for making such a claim, such as those that underlie Catherine Bell and Michael Asch's assertion that "because they are human beings, Aboriginal people at the time of the assertion of British sovereignty [in Canada] did live in societies that were organized and had institutions respecting land ownership as well as jurisdiction over members as well as territory" (1997:72, emphasis added).

To universalize the concept "property" in this way certainly does make its application less ethnocentric, as Hann and others claim, but there are potentially serious consequences, both theoretical and political, in doing so. To make the claim that property is a human universal, anthropologists must expand the concept of property so broadly that their claim means little more than that all people living in society must interact with other people and things and that they must order those interactions in some way. This is no doubt true, but it is not particularly useful from an analytic standpoint. Aside from the statement being so general as to be a truism, it is difficult to see why one would necessarily want to call such a conceptualization "property" at all when other labels, such as "kinship," broadly conceived, might apply equally well. Indeed, Rodney Needham made exactly this argument regarding the term kinship. He concluded that "the word [kinship] has in fact no analytic value" (1971:5) and went on to deal similarly with other seemingly straightforward categories such as "marriage," "incest," and so on. Certainly, one can fruitfully compare the various social relations and practices that Hallowell and Hann want to call "property relations," but to say that such a study is about "property" and not about, say, "kinship" would then be a purely political decision (more on this below).

This suggests that the question—What is property?—is perhaps not the best starting point for an anthropological study of the subject. Needham again: "Anthropologists do often get into trouble of a time-wasting and discouraging sort, when they argue about what kinship is or when they try to propound some general theory based on the presumption that kinship has a distinct and concrete identity" (1971:5). As all theories of property are inherently political, I suggest that anthropologists would do better to concern themselves less with attempts to define property than with trying to understand why and how people use and struggle over different conceptions of "property" in the first place. Accordingly, I am more interested in what the concept of property does in the context of Canadian land claims than in what property is and who does or does not possess institutions that qualify.

There is also a serious political danger inherent in the attempt to universalize the concept of property. In our desire to legitimize certain types of non-European social relations by calling them "property," anthropologists and others are helping to subject those very social relations to new and powerful forms of social change. After all, the term property does have a very specific set of meanings in European legal and political discourse, and these meanings are both created by and reflected in the complex legal and political institutions of the state. We may claim that some specific set of non-European social relations in fact constitutes a set of "property relations," but the moment we do so, we authorize politicians, judges, and other agents of the state to act on them as they would other more familiar forms of property. It gives them the conceptual tools and justification for imposing (yet again) their view of the world on aboriginal people. To translate the ways in which aboriginal people relate to one another and to the land into the language of property is, in essence, a tacit agreement to play by the rules of the game as set out by the state.

LAND CLAIMS: STRUGGLES IN AN IDIOM OF PROPERTY

The language of aboriginal land claims is the language of property. The problem with this, as anthropologists have clearly been aware for some time, is that "property" itself
is a cultural construct. Aboriginal people did not own their lands as "property" until they came face to face with European colonial expansion. This is not to say that they did not engage in complex sets of relationships with one another and with the land, broadly conceived, which gave them a moral claim to the land on which they lived (especially vis-à-vis Europeans). They did (see below). But they did not relate to the land in the specific ways that Europeans recognized as constitutive of property relations (see, e.g., Cronon 1983:54-81; Tully 1993: ch. 5; Williams 1986). This is not surprising, especially in light of Williams's (1986: ch. 8) argument that European attempts to theorize property cannot be understood apart from the colonial project in which they were embedded. She argues that these theories were, in large part, explicit attempts to justify the appropriation of lands from aboriginal people, especially in North America. Thus, aboriginal people do not relate to the land in ways that Europeans recognize as constituting "property relations" precisely because these relations were defined in opposition to how aboriginal people related to the land (or, at least, Europeans' perceptions of that relationship).7

It should not be surprising, therefore, that European and Euro-American governments have been slow to recognize that aboriginal people might possess "property" rights in their lands. The fact that Canada has increasingly done so represents an attempt on the part of the Canadian government to conduct its relations with aboriginal people on a more equal footing. The government's increasing willingness to see aboriginal people's relation to the land in property terms gives their claims a certain legitimacy in Canadian courts that they had previously been denied. This has greatly expanded aboriginal people's access to the legal institutions of the state, allowing them to defend their interests in land and self-government more effectively. At the same time, however, applying the term property to the relationship between aboriginal people and the land is fraught with peril.

The act of expressing aboriginal human–land relations in the language of Euro-American property law is necessarily one of translation, with all the distortion that such a process entails. As Colin Scott has pointed out, "To speak of [in his case] Cree property, then—even 'communal' property—would be to gloss over the essential dynamic of the system [of Cree human–land–animal relations]" (1988:40). If, as Williams (1986), Tully (1993), and others have argued, modern European ideas about property were developed—to a large extent—explicitly in opposition to Europeans' ideas about how aboriginal North Americans related to the land, we might rephrase that in yet stronger terms: to speak of aboriginal–land relations as property relations is to deny, rather than merely "gloss over," their essential dynamic. Furthermore, this "translation," like the development of property theory itself, must be understood in its proper colonial context. As a part of the land claim/treaty-making process, the translation of aboriginal social relations, practices, and understandings into the language of property is an integral part of the effort to incorporate aboriginal people and their lands more fully into the modern nation-state. Given the fact that aboriginal people's way of life was (and in many cases continues to be) somewhat incompatible with this type of incorporation (more on this below), any attempt to translate the already "glossed" notion of "aboriginal title" into the concrete political and economic mechanisms of a treaty or land claim settlement not only runs the risk of inaccurate "translation" but threatens to subvert the very social relations it purports to represent.

The effort on the part of anthropologists to expand the concept of property, then, must be understood in the context of their involvement with and concern about the politics of land. Sir Henry Maine's critique of the distinction between private and communal property was part of his overall argument that British colonial authorities needed to understand and respect the social relations, including those of property, of the people they were trying to govern. Max Gluckman (1943:47-64), too, clearly saw that the only way to understand contemporary events concerning land and agriculture in colonial Barotseland (and Africa more generally) was through an understanding of existing native property systems. The implication was that colonial officials could not hope to administer native-occupied lands properly without understanding the native systems of land tenure. Malinowski (1935:318) went a step further, claiming that most colonial difficulties were the direct result of a failure to understand existing property systems in the colonies. Speck himself made an even stronger political statement: "It becomes apparent by means of our study how, through misunderstanding between the colonial authorities and the natives, large tracts of land were sold by chiefs or by individuals who, from the Indian standpoint, had absolutely no claim to their ownership nor rights of disposal" (1915:305).

By asserting that Algonquian people had property relations, Speck was questioning, at a fundamental level, the legitimacy of the colonial authorities' claim to Algonquian land. Radical though this statement was—especially in 1915—it also illustrates some of the difficulties one encounters in trying to employ the property concept in the aboriginal struggle for land and self-governance. To begin with, his argument is dependent on the fact that the aboriginal people with whom he worked did indeed relate to the land in a manner analogous to European ideas about private property. He assumes that the legitimacy of their claim to land vis-à-vis the state is contingent on this. Such an approach to land claims does not bode well for those peoples, such as many interior Athapaskans, who seem genuinely not to have engaged in social relations that could somehow be construed as analogous to private property, as we shall see below. More importantly, however, such reasoning is flawed at a logical level. Just because people do not divide up the land among themselves in a manner resembling the European ideal of private property, this does not mean that they cannot make a valid
claim to that land vis-à-vis outsiders. Indeed, anthropologists have long recognized that even a nomadic hunting people might develop a sense of attachment to a specific territory.

Speck himself noted that “as [the] population [of hunters newly arrived to an area] grows, and, in addition, remains in the new area, increased band concern with the new territory and its wild denizens will take place. The band will grow ever more conscious of its dependence on a particular area and food supply. . . . Intrusion of new peoples will be resented” (Speck and Eiseley 1942:239). Herskovits, too, recognized a kind of territoriality among hunters, arguing that “full-fledged communism in land thus means that land has no economic value at all except in so far as the holdings of a given tribe are contrasted with the holdings of another entire tribal group whose encroachment on the territory of the first tribe is to be resisted by force” (1940:292–293).

Speck saw this territoriality as a sort of protoproperty, a stage of development that might or might not lead to a relationship with the land more like our own, whereas Herskovits dismissed it as a “political” rather than an “economic” phenomenon, for it does not in itself give land any value. A sense of territoriality like that described by both Speck and Herskovits might cause a band of hunters to defend its land against other similar bands; but they felt that in the absence of “individuated” rights, it could not be used as a rationale for defending native people’s lands against the “civilized” owners of “property” (for, as we have seen, even packs of wolves recognize and defend their territories against invading packs). This is why Speck and others felt the need to “prove” that aboriginal people possessed individuated rights, though these rights were perhaps somewhat different from those of Europeans.

In contrast, “common property” theorists have shown that some systems of group land use function effectively only if outsiders can be excluded (Berkes 1989; Ostrom 1990). This indicates that there exists an alternate basis (other than that of private property) on which aboriginal peoples, especially hunters, might make claims to land against the state. Still others have questioned whether it is appropriate to use the term property for such systems at all. As we saw above, Colin Scott is quite leery about using the label “property” to describe the relationship between Cree hunters and the land. Like Speck and Herskovits, however, he recognizes that the Cree, by virtue of their use and occupancy, do have a legitimate claim to their territory:

At the same time, this system [of human-animal-land relations] entails specific criteria for inclusion within the network of human beings who practice it. Cree, in their own view, legitimately exercise and maintain their rights as against alien claimants who fail to conform to criteria of sharing and stewardship. Historically, when white men have apparently conformed to tenets of reciprocity, and contributed to stewardship of resources, they have been accorded a measure of legitimate participation in the Cree system. Thus when white men fail these standards, eva-

sion or opposition is deemed legitimate by Cree. [1988: 40]

Scott differs from both Speck and Herskovits here. He does not merely argue that the Cree have developed a sense of territoriality through their use of the land. He also claims that, despite the fact that they do not recognize individuated rights in land, the constellation of beliefs, values, and social relations that constitute Cree hunters’ relationship with the land actually provides them with a conceptual framework for measuring the legitimacy of other people’s use of and claims to the land, and that this framework is fundamentally different from that of “private property,” which provides Euro-Canadians with their own means for measuring such legitimacy. This conceptual framework, though it provides Cree people with a clear sense of who can appropriately interact with the land and how, is emphatically not reducible to the European language of property.

Why, then, have the Cree and other aboriginal people the world over felt the need to make their claims to land and self-government in terms of property? They have done so for the same reason that so many anthropologists have supported aboriginal claims by finding “property rights” everywhere. As Eleanor Leacock said of the Montagnais hunters with whom Speck worked, “Since their lands were constantly being encroached upon by white Canadians,” for them not to have told him that they had rights of private property over their hunting territories “would have been folly” (1986:143). It comes down to a question of power. If, in the context of the modern nation-state, aboriginal people wish to claim some form of control over their lands, and they wish those claims to be seen as legitimate by others, they must, as Richard Handler puts it, speak “in a language that power understands” (1991:71). And that language is, and has long been, the language of property.

Anthropologists who participate in the land claims process, like aboriginal people themselves, are forced to speak in the language of property if they wish to be taken seriously. As we have seen, they have tried to avoid the most egregious ethnocentric consequences of doing so by expanding the concept of “property” beyond the relatively narrow sense it has in the European legal context whence it came. In the process, they have tended to conceive of “property” as a set of social relations and practices characterized by some list of describable traits or conditions. The problem with this “laundry list” approach to conceptualizing property (or anything, for that matter) is that once one decides to export a culturally specific concept, such as property, to a new cultural context, the “list” that defines the concept must be expanded to accommodate the new context into which it is being imported (i.e., the particular people with whom the anthropologist works). And once this has been done a first time, there is no logical reason why it should not be done again and again, until the list has been expanded beyond recognition, even to

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the point where the concept is no longer theoretically useful (though there might be great rhetorical or political advantage to expanding the concept of property in this way). Fortunately, there is an alternate way to approach the question of "property."

Certainly people everywhere engage in complex sets of social relations and practices that we might choose to call "property." But the decision to call them that (or, indeed, to call them "knowledge" or "kinship" or even to deny them a legitimizing label altogether) is a political one. This suggests that thinking about the term property as a label, a marker of legitimacy, might be a more useful way of thinking about property. The question, then, becomes not whether non-European societies "have property" but, rather, why someone would want to make (or deny) such a claim in the first place. And, more importantly, what are the social and political implications of making, and then acting on, such a claim? This approach has the advantage of centering the analysis on questions of power while avoiding the theoretical difficulties identified by Needham and the political ones described above. And, just as importantly, this approach locates anthropologists and other property theorists squarely in the middle of political struggles over land, which, in reality, is where they have been all along, as shown eloquently by Robert Borofsky (1987) and Nancy Williams (1986), among others.

First Nation people and their allies have made the (perhaps necessary) political decision to engage in land claim negotiations using the idiom of property. Such an undertaking, however, is far from straightforward; it involves translating First Nation people's understandings of the world into a universe of meaning based on fundamentally different assumptions, with all the risks of mistranslation and misunderstanding inherent in any such process. To what degree has this translation been successful? And what impact, if any, has this process had on how First Nation people relate to the land and animals? In the remainder of this article, I consider these questions, specifically in relation to the experience of Kluane First Nation and its people.

SPEAKING AND THINKING IN THE LANGUAGE OF PROPERTY: THE KLUANE FIRST NATION LAND CLAIM

Early ethnographers of the southwest Yukon and neighboring parts of Alaska were well aware of the debate over hunting territories and looked for evidence of the institution among the peoples with whom they worked. In the process, they described what they refer to as "property relations" among people living in those areas long before the advent of land claims. Frederick Johnson and Hugh Raup, who spent time in the Kluane region between 1944 and 1948, were the first to inquire about property rights there:

The testimony we have is to the effect that there are no claims to the land; anyone can travel and hunt where he pleases. There is some evidence that hunters habitually hunted in certain general areas, but the camps might be moved, and even the cabins built since 1900 could be used by anyone if they were empty. Whether or not the fur industry had resulted in some rules we do not know, but in 1948 the fur trade was at a minimum and appeared to have little effect on the economy, at least at Burwash. [1964:196]

Catharine McClellan conducted fieldwork in the region between 1948 and 1951. In her discussion of property relations, she reported the existence of strong "sentimental ties" to the land, which in some ways resembled the relation of ownership, but she found little evidence of individual- or family-owned hunting territories like those described by Speck:

In the past all three groups [Southern Tutchone, Tagish, and Inland Tlingit] seem to have recognized that some parts of the territory which they exploited were "owned," while other parts of it were "free." . . . In these groups the localized sib segments provided a social reality with respect to territorial claims, but there was never, so far as I can tell, any individual or "family" ownership of land. . . . I believe that it was always possible in the past for a man to manipulate his kin ties so that in effect he could exploit almost any area which attracted him. [McClellan 1975: 483]

In the absence of individuated rights to particular hunting territories among the Indian people of the southern Yukon, McClellan was unwilling to characterize their relationship to the land as one of "true" ownership (i.e., private property):

A Yukon Indian today may refer to a particular section of Yukon Territory as "my country" (a'keyl, Tutchone; q'imii, Tlingit). I believe that in using these terms the speaker wants to emphasize his sentimental ties to a region. The sentiment arises from the fact that either he or his ancestors once exploited the area and it involves the feeling that he continues to have the right to do so. However, it does not necessarily imply that he "owns" the land. [1975:482-483]

Many First Nation people in the southwest Yukon Territory still feel this way about the land. When they speak about "their land," they are often referring more to their own connections to the land and animals (physical, social, and spiritual) than to a desire to exclude others. Once, addressing the land claim negotiations in Burwash Landing, Lena Johnson, a KFN elder, likened herself to a tree with roots in the ground. She said that she and her people would stay forever in the place they were born and that her parents and grandparents, too, had been born and buried there. She was not opposed, she said, to sharing the land with white people; for a long time, in fact, they had done so without many problems. But then the government started trying to take over, to push KFN people from their lands, and that was not acceptable.

As in other parts of the continent, it may have been the fur trade that initially led First Nation people in the Yukon to think in terms of individuated rights of ownership in land. The fur trade gradually made its way westward, eventually reaching the southwest Yukon by about the middle of the 19th century. It seems quite likely that
the dynamic described by Leacock and others for the rest of Canada held in the Yukon as well: First Nation people initially began to recognize individual claims to furbears themselves and then, because of the relatively sedentary nature of some of these animals, to the territories in which they were found.

It was not until 1950, however, that the state (in this case, the Yukon government) became involved by establishing a system of registered traplines, which granted their owners exclusive rights to trap furbears in officially defined areas. Although First Nation people objected quite strenuously to certain aspects of the newly imposed system (most notably the $10 registration fee), they were generally in favor of trapline registration because it protected them from increasing encroachment by Euro-Canadian trappers (McCandless 1985:147). Indeed, there is evidence that the protection of First Nation people’s trapping rights was one of the principal motivations for the establishment of the trapline system in the first place (McCandless 1985:145). Several First Nation elders with whom I spoke agreed that the establishment of registered traplines had been a positive development; one of them even called trapline registration “the best thing that ever happened” to First Nation trappers in the Yukon.

It seems, then, that the First Nation people of the southwest Yukon, like the Montagnais hunters who hosted Frank Speck, were quick to see the advantages of using the language of property to defend their interests against encroaching Euro-Canadians. In a world where Euro-Canadians have regularly claimed ownership of land for the express purpose of excluding others (including First Nation people) and have had those claims backed up by the authority of the state, it is little wonder that First Nation people quickly learned to make their own claims of this sort. Indeed, they have become quite adept at speaking the language of property. It is true that only a few KFN members feel at home with the intricacies of aboriginal title and Canadian property law, but the same could also be said of Euro-Canadians. Even the oldest KFN elder alive today knows exactly what it means to say that someone “owns” the land (indeed, so did Joe Johnson’s grandmother, or she would not have been so adamantly opposed to the idea). Quite apart from the land claim, some KFN members own fee simple title to land in the area, as do a number of Euro-Canadian residents. Everybody in the community knows what they may and may not do on their own and other people’s private property. In addition, many KFN members are quite knowledgeable about some of the other more arcane forms of property in the area, such as rights to subsurface minerals, government leases and grants of right of way, national parks and protected lands, and so on.

In many ways, the present-day process of land claims can be seen as a natural result of First Nation people’s mastery of the language of property and the culmination of their efforts to turn it to their own advantage. But does all this mean that ideas of private property have replaced older ways of relating to the land? Do KFN people now mean the same thing as Euro-Canadians when they speak of “owning” the land?

Perhaps not surprisingly, it depends on whom one talks to. The range of opinions and experiences among First Nation people is as broad and diverse as it is among Euro-Canadians. Certainly there are some who, because of their education, see First Nation claims to ownership of land in much the same way that Euro-Canadians view them: as claims to exclusive possession and control. Others continue to view this type of claim with distaste, much as Joe Johnson’s grandmother did, especially in relation to the land as a whole and its animal inhabitants (as is the case in land claims). At the same time, however, many of these people have no trouble recognizing, respecting, and even endorsing individuated property rights that are either quite small in scale, such as private ownership of house lots, or limited in scope, such as usufructuary rights in traplines. Rather than attempting to speak definitively about “how Kluane First Nation people think about property,” then I will merely point out that there is a tension (both among and within individuals) in how KFN people think about land and their relation to it. It is a tension between aboriginal beliefs about the proper relationship between people and the land and the need to defend their interests—indeed, simply to function—in today’s Yukon.10 This tension is not new. McClellan observed that with the creation of individual traplines in 1950, some younger trapline owners began trying to assert exclusive rights not only to the furbears in their territories but to large game as well. She points out that “this attitude directly counters all aboriginal ideas about the sharing of food animals” (1975:487).

With the advent of land claims, such tensions have only increased. Many KFN people feel quite conflicted about the land claim—even some of those who have been most involved in negotiating it, like Joe Johnson. Others are completely opposed to the whole process. One of these, Agnes Johnson, fears that land claims will make KFN people “just like white men,” depriving them of their hunting rights and forcing them to spend their days in office buildings. She and a number of others in the community prefer the “uncertainty” of aboriginal title and aboriginal rights to the clarity of a set of treaty rights conceived of and written in a language that cannot accommodate some of their most deeply felt beliefs about the world. They would rather continue to live with the paternalistic dictates of the Indian Act than sign an agreement whose very form and language are incompatible with some of their most cherished beliefs and values. But is such an outcome inevitable? Is every attempt to express First Nation people’s interests in the language of property doomed to failure? Is there no way that the language of property, which in some ways is very flexible indeed, can be made to accommodate the concerns of First Nation people? The

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negotiators of the Yukon Umbrella Final Agreement tried hard to make it do just that.

The Umbrella Final Agreement (UFA) is an “agreement-in-principle” among the Council for Yukon Indians, Canada, and the Yukon that sets up a framework for the negotiation of a specific “Final Agreement” between each Yukon First Nation (such as KFN) and the government. It contains many general provisions that apply to the entire Yukon and identifies the areas in which particular First Nations may negotiate provisions specific to their own needs. The intent was to allow each First Nation to negotiate an agreement appropriate to its own specific needs while simultaneously avoiding the potential administrative nightmare of having 14 completely distinct treaties in the Yukon. The UFA does not simply spell out who owns what land. It is a complex document consisting of 28 chapters dealing not only with land but also with financial compensation, heritage, taxation, renewable and nonrenewable resources, economic development, and more.

Negotiators tried in good faith to forge an agreement that not only would help integrate First Nation people into the Canadian state but would do so in a manner that allows them to retain those values and practices that are so vital to their identities as First Nation people. As part of this effort, negotiators of the agreement included many provisions whose express purpose is to accommodate First Nation people’s values, beliefs, and way of life. For example, Chapter 16 (which deals with fish and wildlife) grants First Nation people hunting rights throughout the territory. It was clear to the negotiators that First Nation people’s land-based way of life would not be protected by simply dividing the territory into settlement lands and Crown lands, to be exclusively owned and used by First Nations and Canada, respectively. As a result, First Nation people will have hunting rights throughout the territory regardless of who “owns” the land on which they hunt (Council for Yukon Indians 1993:158–160). Thus, though First Nation people will not own the vast majority of land in the Yukon, they will retain important rights to that land that, in theory, will allow them to maintain the way of life that is so important to them.

First Nation people’s retention of hunting rights on Crown lands may not at first seem consistent with the European ideal of “private property,” but it is quite consistent with European legal theory on property more generally. Indeed, the concept of “rights” is fundamental to this theory. Property theorists have long agreed that the legal status of ownership confers on owners a set of rights that allow them to act in certain prescribed ways toward things (their property) as well as other people (nonowners), though the exact nature of these rights depends on such factors as the type of object involved, the legal system, the socioeconomic context, and so on. Because these different kinds of rights can be quite distinct from one another, and because they are often easily separable, theorists have found it useful to conceive of property as a “bundle” of different rights, each of which can be owned and exercised by a different owner (see Grey 1980; Hallowell 1955:240).

In this formulation it is easy to see First Nation hunting rights on Crown lands as a form of property right (the right of usufruct), which is fully consistent with the Crown’s ownership of other property rights in the same land (including the right to alienate it, to earn income from it, and so on). This is just one of the ways that the negotiators of the UFA, writing in the language of property, tried to accommodate Yukon First Nation people’s values and way of life. By allowing them to retain partial property rights to the entire territory, the agreement enables them, at least in theory, to maintain the hunting way of life that is the source of so many of their values and beliefs. On first glance, then, it seems that this will allow the people of KFN to have a land claim agreement without becoming “just like white men.” But is this really true? How well do the beliefs, values, and practices that shape First Nation people’s relationship to animals, for example, really translate into the idea of a “right to hunt”? Is the concept of hunting rights an adequate tool for expressing and protecting the special relationship that exists between First Nation people and the animals/land on which they depend?

I have shown elsewhere (Nadasdy 1999) how difficult it is to translate into the language of scientific resource management the beliefs, practices, and values through which First Nation people relate to animals. This difficulty arises in large part from the need to compartmentalize and distill these beliefs and practices so as to include them in the management process. The attempt to translate the realities of First Nation people’s relationship with animals into the language of “hunting rights” entails similar processes of compartmentalization and distillation.

To begin with, the idea that property is a bundle of separable rights leads automatically to a process of compartmentalization (see Rose 1994: ch. 7). The right to hunt is distinguished from rights to other types of use (such as mining, logging, and other types of development); and use rights in general are distinguished from other kinds of rights in land, such as the right to alienate it, the right to derive income from it, and so on. This compartmentalization, useful as it may be from the perspective of legal theory, ignores the fact that some of these different types of rights may be incompatible (see Verdery 1999). The right to hunt on a particular piece of land, for instance, may not be compatible with the right to log or mine it. And if hunting rights to a particular piece of Crown land do not prevent the government from selling it to a third party or leasing it for development, then those rights are in reality subject to the whims of government, despite their “entrenchment” in the Canadian Constitution. By separating the right to hunt on Crown lands from the right to otherwise use, alienate, or derive income from them, the Yukon agreement guarantees First Nation people the right to hunt only so long as the condition of the land and the state of development in the area allow. It does not give
them the right to ensure that such conditions continue to exist (see Usher 1986:86–89).

In addition, use of the modifier hunting in the phrase “hunting rights” further limits First Nation people’s rights regarding the land and animals to a very specific and limited social context based on a European concept of hunting. While the right to hunt does include the right to engage in activities related to hunting per se, such as fishing and possessing and transporting animal parts and products, it does not include, or only partially includes, many other social practices that are integrally related to First Nation hunting in the area. For example, the agreement explicitly limits the First Nation right to hunt to “the right to harvest for Subsistence.” While the agreement does give First Nation people the right to “give, trade, barter, or sell” edible parts of fish and wildlife, it only allows them to do so with one another and with First Nation people outside the Yukon who are “beneficiaries of adjacent Transboundary Agreements.” Though it explicitly allows the sale and trade of meat and fish in order to “maintain traditional sharing among Yukon Indian People,” it does not give Yukon First Nation people the right to engage in these kinds of activities with non-First Nation people, including those who may have married into or otherwise become a part of the community and who actively participate in the sharing of meat within the community (Council for Yukon Indians 1993:158).

Significantly, the treaty right to hunt does not include the right to “give, trade, barter, or sell” nonedible parts of fish and wildlife, including furs and skins (Council for Yukon Indians 1993:159). Although Yukon First Nation people will retain the right to trap furbearers for their own use, to the extent that they wish to sell or trade the furs they obtain through trapping, they will be subject to the laws of general application. Indeed, under the agreement, the territorial government will continue to have the power to regulate First Nation trapping itself (as an activity and not merely the sale of pelts). This is all despite the fact that nonedible animal parts, including skins, fur, and sinew, had long been important elements in aboriginal trade throughout the area (see McClellan 1950, 1975).

We have seen that the right to hunt, as just one from a bundle of different possible rights in land, is by itself an inadequate legal tool with which to protect First Nation people’s unique relationship with animals and the land. We have also seen that to conceive of this relationship in terms of an aboriginal right to “hunt” effectively limits the ways in which First Nation people may relate to the land and, further, that these limits have more to do with European notions of hunting than with the First Nation beliefs and practices that hunting rights are supposed to safeguard in the first place. There is, however, another even more fundamental problem with translating First Nation people’s relationship with land and animals into the language of property (i.e., hunting rights). This is the use of the concept of “rights.” This concept, which lies at the heart of European legal and political thought and practice, is—like all other concepts—a cultural construction. Its application across cultures is therefore extremely problematic.

We have already seen how the notion of rights is intimately bound up with the European legal concept of property (e.g., the “bundle of rights”). But what must be distilled out of the complex relationship that First Nation people have with animals and the land in order to speak about it in terms of a “right” to hunt? An aboriginal right to hunt means that aboriginal people, simply by virtue of being aboriginal, have a right to kill animals. However useful this notion might be to aboriginal people in their struggle with the government, it is not at all consistent with many of their most cherished beliefs and values regarding their relationship to animals. For example, KFN people see their relationship with animals as social in nature, characterized by relations of mutual respect and reciprocity. In this formulation, one does not possess a “right” to kill animals merely because one is born to First Nation parents. Rather, animals are a gift. They give themselves to hunters when and if the hunters prove themselves worthy, and with this gift come heavy obligations and responsibilities. If hunters do not live up to these responsibilities, then the animals will stop giving themselves to the hunters. The notion of “rights” has no place in this relationship.

One might argue that we can see hunters as “earning” the right to kill animals through the fulfillment of their responsibilities and obligations, but I believe that this is an inappropriate way of thinking about it. Animals are a gift, and they can justifiably be withheld from a hunter for even so much as an improper word or thought. The notion of rights is inappropriate here because along with the idea of “rights” comes a sense of entitlement, an expectation that those rights will be fulfilled. If they are not, then the holder of those rights is being denied his or her due. Respectful hunters trying to understand their lack of success, however, will search within themselves for a lapse in character, rather than looking outward for someone or something that is depriving them of their rights. Indeed, the expectation that would accompany someone’s “right to kill” an animal is contrary to the proper attitude of respect that a hunter must have if he or she is to be successful in the hunt. Thus, there is a tension between the language of rights and a set of beliefs and values that many KFN people still feel constitutes the “proper” way to relate to animals. This tension manifests itself powerfully in the lives of KFN people today, as will become apparent below.

These days, there are some Kluane people—many of them younger—who do not always abide by locally accepted beliefs and practices about how to relate properly to animals. As a result, they sometimes hunt in ways that other community members see as morally objectionable. The language of hunting rights, however, provides these hunters with an alternative moral framework that allows them to regard their own actions as perfectly legitimate—
even in the face of criticism from community members. On several occasions, I heard KFN members defend their own or a family member's questionable (from the point of view of many in the community) hunting practices by claiming simply that they "had the right" to do what they had done (as part of their aboriginal right to hunt). Many community members, however, do not accept this kind of rights-based argument as legitimate. This leads to tension within the community, as some people seek to substitute a morality based on hunting rights for one based on relations of mutual respect and reciprocity between humans and animals. The following story about an event that occurred some years before my arrival in Burwash Landing illustrates this dynamic.

Some years ago, community members publicly, though indirectly, chastised a young hunter for killing an excessive number of Dall ewes. As I have argued elsewhere (Nadasdy in press), even in the absence of formal laws and regulations, KFN people can and do regulate one another's behavior, primarily through joking and indirect criticism. These can be extremely effective means for getting people to conform to community ideals, and this particular case was no exception; the young hunter did apparently change his ways as a result. At the time, however, he had attempted to defend his actions, and he had done so by referring to his aboriginal right to hunt. By arguing "I've got rights," he was doing no more than repeating an argument that many in the room, including some of those most critical of his actions, had themselves made to government officials in defense of KFN's right, as a people, to hunt. Rather than receiving his arguments sympathetically, however, the elders had "really let him have it." They had asked him if he planned on feeding his rights to his grandchildren and had wondered aloud among themselves what rights taste like. The young hunter had said nothing but had slipped silently out of the room as soon as the elders finished talking about it. According to the person who told me the story: "We never had a problem with him again."

Even so, it is clear that the language of property (here in the guise of hunting rights) allows First Nation people to think of and act toward animals in new ways. Indeed, as distasteful as it is to some First Nation people, the idea that they "own," in a European legal sense, the land and the animals upon it is becoming quite an acceptable—even unremarkable—attitude among many KFN people, especially younger ones. This is at least partially a result of their need constantly to claim this kind of ownership at the land claims table.

CONCLUSION

My point in this article is not to argue that Kluane people are adopting Euro-Canadian notions of property. Though change is clearly occurring, it is not a simple matter of "transition" from aboriginal to Euro-American forms. Nor would I maintain that Kluane people are using their "abo-

original" ideas about the land and animals to "resist" the imposition of Euro-American beliefs and practices. Rather, the discourses and practices associated with European notions of "property" now coexist in Kluane society (however uneasily) alongside discourse and practices whose roots lie in a very different set of cultural assumptions. Kluane people are—to varying degrees—conversant in the languages of both conceptual systems. As I show in the above discussion of hunting rights, KFN people can and do draw on elements from either conceptual/discursive system, depending on their particular agendas and the larger social context. The introduction of Euro-American notions of property (and the social relations and practices they engender) has provided Kluane people with an alternative moral and conceptual framework in which to evaluate one another's values and behaviors—thus opening up a new cultural space for the renegotiation of how people should think of and act toward the land and animals. Whatever the result of this process at the local level, it is clear that the way in which First Nation people express their claims to land has important political consequences at the level of their relations with the state.

Yukon First Nation people (and many Euro-Canadians as well) see the Yukon land claims agreement ideally as a mechanism for integrating First Nation communities more fully (and fairly) into the Canadian state while—at the same time—allowing them to preserve their own distinctive identities and ways of life (see Yukon Native Brotherhood 1973). In this article I have tried to show that, regardless of the actual terms of a land claim agreement, the very idea of such an agreement, conceived and expressed as it is in the language of property, would have been inconceivable (or at least utterly objectionable) to the ancestors of Kluane people. Just to engage in land claim negotiations, KFN people have had to learn a very different way of thinking about land and animals, a way of thinking that to this day many Kluane people continue to regard with disapproval. Despite this, many of them have put aside their discomfort with the idea of "owning" land and animals, electing to participate in the land claim process because they see it as the only realistic chance they have to preserve their way of life against increasing encroachment by Euro-Canadians. To do so, however, they have been forced to express their interests and way of life in the language of property, a process plagued by problems of cultural translation and ridden with politics. First Nation people's strategy of expressing their claims in the language of property—though it might indeed be the only realistic way for them to protect their own interests—helps obscure the fact that there are other ways to conceive of the relationship between humans and land/animals. By agreeing to play the land claims game on terms set by the government, First Nation people and their allies help assure that property remains a hegemonic discourse in the arena of aboriginal-state relations.
Nadasdy • “Property” and Aboriginal Land Claims

NOTES

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1. For those not familiar with the Canadian context, First Nation is the accepted term for referring to aboriginal people and their governments.

2. The Canadian Supreme Court has been somewhat inconsistent in its identification of the ultimate source of aboriginal title (see McNeil 1997b).

3. At present the only politically acceptable way to extinguish existing aboriginal rights and title is through land claim negotiations. “Extinguishment” has been a sticking point in all modern Canadian land claim negotiations. Initially, Canada insisted on the total extinguishment of aboriginal rights and title, so that the difficult and slippery terms would never again rear their heads once the agreements had been signed. Understandably, First Nation people were reluctant to sign away their as-yet-undefined rights. Recently, however, Canada has begun to soften its position on extinguishment. This enabled the parties in the Yukon to sign an agreement that does not explicitly extinguish aboriginal title on settlement lands (see Council for Yukon Indians 1993:15–17, 43; McCormick 1997:67–68).

4. Of course, Morgan was not the originator of this idea. Indeed, it can be traced back at least as far as Hugo Grotius, writing in 1625. For a good overview of 17th- and 18th-century European theories on property, see Williams 1986:chs. 7–8.

5. Once again, Morgan and other 19th-century evolutionists drew on older theorists, among whom Locke is probably the best known, for this “law theory” of property.

6. Interestingly, liberal and Marxist scholars alike have long been aware of the close relationship between European/capitalist conceptions of “property” and a particular construction of “personhood” (see, e.g., Macpherson 1962; Whitehead 1984:179–180).

7. Kent McNeil (1997b:143), however, has argued that there is legal precedent—even within English common law—for hunters to gain fee simple title to land (through adverse possession) simply by virtue of their hunting upon it.

8. Scholars from an array of different disciplines have explored the idea of “cultural translation” and the theoretical difficulties associated with it (e.g., Asad 1986; Kuhn 1962; Wilson 1970). Several anthropologists have focused on the particular problems of translation associated with the practice of universalizing European concepts and using them cross-culturally. I have already discussed Needham’s objections to universalizing kinship; see also, among others, Clifford (1988) on “art” and Tambiah (1990) on “magic,” “science,” and “religion.”

9. Yukon First Nation people commonly use a tree metaphor to describe their relationship to the land (e.g., Cruikshank 1990:163).

10. By using the term aboriginal beliefs, I do not mean to imply that specific beliefs and practices regarding the land and animals have not changed since precontact times (as indeed they must have before contact as well). I use it simply to refer to a view of human–land relations (to which many KFN people continue to subscribe—at least at certain times, in certain contexts) that has its roots in aboriginal society and remains difficult to reconcile with modern Canadian legal views on land.

11. For a more in-depth discussion of human–animal relations in the Kluae area, see Nadasdy in press: ch. 2. Similar sets of human–animal relations have been described across the Arctic and Subarctic (see, e.g., Brightman 1993; Hallowell 1960; Nelson 1983; Tanner 1979).

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