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Abstract

Property law structures the way we make decisions about how we live together and with the world around us. In doing so, it shapes, but is also shaped by, our relationships with the places we inhabit and encounter. Traditionally, non-owners are defined by their distance and exclusion from the primary legal relationship and their lack of enforceable interests. Yet, land use conflicts continue to arise because people routinely assert relationships with land and resources that they are not formally recognised as owning but with which they are deeply entangled. This chapter touches briefly on three examples: the relations of Indigenous Peoples with fee simple lands within Canada; Māori ownership of freshwater in Aotearoa New Zealand; and claims to public space made by unhoused persons. Though these people–place relations are shaped by their legal definition as non-owner relations, purportedly severed and obscured for legal decision-making, they continue to shape formal legal property relations. As such, they deserve recognition as more than peripheral to property law. This chapter traces the assertion of these ‘more-than-ownership’ relations as part of the necessary work of rebuilding a system of property that sustains us as relational beings embedded in the complex materiality of places.

Keywords: Property Law; Non-ownership; Indigenous law; Aboriginal title; Homelessness

Property law structures the way we make decisions about how we live together and with the world around us. In doing so, it shapes, but is also shaped by, our relationships with the places we inhabit and encounter. In particular, the ‘ownership model’ of property (Blomley 2004; Singer 2001) plays a key role in facilitating both exclusion and extractive development by upholding both a dualistic and a hierarchical view of nature–culture relations (Van Wagner 2017). This abstract and dephysicalised understanding of property detaches and severs people (the owners) from place (the owned). By objectifying people–place relations, the ownership model privileges ‘productive’ land use and renders other relations severable or irrelevant, thus failing to account for how places are embedded in complex networks of social and ecological connection and relation.

Through property law, we recognise forms of control over, and use rights to, land through ownership and its derivatives. These rights are held by the owner or those to whom they transfer portions of their ‘bundle’ of rights. Ownership is classically understood to be ‘the greatest possible interest in a thing which a mature system of law recognizes’ (Honoré 1961, 107). We have a much more difficult time recognising relations with the land asserted by third parties, particularly those premised on interdependence, reciprocity or responsibility. Indeed, the dominance of the ownership model has made it difficult to even see other ways of regulating relations with land and resources as property (Rose 1998, 141). These ‘non-owners’,

who neither own nor control any part of the bundle, are presumed to be peripheral to the central relations of ownership. Indeed, these relations are often understood to conflict with and possibly threaten the core of property, whether this is described as the right to exclude or the right to set the agenda (Katz 2008; Penner 1995). Yet, while property may be 'owned', it is always already and continually becoming a place embedded in social and ecological relations (Massey 2005). How we live with the places around us is central to facing the challenges of overlapping environmental and social injustice. Bringing these expanded property relations to the fore not only de-centres ownership in property relations, it calls into question the subject-object dichotomy of the owner and the owned that makes the subordination of some rights and interests to others not only possible but presumptive. By unsettling the 'normative standing' of those outside the ownership relationship (Dorfman 2010, 17), these relations also provide glimpses of how we might transform land use law to build relations of humility, reciprocity and respect with each other and the 'more-than-human' world.

It's all in the name: producing non-owners

In the simplest sense, the term 'non-owner' refers to anyone who does not own a particular object of property. Traditionally, non-owners are defined by their distance and exclusion from the primary legal relationship and their lack of enforceable interests. While they do have duties, disabilities and liabilities vis-à-vis the owner, they do not have rights (Arnold 2013, 40). Non-owners may have relations *about* property, but these are defined and constrained by the rights of the owner and corresponding duties to uphold owner rights even where doing so produces 'dependence and vulnerability' (Blomley 2020, 44). Further, these are relations with the *owner* not the *owned* – the land, the waters, the other beings of a place. Indeed, the more-than-humans that constitute the owned place have no status in property law except as being part and parcel of the owned place, and thus have no recognised legal relations at all.

Central to relations between (human) owners and non-owners in the ownership model is exclusivity. In the classic ownership model of property, the non-owners are those who owe the 'duty of abstention' to the owner who holds the right to prevent them from entering without consent (Wyman 2017). This abstention is material – non-owners have no legal right to enter land owned by someone else. However, it is also conceptual. Non-owners have no right to determine what happens on the land, or how, or when (Katz 2011). While they may at times make decisions that impact the land, these are generally associated with the exercise of rights derivative of the owner's rights (for example, an easement) or even acts of possession; they do not have decision-making authority. Their actions can neither interfere nor conflict with the owner's agenda for their property. This is particularly true with respect to non-ownership relations that are not derivative of the owner's rights or anchored in the non-owner's own property ownership (such as duties owed between neighbours). Such relations with owned land by definition challenge the severability, alienability and ultimately exclusivity of ownership. If, as essentialist property theory contends, the function of property law is to 'preserve' this agenda-setting position of the owner and to ensure that all non-owners 'fall in line with the owners agenda', such relations are by definition excluded from legal recognition (Katz 2008, 315). Indeed, property law grounds the mobilisation of the state's coercive powers to maintain

these intersecting forms of exclusion that uphold the ‘relative standing’ of the owner (Blomley 2020, 43).

Yet, land use conflicts continue to arise because people routinely assert relationships with land and resources that they are not formally recognised as owning but with which they are deeply entangled (Blomley 2020; Van Wagner 2017). This chapter touches briefly on three examples: the relations of Indigenous Peoples with fee simple lands within Canada; Māori ownership of freshwater in Aotearoa New Zealand; and claims to public space made by unhoused persons. Though these people–place relations are shaped by their legal definition as non-owner relations, purportedly severed and obscured for legal decision-making, they continue to shape formal legal property relations. As such, they deserve recognition as more than peripheral to property law. Here, I reject the negative and residual category of the non-owner and adopt the term ‘more-than-ownership’ to describe a range of relations to place that fall outside of the boundaries of ownership (Van Wagner 2017). Rather, more-than-ownership emphasises the complexity and unboundedness of places formally owned by others but deeply embedded in socio-material relations, human and more-than-human. Rejecting the outsider status of this wider set of relations also exposes how the privileges and exclusivity of the owner are ‘held up’ (Keenan 2010) by the ‘organized precarity’ (Blomley 2020) of others. By bringing these wider relations into view, more-than-owners disrupt the orderly and productive management of place through property law, and thus open space for the relational transformation of property relations *with* place. More-than-ownership is not necessarily intended to privilege such relations in disputes about land, though there are certainly situations in which doing so may be appropriate for a range of legal, social and ethical reasons. The examples of Indigenous more-than-ownership discussed below point to the need for jurisdictional transformations that would fundamentally reimagine the nature of the colonial state. Rather, it is intended to account for the wider range of property relations than the traditional ownership model recognises. The claims to public space and belonging on their own terms enacted through encampments powerfully de-centre ownership in our collective negotiation of how we live together and care for each other.

Put simply, if we are willing to take seriously our interconnectedness with both each other and the living world, our decision-making structures must recognise that there is *more than* ownership. Accounting for this wider web of relations moves beyond dualistic debates between ‘anthropocentric’ and ‘ecocentric’ perspectives, both of which are grounded in the assumption that humans can and do exist outside of ‘nature’ (McShane 2007). Instead, as the examples below illustrate, they push us to (re)build property systems not only to achieve more just *human* relations, but to reintegrate these within the life-sustaining ecological systems of particular places.

The original owners: the ‘non-ownership’ of Indigenous title holders

Indigenous title holders have relations with territory and hold authority through Indigenous legal orders and systems of governance. Indeed, the very idea of property in land in settler colonial societies rests on the question of how those living with and governing territory, whose

relations shaped its places, could be transformed into non-owners by a later unilateral claim by the Crown or, through it, private fee simple owners. The production of Indigenous territory as property in land requires a specific set of legal moves to transform Indigenous relations with territory into a proprietary object capable of dispossession (Nichols 2020, 30). Distinct Indigenous relations with land, grounded in reciprocal relations of responsibility with the more-than-human world, are simultaneously recast as proprietary (in the colonial sense of control and alienation) – but only to facilitate their transfer into the unilateral control of the state title, enabling both exclusion and alienation. As Nichols describes, through colonial doctrines recognising Aboriginal or native title, ‘Indigenous peoples are figured as “original owners of the land” but only *retroactively*, that is refracted backward through the process itself’ (Nichols 2020, 30).

This (re)production of land as an abstract alienable commodity is made possible through the separation of people, and place-based legal orders, from places (Graham 2011). The severability at the heart of colonial property relations thus enables the theft of land in part by producing Indigenous ownership as non-ownership, peripheral to the primary ownership relationship, be it so-called Crown or private land. While the common law may recognise specific rights to harvest resources attached to Indigenous (non)ownership, or in some cases a form of title to land (see, for example, *Tsilhqot’in Nation v British Columbia* 2014), governing authority continues to have very limited formal recognition. Indigenous claims to ownership and jurisdiction are formally filtered through settler-colonial state law to produce ‘partial recognition and selective affirmation’, which obscure or even attempt to extinguish the jurisdictional authority to control land and resources grounded in Indigenous legal orders (Nichols 2020, 32). Yet, disputes about decision-making power and responsibility in relation to land and resources continue to emerge in nations such as Canada, the United States, Australia and New Zealand. As the case studies below demonstrate, this relationship between settler colonial property law and Indigenous relations with territory remains highly unsettled. The responsibility-based jurisdiction over land that Indigenous nations continue to assert demands that settler legal systems confront existing structures of property relations to fully account for their rich and reciprocal people–place relations.

Consultation as non-ownership: private land and Indigenous jurisdiction in Canadian courts

While the relationship between privately owned lands and Indigenous interests is unsettled in Canadian law, Canadian courts often avoid uncomfortable questions by presuming that fee simple interests largely, or entirely, extinguish the place-based legal orders and relations that have for millennia regulated the territories now making up Canada (Borrows 2015; Christie 2009). Prior Indigenous title holders are deemed non-owners, even trespassers, and the later fee simple owner is affirmed as the primary decision-maker without interrogating the lawfulness of the underlying property relations. The paradoxical result is that the only constitutionally protected property rights in Canada – those of Indigenous people recognised and affirmed by section 35 of the Canadian Constitution – are presumptively subordinate to subsequent and non-constitutional fee simple ownership rights. Indeed, even where such rights are recognised in particular places, Canadian courts have provided that they can ‘justifiably’

infringe on them for a wide range of settler socio-economic goals, including settlement and resource extraction with the benefits flowing to private third parties (*R v Sparrow* 1990; *Delgamuukw v British Columbia* 1997). Thus, while owners must operate within the boundaries of state land use frameworks, private owners are given both formal and informal jurisdiction over decisions with profound implications for the social and ecological relations of Indigenous territories.

At the heart of this is the failure to treat Indigenous law as law, and therefore Indigenous interests in land as cognisable. This is the foundation of the unquestioned acceptance of Crown sovereignty and underlying title by Canadian courts (McNeil 2018). As the Supreme Court pronounced early in its engagement with the constitutional protection of Indigenous rights, ‘there was from the outset never any doubt that sovereignty and legislative power, and indeed underlying title, to such lands vested in the Crown’ (*R v Sparrow* 1990 at 1103). This fiction of underlying title not only vests ‘extraordinary proprietary power in the Crown’ (Christie 2009), it lays the foundation for a narrow view of both the relationship between Indigenous parties and fee simple lands and Crown obligations in the context of private property (Van Wagner 2021a). With underlying title, the Crown was free to – and did – grant lands to third parties as it wished, lawfully severing those lands from the prior existing Indigenous relations and producing new owners and non-owners in Canadian law.

Much of the case law on Indigenous relations with private land is in the context of resource extraction and the Crown’s constitutional duty to consult and accommodate Indigenous peoples’ interests. The duty applies prospectively, requiring the Crown to undertake consultation prior to making decisions or allowing impactful activities on Indigenous territories (*Haida Nation v British Columbia (Minister of Forests)* 2004). Both the Crown and fee simple title holders have argued that the duty simply does not apply on fee simple lands (*Hupacasath First Nation v British Columbia* 2005 at para 165; *Saugeen First Nation v Ontario (MNR)* 2017 at paras 30, 63; *Chartrand v British Columbia (Forests, Lands and Natural Resource Operations)* 2015). This position was accepted without authority or detailed reasons by the Alberta Court of Appeal in *Paul First Nation v Parkland (County)* (2006). Other courts and tribunals have not fully adopted this position (*Chartrand v British Columbia (Forests, Lands and Natural Resource Operations)* 2015; *Timberwest v Deputy Administrator* 2003 at 40; *Hupacasath First Nation v British Columbia* 2005; *Saugeen First Nation v Ontario (MNR)* 2017). However, the application of the duty in practice has both affirmed Crown sovereignty and upheld the primacy of private ownership (Van Wagner 2021a, 2021b). While Indigenous relations with place may provide context for the scope of a procedural requirement, they do not ground enforceable authority or cognisable interests in land (Collins and Sossin 2019, 335). Indigenous governing authority is placed outside the frame of legal relevance both because Indigenous parties are legally deemed to be non-owners, with at best ‘highly attenuated’ rights (*Hupacasath First Nation v British Columbia* 2005), and because Crown policy deems fee simple lands unavailable to settle historic claims. This narrow view of the relationship between Indigenous interests and private property is driven, in part, by concerns about ‘innocent’ third party interests of those now in possession of fee simple lands (*Chippewas of Sarnia Band v Canada (Attorney General)* 2000). Without

interrogation into their legal basis, the mere existence of fee simple property relations forecloses the possibility of meaningfully recognising Indigenous relations with place.

Yet, Indigenous nations continue to assert relationships and governing authority in relation to private land in a range of contexts, particularly resource extraction (Van Wagner 2021a). Indeed, at the time of writing, there were five ongoing cases in which the relationship between Aboriginal title and fee simple was at issue in British Columbia alone (*Giesbrecht v British Columbia (Attorney General)* 2020 at para 31). These assertions remind us that where land use decisions implicate Indigenous relations with territory, Indigenous interests cannot be presumed to be extinguished by fee simple title – even where this realisation raises uncomfortable questions about settler property interests (Borrows 2015). Indeed, they not only expose foundational contradictions in Canadian property law but also open up space to transform our understanding of ownership to account for a much wider set of relations with place.

Indigenous title, grounded in Indigenous law, is not equivalent to fee simple title. Indeed, even the construct of Aboriginal title in Canadian law recognises that Indigenous relations with land are distinct, in part because they are collective in nature (*Delgamuukw v British Columbia* 1997). This collectively held title necessarily has an inherent governance element; the fee simple bundle does not. Indigenous claims about private property therefore require us to confront what happens to this collective jurisdiction when colonial law purports to have transformed Indigenous title into non-ownership. Despite the agenda-setting authority of the owner, this governing authority cannot be subsumed by individual fee simple ownership. Even if we assume that the jurisdictional element of Indigenous title could have been presumptively transferred to the Crown through the assertion of underlying title, our consideration of the relationship between private landowners and Indigenous title holders is not limited to whether and in what circumstances it would be appropriate to unsettle the formal ownership of the land and resources. Rather, it must include consideration of whether and how jurisdictional authority vis-à-vis privately owned property, now purportedly exercised by the Crown, could be restored to Indigenous title holders. This would recognise Indigenous relations with land as more-than-ownership interests rather than peripheral non-ownership. A broad range of environmental and land use authority could be restored for Indigenous nations to uphold the relationships with, and responsibilities to, the lands, waters and other beings of a particular, and much less private, place.

This may raise a number of logistical complexities, such as how non-Indigenous interest holders in a particular territory will be represented in decision-making processes. But these are not insurmountable. All systems of governance and property relations change and develop to account for an array of interests – both internal and external. Indigenous systems of law are no different and indeed have a long history of interfacing with colonial legal interests. Nor do the potential challenges justify foreclosing the possibility of reconciling fee simple ownership interests with the more-than-owner jurisdiction of Indigenous nations. The current system of property relations has demonstrably contributed to crises of profound inequality and ecological breakdown. Indeed, directly grappling with the complexity of pluralistic property relations

presents a powerful opportunity to rebuild relations with the land and each other in ways that respond to urgent calls for social, economic and ecological transformation.

Māori more-than-owner relations with freshwater: from non-ownership to jurisdiction

Recognising more-than-owner relations exposes the challenges of reconciling legal systems grounded in different worldviews. However, it simultaneously opens up the possibility for the novel solutions and legal creativity we desperately require. The legal relations between Māori and freshwater have a long legal history inside and outside the courts in Aotearoa New Zealand. Contemporary Māori claims to freshwater are embedded in an enduring assertion of Māori law and jurisdiction in the face of colonial dispossession and the imposition of colonial law. Crown–Māori relations with respect to freshwater are also grounded in the 1840 Treaty of Waitangi, the founding document of Aotearoa New Zealand. The Māori text of the Treaty expressly protects both *tino rangatiratanga* (self-determination) and *taonga* (treasures). The English text guarantees ‘full exclusive and undisturbed possession’ of property. Thus, on its face, the Treaty appears to recognise the status of Māori as owners of their territories and resources. Yet, the reality of Crown–Māori has been quite different, with ownership and jurisdiction consistently undermined through legal and political means.

New Zealand courts and the Waitangi Tribunal have recognised some proprietary rights in relation to water beds and bodies (summarised in Waitangi Tribunal 2012). Yet the Crown consistently took the position that Māori did not have ownership rights because water was incapable of ownership in the common law until it was captured and contained. The complex genealogical, metaphysical and responsibility-based relations asserted by *iwi* (tribe) in relation to particular bodies of water may be factors to be taken into account in regulatory decision-making (see the *Resource Management Act 1991* (NZ) Part II) or the basis for novel models of shared decision making (see, for example, section 14 of the *Te Awa Tupua (Whanganui River Claims Settlement Act) 2017* (NZ), which recognises the Whanganui River as a legal person). But, as non-ownership rights, these procedural rights do not confer proprietary rights or governing authority in relation to freshwater. Despite the Crown’s position that freshwater is incapable of being owned, in practice the Crown has not only acted like the owner. Instead, the Crown has created and granted comprehensive rights to private third parties to use and develop freshwater resources. Therefore, while everyone is formally a non-owner in the Crown’s framing, in reality it was Māori relations with freshwater that were subordinated to the exercise of ownership-like rights by others, and for the benefit of others.

Freshwater ownership came into the spotlight when the New Zealand Māori Council launched a Waitangi Tribunal claim about a plan to partially privatise state-owned hydroelectric resources. The Council alleged that the plan ignored ongoing claims by Māori to the ownership over water resources and therefore breached the Crown’s treaty obligation to protect Māori *taonga* (Waitangi Tribunal 2012, 32). A two-stage Waitangi Tribunal inquiry into Māori relations with freshwater examined the claims in detail. Stage 1 examined the proprietary claims and found that Māori do have treaty-protected ownership interests over water resources in New Zealand. Stage 2 found that the water allocation and management regime in the country did not meet

the Crown's treaty obligation to protect resources owned by the Māori (Waitangi Tribunal 2019). The Tribunal findings are now informing both legislative reform processes and legal actions by multiple iwi to establish *tinu rangatiratanga* over freshwater resources in their traditional territory (Ellis 2021). They are also informing the unfolding of broader social and legal reimagining of people–place relations.

The Māori Council framed the freshwater claim in the language of ownership to align with the guarantee of property in the English version of the Treaty (Waitangi Tribunal 2012). While on one hand the ownership framing is conceptually limited by its grounding in common law property relations, and the doctrine of Aboriginal title, it served to strategically recentre Māori relations with freshwater. By foregrounding the link between political authority and proprietary rights at the heart of *tinu rangatiratanga*, it profoundly challenged the idea of ownership itself (Durie 2017). There is no Māori word for the English concept of ownership, and indeed some of the witnesses spoke to its limitations as a descriptor of their relationship with land and water territory (Waitangi Tribunal 2012, 62). The Crown argued that this conceptual mismatch undermined the proprietary nature of the claim, characterising Māori relations with freshwater as better aligned with *kaitiakitanga*, often translated as custodianship or stewardship. This, the Crown argued, upheld the responsibilities to *taonga*, but did not include the proprietary interests claimed.

Characterising Māori claims as 'environmental' concerns is a strategy used by the Crown to place them outside the scope of particular decisions (Bargh and Van Wagner 2019). Māori interests flowing from *kaitiakitanga* are thus characterised as peripheral to the Crown's jurisdiction over 'public' resources and their regulation in the 'public interest'. This is consistent with the adoption of a 'right-to-culture model' of Māori rights, as opposed to and preferred by the Crown to property and 'political authority' models (Erueti 2016, 60). Where the Crown claims to support *tinu rangatiratanga*, it does so in opposition to claims framed through proprietary rights, beneficial interests and governing authority. Rooted in non-ownership rights, Māori jurisdiction is equated with co-management frameworks or representation in environmental decision making (Durie 2017).

In the freshwater inquiry, the Tribunal concluded that the claimants did hold ownership interests in freshwater at the time of the Treaty. But the Tribunal also went further. Rather than subsume the Māori relationship with freshwater within common law ownership, or adopt the Crown's narrower cultural rights characterisation, the Tribunal characterised Māori interests as 'more than ownership'. The claimants did demonstrate they had 'full-blown' ownership in 1840 at the time of the Treaty, while 'English-style ownership' fails to capture the much broader set of relations and obligations between Māori and their *taonga* (Waitangi Tribunal 2012, 76). Thus, while relations with freshwater *include* interests akin to ownership, *te tinu rangitiratanga* 'exists beyond mere ownership, use, or exclusive possession; it concerns personal and tribal identity, Maori authority and control, and the right to continuous access [to *taonga*], subject to Maori cultural preferences' (Waitangi Tribunal 2012, 76, citing the *He Maunga Rongo: Report on Central North Island Claims*). Freshwater is therefore not simply deemed to be capable of ownership in the common law sense. Rather, freshwater bodies are brought into relation with

the human communities that have developed place-based systems embedded in relations of care, responsibility and reciprocity. Thus, rights to use and control freshwater are not simply indicia of power over it. Rather, they are tools to fulfil duties and uphold relationships for the benefit of the living world, including our own embedded selves. What the Tribunal's conclusion means in practice is still being determined and there is much to be cautious about with respect to the Crown's response. Nonetheless, it is clear that Māori relations with freshwater have unsettled the dominant narrative about what property is, and what ownership means, in potentially transformative ways (Durie 2017; E. J. Macpherson 2019).

The commoners: homeless encampments, public property, and the right not to be excluded

While assertions of Indigenous more-than-owner relations fundamentally challenge the role of the settler colonial state to structure property relations and govern relations with place, conflicts about the use of public space present a different form of disruption to the dominant ownership model of property by de-centring ownership from decision-making about how we live together in community. Nowhere is this more clearly illustrated than in the context of tent encampments established by unhoused persons in public spaces. These material manifestations of claims to the human right to housing, to basic dignity and security, are inherently disruptive to the property relations grounded on the primacy of the right to exclude (Hamill 2018). While governments often assert their private ownership of public space in response to encampments, the parks, ravines and other public lands on which they are established are the shared spaces of contemporary communities. Encampment residents bring the more-than-ownership relations of these spaces into view by centring the *public* dimension of these spaces and contesting both presumptions about the role of exclusivity in state-ownership of property and the primacy of property-owning neighbours in the governance of public space.

Canadian cities have long been grappling with the expansion of homeless encampments on public lands (see early cases, such as *Vancouver Parks Board v Mickelson* 2003, and a line of more recent cases starting with *Victoria (City) v Adams* 2009). Despite commitments at all levels of government to the right to housing (*National Housing Strategy Act* 2019; Toronto 2019), more than 235,000 people experience homelessness in Canada every year (Strobel et al. 2021). Indigenous Peoples are disproportionately unhoused in Canada due to the overlapping and ongoing social, cultural and economic effects of colonialism. They are also significantly less likely to use existing shelter systems. Indeed, in Toronto, Canada's largest city, more than one-third of encampment residents are Indigenous (Toronto 2018). For Indigenous peoples, being unhoused compounds the intergenerational impact of land dispossession, loss of language, and breakdown of kinship relations (Thistle 2017). In this context, encampments should be understood as more than just collections of transient or temporary shelters. Without romanticising the hardships and profound deprivation associated with being unhoused, for many residents they are also assertions of relations with place and community in the face of the state's failure to uphold Treaty promises and Indigenous rights, as well as basic human rights to housing, dignity and equality (Young, Abbott and Goebel 2017; Thistle 2017; Speer 2018). These relations with place are about physical survival in the face of state-created homelessness, and they are simultaneously enactments of alternative social and material

relations of mutual aid and belonging in the face of experiences of profound social exclusion and discrimination (Young, Abbott and Goebel 2017). As such, while the relations built by encampment residents necessarily respond to dominant structures of property relations, they are not defined by the presumptive boundaries of the ownership model. Indeed, the challenge they pose to existing hierarchies of property rights is illustrated by the state's resort to trespass as the bluntest available legal tool to re-assert powers of exclusion.

Government responses to encampments not only characterise the property relations of encampment residents as peripheral to the underlying ownership of public space; they actively construct them as hostile to the proper role and use of public property. Legal authority for encampment evictions (or 'clearings', as they are euphemistically referred to) in the name of order and public safety has been further entrenched by the dual processes of financialisation and gentrification reshaping both housing and public space in Canadian cities (Hermer et al. 2020; Amster 2003; Blomley 2013; Herring 2019). The public nature of places such as parks is obscured by the assertion of governments' private ownership and increasingly their readiness to protect the entitlement of property-owning neighbours to 'their' local amenities. By-laws prohibiting overnight camping and the erection of shelters are used to ground trespass notices posted on tents and trees and then enforced by police and private security. By emphasising the powers flowing from ownership, including all the rights of control and exclusion associated with private property (Gordon and Byron 2021; Skolnik 2016), governments actively obscure the human rights duties and obligations they owe to encampment residents occupying public space. Through property law, unhoused persons are transformed from fellow rights-holding residents to trespassers. Their non-ownership status is compounded by the characterisation of their presence as transient and risky to both themselves and housed neighbours. Not understood as residents of neighbourhoods, they are simply 'sleeping outside' in seemingly random locations. The tents or other structures are transformed from homes into 'encroachments', 'hazards' and even 'litter', and thus made both unlawful and dangerous. Encampments are cleared to provide for the 'restoration' of public spaces to their safe and proper aesthetic and recreational uses, which often include commercial uses such as film production and pop-up cafés and restaurants that generate revenue for local governments (Speer 2018; Flynn and Thorpe 2021). Indeed, encampments often trigger a counter-assertion of exclusion of 'the public'. Characterising them as hostile, smelly and ugly, government and public narratives depict encampments as exclusionary of the proper users of public space – the good propertied citizens who want to walk their dog and play in the playground (*Black v Toronto* 2020). The 'public' in public space is thus produced in opposition to the uses of encampment residents who, without their own recognised property claims, are placed outside society and the obligations of the state (Hamill 2018; Grear 2003).

Governments actively use the peripherality of non-owner interests to deny they have obligations to encampment residents, such as the provision of basic services, a duty of consultation, and ultimately protections against forced evictions. Despite legal protections of human rights, including protection against forced evictions, governments contend that encampment residents are without any lawful and enforceable claim to their homes, belongings and communities. In this sense, non-ownership status not only facilitates the

physical exclusion of encampment residences from particular public spaces, it underscores their exclusion from a public with legitimate and lawful interests in public places. Or any place at all. The punitive enforcement of dominant property relations through seemingly mundane, yet violently asserted and enforced, by-laws becomes de facto housing policy for governments failing to address the rapidly growing housing crisis. Thus, not only are the rights of encampment residents subordinated to the owner's agenda, they are deemed never to have existed at all.

Yet the more-than-owner relations enacted by encampment residents actively resist a conception of public space as property that centres exclusivity at the expense of their belonging (Keenan 2010). Formal legal claims pursued by residents alongside ongoing political advocacy have resulted in key moments of destabilisation of dominant narratives (Buhler 2009). These judicial imaginings envision homeless people as having a right to be in public space and make choices about their own survival, even if only temporarily, while rejecting narratives of homeless people as 'threats' to the social and economic value of public spaces (*Victoria (City) v Adams* 2009; *Abbotsford v Shantz* 2015). Canadian courts have expressly distinguished encampment cases from legal property claims, instead grounding them in the constitutionally protected security of the person (see *Victoria (City) v Adams* 2009). However, examining assertions of belonging made by encampment residents on their own terms reveals deep contestations about how dominant property relations are used to structure how we live together and share our common space. They push us beyond the narrative that residents can be 'evicted' because they had no right to be there in the first place. How can one be a non-owner, even a trespasser, on land that is owned for the benefit of the public to which we ostensibly belong? At the very least, echoing C. B. Macpherson's classic sentiment, they have a right *not* to be excluded (C. B. Macpherson 1962). Property relations being enacted in encampments thus expose a fundamental underlying conflict about the rights and interests upheld by dominant property relations. They starkly illustrate how recognising more-than-ownership interests is a matter not only of material survival, but also of collectively defining the nature of belonging in the places we share.

Conclusion: more-than-ownership as an invitation to relation

Recognising a broader set of relations with place – including relations of reciprocity, responsibility and belonging – requires a transformation of our legal and cultural understandings of ownership. As the examples discussed here illustrate, many non-owner relations deemed peripheral to property law are in fact central to the ways we live together with particular places. These moves towards more-than-ownership are not simply efforts to restore or shift ownership, as traditionally conceived, to different parties. They demand a much deeper transformation of what we mean by ownership and how it structures our decision-making from the mythical foundation of Crown sovereignty to the day-to-day enforcement of municipal by-laws. This may include shifting formal title to more-than-owners; indeed, in the case of Indigenous title holders, this will be part of what is necessary and just in the face of ongoing settler colonialism. But foregrounding more-than-ownership is about a much broader reimagining of people–place relations – from Indigenous environmental jurisdiction on private

lands to recognition of place-based reciprocal relations with land and water territory to the (re)commoning of public space through networks of belonging and the right not to be excluded. The willingness to learn, to see, and to recognise how much more there is than ownership is part of the necessary work of rebuilding a system of property that sustains us as relational beings embedded in the complex materiality of places.

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