

Land Tenure and Relationship To Place: An essay uniting spatial, political, and spiritual themes in the formulation of a PhD topic

Peter Knight

Department of Surveying,
University of Otago, Dunedin, New Zealand
Phone: +64 3 479-5401 Fax: +64 3 479-7586
peter.knight@stonebow.otago.ac.nz

**Presented at SIRC 2000 – The 12th Annual Colloquium of the Spatial Information Research Centre
University of Otago, Dunedin, New Zealand
December 10-13th 2000**

ABSTRACT

Administrators and managers of land tenure often look to the future and are concerned with keeping up with the changing nature of property, and the changing nature of technology, and reflecting and accommodating such changes in the administrative model. I am interested in the part of this effort that speaks to the nature of land tenure itself. In spatial analysis we generally ignore the nature of that which space contains and focus our attention on points and lines and the study of their extent. Surveying is the science of accurately and precisely locating points and lines, and inasmuch as we move beyond points and lines to spaces, we define topology as the interrelationships between the spatial figures that emerge from points and lines. With an awareness of the cultural specificity of the way in which we manage boundaries (together with mounting evidence of the inappropriateness of unquestioningly exporting this management to other cultures—that of aboriginal people in particular), I wish to contribute to the evolution of the western land tenure concepts through elaboration of the idea of relationship to place.

Now these folk aren't wanderers or homeless and seem a bit nearer to the likes of us: they seem to belong here, more even than the Hobbits do in the shire. Whether they've made the land or the lands made them it's hard to say, if you take my meaning.

J.R.R. Tolkien, *The Fellowship of the Ring*.

INTRODUCTION

This paper is about the formulation of a PhD topic; I don't like to say my PhD topic because we are never alone in anything that we do; we participate in the capture and expression of ideas made possible by what St. Paul called the groaning of humanity. One of these ideas, stated by the Canadian writer Margaret Laurence in an address to graduating students at the University of Guelph some years back, is that the work of a new generation of graduates is to discover the connections between, and to attempt to pull together the disparate disciplines in academia. Laurence was not talking about physically uniting different departments,

but rather allowing one's thinking to be less specialist, more inclusive, less particular, more holistic. I interpret the theme of the present conference 'evocation' as a manifestation of the rebirth of this renaissance-like thinking and welcome the opportunity for cross-disciplinary discussion and exploration.

My topic is land tenure and relationship to place. As this is the story of how the topic came to be rather than the of the topic itself, and because relationship involves the dimension of time, of evolution, I feel justified in describing something of its history and development as I have lived it over the last ten or fifteen years. If I were to look for major influences on my intellectual development through the first 10 years of my university life (which took place incidentally at Guelph in Ontario, Canada), I would name the women's movement; the aboriginal rights movement; the 'recovery' movement, and finally the experience of dwelling. What these influences all have in common is a spiritual angle that modifies a strict interpretation of the term intellectual. Intellect and emotions are not separate, as neither are politics and religion. However, there may be good reason why historically the categories have been divided off, and also reason for a good deal of caution in re-uniting them.

I have left out of the previous list of influences, those of the profession for which I trained. If asked what I was most interested in it might never have occurred to me to mention surveying. And yet the fact that I was becoming a surveyor was something around which the other influences gathered. In my undergraduate and graduate years at the University of Toronto where I studied surveying I wrote papers on aboriginal land rights and aboriginal boundaries. These subjects were not part of the university curriculum at that time. However, in the years since, the surveying of aboriginal land has become a major project of the Canadian Government involving millions of square kilometres of land. The subject of aboriginal land rights now forms part of the syllabus under which Canada Lands Surveyors are examined. I was astonished at how, what had been for me an undergraduate university club activity during my Guelph years had become such a central issue to the surveying profession and the nation.

ABORIGINAL LAND TENURE

As a result of research into aboriginal boundaries, I began to be interested in the nature of that which is bounded. In trying to locate the extent of an aboriginal hunting area, for example, one is led to consider the physical nature of the hunt, and the animals hunted. I reasoned, moreover, that social and other relations—hostilities with other groups for example, must also play a part in understanding spatial land occupation patterns. I began to conceive boundaries as expressions of a unique and comprehensive relationship to place rather than abstract concepts—that of invisible lines in space. The invisible line in space concept works for the civilized world with its scientific tradition of separating out the parts of a whole and then imbuing those parts with independent importance. But I could not find a specific corollary, in the literature on aboriginal people, for the idea of a boundary as an invisible line in space.

I saw the problem of aboriginal tenure as one of finding ways to accommodate different concepts of boundaries within the dominant land tenure framework. I believed that we might accommodate amorphous Indian tenure through less insistence on geographical immutability of boundaries. We might introduce the dimension of time along with various natural and social phenomena (such as the natural ebb and flow of human population depending on migratory species or resource availability) and allow for movable, fuzzy boundaries. I imagined, for example, a computer animation of a map pulsating in slow motion like a medical illustration of a beating heart. (Something similar is being done today, albeit with a natural science rather than a social science justification, with the new geodetic datum for New Zealand—Datum 2000—which allows for a velocity of the whole model, based on tectonic movement.)

At a surveying conference with a Native land rights theme in Victoria, B.C. in 1994, I wondered at the rightness of bringing aboriginal people in from the land to sit behind GIS workstations and choose the points and lines making up the boundaries of their lands.¹ The strongest impression left upon me by the conference was made by a young Indian woman who was working on a Provincial Government effort to catalogue Native cultural sites in British Columbia. When I met her she carried under her arm a copy of

¹ Peter Knight, *Aboriginal Lands: Tenure, Stewardship, and Boundaries*, co-authored with Brian Ballantyne, Presented to *Canadian Institute of Geomatics Conference* April 20-22 1994, Victoria B.C.

Mander's book on the survival of indigenous nations.² She told me of the reluctance of her elders to draw lines on maps and she directed me toward a book called *We make our living like milk from the land*. I've never managed to acquire this reference, but the point was clear. Native people have a direct relationship with place that is practically umbilical, and it is toward this relationship that we need to direct our attention.

In 1999 at the Bathurst Conference on land tenure, Australian Aborigine, Graeme Neate's made an address to a group of land tenure experts.³ Neate argues that that the techniques that our society uses for sharing land are culturally specific. We must not expect them to work, and must recognize their potentially harmful affects if they are applied to aboriginal land and aboriginal land tenure. Neate's comments were something of a revelation to me. It had not occurred to me that it might be possible to step so completely outside the dominant paradigm. But if Neate could accomplish this from the point of view of aboriginal culture, might not Neate's comments apply beyond the sphere of the mainstream/indigenous relationship and tell us something about western land tenure itself?

WESTERN LAND TENURE

I began with the question of why our system of tenure fails to express the aboriginal relationship to place, and now return to the question of how well the western land tenure model expresses any relationship to place. Might a sense of alienation that exists within the landholding systems of the first world be systemic rather than disaffected?

I wander thro' each charter'd street,
Near where the charter'd Thames does flow.
And mark in every face I meet,
Marks of weakness, marks of woe

Blake's poem⁴ speaks of an unhappy relation between person and place. Land tenure, which is a kind of intermediary between people and place, is specifically mentioned—'charter'd' or surveyed streets—in conjunction with human weakness; or, to use a modern term, disempowerment. Is land tenure itself a source of unhappiness in the relationship of people and place and if so, why? We might go on to consider whether the relationship of people to place could be improved by adapting land tenure to be a better expression of the relationship. Land tenure is not a neutral ingredient: it is pervasive and the question is whether it encourages a positive or a negative expression of the human relationship with place.⁵

RELATIONSHIP TO PLACE

I have used the term relationship to place without providing much background on just what we mean by this term. Indeed I do not know myself what relationship to place is exactly. I have a sense that it disappears every time I turn my head to look at it. Recently I've become aware that the literature of

² Jerry Mander, *In The Absence Of The Sacred, The Failure of Technology & the Survival of the Indian Nations*, Sierra Club Books, 1991, San Francisco, CA

³ Graeme Neate, *Mapping landscapes of the mind: A cadastral conundrum in the Native title era*. UN/FIG Workshop, Bathurst, New South Wales – 18 October 1999, International Conference on Land Tenure and Cadastral Infrastructure for Sustainable Development, Melbourne, Victoria - 26 October 1999. Neate states simply that aboriginal boundaries cannot be represented in the land cadastre. I.e. the concepts of boundaries in the Australian cadastral system cannot be made to serve the aboriginal tenure system.

⁴ Blake, William, from the poem entitled 'London', *The Complete Poems*, Penguin Books, 1977, p.128.

⁵ Unquestionably property can produce a positive relationship with place. In *Property and Persuasion* (see bibliography), Carol Rose writes: "...one can read the messages of successive generations through the way that property looks; property's visibility, in a sense, is especially attuned to letting people speak to each other, over time, about their relationship to place." The question then concerns the limits of land tenure in helping to produce that effect.

geography possesses a wealthy strain of space and place related works and I've busied myself with readings in the phenomenology of place. The word place is used in the literature in contrast to space. Place recognizes the primacy of lived experience, and describes how space gives way to place under the influence of human endeavour. To use our proper language we might contrast spatial analysis with the experience of being in place. Cartographic literature may well contribute to resolving some of this contrast.

The geographic literature seems to me extraordinarily relevant. In that literature a person's relationship with their environment is of central importance. Men and women are bound to the earth and their feelings; acts and thoughts are interwoven with this experience.

“... the bond ... is one of human presence and concern; landscapes therefore, take on the very character of human existence. They can be full of life, deathly dull, exhilarating, sad, joyful or pleasant.”⁶

To Dardel “landscape is a manifestation of ... being and that of others.”⁷ Conversely, people are a manifestation of the land. There is a body—world communion that is the essential core of people's involvement with the everyday world.⁸ We speculate on the nature of the body world interrelatedness. It is this interrelatedness that phenomenology seeks. The fact that we must search for the relationship is an indication of a lack of awareness engendered, in part, through our education, and phenomenology encourages a pre-scientific or post-scientific—almost meditative—approach to the development of place awareness.

How deeply the philosophy of relationship to place must be assimilated in order to form a theory of relationship to place with respect to land tenure I don't know. I have felt recently that I have been living a fascinating diversion and that I need to return once more to the core discipline of land tenure. I think I can show how land tenure draws from relationship to place, and I think that moving the examination back to land tenure might actually help define what we mean by relationship to place. A practical field of study, a point of application may be what is required and I turn now to the subject of land tenure in search of that topic.

THE TWO SIDES OF TO LAND TENURE

I discern two trends within the field of land tenure. The first of these is the study of law and property; the second is the study of people, work and community (I call this the cultural side). For the purpose of analysis, I will examine them separately. The study of law and property includes the study of institutions of property, and institutions of land administration as well as institutional methods. It is also the study of the history of western law with respect to property, and current legal trends and practices. In my own area of teaching, hydrographic surveying, it is the study of the law of the sea, maritime zones and maritime boundaries. When limited to the above areas, the study of property and law is conservative, somewhat oppressive, and above all disconnected from the kinds of subsistence economies that we know to be good expressions of relationship to place.

The law and property side of land tenure is the usual home of a surveying science researcher. However, there is some indication that the field is now opening up to the human side. In the past few years we have seen a masters thesis that deeply sympathized with sociological aspects of Maori land tenure,⁹ and at the Department of Geomatics at Melbourne University there is a masters thesis in progress on the theme of community mapping.¹⁰ The subject of environmental ethics which is now part of the surveying curriculum

⁶ Edward Relph, *Geographical experiences*, in *Dwelling Place and Environment*, Ed. David Seamon, Martinus Nijhoff Publishers 1985. P.23

⁷ Erich Dardel cited by Relph, *Ibid.* p.24

⁸ Miriam Helen Hill, *Bound to the Environment: Towards a phenomenology of sightlessness*, in Seamon, *Op Cit.* p. 99.

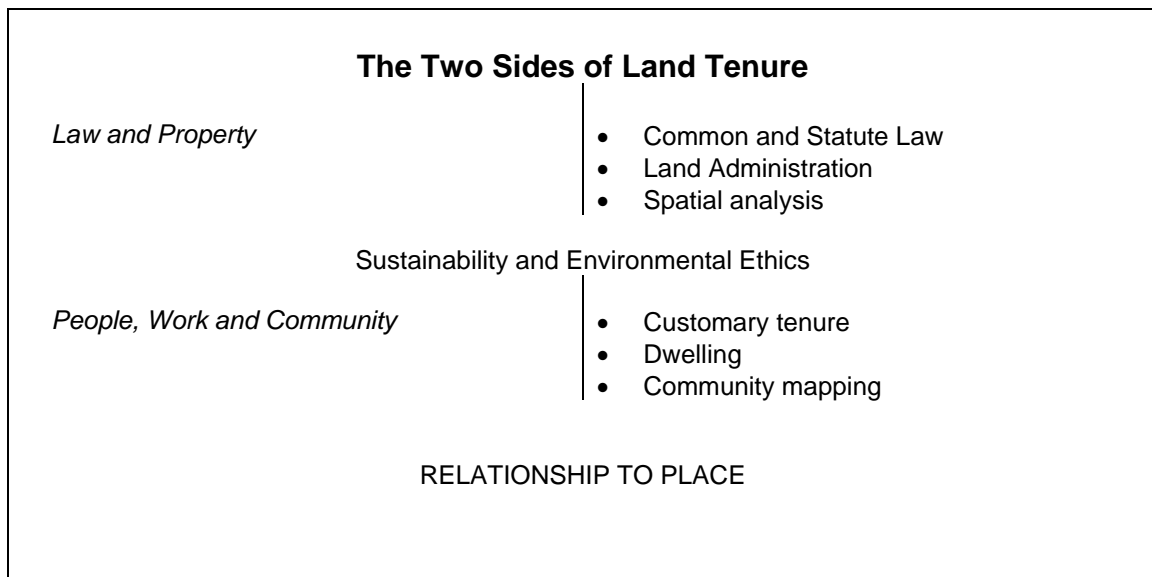
⁹ Susan Hanham, 'Where land meets water': rights to the foreshore of Otakou Maori Reserve. Thesis (M. Surv.), University of Otago, 1996.

¹⁰ Teresa Crowley, Dept. of Geomatics, University of Melbourne, work in progress.

is influential in this humanizing trend though I tend to place this subject on the law and property side of the spectrum because of the emphasis in surveying on the interpretation of environmental legislation.¹¹

The cultural trend in land tenure owes a debt to anthropology and finds a rich area of application in the study of indigenous forms of tenure. In the case of fishing rights and sea tenure, Cordell speaks of the de facto law of the community as opposed to regulation by a non-representative government.¹² The examples he uses are not restricted to indigenous groups but include, for example, salmon fishers of Puget Sound and the inshore cod fishers of Newfoundland. These communities have a direct, organic custom of allocation resources that Cordell contrasts with the legal rules of fishing regulations. The customs and traditions have a history and function that are rooted in their place, work and community. We find what we are seeking in this aspect of the cultures of self-regulating fishing communities, namely a cogently expressed relationship to place.¹³

The law and property side of land tenure is not really distinct and separable from the human side of land tenure. There is a dialectic at work in which research from the humanities informs the development of the law, which in turn deeply affects the way in which the story unfolds. Concepts of property whether they refer to common property or to private property are shared by both approaches, and systems for resource management must similarly have a foot in each camp. For organizational purposes I think we need to recognize that relationship to place is the source of the culture that we study in order to find the human face of land tenure, and that this human side is primary from the point of view of what we recognize as sustainable practice. We can and do institute sustainability in the realm of law and property, but without a connection to the relationship between people and place it becomes disconnected and lacking in meaning.



CONCLUSION

In coming to terms with a PhD topic I feel that I need to make a choice between the law and property, and the people, work and community side of land tenure. I don't need to agonize to know which side my heart

¹¹ See Brian Ballantyne, This must be the place, plumbing a land ethic for the built environment, PhD Thesis, University of Otago, 1994. Ballantyne's thesis is very important from both the law and property, and the people, work, community sides of land tenure.

¹² John Cordell (Ed.), A Sea of Small Boats, Cultural Survival Report 26, Cambridge Massachusetts 1989. p.5

¹³ Relationship to place is similarly highly refined in the culture of hunter-gatherers. See for example Hugh Brody, Maps and Dreams, Indians and the British Columbia Frontier, Waveland Press 1981, for a book that is highly evocative of relationship to place.

is on, so the choice is really between an easy to formulate research problem (law and property), and the tackling of an amorphous monster. However, in taking on the relationship to place side of the story there are some signposts, and one does not have to lose sight of the other side of the river. Property is a good expression of relationship to place and will need to remain in the equation though it will need to be softened with the experience of dwelling. The connections between property, economy and land need to be worked out at the level of the individual and the community, and somehow framed into a relationship with a form with which we can identify.

BIBLIOGRAPHY

Ballantyne, B. A. (1994) This must be the place: plumbing a land ethic for the built environment. PhD thesis, Department of Surveying University of Otago, Dunedin, pp. 183.

Brody, H. (1981) *Maps and Dreams, Indians and the British Columbia Frontier*, Waveland Press.

Cordell, J. (1989) *A Sea of Small Boats*, Cultural Survival Inc., Cambridge, Massachusetts.

Hanham, S. J. (1996) Where Land Meets Water: rights to the foreshore of Otakou Maori Reserve, Department of Surveying University of Otago, Dunedin.

Hill, M. H. (1985) In *Dwelling, place and environment, towards a phenomenology of person and world* (Ed, Seamon, D.) Martinus Nijhoff Publishers.

Knight, P. and Ballantyne, B. (1994) Aboriginal Lands: Tenure, Stewardship and Boundaries. In *Canadian Institute of Geomatics Conference* Victoria B.C.

Mander, G. (1991) *In The Absence Of The Sacred, The Failure of Technology & the Survival of the Indian Nations*, Sierra Club Books, San Francisco.

Neate, G. (1999) In *UN/FIG Workshop, Bathurst, New South Wales – 18 October 1999 International Conference on Land Tenure and Cadastral Infrastructure for Sustainable Development, Melbourne, Victoria - 26 October 1999* Bathurst, NSW; Melbourne.

Relph, E. (1985) In *Dwelling, place and environment, towards a phenomenology of person and world* (Ed, Seamon, D.) Martinus Nijhoff Publishers.

Rose, C. M. (1994) *Property and persuasion : essays on the history, theory, and rhetoric of ownership*, Westview Press, Boulder, Colo.

Seamon, D. and Mugerauer, R. (Eds.) (1985) *Dwelling, place and environment, towards a phenomenology of person and world*, Martinus Nijhoff Publishers.

Strang, V. (1997) *Uncommon Ground Cultural Landscapes and Environmental Values I*, Berg (Oxford International Publishers Ltd.), Oxford, New York.