Editorial introduction

**Anna Grear, Karen Morrow and
Evadne Grant**

In the context of critical reflections upon the relationship between human rights and the environment, it is difficult to imagine many themes more central to the human–environmental nexus than that of ‘ownership’. Lying at the heart of the widely impugned subject–object relations that set up the human as ‘master’ (and ‘owner’) of the earth and its living order, the notion of ownership raises a profoundly natural–cultural (in the rich sense evoked by Haraway¹) knot of puzzles and dilemmas. The impulse towards forms of what we can broadly think of as ‘ownership’ is, at one level, deeply ‘natural’. Such impulses can be read, for example, in the struggle within and between various non-human animal species for territory, burrows, warmth and food.

Humans have, of course, turned ‘ownership’ impulses into something more complex and institutionalised. The human institution of ownership has long formed a contested theme in political and legal theory, and ‘ownership’ has often featured in fraught questions of intra- and inter-species justice. Some humans have even deployed notions of ‘ownership’ (and closely related justifications drawing upon a ‘natural’ entitlement to ‘property’) as a legitimisation for historical and contemporary practices of dispossession. Salient examples include the extensive enclosure of the commons in the service of industrial agriculture in England;² the dispossession of indigenous peoples under European colonialism;³ predatory neo-colonialisms

¹ D. Haraway, *When Species Meet* (University of Minnesota Press, Minneapolis MN 2007).

² See, for example, E.M. Wood, *The Origins of Capitalism* (The Monthly Press, New York 1999) at 67–94.

³ J. McLean, ‘The transnational corporation in history: lessons for today?’ (2004) 79 *Indiana Law Journal* 363–77.

imposed on the global South;⁴ global industrial ravaging of the environmental commons;⁵ asymmetrically distributed patterns of privilege and privation even *within* the global North;⁶ and the internal predatory extension of neo-colonial practices embraced by elites in the global South at the expense of the poor in general and indigenous peoples in particular.⁷

It is perhaps no accident that historically patterned, familiar injustices congealing around legitimations based upon an appeal to ‘ownership’, ‘mastery’ and entitlement have tended to reflect the fact that socioeconomic dominance – and the related enjoyment of ‘ownership’ – has most often been the possession of the ‘master subject’ of Western political, economic and legal theory: the white, European, property-owner–citizen *homo politicus–economicus–juridicus*. Certainly, historically (and contemporaneously in many cultures by effectively replicating and propagating all aspects of the Western master subject paradigm bar its ‘whiteness’, effectively extending its reach to newly constituted male political, economic and legal elites) this has been a recognised and relatively stubborn pattern. In either case, women, children, the nomadic, the indigenous and/or other marginalised human groups have not been/are not quintessential exercisers of ‘ownership’ rights. This particular construct of the ‘owner’

⁴ See, for just one example of an extensive literature on specific cases of corporate malpractice and state complicity, C. Kamphuis, ‘Foreign mining, law and the privatization of property: a case study from Peru’ (2012) 3/2 *Journal of Human Rights and the Environment* 217–53. More generally, see, for example, C. Jochnick, ‘Confronting the impunity of non-state actors: new fields for the promotion of human rights’ (1999) 21 *Human Rights Quarterly* 21, 56–79 at 65; S. Joseph, ‘Taming the Leviathans: multinational enterprises and human rights’ (1999) 46 *Netherlands International Law Review* 171, 173–4; and the reports of the Special Rapporteur to the Commission on Human Rights on the dumping of toxic waste: Commission on Human Rights (20 January 1998).

⁵ See, for example, L. Westra, ‘Environmental rights and human rights: the final Enclosure Movement’, in R. Brownsword (ed.), *Global Governance and the Quest for Justice: Volume 4: Human Rights* (Hart, Oxford 2004) 107–19.

⁶ Increasingly apparent under the pressures of recent austerity doctrine.

⁷ See, for example, discussion in E. Burke III and K. Pomeranz (eds), *The Environment in World History* (University of California Press, Berkeley CA 2009).

has particular implications for the human–environmental nexus. The ontology of modern ‘man’, as is well known, builds upon a problematic subject–object split fully reflected in ‘man’s’ position as the agential and epistemic ‘centre’ of the world⁸ – a position of assumed mastery thoroughly associated with long patterns of environmental degradation and well-rehearsed practices of human intra-species injustice.

Ownership then, is a subject of pivotal importance to critical reflections on the multifaceted and complex relationship between human rights and the environment.

Warnock offers an extended engagement with this important theme. The brief of the *Critical Reflections* series for authors is to offer a relatively unconstrained critical reflection upon a theme relevant to the nexus of human rights and the environment. Warnock begins by asking a threshold philosophical question: ‘can absolutely anything be owned?’ and subsequently refines her discussion by carefully confining the scope of her inquiry to the ownership of ‘property’ (itself a subject of immense importance for the theme of this book series). Her writing is an enriching mix of the personal, the autobiographical, the philosophical, the political and the legal brought into lyrical engagement with the questions of what ownership means and what difference ownership makes.

Warnock’s reflective journey takes her readers from an account of the origins of society and property as a social institution, into the intimate realms of ownership in action in an almost phenomenological meditation upon ‘gardening’, characterised by contemplating the relationships between property, intimacy and privacy. Here, Warnock is at her most self-revealing – almost autobiographical in tone and focus – carefully foregrounding her discussion in a personal meditation on the power of affective and aesthetic ties to a sense of place. Next, Warnock subjects broader societal notions of common ownership to a critical reflection, examining first communism and then some ‘more modest forms’ of common ownership, before moving on to explore the expansive vistas of the ‘unowned’ in the romantic idea of ‘wilderness’.

It is only after offering this panoramic beginning that Warnock

⁸ See, for example, C. Merchant, *The Death of Nature: Women, Ecology and the Scientific Revolution* (Harper Collins, New York 1980); V. Plumwood, *Feminism and the Mastery of Nature* (Routledge, London 1993).

turns her attention to the ethical implications of ownership: how do we take responsibility for the planet? The planet, for Warnock, is an ‘orphan’ thing – a term she uses to emphasise the impossibility of exercising ownership over ‘the planet itself’. In her discussion of ‘taking responsibility for the planet’, Warnock calls, yet again, on the profound sense of connection to, and love for, the ‘thing itself’ that characterises the intimate heart of our richest human experiences of ownership – and extends it to embrace the planet – acknowledging a kind of ‘love’ increasingly recognised towards the environment itself and fortified by understanding the complexity and intricacy of the balance of earth-systems and the interdependencies between layers and forms of life on earth. Warnock, in a sense, opens up her autobiographically intimate journey through ownership to create a sense of a shared biographical location for human beings and to build thereon a conception of intimate responsibility towards the planet as inherent in our shared human situation – but there is more. We have arrived, Warnock insists, at a changed view of what it even means to be human – at an emphatic rejection of Cartesian dualism (and, thus, the subject–object relations of mastery). There is, she suggests, a deepening philosophical sense of our human interdependency, co-situation and kinship with multiple non-human others. This sense, she suggests, could be the beginning of a movement towards an adequate sense of responsibility for the planet. How then, she asks, can this new sense of responsibility be forged and expressed *without* recourse to empty metaphors of stewardship or by appeals to the invention of new gods (such as Gaia)?

Warnock’s working position adopts a ‘generally favourable view of ownership’ as a form of living connection with something which is expressed in practical terms in a series of ‘useful compromises’. As prosaic, in a sense, as gardening itself, ownership responsibility can express a kind of love – a kind of care – for a thing itself, and the ‘useful compromises’ that Warnock has in mind are instances of balancing rights of ownership with forms of access rights and other interventions that diversify the relations that communities can have with land in particular: The Countryside and Rights of Way Act 2000; the National Trust; the designation of green-belt land – all examples, as it were, of ‘compromise conservation’ that are as deeply British, in a way, as Warnock’s passion for gardens and gardening. *Owning*, then, just as much as ‘belonging’, shapes our

experience and ethics, generating in turn the feelings and values that are so fertile for the production of responsibility taking. But love of home alone cannot take us all the way. Research and education, in Warnock's view, become the lynchpins of future progress: they will 'lead us slowly in the direction of the goal: that we assume common responsibility for a world that we do not own, which lies beyond our backyard but which we jointly inhabit; and I also believe nothing else will do so' (see Chapter 8).

Having established why we might take responsibility for what we do own, and how that could be extended to what we do not own, Warnock confronts the final philosophical question in her critical reflection on ownership: 'why do we want to preserve the natural world?'. Here, she suggests, the answer is not love, but fear: 'Promethean fear' – a rational fear of what we ourselves have unleashed: 'fear seems to me to be a powerful motive to bring us to adapt our behaviour and even to make sacrifices of some of the things that technology has brought us. If this means that we must educate people to be afraid, then we should reflect that this is, after all, a not uncommon purpose of education' (see Chapter 9).

Warnock calls us – in the final analysis – to abandon human arrogance, calling on a sense of humility and on fear to regulate our relations with the environment. Such a call, unsurprisingly, tends to echo critical philosophical accounts challenging the human master–subject and insisting that all relations with the living order are but provisional 'cuts' made in a world newly understood, by some philosophers and scientists at least, as a space in which humans are no longer the 'centre' but thrown into the 'middle'.⁹

Warnock's rich, philosophically authoritative and refreshingly intimate reflection provides a lyrical and insightful path towards potentially transformed understandings of just 'who we are'¹⁰ in 'the world' we share and inhabit. Warnock skilfully weaves an account of ownership that moves it away from ill-considered assumptions

⁹ See A. Philippopoulos-Mihalopoulos (ed.), *Law and Ecology: New Environmental Foundations* (Routledge, Abingdon 2011), especially his own chapter in that collection.

¹⁰ A persistent question underlying the epistemological enquiry in L. Code, *Ecological Thinking: The Politics of Epistemic Location* (Oxford University Press, Oxford 2006).

of exploitative human mastery towards a sensitive, nurturing, eco-engaged mode of responsibility building on something approaching a scientifically informed awe responsive to the complexities – and to the dangers – of a planetary system tipped into crisis by human historical arrogance and instrumentalism.