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## A Relational Approach to Property

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# A RELATIONAL APPROACH TO PROPERTY

*Jennifer Nedelsky*<sup>1</sup>

In the modern world, law is one of the most powerful ways of structuring relationships. Law defines what a family is (for tax purposes, medical decisions, immigration, benefits eligibility). Law tells us who owns the products workers make, when a landlord can evict a tenant who has lost their job, and when an employer can fire someone, and law affirms that it is up to our discretion whether to share food, money, or shelter with a hungry homeless person. Law tells us whether we can allow poisonous effluents to run into rivers from farms or factories, and law defines the limits of what we can do to try to stop it. Law never does any of this in isolation from other systems of values, customs, institutional structures, and norms. But these systems are almost always entangled with law. Thus, when the existing structures of relations need transformation, law will have to be part of it. This chapter looks at how a relational approach can help us reimagine property to transform human–Earth relations, thus sustaining life on Earth.

Two decades into the twenty-first century, we are facing a climate emergency and there is increasing, if insufficient, recognition of the urgent need for action. Now is the time to transform the foundations of systems – of ideas and institutions – that have been perpetuating environmental devastation. Private property is one of those foundations. Its very foundational nature makes it seem impossible to change; it also makes change essential.

In undertaking this daunting project of transformation, it is important to remember that law itself is part of society's imagination. It is thus both profoundly powerful and open to change:

Law is not [so much] a set of norms, rules, principles, values ... but part of a distinctive manner of imagining the real' (Geertz 1983, 173). Nowhere is that more true than in the realm of real property law. Property law has, in effect, helped us to reimagine and reinvent what we understand to be the real world. (Steinberg 1995, 17)

Property is one of the most important ways that law structures relations among people, especially relations of power and inequality. Property law also has embedded in it a story about how people see the world and their place in it. In the common law world, the law of property has long been built around hierarchies. People on top are those who control the most property, which, in turn, entitles them to control other people. Once, the story was about natural hierarchies based on people's 'God-given' places, such as lords or peasants. Then there was another story, still prevalent, that inequality is the natural result of freedom, talent, and hard

work. But, even more profoundly, there is a hierarchy of the human above all other life forms. A dominant understanding of Christianity taught that human dominion over Earth means that other life forms are objects for humans use. The kinds of power and entitlements that flow from property ownership (the sort of dominion that ownership is thought to entail) put these stories into effect. Property law distributes, authorises, and justifies power and affirms the ‘rightness’ of the prevailing stories of hierarchy, including the most basic hierarchy of humans above the rest of the Earth. The idea that the Earth is essentially a resource for humans is taken by many as self-evident. Law, norms, and everyday language confirm this. Humans are *subjects* with rights to use the *objects* that make up the Earth community. Thomas Berry captures the centrality of this hierarchy and the need to transform it and our instrumental relationship to the Earth:

Because the exaltation of the human and the subjugation of the natural have been so excessive, we need to understand how the human community and the living forms of Earth might now become a life-giving presence to each other ... Our future destiny rests ... on our capacity for intimacy in our human–Earth relations. ... That future can exist only when we understand the universe as composed of subjects to be communed with, not as objects to be exploited.

(Berry 1999, ix–xi)

Structures of power and their relation to property (for example, land versus stock holding) have changed significantly from the Middle Ages to financial capitalism. Land has not always been seen as a commodity. Once, its primary purpose was not to be bought and sold, but to be passed down within families to maintain power and stability. And there were once significant duties that accompanied land ownership (Singer 2000). Shared land, ‘commons’ to which ‘commoners’ of the region had access for foraging and hunting, was once common throughout England. The story of the ‘enclosure’ of the commons is part of a fascinating history of exclusion, brilliantly told in *The Book of Trespass* (Hayes 2020). Some of this legacy can be useful in the fundamental reimagining that is now essential if property is to become part of the solution to the environmental crisis, rather than a barrier to change. We can remember that understandings of property dominant today have not existed ‘from time immemorial’, and that some of the concepts and practices of the past can be repurposed to remove rather than enact hierarchy.

What is the basic change that is necessary? The norms and legal rules of property must express and implement a relationship of mutual respect among humans and respectful care for members of the Earth community, who are humans’ fellow subjects. Here, I offer an approach to property that expands the more common relational forms (only about human-to-human relationships) and is distinct from the standard legal language that property is about relationships among people with respect to objects.

A relational approach to property (as to all rights) asks how different versions or interpretations of property would structure relations differently, and then how those relations foster or undermine values such as respect, privacy, or environmental sustainability. Relations among humans include relations of power, trust, and responsibility. For example, some tenants’ rights legislation may decrease the power of landlords to evict at will or enter rental property, thus increasing the security, privacy, and autonomy of tenants. There are big questions about what forms of property foster relations of human equality and what kinds of relations best foster freedom for everyone, and how those values relate to ‘productivity’. In this chapter, I expand the idea of a relational approach to include relations between humans and the rest of the Earth community in which humans are embedded: animals, plants, rocks, soil, water, mountains, microbes

– all seen as part of an interdependent web of connection that constitutes the living Earth (‘the Earth’, for short).

Rights need to be defined and, when they are implemented, they need to be interpreted. To clarify the inevitable disagreements and find the best way forward, my version of a relational approach suggests the following questions: (1) what structures of relations have shaped the *problem* at hand, and how has law helped shape those structures?; (2) what *values* are at stake in the problem? (3) What kinds of *relations promote such values*?; what kind of change in existing relations would enhance rather than undermine the values at stake? (there may, of course, be more than one value at stake and they may compete with one another – for example, relations that enhance the privacy and autonomy of a renter may decrease the security and freedom of the landlord); and (4) what interpretation or *change in the existing law* would help restructure the relations in the ways that would promote the values at stake? (Nedelsky 2011, 2020). This approach can reveal what is at stake in legal and policy debates, so that legal technicalities do not obscure what matters. Understanding the links – between values, relationships that give effect to values, and law that shapes relationships – provides guidance for both interpreting and transforming law. This chapter applies this framework to the transformation of property, which I summarise below.

The problem (1) that I focus on here is the harm to the Earth inflicted by human relations of superiority to other life forms, enabled by property law and norms that include no intrinsic obligation to care for the Earth. The question I address (4) is what forms of property in land will foster an awareness of the interdependence of humans and the Earth and thus of mutual care, respect, and responsibility. Awareness and responsible care are the values (2) at stake, and (3) they clearly require a change in the relationship between humans and Earth. The values entail recognising all members of the Earth community as subjects with whom humans are in relation, rather than as objects that are radically less worthy of care and respect. These values can, in turn, be seen as part of the common objective of preserving the capacity of the Earth to sustain life for humans as well as other life forms. My proposal here (4) is that property in land needs to change to a form of ‘trust’ that would foster these relations of respect and responsibility. The land itself would stop being an object for use and extraction; land and the life it sustains would become fellow subjects in the web of interdependence. Thus, property in land would come with a built-in legal responsibility for care, a responsibility extending to future generations.

One of the advantages of defining property in ways that will foster the core values at stake in environmental sustainability is that governments will no longer have to undo or contain the harmful consequences of property ownership via legislation and environmental regulation. The idea of government ‘interference’ in the rights of property owners will be replaced by optimal definitions of property (always a power of law and the state).

Property in land comes in many forms, including common property, public property, state-owned property, and private property (Hamill 2012). My focus here is on private property, in part because private property holds such a foundational place in the values of common law countries. But the argument applies to all forms of property whose use affects the Earth community. I do not try to assess which form of property would work best in different circumstances or elaborate on the different forms ‘trust’ could take.

### **Transforming relations of hierarchy**

At this juncture in history, what matters most is to structure relations of respect, care, and equality, not only among human beings but also with all the Earth community. This would involve a radical transformation in the value systems of the common law world, which (like much of the world since the advent of agriculture in the Neolithic era about 10,000 years

ago) have been organised around relations of unequal power and advantage. The denigration of the Earth as a mere resource for human exploitation is of much more recent origin. But today, in the Western world, we live within systems of law, custom, ethics, and values that both espouse equality and take hierarchy for granted as part of the natural order of things. The most basic form of hierarchy is a pyramid of life forms with humans at the top. But the hierarchy extends among humans as well: we are all rank ordered by intersecting categories such as gender, race, national origin, wealth, (dis)ability, and sexual orientation. These rankings translate into access to power over others and to resources such as food, shelter, education, health care, and income. They also translate into differences in vulnerability to violence, hunger, and incarceration. Societies use such rankings to organise who does high status work and who provides the low status care that human life and well-being require. Care for the Earth generally does not even make it onto the list of either work or care to be allocated (Nedelsky and Malleon forthcoming).

To challenge the naturalness and value of hierarchy is not to deny the presence of thousands of forms of difference within and between species. Part of the necessary transformation is to recognise that difference need not translate into hierarchy, despite our deeply ingrained habit of rank-ordering. Nor does the challenge deny that some more-than-human species also rely on hierarchies for purposes of authority, access to food, and choice of mates. But the idea that competition and hierarchy are the central drivers of all life forms is increasingly recognised as seriously limited. Life also requires cooperation and care (Nowak 2011; Hrdy 2009). Most importantly, the contemporary forms of human hierarchy (both among humans and between them and the rest of Earth) are causing great damage and suffering.

In the common law world, there is increasing recognition that there are widespread inequalities among human beings that cannot be reconciled with a commitment to the idea that all humans are inherently of equal value. That commitment is widely shared, despite differences in what people think that commitment entails in practice. This commitment matters even though large numbers of people are quite complacent about the failures of their institutions, and their own practices, to live up to that commitment. Nevertheless, when categories of hierarchy such as race and gender clearly mean that some people have fewer opportunities and are more subject to violence and ill health, many people recognise – at least in principle – that there is a problem with the way those hierarchies are being enacted. Yet, most take for granted that people whose property generates wealth will have greater power and advantage over those without such property. Many also know that the children of the wealthy will have better life chances for education, opportunity, health, and future power.

So, in the world of hierarchy among humans, there is currently both an unease and an acquiescence. With respect to human–Earth relations, there is a belief that human superiority is obvious *and* an increasing challenge to the idea that the Earth is essentially an object for human use. Thomas Berry (1988, 1999) argued for decades that the stance of superior entitlement is at the heart of the degradation of the planet, which may ultimately destroy its capacity to support human life – as well as other life forms that are already disappearing from the planet.

I see the hierarchies *among* humans and the hierarchy of humans *above* the rest of the planet as linked together. The disparate impact of climate change, including the refugees it will create, is a terribly clear link between human inequality and harm to the planet. The dominant understandings of property are tied to both. People will need to rethink the meaning of property: what people can do with the land they ‘own’ and when states can exclude people from their ‘sovereign’ territory. What will the right to exclude mean when those claiming it are responsible for the climate change that is making others’ land uninhabitable?

## **Changing the meaning of property and the challenges of existing property regimes**

A foundational change in the dominant understanding of property is necessary. This chapter points to a path for this change and its transformation of human–Earth relations. But, of course, I cannot provide a blueprint for all the diverse legal changes that would need to flow from the basic transformation. In this section, I take up some of the key challenges for a transformation.

There is a preliminary question of whether to stop using the term ‘property’ with respect to the Earth. For example, there are compelling arguments that animals should not be anyone’s property: a concept that gives the power to use, kill, or destroy objects is not suitable for the kinds of beings that animals are (Deckha 2021). Some would expand that argument to say that no part of the Earth community should be property because they are all fellow subjects, not objects of use. This chapter explores a sort of middle path in relation to land. Rather than reject the concept of property – despite its long history of inequality, dispossession, and environmental devastation – ‘property’ would still be used to describe the rules for access, use and transfer of land. But the term ‘property’ would have built into it a responsibility to care for the Earth. All powers of property in land would be subject to the well-being of the whole Earth community, both present and future. The rules of property would be set and adjudicated in accordance with that responsibility.

For thousands of years, power and exclusion have been central to property, and I think most people tacitly assume that property inevitably creates human relations of inequality. The actual practices that create inequality and exclusion have varied and changed over the years, from the enclosure of the commons in England to slavery (treating people as property) to the radical dispossession of Indigenous peoples to the increasing level of inequality both within and between countries. The creation of hierarchy and the exclusion of the poor from access to land, social status, and political power are not inevitable processes. Legal history allows us to see how it was accomplished, and the role property law has played.

Now let us imagine that instead of organising land use around relations of power and advantage, the basic purpose of property law was to foster, enable, and express an awareness that humans inhabit a shared Earth with many other beings, and to enable all beings to live and thrive. To think about the kind of transformation this would involve, it helps to think about a common conception of ‘sharing’ in today’s common law worlds.

Some child development literature argues that children learn about property and sharing when they are around two years old, as part of their developing sense of autonomy. The picture of sharing here is one of largesse. A child learns that if a toy is ‘theirs’, that means that they can control who has access to it – whether they are using it or not. ‘Sharing’ in this framework means that the child has the discretion about whether to let another use their toy. It’s ‘nice’ to share, but it is up to the owner. Key parts of this version of autonomy are control over resources and the power to be ‘nice’ and deserve gratitude, or to choose otherwise (Nedelsky 2011, ch. 3).

This, of course, is a notion of sharing that is based on private, exclusive property. It is the opposite of what I mean – and, as I understand them, what many Indigenous legal systems mean – by sharing the Earth with all one’s relations.

To embrace a conception of a genuinely shared Earth, humans would see themselves as embedded in an interdependent community of life forms as well as water, air, soil, rocks, and minerals (Davies, Godden and Graham 2021). The goal of a property regime would then be to organise relationships of care and respect between humans and all other members of the Earth community. Of course, the regime would also have to facilitate the livelihoods of all the beings in the community. Whatever harmonious sharing looks like, it would have to include the reality

that most life forms live by eating other life forms. And some life forms, like bacteria, live within other life forms, sometimes in ways that harm or kill them. Indeed, the dispersion of chemicals in the air, land, and water and their presence in clothing and furniture means that these chemicals become part of the human body in ways that give new meaning to interdependence and the permeability of bodily boundaries (Eisen, Mykitiuk and Scott 2018). The puzzles of caring, intergenerational relations among entities that live off one another are anything but simple. But interdependence is a fact, and the catastrophic consequences of human superiority and entitlement to the planet are increasingly obvious.

Property law presumes and reinforces those relations of superiority. To survive, we need to learn how to genuinely share the planet and live in sustainable harmony with the rest of the Earth community. So, whatever ownership and property mean, they will have to include, to take as a starting point – and not as an exception to property rights – responsibilities to the Earth with which humans are interdependent.

In addition to the meaning of sharing, the transformation project will have to consider another piece of ‘common sense’ property: how societies decide who owns something. In 1689, John Locke made famous the idea that property arose when people ‘mixed their labour’ to produce things ((1689) 1947; Hamill 2018). If you plant, you can harvest; if you build a chair, it’s yours. But, of course, this compelling idea required modification in a commercial world. You only own the crops you plant if you have property rights in the soil in which they are planted. And from early on in agriculture, surplus and abundance for the growth of ‘civilisation’ arose from people who owned the soil getting others to till it for them. Similarly, one only owns a chair one has built if one owned the wood and the tools with which it was built (and had a right to the wood by purchase or entitlement to chop down a tree). In our modern economies, *having* property is effectively a precondition to creating property by mixing one’s labour with the material world.<sup>2</sup> Most people today take for granted that the workers who build things in factories do not own what they produce. This reflects a particular understanding of property and ownership. Modern systems of production require both (1) money (capital) to buy the materials and build the infrastructure and (2) the labour of those who make the products. Current definitions of property mean that what is produced belongs to those who provide the capital, not the labour. There is no inherent reason why this should be the case. Production could be organised around different understandings of property.

Of course, one of the deepest challenges is that in settler societies, ownership of land comes with a terrible history. In many cases, Indigenous peoples’ very relationship of stewardship with the land marked them as ‘uncivilised’ in the eyes of settlers, and thus unsuitable as property owners or citizens. Existing land ownership rests on dispossession and morally untenable notions of property (and its link to sovereignty) (Bhandar 2018). Reimagining property with responsibilities to care for the Earth will be an occasion to take up the pressing issues of redress to Indigenous people, as well as recognising the wisdom of their traditions.

### **Resources for transformation**

What resources do we have for such a foundational transformation? In terms of law, we have Indigenous legal systems, legal history (which shows us the shifting forms of property over time), and existing legal concepts that we can draw upon to articulate a human responsibility towards the Earth.

A shared Earth does not require all property to be held in common. There can be many kinds of territories for human and nonhuman animals. Respectful sharing *does* require a built-in responsibility to care for the Earth community, present and future. Existing common law

provides two concepts that can help with reimagining property. One is the duty of care, and the other is the complex doctrine of trust. Law schools offer entire courses on trust (and a great deal of the basic course on torts is about the duty of care). I will focus here on trust. The basic idea is that someone can hold property in trust for someone else, such as a child. The duty of the trustee is to use trust property in ways that will be of benefit to the beneficiary, such as the child. Suppose all land was held in trust for future generations – not only of all humans, but also of the Earth community. The law could carve out different entitlements to use for those currently living on the land, but always with the basic proviso that there must be at least equal benefits for future generations. This legal concept is similar to concepts of stewardship found in Christianity, Judaism, Islam, Hinduism, and Buddhism. Of course, the idea of responsibility to the Earth and to future generations is also central to the teachings of many Indigenous peoples.

The trust concept has the potential to provide a legal framework for relations of caring responsibility. But it is, of course, not a simple solution. The equal benefits proviso will not itself tell us what counts as benefits or what to do about possible conflicts between important short-term gains (such as enough food for the existing population) and long-term benefits to future generations. (The norms about such trade-offs might be different from those of ordinary trust doctrine, where the benefits to the beneficiary always take priority over the interests of the trustee.) In addition, common forms of cost-benefit analysis may be unsuitable when everything affected is treated as fellow subjects, not as potentially disposable objects.

A system of trusteeship for all land would have to work out questions of how such trusteeship could be transferred among humans. Could it effectively be bought and sold? Would there be constraints on the selling price, so that land could not be sold for profit, or profits would be limited, or taxed and returned to care for the land? Would it be possible for people to recover the costs of improvements they made to the land or the buildings on it? There might be different answers in different contexts.

Right now, there are community land trusts that provide housing for low-income people. People who qualify can buy and sell the property, but profits are limited. There is also an increasing number of privately created conservation trusts to protect wild lands that will restrict the use future owners can make of the property. Another example is Trust for Nature in Victoria, Australia, which encourages the creation of conservation trusts.<sup>3</sup> And there is also land that is held as public trust. In addition, 89% of land in Canada is still publicly owned. It is leased for designated uses, and with varying terms, including a version of freehold ownership. These are examples of land that can be productively used and transferred, but with built-in limitations. They can be used to help work out the details of what a new form of private property in trust would look like, and they can help us find legal structures that are able to create relations of responsibility between humans and the Earth on which they depend. In addition, other scholars have offered versions of property in trust (Wood 2013).

Another way of expressing respect for members of the Earth community is to recognise them as fellow subjects with rights, as has happened with rivers in New Zealand and Canada.<sup>4</sup> This indirectly creates a trust-like relationship with the humans who will act to protect those rights. I see such rights-recognition as a complement, rather than an alternative, to responsibility to care for the Earth becoming a foundation of property. Such a responsibility would cover all dimensions of Earth, not just named entities, and I think the framework of responsibility rather than competing rights is best suited to the necessary transformation of the relationship between humans and the Earth.

I have not tried to identify who would adjudicate the inevitable conflicts over any form of trust, or who would be authorised to raise a complaint. Could a river be the complainant about a breach of trust, even if not named in legislation? Who decides who are suitable advocates for



entities without human language? Whatever the specifics, it is important to have more diverse and democratically accountable decision-makers than is currently the case with the judiciary. Everyone should recognise that the way property is defined, and contested, and modified over time is central to the way both human equality and environmental sustainability can be achieved. Thus, a representative and participatory system of decision-making will be required (Nedelsky 2011, ch. 6).

I have also not tried to talk about the transition between the existing property system and a new system of something like trusteeship. The most important point is that although common law concepts may help, I envision the basic transformation of the meaning of property to come via legislation, not the courts. In addition, questions of compensation to current owners need to consider the fairness of existing ownership. In the American context, for example, ownership patterns are shaped by the ways acquiring ‘unoccupied’ land by ‘settlement’ through land grants was possible for settlers of European extraction but not comparably for those of African descent or for Indigenous peoples, whose ancestors had been dispossessed.

Holding all land in trust would be such a profound legal transformation that it would require a widespread change in values in the population at large. Many believe that property entitles owners to do whatever they want as long as they do not violate the rights of other owners (and occasionally non-owners). This is a claim to freedom, which environmental regulation is seen as restricting. If this presumption of absolute rights of use and exclusion prevails, the habitability of the Earth will continue to be at risk. We have already seen the limited impact of environmental regulation that tries to constrain the power of property – in law, in politics, and in dominant norms. We need to change shared norms around what property means while we work to re-define the law of landed property. This means new understandings of responsible freedom and of the complex values of being part of the Earth community – all of which can be compatible with important (but not absolute) freedoms for individual property owners.

What are the resources for fostering this transformation in norms and values? Almost all the answers involve public education. Perhaps the first step is to ensure that people in the settler countries understand that Indigenous peoples successfully lived on and cared for the land for thousands of years with principles of kinship and responsibility with respect to the Earth. Of course, historically Indigenous economies were very different from contemporary financial capitalism, and the scale of the communities was much smaller. Nevertheless, they provide examples of the viability of responsibility-centred relations to land.

The necessary change in values needs to be part of a basic change in world view, as humans reimagine their relations within their shared world. The teaching stories of Indigenous peoples provide a path here (Borrows 2010, 2019). In addition, writers drawing on different spiritual traditions invite readers to embrace ‘a wild love for the world’ (Kaza 2020; Macy and Brown 1998). Nature writers and psychologists explain the crucial benefits of contact with nature. In addition to the inspiration of writers (and artists), I think people need to be encouraged to see care for the Earth as part of their basic obligation to others (Nedelsky and Malleson forthcoming). For this to work, in turn, people need the *experience* of providing and receiving care from the Earth. If care for the Earth is merely an abstraction, I don’t think it can have the power to fuel the scope of change that is necessary. The proposed changes in property law could foster and express new relations between humans and the Earth. But all relationships require care, and law cannot command feelings of care. Humans must develop practices in which care flourishes. Experience and education in learning from the Earth must be part of the project of transformation.

Gardening allows many to experience the gifts of the Earth and the joys of care given and received (Kimmerer 2020). But the Earth also has lessons vital to reimagining property that are not so easy. Most people need to learn how to learn from the Earth. It takes attention, receptivity,

and guidance (such as has been provided in the Indigenous Law Camps run by Osgoode Hall Law School, where participants are encouraged to see the land as a source of law) (Borrows 2017, 2018). And so, it takes *time*, that seemingly scarce commodity (bought and sold as it is). I find that it also takes time and receptivity to learn from Indigenous written teachings. They are not generally amenable to skimming for ‘takeaway’ points that summarise the ethics of kinship relations with the Earth. A serious engagement with a deeply different world view is necessary and demanding. Nevertheless, the beauty of these teachings draws many and they are increasingly widely available (Kimmerer 2020; Johnston 2003; Simpson 2014). (Indigenous literature is now part of the grade 11 curriculum in Ontario.) For the purposes of reimagining property, it is especially helpful to learn how Indigenous ethical teachings are integral parts of Indigenous law, and thus of legal relations with the land and other users of the land (Borrows 2019; Watson 2015, 2018). In sum, Indigenous traditions offer expressions of the values, the world view, and the forms of law that can guide the transformation of common law property proposed here and facilitate the experience of mutual human–Earth care that can ground that transformation.

In addition, I am persuaded that unless the transformations necessary to address climate change are embedded in wider policy changes aimed at equality among humans, there will not be the necessary popular support for change (Klein 2020). There will be costs to the changes, and they need to be distributed fairly (as the harms from pollution and climate change have not been). Not just averting disaster, but also a better way of life should be a clear part of the project. This is particularly so when property is proposed as a vehicle for change.

Property has been foundational in enabling the objectification and despoiling of the Earth and in structuring relations of inequality – and not just economic inequality. No common law society has succeeded in insulating social or political equality from economic inequality. The hierarchies among humans and between them and the Earth are bound together with property in complex ways, and they need to be addressed together for both political and ethical reasons. Even if implemented, ‘land in trust’ will not itself transform human inequality. So, this proposal ultimately must be part of a larger project.

There is always a kind of chicken-and-egg problem with using law as a tool of transformation. Law is such a fundamental part of the values, institutions, norms, and customs of common law societies that it is hard to see how basic changes can take place without involving law. But all law is based in norms and in sets of values and frameworks of understandings that make the law intelligible and meaningful. Law, in turn, is an essential part of the transformation of basic norms because, in the modern world, it plays a huge role in both articulating and enforcing dominant understandings. But law itself cannot be the only vehicle for the transformation of the underlying framework of values and assumptions about how the world works. Other sources must *motivate* changes in the law. The centrality of property in law, norms, and institutions means that a basic transformation *at all levels* is essential if property is finally to foster relations of equality and respect rather than hierarchy and violence. Since transforming relationships of hierarchy is at the heart of these changes, a relational analysis will be particularly helpful in guiding the transformation.

Of course, the idea of all landed property held in trust for the Earth community, present and future, is aspirational. The foundational change in the relationship between humans and the Earth involves changes in legal practices and values that are both deep and broad. Popular beliefs, economic interests, and, therefore, political power will resist it. But it is not utopian; the necessary resources – legal and ethical – are available now. Popular opinion on climate change is shifting, and the pandemic reminds us of the possibility of fast, radical change. Other changes, such as ending the use of fossil fuels, also seem impossible but are necessary to survive climate change. It is the very embeddedness of property in our legal, economic, and cultural systems that

makes transformation both profoundly difficult and urgently needed. Collectively, we need both the vision and the political will to enact the changes necessary to avoid climate catastrophe and the vast suffering it will entail.

## Notes

- 1 Osgoode Hall Law School, York University.
- 2 Only where there are still forms of 'commons' where one can gather material – clay for pots, plants for medicine, fish for food – can one freely mix one's labour to create property.
- 3 'In Victoria 62% of the land is privately owned. Sadly, this means many thousands of hectares of native vegetation are lost each and every year to clearing and the impacts of climate change. Long-term protection of what remains is critical to the future of many ecosystems and species. To achieve this goal, Trust for Nature works closely with private landowners, government, organisations, traditional landowners and businesses to help restore, protect and manage biodiversity on private land' (Trust for Nature n.d.).
- 4 *Tē Awa Tipua (Whanganui River Claims Settlement) Act 2017* (NZ); Municipalité Régionale de Comté de Minigamie, Res 025–21, *Reconnaissance de la personnalité juridique et des droits de la rivière Magpie – Mutehekau Shipu* (16 February 2021); Conseil des Innu de Ekuanitshit, Resolution, Doc no 919-082, File no 919-01-18 (18 January 2021). See also Kestler-D'Amours 2021.

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