ENVIRONMENTALISM AND ECONOMIC DEVELOPMENT: SOME AXIOLOGICAL CONFLICTS AND AN ATTEMPT AT RECONCILIATION

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ABSTRACT

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Serious problems of air and water pollution, along with rapid population growth and profligate consumption of precious resources, have led to widespread concern about the need to protect the environment. Depletion and degradation of those resources in the first half of the twentieth century seemed to threaten the quality of life for people now inhabiting the earth and perhaps make the planet uninhabitable for posterity. This situation, coupled with other factors, has brought about the rise of the environmentalist movement.

Like many popular causes, environmentalism has developed ideological characteristics which tend to distort value judgments. More extreme advocates have proposed a new "ethic" which would elevate ecological values to the highest position as a norm for human conduct. They have adopted the principle enunciated some thirty years ago by pioneer conservationist Aldo Leopold: "A thing is right when it tends to preserve the integrity, stability and beauty of the biotic community. It is wrong when it tends otherwise."

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This dissertation begins by examining the "environmental ethic" to determine whether it is tenable in the light of commonly accepted axiological principles. The examination shows that the environmental position is unacceptable and suggests the importance of a moral discussion which takes into account both human needs and human obligations with respect to persons and other objects within the human environment.

One of the principal points at issue between environmentalists and those who would assign a more primary role to developmental values is the question of "rights." After reviewing the development of this concept and its use in both moral and legal contexts, I have concluded that the term "a right" is analogical (in the Thomistic sense). In its primary sense it applies only to moral agents: human beings capable of acting purposively and voluntarily. Infants and fetuses (who are "virtually" moral agents), "dysfunctional" people, posterity, animals and environmental objects can be right-holders only in a secondary sense of the term. Understood in this way, a moral right in its primary meaning is a moral entitlement to a certain good which entails a relationship between the subject of the right and one or more respondents such that there is in the respondents a moral obligation to perform acts which would result in the subject's attaining the good or to refrain from performing acts which would prevent attainment.

Applied in actual circumstances, this concept provides the basis for interpreting the traditional right to property along with the more recently recognized rights to a decent environment and to employment. Resolving conflicts among these rights poses certain difficulties but the concept of rights I have proposed permits their reconciliation on the basis of their relationship to the "vital interests" of moral agents.

Along with the theory of rights, it is essential to understand the moral imperatives of human obligations. I have attempted to show that not all obligations are correlative with rights. People have serious obligations, both as individuals and as members of collective groups such as corporations and social organizations, which arise from sources other than rights. This explains the obligations moral agents have to those entities to whom "rights" are attributed by reason of the secondary analogates of the term, the infants and others mentioned above. It suggests a lexical ordering of obligations, similar to the ordering of rights and similarly based on relationships involving both vital and non-vital human interests.

The dissertation concludes with a discussion of the implications of the concepts of rights and obligations, both for public policy and for individual or corporate decisions, particularly as they affect environmental protection and economic development.

PREFACE

Completion of a doctoral program in an ancient discipline such as Philosophy is a difficult task under any circumstance, but for me it has entailed more than the usual quantum of difficulty. As an over-age student of 50, who had received the M.A. degree 22 years earlier, I had been away from Philosophy and the academic life for more than 20 years when I applied for admission to the Michigan State University graduate school program in 1970. Without the encouragement of those faculty members who were willing to take a chance on me and many others both within and without the University who provided understanding, acceptance, guidance and a strong measure of forbearance, I could not have completed the task. To all of them I wish to express my deep appreciation.

I would like to acknowledge first the help I received from Dr. Rhoda Kotzin, graduate chairman in the Philosophy Department at the time of my entrance into the program. Her counsel then and in subsequent years has been invaluable. I appreciate also the encouragement I received from Dr. William Callaghan, then chairman of the Department of Philosophy.

A special word of thanks is due Dr. Lewis Zerby, the chairman of my dissertation guidance committee. He supported with enthusiasm my proposal to write on a somewhat unusual topic and by his gentle but critical direction guided me through the intricacies of putting together a dissertation.

Thanks also to the members of the committee: to Dr. Bruce Miller, whose critical reading and detailed comments sharpened my arguments even when I was not able to win his complete assent; to Dr. Harold Walsh, whose incisive criticism of early drafts helped focus the thesis; to Dr. Richard Hall, whose reading of the final draft I appreciated and whose earlier help in preparing for the troublesome prelims I appreciated even more; and to Dr. Lewis Moncrief, of the Department of Recreation Resources Planning, whose non-philosopher's viewpoint made its special contribution to this work.

Throughout the course of this doctoral program, I have continued to earn a living in the full-time and sometimes demanding position of director of the Industrial Development Division of the Office of Economic Development, Michigan Department of Commerce. This has required me to pursue my studies almost exclusively at night, on weekends or occasionally during whatever brief "annual leave" periods I could muster. I appreciate the cooperation

of my superiors in permitting me to arrange my working schedule with sufficient flexibility to enable me to meet certain special scholastic requirements and the cooperation of my colleagues in sometimes bending their schedules to fit mine.

I could have done none of this, of course, without the help and encouragement of my wife and family. They know how much I owe them, but I want them to know that I appreciate their sacrifices that have made all this possible.

Permit me, if you will, the author's privilege of a final personal comment on the present work. The discerning reader will have noticed that my extra-philosophical vocation is in the field of economic development. This is the career which has claimed my interest for the past 27 years. It might be expected that this circumstance would bias my viewpoint with respect to the topic of this dissertation. It would be fatuous to deny at least some degree of bias: it was this interest, indeed, which led me to the subject. This familiarity with economic development, however, has made me realize that there are serious philosophic, moral issues which need exploring. I have made an honest effort to analyze a few of them, with sufficient detachment, I hope, to make the argument credible or at least worth listening to.

In making this analysis I have tried to discuss moral issues strictly from the philosophical view of an ethics which prescinds from religious values. I happen to believe religious values are important to moral judgments in two senses: religious considerations can offer stronger motivation than merely secular reasons for following moral imperatives; and religious considerations can sometimes lead one to impose on himself stricter moral codes than the merely secular. On the other hand, one cannot expect others who do not share his religious views to be bound by the stricter morality his religion requires. We can all meet, however, on the common ground of philosophical ethics. On that ground we can reasonably expect others to be bound as we ourselves are bound by the moral principles which reason discovers.

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INTRODUCTION

Strident voices have been shouting for more than a decade that the world is headed for environmental disaster. If we do not change our way of life in dramatic fashion, these voices insist, our "spaceship earth" will become uninhabitable within a few short years. Apologists for growth and technological "progress" have countered in more measured but equally strident tones that our economic system will inevitably collapse unless it continues to expand. Such a debacle would leave millions unemployed in this country and millions of others in less developed areas dead of starvation. The conflict between economic growth and environmental protection has become one of the burning political and social issues of the final quarter of the twentieth century.

Even discounting the extreme predictions of doomsayers on both sides, there is no doubt that we must find ways to permit our economy to continue to function and grow without destroying the environment in which we live. The United States has already made significant improvements in both air and water quality. People are fishing again in the Detroit River and Lake Erie is not as "dead" as it once seemed to be. Motorists can leave their windows open and

still breathe while passing through Gary, Indiana, on the Turnpike. Even the Los Angeles smog is less oppressive than it once was. Population is no longer increasing at "exponential" rates. Yet the economy has continued to grow.

The conflict, however, is still far from being resolved. More needs to be done in cleaning up the air we breathe and the water we drink. For our own welfare and that of our posterity, we must conserve scarce resources and keep our planet liveable. At the same time, society must be concerned with problems of unemployment and poverty which degrade people and make life hardly worth living for many in this country as well as in less developed parts of the world.

Not only are there difficult technical questions which must be answered and legal problems which must be solved, but there are fundamental moral and philosophic issues which we must consider. These latter, I believe, are essential in arriving at sound decisions concerning both public policy and private actions which affect the resolution of the conflict between environmental protection and economic growth.

A basic philosophic question is raised by those who advocate the adoption of what they call the "environmental ethic." The supreme principle of this doctrine, as enunciated by one of its early proponents, Aldo Leopold,

is, "a thing is right when it tends to preserve the integrity, stability and beauty of the biotic community. It is wrong when it tends otherwise."[1] This contrasts sharply with the traditional ethical principles of western civilization which have consistently held that human interests represent paramount values. To accept the "environmental ethic" position would undermine the entire legal and moral foundation on which our civilization rests; it would subordinate human values to those of a biological system in which man is only an incidental--and, by and large, insignificant--part.

Examination of this position, as I intend to demonstrate, will show that it is ill-founded, internally inconsistent and totally unacceptable on consequentialist grounds. Yet it is widely accepted as "received doctrine" by many environmentalists--the foundation of the environmental/ecological ideology--and is the logical antecedent of positions held by numerous others who do not accept the principle itself. It threatens to become the basis for public decisions and private ethical judgments with enormous potential for harm to human society.

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[1]Aldo Leopold, A Sand County Almanac, p. 262. Leopold referred to this as the "land ethic" in his treatise, originally published in 1949, but later writers more commonly use "environmental ethic."

Advocates of the "environmental ethic," along with proponents of positions implicitly dependent on its principle, are people of good will whose intentions are laudable. They are seeking solutions to many of the admittedly serious problems associated with environmental degradation and unwitting or ruthless depletion of essential resources. Their fundamental error is to make the "biological community" the center of their concern rather than the "human community" and hence to confound ecological principles with moral principles. In decrying the "anthropocentric" attitude which, they charge, places man at the center of the universe and makes man's well-being the sole criterion of value, these environmental partisans depreciate the worth of the human spirit and deny man's distinctive, even unique, place in the world.

It is my contention--and the burden of much of this dissertation--that people can solve their economic and environmental problems within the context of ethical positions which vindicate the preeminent status of man as a moral agent unique among the entities of the world. In arguing for this position, I plan to develop a theory of human rights and obligations which will lead to a system of priorities in accordance with which people can arrive at sound public policies and resolve conflicts relating to economic development and environmental protection.

Acceptance of these principles will not in itself solve the problems or make them go away, nor will it resolve the many conflicts which are bound to arise. It is my hope, however, that it will lay a foundation for resolution of the conflicts by providing a moral basis for reaching reasonable decisions within a context of human values and with appropriate regard for the demands of social justice.

CHAPTER I

THE IDEOLOGY OF ENVIRONMENTALISM

Confrontations between "environmentalists" and "developmentalists" over controversial projects often involve far more than a simple dispute concerning the apparent issues in the case at hand. What frequently takes place instead is a fundamental clash between two ideologies radically opposed to each other, each with its own set of values, each expressed in a language which the other side does not fully comprehend. "Ideology" has been defined as "any social ideal, set of social ideals, or scientific hypothesis which is expressed in such a way that it appears to be factual information but is actually a mixture of normative and descriptive elements."[1] As the noted economist Joseph A. Schumpeter has pointed out:

> . . . Ideologies are not simply lies; they are truthful statements about what a man thinks he sees. Just as the medieval knight saw himself as he wished to see himself and just as the modern bureaucrat does the same and just as both failed and fail to see whatever may be adduced against their seeing themselves as the defenders of the weak and innocent and sponsors of

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[1]Lewis Zerby, "Normative, Descriptive, and Ideological Elements in the Writings of Laski," p. 135.

> the Common Good, so every other social group develops a protective ideology which is nothing if not sincere.[2]

"Developmentalists" tend to include industrial and commercial interests, real estate promoters, chambers of commerce, state or municipal development agencies, and various citizen groups interested in "economic progress." The "environmentalist" side typically comprises federal, state and local environmental protection agencies; air quality or water pollution control officials; departments of natural resources; organizations representing recreation interests such as associations of hunters, sports fishermen and outdoorsmen; "environmental defense" coalitions; and the Sierra Club.

Occasionally, one or another of the groups mentioned will be on the other side, as happens when the environmental defense group challenges a recreation project or when the Sierra Club opposes a state pollution control agency for not enforcing regulations strictly enough. A cross-over may also occur when an existing commercial organization believes development of a new project threatens its interests.[3]

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[2]Joseph A. Schumpeter, "Science and Ideology," p. 349. Schumpeter also has an interesting section in his History of Economic Analysis under the caption, "Is the History of Economics a History of Ideologies?" (pp. 34-47).

[3]For example, in 1969 developers of the Hilton Head Island resort near Beaufort, South Carolina, strongly opposed establishment of a major new chemical complex in that vicinity on "environmental" grounds; see Oliver G. Wood, Jr., ed., The BASF Controversy: Employment vs. Environment.

Participants on either side of an environmental dispute frequently have widely divergent interests among themselves. Labor unions often have strong environmentalist leanings, but sometimes, seeing their memberships' jobs in jeopardy, find themselves unaccustomedly on the same side as their employers.[4] Organizations representing minority and disadvantaged groups not usually noted for support of "big business" causes support developments which they see as offering economic opportunities for their constituents.[5]

The environmental side also mixes strange bedfellows. Fishermen and canoeists, who frequently dispute over the use of rivers for their respective forms of recreation, make common cause against projects which they see as endangering either sport. Public health officials concerned with the damaging effects of pollution on drinking water or the danger of air contaminants to citizens' lungs join with ecologists who are less concerned with human distress than with trespass against the "rights" of natural objects themselves.

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[4]The United Steelworkers of America, AFL-CIO, for example, presented an amicus curiae brief on behalf of Reserve Mining Co., Armco Steel Corp., and Republic Steel Corp. in a lawsuit which threatened to close Reserve's plant at Silver Bay, Minnesota, on environmental grounds. See Reserve Mining Company v. Environmental Protection Agency, 514 F.2d 492 (1975).

[5]See The BASF Controversy, p. 19; also see Norman J. Faramelli, "Ecological Responsibility and Economic Justice."

In spite of the fluid character of the constituencies on each side there is a consistent tendency in virtually all the disputes: the developmentalists want the project to go ahead; they are concerned with economic growth and "progress." The environmentalists want to inhibit the project, hedge it about with restrictions, in many cases keep it from happening at all.

Project proponents are frequently baffled by the intensity of the opposition to a development which they believe will provide all sorts of benefits to the community--jobs, tax revenues, useful products, highway construction, recreational opportunities for the poor--as well as (in many cases) profits for the entrepreneur. They are acting within the framework of an ideology in which "progress" and economic growth are considered positive goods which society values and seeks to encourage. To them, the "public interest" lies in the effort to secure values of this kind; they cannot understand it when the opposition cloaks itself in the mantle of "defenders of the public interest" in attempting to stop the project.

What developmentalists fail to realize is that their adversaries have rejected the values they prize. The environmentalist ideology looks upon "progress" with suspicion: ecological science considers the ideal to be "homeostasis" or "stability" within the ecosystem. Since human beings

are part of the ecosystem, they contend, any "progress" instigated by people inevitably tends to disturb that stability and consequently is at least prima facie undesirable.

Environmentalist Tactics

Because of the widespread, in fact until recently almost universal, acceptance of the developmentalist viewpoint, environmentalists often couch their opposition in terms more readily acceptable by the general public. As one respected environmental author put it:

> . . . Public interest challenges to decisions alleged to be environmentally unsound are diverted by the pressures of doctrine and tradition from claims about the value of nature as such into claims about interference with human use, even when the real point may be that a particular wilderness area, for example, should be "used" by no one.[6]

This rather deceptive approach is sometimes distasteful, but the elite leaders of the cause believe it is justified by the circumstances: "While the environmentalist may feel somewhat disingenuous in taking this approach, he is likely to regard it as justified by the demands of legal doctrine and the exigencies of political reality."[7]

Another writer described the same sort of "disingenuous" approach and pointed out a problem which sometimes ensues:

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[6]Lawrence H. Tribe, "Ways Not to Think About Plastic Trees," p. 63.

[7]Ibid., p. 73.

> There are a wide variety of reasons why those concerned with affecting the outcome of a major land use issue are not envisioning (or at least not expressing) many of the concerns that in fact move them and many of the options that in fact are open to them. . . .[8]
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> . . . [The conservationists'] starting point is piety and self-doubt in the face of nature, and sometimes it has gotten lost. To gain entry into the discourse, they talk about a cash crop [of oysters to be endangered by construction of the dam under dispute]; to avoid sounding softheaded, they fail to emphasize that, in their view, the "cash crop" is merely an indicator of a far more valuable ecosystem. The conservationists have separate languages for talking to one another, to politicians, and to their avowed opponents. Except when they talk to one another (and perhaps even then) they refrain all too often from articulating what really matters to them.
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> . . . When a dialogue proceeds under false pretenses, its participants rapidly grow bitter; if after much effort you have scored a point, and your opponent acts as if the score is unchanged (because it really is), you want to quit. The Philadelphia office of the [U.S.] Corps [of Engineers] now feels this way about the Environmental Defense Fund, and expresses a strong desire to keep its distance.[9]

If the dedicated environmentalist's objective is to preserve stability in an ecosystem, she attains her end by seeing that nothing is done. The most desirable outcome of a controversy may well be no resolution at all. This leads to endless dispute, in which the environmentalist--particularly one whose livelihood and professional career depend

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[8]Robert H. Socolow, "Failures of Discourse: Obstacles to the Integration of Environmental Values Into Natural Resource Policy," p. 3.

[9]Ibid., pp. 20-22.

on "defense of the ecology"--can gather support to her cause by involving people with specific interests in some aspect of the conflict. When these interests are satisfied, she can turn to people concerned with another aspect, in the hope that the controversy will be drawn out so long that the developer will become discouraged and abandon the project altogether. In this effort, many somewhat naive politicians and newspaper editors who find it advantageous to support any popular "cause" lend their support to environmentalist crusades; they believe they are helping to resolve a dispute in the interests of people whereas in reality they are contributing to a non-solution which only serves the anti-human (or at least "non-pro-human") purposes of the "environmentalist ethic" advocate.

A classic example of the successful use of the technique was the "Storm King Mountain" controversy, in which environmentalists were able to prevent Consolidated Edison of New York from building a pumped-storage power generating facility. The first opponents were affluent owners of vacation retreats in the mountains whose esthetic vistas would have been disturbed by the project. Professional environmentalists soon joined the fight and quickly attracted influential political and newspaper support. After fifteen years of controversy the project was abandoned. Meanwhile, New York experienced a disastrous

blackout and numerous severe power shortages, which the project probably would have prevented; the utility company's finances were in a shambles and its customers were receiving power at costs greatly inflated by the necessity of using less efficient generating methods.[10]

Environmentalists scored a similar "success" in 1975 by thwarting the efforts of Northstar Steel Company of St. Paul, Minnesota to construct a $50,000,000 "mini-steel" plant in Muskegon, Michigan. The facility would have employed more than 500 people in an area suffering from substantial and persistent unemployment. The local planning commission and city council approved the project by almost unanimous votes and state pollution control authorities endorsed it; but a local opposition group, with help from the Western Michigan Environmental Action Council, was able to delay the project to such an extent that the company decided to cancel the Muskegon project. Company officials said they were certain they could win out in the end, but found unacceptable the delays and the inevitable hostilities within the community which the controversy was bound to create.[11]

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[10] See William Tucker, "Environmentalism and the Leisure Class." Tucker makes an interesting application of Thorstein Veblen's Theory of the Leisure Class to environmental activism.

[11] This reference is based on personal observations of the author, interviews with some of the principals involved and records of the Office of Economic Development, Michigan Department of Commerce.

Commenting on a similar dispute concerning the proposed location of a chemical plant near Beaufort, South Carolina, in 1969, a University of South Carolina professor remarked:

> Another move worthy of serious consideration is that of toning down the adversary process. The adversary or bargaining process has worked in most situations in the industrial relations field for many years because the parties to the vast majority of disputes were willing to negotiate and assumed throughout the negotiations that an agreement would be reached. Too often in disputes involving environmental issues, however, disputants have presented "all or nothing" demands and have resorted to picketing, court injunctions, and extensive use of the news media to get their way. If we are going to resolve the environmental problems of the 1970's we are going to have to be more reasonable than we were in the latter half of the 1960's, and we are going to have to place more faith in scientific testimony about facts, research experimentation, and negotiations.[12]

In all of the three environmental confrontations just mentioned, the outcome was the same. Nothing happened. What better result could one hope for if she were dedicated to the ecological environmentalist's goal of "homeostasis" or stability of the ecosystem? In the view of such ideologues, the enemy of stability is the desire of people to change things as they exist in nature in order to satisfy their own wants or desires; the selfish interests of people lead them to disregard what would be in the best interests of the natural ecosystem. Since not enough people subscribe to this belief, however, environmentalists find it expedient

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[12] Wood, The BASF Controversy, p. 72.

to appeal for support to the very same characteristic of human self-interest which they abhor until they can convince the masses of the rightness of their true position:

> An environmental ethic that is accepted and complied with because it appeals to one's self-interest is not, admittedly, on an altogether sound footing. Such a view continues in part the erroneous concept of one's separateness from nature. The authors believe, however, that an appeal to self-interest is the best if not the only hope for the adoption of an environmental ethic at the present time, when such an ethic is critically needed. Our hope is that ultimately people will recognize and accept the right of other species to exist simply for their own sake and not because people need them.[13]

This appeal to "enlightened self-interest" based on the premise that "whatever affects the environment adversely will eventually harm everyone," is only a tactical move. It would rely on two arguments: that those presently living are in imminent danger from environmental pollutants and that violation of environmental integrity poses a threat to posterity:

> For an appeal to self-interest on these grounds to succeed, we must be convinced of the danger to ourselves and to posterity. If the facts are presented clearly and simply, however, the layperson need not know a great deal about biology or ecology to understand the risks we run of causing irreparable damage or of starting irreversible and disastrous processes. How soon and how thoroughly he or she could be convinced would depend, if we can judge by the success of advertising methods, upon how thoroughly and repeatedly he or she was exposed to the facts.

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[13] Douglas H. Strong and Elizabeth S. Rosenfield, "Ethics or Expediency: An Environmental Question," p. 269, n. 44.

> To persuade enough people . . . that an urgent need exists for a new approach to environmental problems, to persuade them that whatever we do that affects the ecology is morally either right or wrong, to educate them to the point where they are willing to make personal sacrifices . . . is, to say the least, a formidable task. Educators at every level, journalists of every order, the powers of radio and television, in fact all the powers of communication, would have to participate. . . .[14]

Even with this appeal to self-interest, however, the well-being of the environment would take precedence over the good of human beings:

> . . . Whether the question involves the size of one's family or the cutting of trees on one's own property, the good of the earth will come first. What is ecologically sound will be right; what is ecologically unsound will be wrong.
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> With respect to any course of action that protects or improves the condition of the environment at the expense of someone's job, the duty to the environment will be, by its very nature, greater than the duty to the job-holder. . . . As for the question, should we use the earth as we see fit at the expense of those who come after us, the answer is implicit in the ethic itself. Care of the earth is its essence, the present and future health of the earth its objective.[15]

And that is the case when the environmentalists are appealing to human self-interest! This kind of "selfish" motivation aside, the real goal would be a "vision" of "an environment that would maintain the complexity, diversity and stability of all life on earth" for its own sake:

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[14] Ibid., pp. 268-269.

[15] Ibid., p. 269.

> . . . As for those who seek a vision and can be guided by one, what could be more inspiring than the vision of people learning to understand the earth in all its complexity, the vision of people coming by reason and insight to see themselves as members of the biotic community, administrators of its laws, insurers of its health, custodians of its beauty? For those who share this vision, an environmental ethic already exists.[16]

Leopold's Land Ethic

It was this kind of vision Aldo Leopold had in mind when he wrote about the "land ethic." Leopold was a conservationist of the old school, a forester by profession, a pioneer in game management, one of the organizers (in 1935) of the Wilderness Society. His best known book, A Sand County Almanac, written in 1949, was a kind of romantic panegyric of the "outdoor" life. In it, besides describing his own experiences, he expressed concern over the growing problem of pollution and what he considered to be the need for greater understanding of ecological processes and improved behavior of people toward the natural environment.

As Leopold saw it, man is part of a "community of nature." The species Homo sapiens enjoys a status within this community similar to that of every other species. Each has its proper place in an integrated and highly complex pattern of relationships. Because of a superior degree of intelligence, human beings have a special place in the

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[16] Ibid., pp. 269-270.

pattern just as the other higher animals do with respect to species with lower degrees of intelligence. Nevertheless humans depend on other species and are subject to the same inexorable laws of natural ecology. Their behavior should reflect recognition of their place within the ecological community.

Acceptance of the "land ethic," Leopold believed, was a simple extension of previous moral commitments which had evolved over the ages. The first ethics, he wrote, dealt with relationships between individuals. The second had to do with relationships between individuals and the human society they live in. The next logical step is to extend ethical concern to the environmental community:

> This extension of ethics, so far studied only by philosophers, is actually a process of ecological evolution. Its sequences may be described in ecological as well as in philosophical terms. An ethic, ecologically, is a limitation on freedom of action in the struggle for existence. An ethic, philosophically, is a differentiation of social from anti-social conduct. These are two definitions of one thing. The thing has its origin in the tendency of interdependent individuals or groups to evolve modes of co-operation. The ecologist calls these symbioses. Politics and economics are advanced symbioses in which the original free-for-all competition has been replaced, in part, by co-operative mechanisms with an ethical content. . . .
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> There is as yet no ethic dealing with man's relation to land and to the animals and plants which grow upon it. Land . . . is still property. The land relation is still strictly economic, entailing privileges but not obligations.
>
> The extension of ethics to this third element in human environment is . . . an evolutionary possibility and an ecological necessity. . . .

> All ethics so far evolved rest upon a single premise: that the individual is a member of a community of interdependent parts. His instincts prompt him to compete for his place in the community, but his ethics prompt him also to co-operate (perhaps in order that there may be a place to compete for).
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> The land ethic simply enlarges the boundaries of the community to include soils, waters, plants, and animals, or collectively: the land.[17]

Leopold's reasoning in support of his "land ethic" is essentially an argument from analogy.[18] In society, the human community, people have moral relationships to each other, in which each member of the community accepts restrictions on her own freedom for the good of the community as a whole. Each person respects the rights of every other person as a matter of moral obligation arising out of membership of all in the human society. This cooperation works to the advantage of all. The biotic community, including human beings along with all other species of plants and animals plus the land itself on which they live, exhibits similar relationships among mutually interdependent individuals. It follows, Leopold would argue, that the individual members of this biotic community should have the same kind of ethical rules governing their conduct toward one another that members of society have in

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[17] Leopold, Sand County Almanac, pp. 238-239.

[18] For a general discussion of "argument from analogy," see below, pp. 82-83.

their community. Each, including individual human beings, should respect the rights of others, including animals, plants and the earth itself, to existence and the quiet enjoyment of their natural functions.

Like so many arguments from analogy, Leopold's fails because it does not take into account the fundamental difference between the internal relations which hold within the respective analogates. The biological interdependence among the individuals in the ecologic community is not at all the same as the moral interdependence among the members of human society. Physical dependence, based ultimately on transformation of solar energy into food through photosynthesis, metabolism, predation and other biological phenomena, characterizes the biota. In the human community the basic characteristic is the interplay of reciprocal relationships among rational agents acting voluntarily and purposively.

The resemblance between human and ecologic communities is superficial; certainly it is not the foundation on which to build an "ethic." If it were, the results would be disastrous, even to the environmentalists' program. If the ecologic community were taken to be the model for human society, no individual would have concern for another save in the instinctual preservation of his own interests. No individual would sacrifice his own present advantage for

some higher conceptualized good of another or of the group as a whole or their posterity. The weak would be the prey of the strong and the only limitation on self-aggrandizement the countervailing brute strength of natural circumstance. People would live in what Hobbes described as a state of "war of every man against every man" where life is "solitary, poor, nasty, brutish, and short."[19]

Precisely the elements which distinguish the human from the biotic community form the basis for ethical thought and behavior. Because human reason can understand an object of its perception under various aspects of good, people can choose among different courses of action with respect to the object. When a person perceives a wolf, he may think of it as a danger to himself or his children, as an economic threat to his livestock, as a prize on which to collect a bounty, as a specimen to be displayed in a zoo, as a beautiful wild creature to be admired, as a predator whose existence--or perhaps whose elimination--would help preserve the balance in an ecosystem, as an example of God's providence, as a symbol of freedom, as a fellow sentient being whose feelings deserve consideration. Each conceptualization of the object perceived involves some aspect of good, some object of human desire, some value. The human being evaluates these goods, compares them,

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[19] Thomas Hobbes, Leviathan, ch. 13, p. 85.

deliberates the course of action best suited to accomplish what he considers most important and then decides to act in such a way as to achieve the good or combination of goods he has chosen. Unlike the other members of the biotic community, human beings do not act from blind instinct, like lemmings rushing to the sea or whales beaching themselves on Florida sands, but in a rational manner appropriate to them as human. It is this kind of human action which is the subject of ethical thought.

As a rhetorical device, the analogy between human and biotic communities is useful. Even though it will not stand scrutiny as an ethical argument, it draws attention to the need for people to devote rational concern to the importance of biological processes and human involvement with them. Man alone among the animal species has the capacity to consider her participation in a rational manner and make the normative judgment that she should give due consideration to the effect her actions have on her environment.[20]

It was with this in mind that Leopold made his plea on behalf of the ecologically conscious minority that people

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[20] Note that in this sentence, as in a few other instances, I have used the word "man" in its general sense, as standing for members of the human species, regardless of sex. I should also point out that I have followed the practice of using the personal pronouns "he" and "she" (and their inflections) interchangeably when the reference is indefinite with respect to sex.

should "quit thinking about decent land-use as solely an economic problem." He was right when he went on to say that people should "examine each question in terms of what is ethically and esthetically right, as well as what is economically expedient." However, he oversimplified the problem and overstated his case--knowingly, I think--when he added the next statement: "A thing is right when it tends to preserve the integrity, stability, and beauty of the biotic community. It is wrong when it tends otherwise."[21]

The "Holistic" Argument

Emphasis on man's position as part of a natural community is a common theme among writers who share the ecologist's "vision." An argument in support of this position advanced by Harold K. Shilling resembles Leopold's but attempts a somewhat more sophisticated analysis of the relationships within the natural community.

Key to an understanding of the world, he argues, is awareness of its "holistic" character. "All of its components--its fundamental entities, its soils and mineral deposits, its atmosphere and waters, its plants, animals, and human beings--all these together are seen to constitute

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[21] Leopold, Sand County Almanac, p. 262.

an integrated ecosystem . . . by virtue of their dynamic interrelations, interactions, and mutually supportive functions."[22]

Four characteristics of the world underscore this holistic view, according to Schilling:

1. Man is in no sense separate from nature, but is integrally a part of it. Everything he is and does is deeply embedded in "the system we call nature" and is subject to its laws. Even his capacity to think comes into being through interaction with his environment. Our minds are not only culture-dependent but nature-dependent as well. Without nature "there would be no souls in the Biblical sense of the human psychosomatic wholes that we call . . . persons."
2. All entities, including man, exist and are definable primarily by virtue of interrelationships with other entities, rather than by any supposed substance-essences of their own. To ask what an entity <u>is</u> fundamentally, is to ask not what it is made of but how it interacts with others.
3. Fundamental units of physical reality tend to form complex structures which have properties as wholes

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[22] Harold K. Schilling, "The Whole Earth Is the Lord's: Toward a Holistic Ethic," p. 101.

not possessed by the constituent parts. For example, molecules have no color or temperature, but the bodies they constitute do. Analogously, individual human beings aggregate into social communities, thus acquiring qualities they lack in isolation.

4. Animals as well as men possess mind and spirit, which, contrary to Cartesian dualism, are natural dimensions of life itself and are not limited to human life, nor are they substances added to it.[23]

Viewed in this way, Schilling maintains, the world deserves man's respect and the development of a new kind of "ethic":

> What kind of an ethic should it be? . . . It should be holistic in conception and thrust, thus recognizing that wholeness and the system of interrelationships are of ultimate significance for the cosmic scheme of things. This ethic should declare itself for the conservation and enhancement of wholeness where it exists and to the redemption or healing of it where it has been broken. Those decisions and actions that bring about maximization of such interrelation and interdependence as make for wholeness should therefore be designated as morally responsible and right, and those that operate to break or destroy it should be regarded as wrong.
>
> Such an ethic would accept the inevitability of tension between individual and group, between what is best for the individual and what is best for the common good and would seek a balance between the two by emphasizing the needs, not of the individual in and of himself, but of the <u>individual in community</u>.[24]

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[23] Ibid., pp. 101-107.

[24] Ibid., p. 109.

Some of the implications of these principles, Schilling believes, need special emphasis:

> . . . One is that our sense of the iniquity of environmental pollution must not stem only from our fear of its consequences for ourselves. The animals too must breathe, and so must the plants; hence they too have rights here. It is the whole earth that is being damaged. Even if man could somehow avoid serious damage to himself, a holistic ethic would demand his acting vigorously to protect his fellow creatures if they were endangered--as indeed they are.[25]

The normative judgment of what is right and what is wrong, as expressed in Schilling's account, appeals implicitly to a widely held moral principle that a member of a community should act for the common good of that community. Since people are members of the community of nature, they should act for the common good of the natural community.

This argument clearly depends on the validity of the non-normative claim which is the heart of the "holistic" view. If it is true that there is a "community of nature" in the sense relevant to the use of "community" in the underlying moral principle and if it is true that human beings are members of such a community, the conclusion follows. For this reason it is important to examine these claims.

There is no question that man is a part of the natural world. Human beings certainly depend on animals

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[25] Ibid.

and plants for food and need the atmosphere to breathe. Most people would also agree that the development of intellect depends on knowledge of physical objects through sensation; this is the common-sense view, sanctioned by Aristotelian epistemology and apparently confirmed by modern scientific psychology. But what do these facts prove? They could as easily be used to prove that man is a user or exploiter of nature as to show that she is "an integral part" of it.

Josiah Royce compared a community, in the ethical sense, to a living, organic being, with a past and a future, and a mind of its own. The community, he said, could exist only through members capable of engaging in social communication and able to project themselves, ideally, into a past they shared with other members and into a future they hoped to share. It is not mere symbiosis or even de facto cooperation which constitutes a community; as Royce described it:

> Men do not form a community, in our present restricted sense of that word, merely insofar as the men cooperate. They form a community, in our present limited sense, when they not only cooperate, but accompany this cooperation with that ideal extension of the lives of individuals whereby each cooperating member says: "This activity which we perform together, this work of ours, its past, its future, its sequence, its order, its sense--all these enter into my life, and are the life of my own self writ large."[26]

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[26] Josiah Royce, "The Search for Community," p. 234.

The notion of "community" in the sense relevant to the moral principle under consideration implies more than a simple collection or group of individuals taken together. It means something beyond the idea of individuals dependent on each other; otherwise the parts of a watch or components of an automobile could be called "members of a community." To use the word in this way trivializes the notion and renders it unusable as the basis for an ethical judgment. In a moral community, the kind of community to which the principle properly refers, the members are rational individuals recognizing reciprocal rights and obligations in each other and sharing a common end.[27] It is this concept which gives rise to the principle that each member should act in such a way as to achieve the intellectually recognized and rationally desired end which is shared by the group and which constitutes the common good.

Some of the metaphysical claims suggested by Schilling in the passage paraphrased at length above are at best doubtful, but it is not my intention to

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[27] This is the sense of "community" and "common good" found in Aristotle's Nichomachean Ethics and Politics as well as in St. Thomas Aquinas (see Summa Theologica I-II, qq. 90-95), Locke (Concerning Civil Government) and numerous other political philosophers. John Rawls has an interesting chapter, "The Idea of Social Union" (in A Theory of Justice, pp. 520-529), which discusses these notions in some detail.

analyze their ontological validity here, only their connection with their author's ethical claims. For example, Schilling's statement that "all entities, including man, exist and are definable primarily by virtue of interrelationships with other entities, rather than by any supposed substance-essences of their own" may or may not be true, but even if it is, it fails to support his ethical position. What it purports to show is that man is an integral part of nature, an equal member of a community comprising all natural things, and consequently man's primary moral obligation is to bring about the "conservation and enhancement of [the] wholeness [of nature]."

What this argument overlooks is that the most significant interrelationship between man and the rest of nature is that of "knower" and "known." Man's intellectual capability constitutes the defining characteristic of the species; it is reasoning power which sets human beings apart from other animals and gives them a distinctive place. This non-reciprocal relationship between man and "nature" is the basis for man's special position in the scheme of things. It may indeed give rise to a moral obligation for people to act rationally with respect to their environment, not because human beings and trees or other natural objects are fellow members of a moral community but because protection of their environment is a

common good which members of human society--a true moral community--rationally seek.

In attempting to establish the "holistic" character of the world, Schilling argues that "animals as well as men possess mind and spirit." The examples which he uses to support this position prove at most that there is an "animal spirit" which is "a genuine spirit, and therefore not wholly different in kind" from the human spirit. Even if this claim could be supported by more compelling arguments than Schilling adduces, however, it is far from strong enough to demonstrate that animals share with people the kind of purposive rationality required as the basis for a moral community.

In a move which seems reasonable, but inconsistent with the "community of nature" argument, Schilling urges that "love of nature . . . must not be allowed to be weakened by association with unfortunate sentimentality or extreme views."[28] Instead, he recommends that an attitude of responsibility on the part of both "individual persons and the community of persons" be the key characteristic of man's "ethical stance toward nature." This would not forbid pollution itself, but irresponsible pollution; not all killing of animals, but only irresponsible killing. To make this stick, it seems to me, he must invoke a moral principle

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[28] Schilling, "The Whole Earth," p. 111.

which places man apart from the rest of nature and imposes on her duties arising from her special position rather than from her membership in the natural community.

Looked at from within the environmentalist ideology, the arguments of both Leopold and Schilling are compelling. If one accepts the presupposition that human beings are so intimately bound up with the rest of nature that they have no specifically human ends which transcend the biological, the conclusion of their arguments readily follows. Even a weaker premise, which acknowledges human values but puts them on at most an equal footing with those of nature or the ecological system, supports the same result.

The Question of Anthropocentrism

The heart of the environmental ideology is the rejection of "anthropocentrism," the view that man is the central fact or most important feature of the universe. Man-centered attitudes, environmentalists argue, have led to disregard or even contempt for the rest of nature. The result has been a persistent tendency to use resources profligately and to pollute the air, water and earth with wastes from human activity.

Much of the blame, according to some writers, accrues to the Judaeo-Christian religious tradition. The Biblical account of creation depicted God as a being entirely apart from nature. God created man as part of

nature but distinct from it, in that man had an immortal soul, made in God's image. The Creator gave human beings dominion over all things, to use them for human benefit. Man has responded by setting out to conquer the earth and subjugate everything in it for her own purposes, without regard to the damage caused to other parts of nature.

According to Lynn White, Jr., "Christianity is the most anthropocentric religion the world has seen."[29] Modern science and technology, he maintains, have grown out of the natural theology espoused by the church and have adopted the man-centered attitudes embedded in its tradition:

> I personally doubt that disastrous ecologic backlash can be avoided by applying to our problems more science and more technology. Our science and technology have grown out of Christian attitudes toward man's relation to nature which are almost universally held not only by Christians and neo-Christians but also by those who fondly regard themselves as post-Christians. Despite Copernicus, all the cosmos rotates around our little globe. Despite Darwin, we are not, in our hearts, part of the natural process. We are superior to nature, contemptuous of it, willing to use it for our slightest whim.

White's conclusion is that "we shall continue to have a worsening ecological crisis until we reject the Christian axiom that nature has no reason for existence save to serve man."[30]

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[29] Lynn White, Jr., "The Historical Roots of Our Ecological Crisis," p. 347.

[30] Ibid., pp. 349-350.

As Lewis Moncrief has pointed out, White's explanation over-simplifies the situation. Environmental degradation has resulted from a complex combination of cultural influences, of which the dominant religion is only one factor. Moncrief writes:

> Certainly, no fault can be found with White's statement that "human ecology is deeply conditioned by beliefs about our nature and destiny--that is, by religion." However, to argue that it is the primary conditioner of human behavior toward the environment is much more than the data he cites to support the proposition will bear. For example, White himself notes very early in his article that there is evidence for the idea that man has been dramatically altering his environment since antiquity. If this be true, and there is evidence that it is, then this mediates against the idea that the Judaeo-Christian religion uniquely predisposes cultures within which it thrives to exploit their natural resources with indiscretion. White's own examples weaken his argument considerably. He points out that human intervention in the periodic flooding of the Nile River basin and the fire-drive method of hunting by prehistoric man have both probably wrought significant "unnatural" changes in man's environment. The absence of Judaeo-Christian influence in these cases is obvious.[31]

Nevertheless, White's thesis has gained a prominent place in the ideology of environmentalism. Its contention that Christianity reinforces the notion that man and his interests have a special value superior to the value of "nature" is certainly plausible even if other cultural factors carry greater explanatory weight. A central Christian belief is that the human soul is immortal,

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[31] Lewis W. Moncrief, "The Cultural Basis for Our Environmental Crisis," p. 509.

destined to live forever in union with God. In this important respect, according to Christian tradition, man is different in kind from the rest of nature, which is destined to pass out of existence. Christianity emphasizes spiritual or immaterial values associated with man's "higher" faculties as opposed to material values related to the corporeal functions man shares with other animals and the rest of creation.

White's characterization of Christianity as the world's "most anthropocentric religion" may or may not be accurate. There can be no question, however, that human beings and their relationship to God are important elements in the Christian religion. In this, Christianity differs from both pantheism and materialism. Neither of these is a religion in the same sense as Christianity is. However, pantheism characterizes many religions of both ancient and modern times and materialism serves as the basis for secularist beliefs which comprise the most common contemporary substitute for religion. In the former, God is found in everything and no sharp differentiation exists between man's spiritual character and that of the rest of nature; in the latter there is no God and man has no spiritual status but is just like other material things, only a little more complex. Christianity rejects both views and in doing so insists on the transcendence of God as

a being apart from nature and on the preeminence of man as the only part of nature capable of sharing in what it considers to be the God-like attributes of rationality and free will.

Relative to either pantheism or materialism, Christianity could properly be called anthropocentric because of the special place accorded to man among God's creatures. In itself, however, Christianity is more appropriately characterized as "theocentric." God, rather than man, occupies the central position in its cosmology. This contrasts with what might be called the "physiocentric" view of those who concede first place to "nature"--the realm of all things directly knowable by man--excluding the notion of a transcendent God.

The environmentalist ideology is clearly "physiocentric." It emphasizes the continuity between man and the rest of nature. Had not Darwin shown conclusively that man evolved from lower forms of vertebrates? Has not science proved the irrelevance of the notion of a transcendent God? To the dedicated environmentalist, man is but a single element in the complex biosystem which comprises the universe. Through ecological science the individual human being can learn her place in the system; the environmental ethic prescribes that she know her place and keep it. In terms of value, the most important good is that of the biosphere.

Individual human interests and even the common interest of man as a single species must be subordinated to the higher good of the well-being of nature as a whole.

Seen from the perspective of this ideology, any view which places the needs or wants or interests of human beings first is--in its most pejorative sense--anthropocentric. Those holding the humanist view are "unremittent human chauvanists."[32] It is not only the Judaeo-Christian tradition which the environmentalist ideology rejects, but every tradition which gives first place to human interests. It certainly rejects the view of Aristotle, who claimed happiness as the chief good for man. Utilitarianism is clearly unacceptable and, in fact, is a frequent target of environmentalist diatribes.[33] The views of Rawls and other "contractarian" theorists are likewise incompatible with this ideology. Civilization itself, insofar as it tends toward improvement of the human condition, along with cultural developments and the whole fabric of laws and political organization which seek to promote the common good of people, is clearly anthropocentric. Followed to its logical conclusion, the principle underlying the environmentalist ideology would lead us to

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[32] Christopher D. Stone, "Should Trees Have Standing?--Toward Legal Rights for Environmental Objects," p. 475.

[33] Strong and Rosenfield, "Ethics or Expediency," pp. 259-260.

abandon not only Christianity but also civilization and the ethical, political and legal structure supporting it.

Few if any environmentalists would go so far as to advocate the abolition of civilized society on the grounds that it is anthropocentric, but the tendency toward this conclusion is evident in much of the literature. Wistful longing for the simple, uncomplicated, primitive life is a common theme. It comes through in the glorification of Thoreau, the praise of "outdoor" life, the advocacy of legal rights for environmental objects, the support for preservation of wild rivers and wilderness areas, the decrying of technology as "nature's" enemy.

Ironically, the ideologues who hold as a basic principle that the interest of people must be subordinated to the "interests" of the ecological system have succeeded in positioning themselves in the public mind as "defenders of the public interest." Playing on legitimate, if somewhat exaggerated, fears that misuse of resources and pollution of the environment threaten public health and the welfare of future generations, advocates of basically anti-humanist positions have marshalled great support for their cause. Concern over real problems of environmental degradation and selfish exploitation of precious resources has led to adoption of public policies which could inhibit economic growth and deny employment opportunities such growth would offer.

A classic example is the controversy over construction of the Tellico Dam in eastern Tennessee. The Tennessee Valley Authority obtained Congressional approval to construct the dam in 1966. The $116,000,000 project was designed to produce energy needed in the TVA power system, control floods on the Little Tennessee River and provide recreational and industrial development opportunities badly needed in the area. Environmentalists tried to stop construction with a wide range of arguments, just as they had opposed virtually every other dam-building project. Here the arguments ran from protection of 25,000 acres of rich farmland to preservation of Cherokee Indian archeological sites. Dam opponents lost at every step until they happened to discover that one part of the proposed project area was the last remaining habitat of the snail darter, a tiny fish on the endangered-species list. Armed with this information they were able to go into Federal court and halt construction of the dam.[34]

The Endangered Species Act, passed by Congress in 1973, directs the Secretary of the Interior to ensure that the "critical habitat" of any endangered species is not destroyed as the result of any action by an agency of the Federal government. Regardless of how the interests of

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[34] See The Wall Street Journal, 15 November 1977, "Ruling That Halted Work on TVA Dam to Save Fish to Be Reviewed by Justices."

people may be affected, the Act protects a species of flora or fauna from extinction. In the Tellico Dam case, the Supreme Court of the United States decided that this was indeed the intent of Congress. Environmentalists have used the Act to hold up other projects in which benefits to people had been shown to outweigh any disadvantages to people on the basis of environmental impacts. One notable example is the Dickey-Lincoln School Dam project in Maine, which was stopped because it threatened the Furbish lousewort, a fern-like plant thought to be extinct but rediscovered in 1976 along the St. Johns River.

There is no evidence to suggest that either the snail darter or the Furbish lousewort is important to human welfare, present or future. Any such consideration is not even pertinent, given the environmental ideology. From that point of view, basing public policy decisions on what is good for man is "anthropocentric" and must be avoided: the proper basis is what is good for the ecosystem. Once that has been established as the basic principle all sorts of implications for public policy follow. In formulating rules for clean air or clean water, it is no longer a question of what will contribute to public health and welfare or what will assure the well-being of future generations. The "environment" or the ecosystem become absolutes whose integrity must be protected regardless of cost in human terms.

It was in the spirit of the environmentalist ideology that many of the laws and new environmental control regulations of the late 1960's and early 1970's were adopted. It may well be that the emotional attraction of an extreme position of this kind was needed to draw attention to serious problems of environmental degradation which had been accumulating for many years. The entrenched position of laissez faire capitalists whose factories polluted the air and water in complete disregard for the welfare of other users was certainly difficult to assail. The public was indifferent, or powerless to act if they did recognize the problem. Economists generally ignored whatever costs might be associated with pollution; they labeled them "externalities," which, in the words of one respected theorist, writing in 1971, "seemed like curiosa to the economists of barely a generation or two ago."[35]

It is not surprising that a simplistic and seemingly clear position such as that offered by the "environmental ethic" could provide the rallying point around which the disaffected could marshall their forces. Rachel Carson's Silent Spring had dramatized the devastating effects careless use of pesticides could have on bird and animal life. The "Club of Rome" had all but proclaimed the end of the

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[35] Tibor Scitovsky, Welfare and Competition, p. 269.

world in a doomsday report based on extrapolations by a group of MIT scientists.[36] Barry Commoner, Garrett Hardin and Paul Ehrlich were trumpeting the onset of environmental disaster.[37] Eager politicians happily embraced an emotional "issue" which had special appeal to young people and could divert attention from more explosive problems such as racial injustice and opposition to the Vietnam War. Here was a ready-made cause around which an ideological framework could be constructed--and the ecologists had the theory to go with it. The problems of overcrowding, air and water pollution, depletion of energy resources, endangerment of animal species and lack of concern for posterity all had their roots in our want-oriented perspective which placed undue emphasis on man's selfish efforts to satisfy his own needs, so the ecologists argued. Our problem, they insisted, is anthropocentrism; the solution is to reject this selfish attitude and center our concerns on nature rather than man.

This ideology had a special appeal to the idealism, the unselfishness and the anti-establishment prejudices of young people. Its premises were not examined carefully, but its conclusions were enthusiastically embraced. With a kind

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[36] Donnella H. Meadows et al., The Limits to Growth.

[37] See Barry Commoner, The Closing Circle; Garrett Hardin, Exploring New Ethics for Survival: The Voyage of the Spaceship Beagle; and Paul R. Ehrlich, The Population Bomb.

of evangelical zeal and almost religious fervor, environmentalists pressed for reforms and adoption of public policies which not only sought to correct blatant abuses but which tended to establish the primacy of nature's interests over those of human beings.

Critique of Environmental Ideology

Like other revolutionary ideologies, that of environmentalism was impatient of the niceties of rational argument. Few of its proponents stopped to consider the inherent risk of attempting to apply the concepts developed in one science, that of ecology, to another discipline, the field of human ethics.

William T. Blackstone pointed out the danger of making too facile a transfer of ecological notions to human affairs. Blackstone recognized the urgent need for serious attention to environmental problems and adopted the position that "it would quite clearly be a major step forward if more persons adopted the ecological attitude, which embodies the explicit recognition that environmental changes will have repercussions and that environmental exploitation must be restricted."[38] But he warned that problems arise when we attempt to apply that attitude in formulating environmental policy because of the inadequacy of data provided by the

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[38] William T. Blackstone, "Ethics and Ecology," p. 21.

relatively new science of ecology and the need for clarification of such key ecological concepts as "stability," "balance," and "homeostasis" in nature. After discussing the use of these terms in the usual ecological contexts, Blackstone added:

> The issue is more complicated when speaking of the human community, for these terms take on additional complexities and normative implications. The notions of stability, balance and homeostasis in the human population involve value judgments about the quality of the environment and the quality of human life. Such concepts cannot be given a purely descriptive meaning. So we must ask: What is the standard of environmental quality and population density which would define the meaning of a homeostatic human population? What standards, in other words, are presupposed when we speak of an equilibrium between human population and its environment? What is to be meant by an ecological balance when we are talking about the sociocultural needs of man? . . . What constitutes a balance when it comes to power? or wealth? or education? The normative problems here are vastly more complicated than those in reference to a balanced order among plants and animals in nature. Therefore, we must be very careful in moving from the use of concepts which were developed and utilized for the study of plant and animal communities to their use in human communities. Just as the notion of homeostatic balance when applied to plants and animals may not be directly applicable to human beings, so also the notion of an ecological balance within plant and animal communities may not be directly applicable to human communities. This is not to deny that the ecological analogue is important in human affairs. But we must be wary of overextending that analogue. Or, perhaps better, we should be prepared to extend it properly to cover human affairs.
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> Let me clarify this further. If the valuationally loaded terms--homeostasis, equilibrium, balance, and stability--when applied to the human context are interpreted to mean largely man's biological and physical needs, then norms which are essential for man's state of well-being are left out of the picture. I have no objection to the use of these terms as basic

> normative premises for evaluations if they are conceived broadly enough to include all the components which are essential in assessing man's well-being. We must not ignore the psychological, social and cultural factors which are so essential to what might be called a state of homeostasis in man. The solution to environmental crisis, in other words, involves not just physical or organic satisfaction and equilibrium but also what might be called cultural satisfaction and equilibrium.

While accepting the need for recognizing homeostasis and equilibrium as norms, Blackstone argues that in the human context these norms presuppose "certain basic moral and political principles, those which insist upon certain basic freedoms and rights." It follows that a value system which includes the ecological norms must rest on more fundamental principles which help to define these concepts. Among the underlying value premises he takes to be preeminent those of utility and justice. The principle of utility implies concern for the public interest, with "public" construed broadly to include "optimum living conditions for all human beings, those now existing and those yet to come." But he insists that this "concern for human welfare all over the globe must also be conjoined with another fundamental value, that of justice and the intrinsic worth and dignity of all human life."[39]

In Blackstone's view these principles, applied to environmental questions, lead to the acceptance of the right

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[39] Ibid., pp. 22-26.

to a livable environment as a basic and inalienable human right. His argument for the existence of universal human rights, he explains, rests "on a theory of what it means to be human, which specifies the capacities for rationality and freedom as essential, and on the fact that there are no relevant grounds for excluding any human from the opportunity to develop and fulfill his capacities (rationality and freedom) as a human." Since a livable environment is essential for one to fulfill human capacities, it follows that each person has a right to such an environment and conflicting rights must be qualified or restricted.[40]

This line of argumentation deals with the questions of concern to environmentalists without commitment to anti-humanist principles. In this respect it differs sharply from the ideological excesses which characterize much of the movement. The practical consequences for public policy become, in my view, much more acceptable. It opens the possibility for discussion of how much and what kind of ecological homeostasis is desirable, rather than acceptance of an absolute biological equilibrium as the ultimate norm. As Blackstone points out, "unless one adheres dogmatically to a position of 'reverence for all life,' the extinction of at least some species or forms of life and the generation of other forms may be seen as quite desirable."[41] The

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[40] Ibid., pp. 30-32.

[41] Ibid., p. 25.

impact of this more balanced perspective on public policy deliberations such as those which, in the heat of environmentalist fervor, led to passage of the Endangered Species Act is obvious.

Focusing attention on "what it means to be human" as the basis for ethical discourse restores rationality to the discussion. The question of rights which Blackstone raises is certainly important, but "being human" may also entail having obligations to act in a certain way even in the absence of rights in the object of human actions. Anthropocentrism can be conceived not only as concerned with the fulfillment of human wants and desires but also as concerned with the responsibilities people have. An "environmental ethic" which seeks to displace man as the center of attention--rejecting anthropocentrism--may be environmental but it is no ethic at all.

What is needed instead is a moral discussion which keeps man as a focal point, considering both human needs and human obligations with respect to the persons and other objects within the human environment. In no way should this discussion minimize the need for improvement in environmental conditions or deny the importance of moral concern about them. To use an old idiom, it may well require that human beings "form a conscience" about environmental objects and man's relationship toward them. It ought to reject,

however, any "environmental ethic" which fails to recognize the unique position of man within the scheme of things or which gives preference to non-human over human values.

Many ethical questions deserve consideration in such a discussion. One is the issue raised by Blackstone concerning the acceptance of "environmental livability" as an inalienable human right. This can only be resolved on the basis of understanding what it means to be "an inalienable human right." If, indeed, it is such a right, then how do we resolve conflicts with other rights such as the traditional "right to private property" or the more recently recognized "right to employment"? Do only presently living human beings have the right to a decent environment, or is it proper to attribute such a right to people of the future--our posterity--or even to animals and natural objects?

The chapters which follow will discuss these questions, beginning with consideration of basic concepts about rights. I hope to show that "a right" is an analogical term which applies in its primary, proper and literal use only to human beings capable of rational and voluntary acts but in secondary senses to other objects; in many instances the secondary predication is based on obligations people have toward these objects. In the light of this discussion, it will become apparent, I hope, that there are serious moral concerns about environmental problems,

but that such concerns must be reconciled with other considerations with at least an equal call upon our conscience. Rejection of the ideology of environmentalism does not imply the acceptance of an ideology which apotheosizes human selfishness and greed. It is my intention, in the rest of this dissertation, to suggest some of the moral considerations which would help us chart a course which would enable us to avoid both perils. Obviously, the views expressed will not purport to be the final word on this most troubling subject, but they should gain added strength from the fact that they are consistent with and largely based on a long tradition in the history of ethical thought.

CHAPTER II

SOME LEGAL AND PHILOSOPHICAL CONCEPTS OF RIGHTS

The issue of "rights" arises at several points in the conflict between developmentalists and environmentalists. The more extreme advocates of laissez-faire capitalism insist that their rights are being violated when governments place any restrictions on the use of their property, particularly when it is done in the interest of environmental protection. Dedicated outdoorsmen maintain that any significant development programs in certain forest regions infringe on their right to enjoy wilderness areas. Conflicts frequently develop between manufacturers who claim a right to the use of air and water resources for disposal of purified waste material and neighbors who argue that even such limited use violates their right to enjoyment of a completely clean environment. Workers and the economically deprived unemployed claim that extreme environmental protection standards deny them satisfaction of their right to a job and deny their families a decent standard of living. At the far end of the environmentalist side of the spectrum there are those who insist that natural

objects--animals, trees, even rocks and the land itself--have rights which people should not violate by using them for human purposes.

In view of this frequent invocation of the concept of rights by all these diverse participants in the dispute, it seems appropriate to try to sort out the ethical underpinnings of the conflicting claims. To do this effectively it will be necessary to start out with a discussion of the notion of rights in general. This should lay the groundwork for specific application of the notion to the problem at hand.

Development of the Legal Concept

Within the framework of the American legal system, there are countless instances of laws and practices relating to rights. The most all-encompassing are the statements in the Declaration of Independence:

> We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty and the pursuit of happiness. . . .

The language of the Constitution, particularly in the first ten articles of amendment, known as the Bill of Rights, establishes strong limitations on the government to prevent its infringement of people's rights. The courts, for the most part, have been zealous in protecting these rights. Moreover, they have also continued to enforce the traditional

rights ensconced in the common law which developed in British courts over the centuries and carried over into both state and Federal legal systems.

Until the seventeenth century there was little explicit discussion of individual rights in legal contexts. Many writers spoke of laws which regulated the conduct of one person in relation to another and often treated of obligations which that person had to a fellow man; but they seldom discussed rights as such. With increased interest in man as an individual following the Renaissance period, however, the question of rights took on new importance. Thomas Hobbes (1588-1679) was one of the first to treat of liberty as a natural right:

> The right of nature, which writers commonly call jus naturale, is the liberty each man hath to use his own power as he will himself for the preservation of his own nature; that is to say, of his own life. . . .
>
> A law of nature, lex naturalis, is a precept, or general rule, found out by reason, by which a man is forbidden to do that which is destructive of his life. . . . For though they that speak of this subject use to confound jus and lex, right and law, yet they ought to be distinguished, because right consisteth in liberty to do, or to forbear; whereas law determineth and bindeth to one of them: so that law and right differ as much as obligation and liberty, which in one and the same matter are inconsistent.[1]

John Locke identified the three great classes of natural rights as "life, liberty and property." These

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[1]Thomas Hobbes, Leviathan, Great Books ed., ch. 14, p. 87.

became enshrined in the 1789 French "Declaration of the Rights of Man and Citizens" and in the United States Constitution. As "natural" rights these were considered to be antecedent to legal rights, which merely codified the pre-existing freedoms and provided orderly means for their enforcement.

The era in which this doctrine of natural rights gained ascendancy coincided with the period in which capitalism became the dominant economic theory. The Lockean notion of the fiercely individualistic man in the state of Nature surrendering his absolute freedom in return for the protection of his rights to life, liberty (of movement) and property became the model on which the newly emerging capitalist states were built.

For the sake of the burgeoning economic system, the most important of the "imprescriptable" rights was that of property. This became, in fact, the keystone for much of the legal structure built from the end of the eighteenth century up to the present. Locke had theorized that God had given men the earth and all that was in it as their common property; but the divine command meant that individuals should cultivate the land and by their labor acquire title to it by "appropriation":

> God gave the world to men in common, but since He gave it to them for their benefit and the greatest conveniencies of life they were capable to draw from it, it cannot be supposed He meant it should always remain common and uncultivated. He gave it to the use of the industrious and rational (and labour was to be his title to it); not to the fancy or covetousness of the quarrelsome and contentious.[2]

Each man in the state of Nature had an equal right with every other man "to preserve his property--that is, his life, liberty, and estate, against the injuries and attempts of other men" and to punish offenses against him. In forming civil society, men gave up into the hand of the community their power of preserving property and punishing offenders on the understanding that the law would defend their rights.[3]

In his treatise on The Wealth of Nations, published in 1776, Adam Smith described the function of the state in these terms:

> According to the system of natural liberty, the sovereign has only three duties to attend to; . . . first, the duty of protecting the society from violence and invasion of other independent societies; secondly, the duty of protecting, as far as possible, every member of the society from the injustice or oppression of every other member of it, or the duty of establishing an exact administration of justice; and, thirdly, the duty of erecting and maintaining certain public works and

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[2]John Locke, Concerning Civil Government, Second Essay, Great Books ed., ch. 5, s. 33, p. 32.

[3]Ibid., ch. 7, s. 87, p. 44.

> certain public institutions which it can never be for the interest of any individual, or small number of individuals, to erect and maintain. . . .[4]

Sir William Blackstone, in his Commentaries on the Laws of England, published in 1860, wrote that the principal aim of society is to protect individuals in the enjoyment of "those absolute rights, which were vested in them by the immutable laws of nature, but which could not be preserved in peace without that mutual assistance and intercourse which is gained by the institution of friendly and social communities." He identifies these absolute rights as personal security, personal liberty and private property. His description of these three is worth quoting at length:

> I. The right of personal security consists in a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation. . . .
>
> II. Next to personal security, the law of England regards, asserts, and preserves the personal liberty of individuals. This personal liberty consists of the power of locomotion, of changing situation, or moving one's person to whatsoever place one's own inclination may direct, without imprisonment or restraint, unless by due course of law. . . .
>
> III. The third absolute right, inherent in every Englishman, is that of property: which consists in the free use, enjoyment, and disposal of all his acquisitions, without any control or diminution, save only by the laws of the land. The original of private property is probably founded in nature . . . but certainly the modifications under which we at present

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[4]Adam Smith, An Inquiry Into the Nature and Causes of the Wealth of Nations, Great Books ed., bk. 4, ch. 9, p. 300.

> find it, the method of conserving it in the present owner, and of translating it from man to man, are entirely derived from society; and are some of those civil advantages, in exchange for which every individual has resigned a part of his natural liberty. . . .[5]

The view expressed by Blackstone exercised great influence among legal theorists and practitioners of his time. It reflected the thinking of many people, not only in England but also in the United States and to a certain extent in other parts of Western society. The agreement, however, was far from unanimous. To some it represented a thoroughgoing conservative statement, opposed to needed reform; even though in its seventeenth century origin the natural rights theory had been a radical departure and through its eighteenth century expositors had helped bring about, or at least justify, revolutionary changes in governments, by the middle of the nineteenth century it had become the bastion of the established order, in the view of many critics.

John Austin, the eminent jurisprudence scholar, criticized Blackstone's "natural law" theory on the grounds that it blurred the distinction between law and morality. Taking a more positivistic view, Austin held that legal rights were not derived from an abstract concept of natural liberty but had meaning only because of some correlative

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[5]Sir William Blackstone, Commentaries on the Laws of England, vol. 1, pp. 124-138.

duty imposed as law by the command of the sovereign. He believed laws should be framed by the sovereign on the basis of the principle of utility. Austin's views on natural rights reflected those of Utilitarianism's founder, Jeremy Bentham. As a political reformer attacking the lawyers who "assumed dogmatically that the Common Law of England enshrined the natural rights of man, and was, therefore, sacrosanct,"[6] Bentham wrote:

> Right . . . is the child of law: from real laws come real rights; but from imaginary laws, from laws of nature, fancied and invented by poets, rhetoricians, and dealers in moral and intellectual poisons, come imaginary rights, a bastard brood of monsters. . . . Natural rights is simple nonsense: natural and imprescriptable rights, rhetorical nonsense--nonsense upon stilts. But this rhetorical nonsense ends in the old strain of mischievous nonsense: for immediately a list of the pretended natural rights is given, and those are so expressed as to present to view legal rights.[7]

Leaving aside for the moment the controversy between Blackstone and Austin on the question of whether or not legal rights are grounded in some "natural law," it may be helpful to examine what lawyers mean when they speak of "a right." In its most common usage, the term describes a legal relationship between two people; more precisely, it is a legal relation which one person has with respect

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[6]S. I. Benn and R. S. Peters, The Principles of Political Thought, p. 108.

[7]Jeremy Bentham, Anarchical Fallacies, quoted by Benn and Peters, p. 446.

to another person. When a certain person named Adams, for example, buys a car from another person named Brown at an agreed-on price of $1,000, Brown has a right to have Adams pay him $1,000, contingent on Brown's delivering the car to him. The transaction has created an attribute in Brown which can be described as a legal relation with respect to Adams. If Brown brings suit, the courts will enforce the right by compelling Adams to make the payment. The same transaction creates a different kind of relation in Adams with respect to Brown: a duty to make the payment. In this context, "duty" clearly is a correlative of "right." In legal jargon the right just described is a "right in Personam" because it is correlated with the specific duty of a determinate individual; it is a "positive right" because it requires affirmative action by that individual, rather than omission of an act or forbearance of some kind. By contrast, Adams has a "negative right" which prohibits Brown from striking him; this is called a "right in rem" since it imposes the duty of forbearance not only on Brown but on all other members of society.[8]

Arthur L. Corbin, a professor of Law at Yale University, provided a classic statement of the fundamental legal concept of a "right" in an article which appeared in

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[8]See Arthur L. Corbin, "Legal Analysis and Terminology."

the Yale Law Journal in 1919. The following is a pertinent excerpt:

> The term "legal relation" should always be used with reference to two persons, neither more nor less. One does not have a legal relation to himself. Neither does one have a legal relation with two others; he has separate legal relations with each. A so-called legal relation to the State or to a corporation may always be reduced to many legal relations with the individuals composing the State or the corporation, even though for convenient discussion they may be grouped. There can be no such thing as a legal relation between a person and a thing. The relation of A to his house is a physical relation; but A has many legal relations to other persons with respect to his house. . . .
>
> . . . Assuming that we wish to determine the legal relations of A and B, we may ask ourselves the following questions:
>
> (1) What may A (or B) do, without societal penalty assessed for the benefit of the other?
>
> (2) What must A (or B) do, under threat of societal penalty assessed for the benefit of the other?
>
> (3) What can A (or B) do, so as to change the existing legal relations of the other? (This has no reference to mere physical power.)
>
> If we determine that A may conduct himself in a certain way he has a privilege with respect to B, and B has no-right that A shall not so conduct himself.
>
> If we determine that A must conduct himself in a certain manner, he has a duty to B, and B has a right against A. . . .
>
> We may now proceed to the more formal definition of the . . . legal relations. . . .
>
> (1) RIGHT: A legal relation between two persons. The correlative of duty, and the opposite of no-right. An enforceable claim to performance (action or forbearance) by another. It is the legal relation of A to B when society commands action or forbearance by B and will at the instance of A in some manner penalize disobedience. . . .

> (2) DUTY: The correlative of the concept right, above defined, and the opposite of privilege. It is the legal relation of a person, B, who is commanded by society to act or to forbear for the benefit of another person, A, either immediately or in the future, and who will be penalized by society for disobedience. . . .[9]

As Corbin makes clear, the law recognizes only persons, or human beings, as holders of rights. Some legal scholars, however, have noted that changes have occurred in this concept over the years. Prior to the Civil War, at least within some states of the Union, black persons were not considered to be right-holders in the same sense as white people were. As slaves, blacks were considered to be chattels, with the legal consequence that, as one court opinion put it:

> . . . In the eye of the law, so far certainly as civil rights and relations are concerned, the slave is not a person, but a thing. The investiture of a chattel with civil rights or legal capacity is indeed a legal solecism and absurdity. The attribution of legal personality to a chattel slave,--legal conscience, legal intellect, legal freedom, or liberty and power of free choice and action, and corresponding legal obligations growing out of such qualities, faculties and action--implies a palpable contradiction in terms.[10]

Even blacks who were not slaves, along with members of other "inferior" races, had certain legal disabilities.

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[9] Ibid., pp. 165-167. See also chapter on "Legal Rights" in Joel Feinberg, Social Philosophy, pp. 55-67.

[10] Stone, "Should Trees Have Standing," p. 454, n. 19, quoting from Bailey v. Poindexter's Exr., 56 Va. (14 Gratt.) 132, 142-143 (1858).

A California statute in force in the 1850s provided that "no Black or Mulatto person, or Indian shall be allowed to give evidence in favor of, or against a white man." The highest state court ruled that the statute applied to Chinese as well, since they too were "a race of people whom nature has marked as inferior. . . ."[11] The adoption of the Fourteenth Amendment, along with subsequent legislation and court decisions, made it clear that all persons, of whatever race, were entitled to hold rights.

Environmental Objects as "Right-Holders"

Professor Christopher D. Stone, of the University of Southern California Law School, cites this change and others as precedents to support his proposal that non-human entities should be recognized as right-holders. He is, as he says, quite serious in proposing that we give legal rights not only to animals but "to forests, oceans, rivers and other so-called 'natural objects' in the environment--indeed, to the natural environment as a whole."[12] His concern is primarily with legal rights. The concept of what kind of entity qualifies to be a holder of legal rights, he says, has been changing throughout the history of law. For centuries, children were considered to be

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[11] Ibid., quoting from People v. Hall, 4 Cal. 399, 405 (1854).

[12] Ibid., p. 456.

utterly without rights, completely at the disposal of their fathers; at one time fathers could put their children to death without legal censure. Women in many legal systems were similarly without rights, as were slaves, Jews, blacks and other categories of people. As society has matured, the legal status of "right-holder" has been gradually extended to new classes of entities to which members of society wanted to grant special protection. In modern times, non-human entities such as corporations, universities, nation-states and other organizations have been recognized as holders of rights.

There is no good reason, Stone argues, why this status should not be extended to environmental objects if society wants to protect them. The major advantages would be those that correspond to the criteria for being considered a holder of rights:

> First and most obviously. . . an entity cannot be said to hold a legal right unless and until some public authoritative body is prepared to give some amount of review to actions that are colorably inconsistent with that "right." . . .
>
> But for a thing to be a holder of legal rights, . . . each of three additional criteria must be satisfied. All three . . . go towards making a thing count jurally--to have a legally recognized worth and dignity in its own right, and not merely to serve as a means to benefit "us" (whoever the contemporary group of rights-holders may be). They are, first, that the thing can institute legal actions at its behest; second, that in determining the granting of legal relief, the court must take injury to it

> into account; and, third, that relief must run to the benefit of it.[13]

To protect its "interests" a guardian representing the natural object (a river, for instance) could initiate legal actions on behalf of the object; in granting legal relief, the court would be required to take into account damage to the environmental object itself (e.g., pollution of the river); the relief granted would have to be directed toward the benefit of the object itself. All this is in contrast to the present situation, in which only some human being who has suffered damage from pollution of a river, for example, is eligible to be a potential litigant with standing to bring suit; courts consider damages to people using the river--riparian owners or fishermen, perhaps--rather than damage to the river itself, in granting relief; the relief granted seeks to make whole the interest of the people who are injured rather than to remedy the damage to the river. Moreover, Stone maintains, granting environmental objects the jural status of "right-holder" would influence courts to be more concerned with their protection and affect the court's decision with respect to where the burden of proof should lie. In addition, it would engender a new attitude of respect among people and make them less likely to damage environmental objects.

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[13] Stone, "Should Trees Have Standing?" p. 458.

Although Stone deals directly only with the legal question of defining by law who--or what--may be considered a holder of rights, his supporting arguments inevitably open up the normative issue: what should the scope of the term "right-holder" include? For our purposes, the legal aspects of the question are of merely incidental interest. They help to focus attention on the meaning of the concept of "a right" and in doing so may help clarify the moral issues with which we are specifically concerned.

The resolution of the problem of what kind of entity can have rights depends to a great extent on what we mean by the term. A right may be considered "a liberty," as Hobbes maintained; "a permission secured by public force," as Oliver Wendell Holmes defined it; a "relative duty," as Austin argued; "a future judicial remedy," as Karl Llewellyn, a proponent of Legal Realism, insisted; or "a claim upheld by law," as Paul Vinogradoff wrote.[14] If we accept any of these, however, we are making an ontological commitment about the kind of thing which can exercise a liberty or use a permission or have a duty or seek a judicial remedy or make a claim. Otherwise we are talking nonsense. If to have a right is to make a claim of some sort, then the only kind of entity about which it makes sense to predicate a right is the sort of entity which can make a claim.

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[14] For a discussion of these definitions (and others) of "a right," see Carl Wellman, Morals & Ethics, pp. 239-253.

Arguments for "Animal Rights"

In addition to Stone, there are numerous writers who consider it appropriate to talk about the rights of entities other than living human beings. One of the perennial controversies has been about "animal rights,"[15] and environmentalists have devoted considerable attention to the question of the rights of "posterity"--the future inhabitants of the earth. The notion that posterity has rights has also gained the support of moral philosophers such as Joel Feinberg, who writes:

> . . . Surely we owe it to future generations to pass on a world that is not a used up garbage heap. Our remote descendants are not yet present to claim a livable world as their right, but there are plenty of proxies to speak now in their behalf. These spokesmen, far from being mere custodians, are genuine representatives of future interests.
>
> Why then deny that the human beings of the future have rights which can be claimed against us now in their behalf?[16]

Feinberg bases his argument on what he calls the "interest principle," namely, "that the sorts of beings who can have rights are precisely those who have (or can have) interests." He cites two reasons in support of this principle:

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[15] See Tom Regan and Peter Singer, eds., Animal Rights and Human Obligations.

[16] Joel Feinberg, "The Rights of Animals and Unborn Generations," pp. 64-65.

1. because a right holder must be capable of being represented and it is impossible to represent a being that has no interests, and

2. because a right holder must be capable of being a beneficiary in his own person, and a being without interests is a being that is incapable of being harmed or benefitted, having no good or "sake" of its own. Thus, a being without interests has no "behalf" to act in, and no "sake" to act for.[17]

On the strength of this analysis, Feinberg maintains that animals, at least the higher animals, are "among the sorts of beings of whom rights can be meaningfully predicated and denied," since they "have appetities, conative urges, and rudimentary purposes, the integrated satisfaction of which constitutes their welfare or good."[18] This implies that they do, indeed, have interests. Most people would admit that we ought to treat animals kindly. If we hold that we ought to do so for the animal's own sake, rather than merely out of obedience to authorities or consideration for tender human sensibilities and that such treatment "is something we owe animals as their due, something that can be claimed for them, something the withholding of which would be an injustice and a wrong, and not merely a harm," then, he concludes, we do ascribe rights to animals.

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[17] Ibid., p. 51.

[18] Ibid., p. 50.

Applying the same "interest principle," Feinberg argues that inanimate natural objects could not properly be subjects of rights, nor could plants and other vegetative types of life, inasmuch as they do not have interests of their own in the appropriate sense. This is not to say that we may not have duties with respect to trees, flowers, rivers or even rocks, not to mention artifacts like historic buildings and other "things." But these duties do not arise out of the interests of the objects; it is not their good or welfare we consider, but that of ourselves or other people in relation to them.

Fetuses present a difficult problem for Feinberg's conceptual analysis. But having allowed rights to dead persons on the grounds that their interests survive them, he also feels that potential possessors of interests should be recognized as legitimate subjects of rights. The question of whether fetuses have a right to live (a right he denied to brute animals), or a right to be born, Feinberg considers a substantive one to be decided by law or moral argument, but his answer to the conceptual question of whether fetuses are among the sorts of beings of which rights can be meaningfully predicated is in the affirmative. This is so, "even though they are (temporarily) incapable of having interests, because their future interests can be protected now, and it does make sense to protect a potential

interest even before it has grown into actuality."[19] Fetuses (as well as infants and mental incompetents) are unable to assert their own rights or make claims in proper persona but guardians appointed for the purpose can do so in their name.

By parity of reasoning, future generations are also entitled to be considered possible right-holders, Feinberg believes. On the normative question of whether they have a right to come into existence he has doubts similar to those he has concerning the rights of fetuses to be born. But he does hold that they have contingent rights such that if they come into existence they have a right to the protection of their future interests, including interest in a decent, livable environment.

A contemporary moral philosopher, James Rachels, argues that it is logically possible for animals to have rights and that in fact they do have certain rights, though not necessarily the same rights humans have. The first contention is essentially a negative one, in which he attempts to refute arguments against the logical possibility of animals having rights based on requirements that (a) a right-holder must be able to possess something if it be said to possess rights and (b) that a right-holder must be the kind of entity capable of having a reciprocal moral

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[19] Ibid., p. 64.

relationship with others. Even if the first requirement is valid, Rachel maintains, animals can have rights since in fact they can and do possess things. He rejects the reciprocity argument as invalid. To have a right it is only necessary to be the beneficiary of a moral obligation; it is not essential to be able to have such an obligation. He cites the case of a severely retarded person who has the right not to be tortured even though incapable of having a reciprocal obligation not to torture others.

In his positive argument, Rachel intends to show that animals have at least some of the rights usually attributed exclusively to humans. His essential point is that there are no relevant differences between human beings and at least some animals, with respect to the interests protected by certain rights. The right of a human being not to be tortured, he argues, arises from the fact that a man has an interest in not being tortured because he has the capacity to suffer pain. But in this there is no relevant difference between a human being and a non-human animal which can suffer pain. Consequently, there is no reason to deny the right not to be tortured to the animal while granting it to the man.

Using a somewhat similar line of argument, Rachel concludes that animals have a right to liberty. He concedes that liberty taken in some senses is a concept which

applies exclusively to man. This would be the case if we mean by liberty the "moral freedom to guide one's actions by a sense of right and wrong." However, if we mean by the right to liberty the "right to be free of external constraints on one's actions" then animals can have this right. It is derived, he says, from a more basic right not to have one's interests needlessly harmed. Since the interests of many species other than man are harmed by a loss of freedom, these species too have a right to liberty.[20]

Rachel believes a case can be made for animals' right to liberty even on the basis that it is necessary to their "moral freedom." This right is derived from the premise that beings with moral capacities should be free to exercise those capacities. He maintains that animals exhibit moral virtues, such as devotion and love for their offspring, self-sacrificial loyalty to other members of their herd or pack, and compassion for other members of their species. Beings that practice these virtues have moral capacities, he concludes, and should have the right to freedom necessary to exercise them.[21]

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[20] James Rachel, "Do Animals Have a Right to Liberty?" pp. 214-219.

[21] Ibid., pp. 205-223. For a response to Rachel's arguments, see Donald Vandeveer, "Defending Animals by Appeal to Rights," in the same publication, pp. 224-229; Rachels replies to Vandeveer on pp. 230-232.

An earlier argument to the same general point was presented in 1912 by Henry S. Salt, a British crusader for Vegetarianism and humane treatment of animals.[22] He argued that animals have rights if men have them; these rights, he says, "consist in the 'restricted freedom' to live a natural life--a life, that is, which permits of the individual development--subject to the limitations imposed by the permanent needs and interests of the community." Such rights were even then being recognized and would some day be generally acknowledged:

> But, it may be argued, vague sympathy with the lower animals is one thing, and a definite recognition of their "rights" is another; what reason is there to suppose that we shall advance from the former phase to the latter? Just this; that every great liberating movement has proceeded exactly on such lines. Oppression and cruelty are invariably founded on a lack of imaginative sympathy; the tyrant or tormentor can have no true sense of kinship with the victim of his injustice. When once the sense of affinity is awakened, the knell of tyrrany is sounded, and the ultimate concession of "rights" is simply a matter of time. The present condition of the more highly organized domestic animals is in many ways very analogous to that of the Negro slaves of a hundred years ago; look back, and you will find in their case precisely the same exclusion from the common pale of humanity; the same hypocritical fallacies, to justify that exclusion; and, as a consequence, the same deliberate stubborn denial of their social "rights." Look back--for it is well to do so--and then look forward, and the moral can hardly be mistaken.[23]

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[22] Henry S. Salt, "The Principle of Animals' Rights," pp. 173-178.

[23] Ibid., pp. 174-175.

Criticism of "Animal Rights"

John Passmore expressed a more traditional moral view. He rejected the position that the growing tendency to require humane treatment of animals entails ascription of rights to them. Commenting on Salt's advocacy of that position, he remarked:

> . . . In defence of the view that animals have rights Salt argues that they are protected by law. If that argument suffices, however, then we should have to conclude that not only animals but trees and plants and even rocks and landscapes can have rights; for they, too can be protected by law--and not only, as Salt concedes, as property.[24]

These developments, he says, do not indicate that animals have gained rights, but rather that men have lost what once were considered rights to treat animals as they chose:

> . . . Salt's view misconceives the nature of the change that has taken place in Western moral thought. What has happened over the last century and a half in the West is not that animals have been given, by law and public opinion, more power, more freedom or anything else which might be accounted as a right. We are still perfectly free to kill them, if it suits us to do so. Rather, men have lost rights; they no longer have the same power over animals, [they] can no longer treat them as they choose. This is characteristic of moral change; it follows from the fact that, in [H.L.A.] Hart's words, 'moral rules impose obligations and withdraw certain areas of conduct from the free option of the individual to do as he likes.' But that men have lost rights over them does nothing to convert animals into bearers of rights, any more than we give rights to a river by withdrawing somebody's right to pollute it.[25]

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[24] John Passmore, Man's Responsibility for Nature, p. 115.

[25] Ibid., pp. 115-116. The reference to Hart is from The Concept of Law, p. 7.

Passmore adopted the position that animals cannot have rights since they are not members of human society. This is a common viewpoint among moral theorists but in itself it is certainly not a self-evident truth. It obviously depends on the premise that only entities which are members of human society can have rights. Opponents, of course, would dispute this. Ecologists maintain that the proper premise is rather one to the effect that all entities which are members of the same community have rights with respect to each other; they go on to argue that men, animals, plants and other environmental objects are members of the same ecological community and consequently have rights. Passmore disagrees. To belong to a community in the only sense which generates ethical obligation, he says, it is essential that the members have common interests and recognize mutual obligations. Since human society is the only community which meets these criteria, only its members can have rights.

If the concepts "being a member of the human community" and "being a person" are at least extensionally equivalent, the premise given above comes out to the same thing as the proposition that only "persons" are the sorts of entities which can have rights. This is a point frequently discussed in connection with disputes over the morality of abortion. In one such discussion, Stanley

Benn developed an argument pertinent to the present subject.[26]

The main point of Benn's account was to determine what it means to be "a person." His conclusion was that a person is "someone aware of himself, not just as process or happening, but as agent, as making decisions that make a difference to the way the world goes, as having projects that constitute certain existing or possible states as 'important' and 'unimportant,' as capable, therefore, of assessing his own performances as successful or unsuccessful." It is not enough, as some have claimed, simply to have the capacity to desire an object; to have a right presupposes that one be aware of oneself "as the subject of enterprises and projects that could be forwarded by choosing to exercise one's rights."

Benn argued that the fact that there are good reasons for a person to perform certain actions related to the well-being or suffering of a sentient being does not imply that the latter has a right to those actions:

> . . . One ought to feed one's domestic animals not because they have a right to be fed, but because it is cruel not to feed them, and it is an owner's responsibility to see that they are not left to suffer. We may have duties in respect to such beings, as patients, just as we may have duties in respect of the environment, which may also suffer (though in a somewhat different sense) if we pursue our objectives with a reckless disregard for the damage we do.

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[26] S. I. Benn, "Abortion, Infanticide, and Respect for Persons," pp. 98-100.

To ascribe a right to some one, in Benn's view, is a quite different matter:

> . . . Paradigmatically, it is to say that by virtue of a set of normative relations that hold between him and some particular respondent or people at large, there are certain demands such that his making them would be a reason for the respondent's acceding to them, and would put the latter in the wrong if, without some overriding reason, he did not accede to them. . . . There are, in short, a series of normatively significant acts (including speech acts) open to the bearer of a right, which have as their general point enabling him to manipulate his social situation the better to pursue whatever aims or purposes he may happen to have.

This analysis, in my view, comes much closer to the mark of what we intuitively consider to be "rights" than do those accounts which rely simply on the "interest principle" or a vague notion of "community." The term "rights," of course, cannot be confined to a single meaning; as Charles Frankel says, it is "awkward and polyguous at best."[27]

To use Thomistic language, "a right" is an analogical term. The primary analogate is the relationship, of the kind Benn describes, which holds between two persons or moral agents. The ratio signified by the term is found properly in this relationship. The term can be applied to a relationship between a moral agent and an animal, but this would be a secondary analogate, with the application

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[27] Charles Frankel, "The Rights of Nature," p. 103. [I have not yet found a dictionary, including the OED, which defines "polyguous."]

of the term based on the resemblance between this relationship and the ratio found properly in the primary analogate. The attribution of rights to "Nature" or environmental objects seems purely metaphorical; perhaps, as Frankel says, the use of the expression "Nature has rights" is simply a way of articulating "the claim that the social introduction and use of technology should be subjected to methods of rational appraisal, and that unintended costs and consequences should be sought out." To sum up: real live people have rights simpliciter; at most, animals, environmental objects and future generations have rights secundum quid.

The foregoing statement does not settle the question, nor is it intended to: it simply sets the stage for a fuller discussion of the question of rights, which I plan to pursue in the following chapters. As the argument will show, the issue of what sort of entity can have rights is central to solution of problems relating to the right to a decent environment and the right to employment; it is also relevant to the resolution of the conflict between them.

CHAPTER III

AN ANALOGICAL THEORY OF RIGHTS

Moral Characteristics as the Basis of Rights

Man is a moral animal. Many philosophers, including Aristotle, insist that rationality is the specific difference which distinguishes the human species from other animals. But even those who believe that the difference in intelligence between men and the lower animals is only a matter of degree still hold that the "capability of volitions for rightness of which [the subject] is responsible"[1] is a distinctively human characteristic. Darwin, for instance wrote:

> There can be no doubt that the difference between the mind of the lowest man and that of the highest animal is immense. . . . Nevertheless the difference . . . certainly is one of degree and not of kind. . . .[2]

But he also said:

> . . . A moral being is one who is capable of comparing his past and future actions or motives,

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[1]The OED definition of "moral" in sense 6 b, "of an agent or his attributes."

[2]Charles Darwin, The Descent of Man, Great Books edition, part 1, ch. 4, p. 319.

> and of approving or disapproving of them. We have no reason to suppose that any of the lower animals have this capacity. . . .[3]

The idea of being a moral agent contains within it at the very least the notion of having the ability to understand concepts of right and wrong and to direct future actions in accordance with these judgments. This entails the ability to act purposively, that is to say, to act in such a way that the action will accomplish the good--or possibly the evil--intended. It also entails the ability to act in a voluntary way, since otherwise the agent could not be held responsible for the actions and there would be no point approving or disapproving of them in the sense Darwin used.

To make a judgment that some future action would be right or wrong, however, requires some standard or principle on which to base the decision. A fundamental principle which most people, including moral philosophers, generally accept is stated by Sidgwick in this way:

> . . . Whatever action any of us judges to be right for himself, he implicitly judges to be right for all similar persons in similar circumstances. Or, as we may otherwise put it, "if a kind of conduct that is right (or wrong) for me is not right (or wrong) for someone else, it must be on the ground of some difference between the two cases, other than the fact that I and he are different persons."[4]

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[3]Ibid., p. 311.

[4]Henry Sidgwick, The Methods of Ethics, p. 379.

To avoid certain problems, Sidgwick reformulates the statement as follows:

> . . . It cannot be right for A to treat B in a manner in which it would be wrong for B to treat A, merely on the ground that they are two different individuals, and without there being any difference between the natures or circumstances of the two which can be stated as a reasonable ground for differences of treatment.[5]

Combining the principle of reciprocity with the notion of what it is to be a moral agent, Alan Gewirth derives the "Principle of Categorial Consistency."[6] Every agent, he says, in undertaking any action which affects another person, must observe reciprocity or "universalizability"; he must apply to himself the same rule of action which applies to the "recipient" of his act. If the act is right for him, it is right for his recipient, or vice versa, unless there are relevant differences between them. There may be relevant differences: for example, a teacher may take certain actions with respect to a student which would not be appropriate for the student to take with respect to the teacher; an employer may act in a certain way toward an employee because of relevant differences in their status. If the recipient of these actions objects that the

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[5]Ibid., p. 380.

[6]See Alan Gewirth, "Categorial Consistency in Ethics," pp. 291-299.

differences are not relevant in the instant case, the agent might appeal to a higher-order rule and claim that his greater wisdom or experience or age makes a qualitative difference, which may in fact be relevant. In some instances, however, the recipient may be able to show that the actions affect him as a moral agent and on that "maximally general" or "categorial" level there are no relevant differences. On this level, Gewirth insists, one person must apply to all others the "categorial rule of action" that he applies to himself:

> . . . To put it formally, then, it is necessarily true of every agent who performs an act that he does it voluntarily and he does it purposively.
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> It is these two characteristics that constitute the categorial rules of human action. Hence, by the principle of reciprocal consistency, he ought to apply these same two rules to his recipient insofar as the latter is a potential or prospective agent. We thereby obtain, by combining the general principle of reciprocal consistency with the categorial rules of action, what I shall call the Principle of Categorial Consistency: Apply to your recipient the same categorial rules of action that you apply to yourself. This principle, which I shall henceforth refer to as the PCC, is, I suggest, the supreme principle of morality. . . .
>
> The PCC, then, requires that the agent yield to his recipients the same categorial features of action which are the proximate conditions both of his own action and of whatever goods are attainable by action. Hence the PCC at once entails two interpersonal categorial rules, which may be formulated as follows: (1) In acting toward a recipient do not coerce him, that is, do not make him participate in the interaction with you against his will, or involuntarily, or without his consent. (2) In acting toward a

> recipient do not frustrate his purposes, that is, do not diminish or remove something that seems to him to be some good of his. . . .[7]

Leaving to one side the question of whether the PCC is, indeed, the "supreme principle of morality," we can agree that the analysis makes sense. It can provide the basis for understanding what it means "to have a right."

As the discussion toward the end of the last chapter indicated, it is a matter of controversy whether entities other than human beings have rights. If the concept of rights has any meaning at all, however, it is clear that it does have meaning when applied to people, and this application may be taken as the basic and primary usage of the term. To say that a person has a right to something goes beyond saying that the person has a claim: it is to assert that the subject of the right has a moral capability for attainment of the good in question and that there are good reasons why the subject should attain it. In short, the person is entitled to the good; this entitlement provides the basis for a claim.[8] One can still ask what is the basis for this entitlement and in the case of a moral agent the answer is clear: In order to act as a moral agent, an entity must have the capability of acting purposively and voluntarily and if there is to be any

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[7]Ibid., p. 292.

[8]See H. J. McCloskey, "Rights."

specifically human activity in the world and consequently any moral order people must be free to exercise this capability.

A person's exercise of the capability for purposive and voluntary action, as Gewirth has shown, entails an obligation on the part of other moral agents. This leads to the following as a working definition of a moral right in the sense in which it is attributed to a moral agent:

> A moral right is a moral entitlement to a certain good which entails a relationship between the subject of the right and one or more respondents such that there is in the respondents a moral obligation either to perform acts which would result in the subject's attaining the good or to refrain from performing acts which would prevent its attainment.

This account, I believe, accurately describes what we mean when we use the term "a moral right." It also captures the essence of the term "rights" used in legal and political contexts. In addition, it provides the basis for application of the term in situations involving entities other than moral agents, including infants, fetuses, mental incompetents, "posterity," animals, legal fictions such as corporations, and even environmental objects. To understand how this can be the case, however, requires a brief digression from the main topic of discussion--a digression which I believe can shed considerable light on the admittedly slippery concept of rights.

"Rights" as an Analogical Term

The introduction of the Thomistic notion of "analogy" toward the end of the last section was not because of purely antiquarian interest. On the contrary, this doctrine of analogy, which plays such an important role in the logic, metaphysics and theology of St. Thomas Aquinas, has an important application to the theory of rights. St. Thomas did not make this application and in fact did not treat of rights in any systematic way, but his concept of analogy can provide a useful analytic tool with which to consider the subject.

Before getting into the Thomistic concept, however, I would like to distinguish it from another common use of the term "analogy"--that which appears in logic texts under the heading "argument from analogy." This is a form of reasoning which uses resemblances between two objects as a ground for believing that they will have other properties in common. The following example appears in a popular textbook:

> . . . "The herring we ate last week was improved in flavor by being cooked in vinegar: The same can be expected from treating mackerel in the same way." Here it is taken for granted that the herring and mackerel resemble one another, and the property that both of them are expected to have is that of being improved by cooking in vinegar. . . .
>
> In any argument from analogy, there has to be some degree of resemblance between the things compared. Thus the basis of resemblance between a

> herring and a mackerel is that both are known to be salt-water fish. . . . The soundness of an argument from analogy will . . . depend on whether the basis of resemblance is actually connected with the property . . . assigned to both.[9]

In the first chapter, I had occasion to criticize an argument from analogy in favor of the "environmental ethic" which was based on resemblance between the human community and the biotic community. The argument failed because the resemblance between the two types of community did not hold in those respects essential to the ethical question.[10] Nevertheless, this type of argument is widely used and often quite persuasive.

The type of analogy which I plan to discuss now is quite different from the one just described. It has to do with analogy in terms rather than in argumentation. In the language of Thomistic logic, "analogical" describes a mode of predicating terms which is midway between "univocal" and "equivocal" predication. It is this sense of analogy which I wish to apply to the concept of rights.

A term is predicated univocally when the objects which it signifies are the same, in that they have a common characteristic or ratio which is the basis for using the term. Thus, the term "log" applies in a univocal way to two pieces of wood cut from trees. The two objects are

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[9] Max Black, Critical Thinking, pp. 319-321.

[10] See above, pp. 19-22.

not in all respects the same: one may be shorter than the other, one may be oak and the other maple. But both are the same in that they have the common characteristic of being pieces of "trimmed but unhewn timber."

The same term, "log," is predicated equivocally when applied to a piece of wood and a certain kind of mathematical function (namely, the exponent indicating the power to which a fixed number, the base, must be raised to produce a given number). Here the objects are not at all the same; they have no common characteristic as the basis for applying the same term, the use of which is simply an accident of the English language.

The term "log" can also be used in an analogical way, applied to a piece of wood and to a metal device trailed from a boat to determine its speed. The objects to which the term refers are not the same, but there is a resemblance based on the fact that the prototype for the navigational device was a piece of wood. The characteristic on which the use of the term is based is found primarily in the piece of wood, which is consequently called the "primary analogate"; it is found in the navigational device only by considering the relationship which that device bears to a piece of wood as a functional prototype: hence the device is called a "secondary analogate."

Consider the analogical use of the term "father" for an actual male parent and for George Washington as the "father of his country" or for Mendel as the "father" of genetic science. In the primary analogate the term is applied because of a certain relationship which the object referred to has with his physical offspring; in the secondary analogates there is a similar kind of relationship between the objects and their political or scientific "offspring," but it is not properly called a relationship of fatherhood. This is known as "metaphorical" or "symbolic" analogy.

In "analogy of attribution" the common characteristic is found actually only in the primary analogate but is attributed to the secondary analogate because of a real relationship between it and the primary analogate. For example, we call both a man and a salubrious climate "healthy" even though health is truly a characteristic only of a living body. The reason for this usage is that we believe the climate can be a causal factor in the living person's health.

Finally, we can speak of "analogy of inequality." In this case the common characteristic is found in both the primary and secondary analogates, but in different degrees. For example, the term "animal" applies to both a horse and an amoeba because certain common characteristics

are found in both, but they are found in the horse in a much more developed way.[11]

The Primary Analogate: Rights of Moral Agents

It is my contention that the term "rights" is analogical as applied to moral agents and other entities sometimes considered to be holders of rights. To understand the ramifications of this position, it will be necessary first to take a closer look at the primary analogate, the rights of moral agents.

The working definition given above described a right as a moral entitlement to a certain good. One of the necessary conditions for the exercise of any moral capability is that the agent must be free of external coercion; to act at all, in the moral sense of acting, the agent must have the right of freedom or liberty. As H. L. A. Hart expressed it:

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[11] This last type is considered univocal rather than a true analogical predication by many Thomistic writers, but it will serve well enough to make the point I want to establish in the subsequent discussion. Note also that I have not included the type of analogy most important to the metaphysics of St. Thomas, namely, analogy in which the same term is applied to different objects because the relationship between the one object and the characteristic signified by the term is similar to the relationship between the other object and that characteristic: for instance, "good" predicated of a poker hand and a house; or "existence" predicated of man and God. For a discussion of the whole theory of analogy see Gerald B. Phelan, St. Thomas and Analogy.

> . . . If there are any moral rights at all, it follows that there is at least one natural right, the equal right of all men to be free. By saying that there is this right, I mean that in the absence of special conditions which are consistent with the right being an equal right, any adult human being capable of choice (1) has the right to forbearance on the part of all others from the use of coercion or restraint against him save to hinder coercion or restraint and (2) is at liberty to do (i.e., is under no obligation to abstain from) any action which is not one coercing or restraining or designed to injure other persons.
>
> I have two reasons for describing the equal right of all men to be free as a natural right; both of them were always emphasized by the classical theorists of natural rights. (1) This right is one which all men have if they are capable of choice; they have it qua men and not only if they are members of some society or stand in some special relation to each other. (2) This right is not created or conferred by men's voluntary action. . . .[12]

Hart's position is stronger than the one I propose to defend. His contention is that a moral agent has a right to perform any action he chooses so long as the act does not coerce or injure another person. I would be satisfied with the weaker thesis that a moral agent has the right to perform any action which is in his vital interest, subject to the same constraints of avoiding coercion or injury to another person. By this I mean that respondents with whom the moral agent interacts have an obligation to forbear from the use of coercion or restraint against the performance of an action which is essential to the agent's

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[12] H. L. A. Hart, "Are There Any Natural Rights?" pp. 175-176.

integrity as a moral agent; in some instances the obligation may go beyond mere forbearance and include positive acts of assistance.

The term "vital interest" requires explanation. As the last statement suggests, it includes whatever is essential to the agent's physical and moral integrity. A person has a vital interest in continuing to live, in enjoying good health and at least minimal comfort, in having sufficient food and shelter, in being free from restrictions on physical movement which would interfere with any of these. On the moral side, a person has a vital interest in having access to truthful information, in being able to judge for himself what is right or wrong and in being able to act on these judgments without coercion.

The moral agent's right to perform actions which are of vital interest precludes attacks on his physical integrity which would destroy or weaken his capacity to act as a moral agent. Respondents have an obligation not to kill or injure him, not to endanger his health, not to deprive him of food or shelter, not to restrain him physically. Others may not force him to perform an action he judges to be wrong nor prevent him from performing an act he considers morally obligatory. The moral agent's right to his vital interests may also entail an obligation on

others to rescue him from death or physical danger, to see that he has the necessary sustenance, to supply needed information, to protect his freedom of conscience.

Both the negative obligation not to endanger health and the positive obligation to see that a person has the necessary means of sustenance have important implications for the main subject of this dissertation. The former has an important bearing on the right to a decent environment and the latter relates closely to the right to employment, under prevailing social circumstances.

The existence of the basic right to personal integrity, I believe, follows directly from what it means to be a moral agent, taken in conjunction with the Principle of Categorial Consistency discussed previously. In the sense in which Hart uses the term in the passage quoted above, this is a "natural right" which all men have if they are capable of choice. As he points out, they have it "qua men and not only if they are members of some society." As human beings, however, they are members of society and it is within this context that we are able to work out the practical applications of the rights which follow from it and the limitations to which it is necessarily subject.

This position is consistent with the principles of justice worked out by John Rawls in his version of contractarian theory. His first principle requires that

"each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all."[13] The capacity for moral personality, he says, is a sufficient condition for being entitled to equal justice:

> This fact can be used to interpret the concept of natural rights. For one thing, it explains why it is appropriate to call by this name the rights that justice protects. These claims depend on solely natural attributes the presence of which can be ascertained by natural reason pursuing common sense methods of inquiry. . . . The propriety of the term "natural" is that it suggests the contrast between the rights identified by the theory of justice and the rights defined by law and custom. But more than this, the concept of natural rights includes the idea that these rights are assigned in the first instance to persons, and that they are given a special weight. . . .[14]

The fact that moral agents have a right to freedom does not necessarily mean that this right is unlimited. Human beings are not only moral animals but social animals as well. The concept of a right itself implies the existence of other moral agents, the respondents upon whom the right imposes a moral obligation. These people have the right to freedom also and it is entirely possible that these rights will conflict.

In the passages cited above, both Hart and Rawls referred to limitations on the right to freedom. Hart

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[13] Rawls, A Theory of Justice, p. 302.

[14] Ibid., p. 505, n. 30.

mentioned "the absence of special conditions which are consistent with the right being an equal right" and restricted the actions, for which liberty is guaranteed by the right, to those which are not "coercing or restraining or designed to injure other persons." Rawls' first principle of justice contemplated the "most extensive system" of basic liberties, but one which is "compatible with a similar system of liberty for all." Rawls conceded that liberty can be restricted, but only for the sake of liberty itself. To justify such restriction, he said, either

a. a less extensive liberty must strengthen the total system of liberty shared by all; [or]

b. a less than equal liberty must be acceptable to those with the lesser liberty.[15]

Rawls explained the limitation in the following way:

> . . . First of all, it is important to recognize that the basic liberties must be assessed as a whole, as one system. That is, the worth of one liberty normally depends upon the specification of the other liberties, and this must be taken into account in framing a constitution and in legislation generally. While it is by and large true that a greater liberty is preferable, this holds primarily for the system of liberty as a whole, and not for each particular liberty. Clearly when the liberties are left unrestricted they collide with one another. To illustrate by an obvious example, certain rules of order are necessary for intelligent and profitable discussion. Without the acceptance of reasonable procedures of inquiry and debate, freedom of speech loses its value. It is essential in this case to distinguish between rules of order and rules restricting the content of speech. While rules of order limit our freedom, since we cannot speak

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[15] Ibid., p. 302.

> whenever we please, they are required to gain the benefits of this liberty. Thus the delegates to a constitutional convention, or the members of the legislature, must decide how the various liberties are to be specified so as to yield the best total system of equal liberty. They have to balance one liberty against another. The best arrangement of the several liberties depends on the totality of limitations to which they are subject, upon how they hang together in the whole scheme by which they are defined.[16]

Secondary Analogates

With limitations such as those Rawls discussed, the natural right of personal integrity may be considered the foundation for many of the commonly accepted natural rights, including the classic rights to life, liberty and the pursuit of happiness. All of these are rights in the primary sense of the term, as are some of the more recently identified social rights such as those discussed in the United Nations' "Universal Declaration of Human Rights." In a subsequent chapter, I will discuss in some detail three types of rights particularly pertinent to the conflict between environmentalists and developmentalists: the right to property, the right to a decent environment and the right to employment. The next several pages, however, will provide additional groundwork for that discussion by treating some of the "rights" which are given this name (as I shall argue) only as secondary

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[16] Ibid., p. 203.

analogates of the term. Among these are the "rights" of non-adult human beings, animals and future generations.

Let me emphasize here that in suggesting a sharp distinction between the use of the term "rights" as applied to moral agents, the primary analogates, and its use as applied to other entities, I have no intention of derogating the importance of the obligations moral agents have regarding these other entities. For clarity of thought, however, it is important that the distinction be made; it also has some practical consequences in the ordering of priorities with respect to obligations, as the chapter on that subject will explain. Furthermore, it may serve as a kind of antidote to the "rights-mongering" of many contemporary advocates of popular causes, whose loose and trivial employment of the term "rights" detracts from the value of the term in its proper sense, in an ethical instantiation of Gresham's law.

One of the significant reasons for insisting on the rights of moral agents as the primary analogate is that the existence of rights of this type is clearly demonstrable. Given the existence of moral agents in a world in which rationality and moral order have any meaning, it follows that these entities have natural moral rights. Rights may be imputed to other entities, but only because of the relationships these others have

to moral agents or because of the resemblance their situation bears to the situation which is the basis for ascription of rights to moral agents.

Rights can be ascribed to infants, children and perhaps even to fetuses by "analogy of inequality." The right thus ascribed is not a true right in the primary sense of the term because the subject is not a moral agent. The analogical use of the term is justified in two related ways: first, the subject is virtually, though not actually, a moral agent; second, there is a similarity between the relationship which the subject has with adults and the relationship a moral agent has with his respondents.

Although the infant is not a moral agent, it is the kind of entity which in the natural course of events will become one.[17] It is not just potentially but is virtually a moral agent. Let me explain what I mean by an example: Suppose there are several people standing around a swimming pool. Five of them are in bathing suits, intending to go in the water, but another five are in ordinary clothes. One might say that all ten are potentially in the water; but the five prospective swimmers have a greater degree of potentiality for being in than the others. However, let us also suppose that one young

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[17] For brevity, I will use the single term "infant" to stand for all of the various types of non-adult human beings.

woman has already gone onto the diving board, has left the board and is in the middle of the back somersault portion of a full-gainer; she too is potentially in the water but, more than that, she is virtually in. It is in this sense that I say the infant is virtually a moral agent; and this provides strong justification for attributing rights to the infant in an analogical sense.

Second, because of this status of being virtually a moral agent, the infant has a relationship with adults similar to, though not exactly the same as, the relationship a holder of rights has with respondents. The difference is that the infant cannot perform purposive and voluntary acts; ordinarily the infant's parents (or in some cases a person appointed by the state in loco parentis) will supply the missing intelligence and volition. The similarity is that the adults have obligations with respect to the infant resembling those which they would have to a moral agent. In maturing, the infant gains moral status proportional to the development of capabilities of performing purposive and voluntary acts; this process is a continuum: there is no magic point at which one can say the person who was an infant has now become a moral agent. The law, of course, makes arbitrary definitions and may, in fact, decree that

for some legal purposes an infant should be treated in a manner similar to a holder of rights.[18]

When writers speak of animals as "having rights" they are using the term by "metaphorical analogy." One basis for this usage is a resemblance between (a) the relationship animals have with moral agents and (b) the relationship a person who is a holder of rights in the primary sense has with other moral agents who are respondents. Moral agents do have obligations with respect to animals of the kind Benn referred to in the passage quoted toward the end of the last chapter.[19] In some respects these obligations are similar to those which a moral agent has toward a holder of rights. One of the major differences is that the moral agent does not have a duty to the animal as such but only a duty with respect to the animal. The latter is not a moral agent, nor is it the kind of entity which has the potentiality for ever becoming one; hence the basis does not exist for the kind of reciprocal relationship which is found between a person who is a holder of rights in the primary sense and another moral agent.

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[18] See below, pp. 220-223, for a discussion of obligations owed by moral agents to, and with respect to infants. The latter discussion also treats of obligations toward "dysfunctional" moral agents, human beings who lack the capability for rational function.

[19] See above, p. 73.

The main point here is that the two kinds of relationship just described are not identical. In the one case, that of the relationship between a person and other moral agents who are respondents, there is good reason for ascribing the kind of moral entitlement called "a right." In the other, the relationship between an animal and a moral agent, the reason for the ascription is less clear; the most plausible reason, I believe, is the resemblance which the latter relationship bears to the former and it is this resemblance which justifies the ascription of rights to animals, but only in a secondary sense.[20] Of course, there are other points of resemblance between people and animals: some of the primates look like people; some can be trained to mimic human speech and some even trained to communicate in a primitive way; animals, like people, are sentient beings and undoubtedly some feel pain. These characteristics may be good reasons for the obligations people have with respect to animals, but they are not sufficient reasons for attributing rights to them in the same sense in which we attribute rights to people.

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[20] H. J. McCloskey made a similar point in his article "Rights," pp. 326-327, when he said: "Animals, or at least the higher animals, may usefully be said to have rights by analogy. We have duties involving them, and these duties might be said to create rights by analogy. (The latter are not the same as rights in sense (a) [a 'negative concept' of right described earlier in McCloskey's paper], for a right by analogy is not an entitlement, whereas a negative right is such; and the difference leads to important implications.)"

Feinberg based his case for ascription of rights to animals on their possession of "interests."[21] He conceded that people have moral obligations or duties with respect to plants or inanimate objects which do not have rights, but he distinguished this situation from that involving animals because "try as we might, we cannot think of mere things as possessing interests of their own," as we can of animals. His explanation was that:

> . . . Mere things have no conative life: no conscious wishes, desires, and hopes; or urges and impulses; or unconscious drives, aims, and goals; or latent tendencies, direction of growth, and natural fulfillments. Interests must be compounded somehow out of conations; hence mere things have no interests. . . . Without interests a creature can have no "good" of its own, the achievement of which can be its due. Mere things are not loci of value in their own right, but rather their value consists entirely in their being objects of other beings' interest.[22]

The notion that animals have interests of the kind envisioned by Feinberg differs radically from the view generally accepted by society. People seem to believe that they should be concerned with an animal's welfare rather than with its interests. This distinction was made forcefully by McCloskey:

> . . . Moral rights can be possessed by beings who can claim them, and by those who can have them claimed on their behalf by others whose interests are violated or disregarded if the rights are not respected. The concept of interests which is so

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[21] Feinberg, "Rights of Animals," p. 49.

[22] Ibid., pp. 49-50.

> important here is an obscure and elusive one. Interests are distinct from welfare, and are more inclusive in certain respects--usually what is dictated by concern for a man's welfare is in his interests. However, interests suggest much more than that which is or ought to be or which would be of concern to the person/being. It is partly for this reason--because the concept of interests has this evaluative-prescriptive overtone--that we decline to speak of the interests of animals, and speak rather of their welfare.[23]

Animals are not usually considered to be much different from "mere things" in the respects mentioned by Feinberg at least insofar as their relations with people are concerned. The farmer does not normally consider whether his cow would prefer to be bred naturally or by artificial insemination. He is not concerned about whether his horse has "unconscious drives, aims and goals" which do not include being saddled or hitched to a plow. People don't normally wonder if their dogs find their "natural fulfillment" in being tied up in the back yard or trained to sniff out marijuana at customs posts. Yet we don't consider these to be violations of the animals' "rights." What society does require is that people behave toward animals in a manner considered appropriate in an advanced civilization: the poor dumb beasts should be fed and cared for (if they are domesticated animals) and not treated cruelly, since to do otherwise would not be consistent with how we feel people should act. There is no question

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[23] McCloskey, "Rights," p. 326.

of "justice" or giving the animal its "due." Beasts act toward other animals in a beastly way, but men in a human or "humane" way.

Even assuming that animals have interests of the kind described, Feinberg has not established that his "interest principle" is a sufficient reason for identifying an entity or a class of entities as eligible to be considered as a holder of rights. At the most, he has established the possession of interests as a necessary condition. Feinberg uses the following as his working definition of "having a right": "To have a right is to have a claim to something and against someone, the recognition of which is called for by legal rules or, in the case of moral rights, by the principles of an enlightened conscience."[24] Since the existing legal system does not recognize animal rights, it would be necessary to rely on "the principles of an enlightened conscience" for recognition of them. In order to validate the interest principle then, we would have to supply some prior "principle of an enlightened conscience" such as this: "(1) Moral agents have an obligation to respect the claims of any entity which has or can have an interest, i.e., a conative urge, however primitive, for its own good or welfare."

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[24] Feinberg, "Rights of Animals," p. 43.

If this proposition is true and it is true that animals have or can have interests in the intended sense, it follows that animals are among the kinds of entities which can have claims of the sort properly called rights. Against those who would argue that animals cannot make claims, Feinberg responds that they can do so through agents speaking in their behalf, just as the law allows infants and mental incompetents to do in pursuit of their legal rights.

But how would one go about justifying proposition (1) itself? It is certainly not a self-evident truth. One could simply affirm the principle on the basis of "moral sense"; but that kind of intuition does not command assent from others who do not share the same conviction. An appeal could be made to the utilitarian principle, claiming that assent to proposition (1) is required by the maxim that one must always choose that action which will result in the greatest happiness of all sentient beings. Even assuming the validity of the utilitarian principle, however, it may not always be the case that granting animal rights will produce the desired outcome in the utilitarian calculus; the same objections which Bentham raised against natural rights for people would obtain within the utilitarian system against this proposition as well. A consequentialist could argue that

affirmation of proposition (1) will lead to undesirable results. It is difficult to see how one could agree with the proposition and yet accept Feinberg's statement that "it is implausible to ascribe to [individual animals] a right to life on the human model."[25] It seems to me that the proposition clearly implies that right to life, with all of its adverse consequences for human behavior; we can't have it both ways, admitting the consequences we like and denying those we disapprove of.

It is true enough that having interests is a necessary condition of having rights; but only when we add to proposition (1) the notion that the entity having the interests is itself a moral agent, with an obligation-entailing relationship to other moral agents based on reciprocal consistency, do we have a sufficient condition for ascribing rights. Yet writers like Feinberg use the term with reference to animals; I should be the last to deny them the right to do so, but for the sake of clarity of thought I suggest that they are using it in an analogical sense.

Much the same can be said of attributing rights to "posterity." Here the problem is not that people who will be alive five hundred years from now (to use Feinberg's time frame) are not the sort of entity which can have

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[25] Ibid., p. 56.

rights, as is the case with animals. Instead, it is that they do not exist now and consequently cannot have "interests" now, much less rights. If and when they actually exist they will be subjects of rights, but by then those now living will no longer be around. The most that can be properly said of future people now is that they are prospective holders of rights, but in a sense much more attenuated than the sense in which we use the term in speaking of infants or fetuses. The latter are actually existing beings who are potentially subjects of rights; the former are potentially existing beings who, if that potentiality is actualized, will become subjects of rights.

The point of saying that future generations have rights against the present generation is to make a case for imposing moral obligations on people now living which would require them to perform certain duties which would assure satisfactory living conditions for people who will inhabit the earth after the present generation is dead and gone. If posterity did have such rights, the fact of that moral obligation would be clear. My position is that we do have certain moral obligations of the type suggested, but that these do not arise from "rights" in the proper and primary use of that term; as long as we are clear about this point, there is no reason we cannot use the term

"rights" in an analogical sense to call attention to these obligations.

In my view we do have obligations with respect to infants, animals, people of future generations and even natural objects, but not because those entities have rights properly so called. Since fetuses, infants and older children are virtually moral agents we have obligations which impose both negative and positive duties: we ought to do nothing which would interfere with their natural progression to the state of becoming moral agents and, depending on our relationship with them (as parents, siblings, relatives, teachers, government officials, citizens), we have a stronger or weaker obligation to take positive steps toward nurturing and educating them. In any case, we do have the obligation of according them the dignity due incipient moral agents, just as we give special treatment to the President-elect before he has taken office, giving him secret-service protection, furnishing him intelligence information, according him access to government agencies, supplying him with office space and (on the part of the incumbent) doing him the honor of consulting with him on sensitive decisions which will affect his future conduct of the office.

As moral agents who are also susceptible to pain, people are aware of how it feels to be mistreated, deprived

of food and in general made to suffer. They know that to cause another person to suffer unnecessarily would be a violation of the person's rights. This conception is based on a certain equality, at least on the categorial level, and a consequent mutuality which calls for reciprocal consistency of treatment between moral agents. But even though we do not recognize the same kind of equality between people and animals, the fact of the shared ability to experience pain gives rise to feelings of compassion on the part of people toward animals. Civilization has sharpened the sensitivities of people toward each other and, despite occasional lapses, has given rise to a consensus that cruelty to other human beings under any circumstances is wrong; this is in fact one of the hallmarks of a "civilized" society in contrast with a "barbarous" one. Because of human compassion the conviction among people has become more general that cruelty toward brute animals is also wrong, as being "inhuman" and not consistent with the dignity of man. Rawls expressed this conviction in explaining the limitations of his theory of justice:

> . . . Not only are many aspects of morality left aside but no account is given in regard to animals and the rest of nature. A conception of justice is but one part of a moral view. While I have not maintained that the capacity for a sense of justice is necessary in order to be owed the duties of justice, it does seem that we are not required to give strict

> justice anyway to creatures lacking this capacity. But it does not follow that there are no requirements at all in regard to them, nor in our relations with the natural order. Certainly it is wrong to be cruel to animals and the destruction of a whole species can be a great evil. The capacity for feelings of pleasure and pain and for the forms of life for which animals are capable clearly imposes duties of compassion and humanity in their case. . . .[26]

Taking it for granted that we do have obligations which do not arise from rights, the question remains: whence do they arise? Without putting too fine a point on it, we can say that many of our obligations simply follow from the fact that we are members of human society. This membership limits our freedom in certain ways which I plan to discuss more fully in a later chapter on the subject of "obligations." For the present, it is sufficient to note that institutions of society such as the family and the state carry with them obligations imposing duties to act in certain ways not necessarily related to rights and that the continuity of society itself requires a concern for "posterity."

The analogical theory of rights which I am advocating makes it clear that the relationship between rights and obligations is not entirely correlative. Every right in the primary sense of the term implies an obligation on the part of one or more moral agents; but it is not the case that every moral obligation implies a corresponding right,

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[26] Rawls, A Theory of Justice, p. 512.

even though it may form the basis for the use of the term in a secondary analogical sense. The importance of these distinctions will become evident in a later discussion of the priority ordering of rights and obligations. First, however, I wish to consider in some detail three specific types of rights which have an important bearing on the conflict between environmentalism and economic growth. This will be the subject of the next chapter.

CHAPTER IV

APPLYING THE CONCEPT OF RIGHTS

The assertion of three types of rights plays an important role in many confrontations between environmentalists and their adversaries. The most ancient of these rights--and perhaps still the most controversial--is the right to property. The other two are more modern in origin, the right to a decent environment and the right to employment. In a sense, both of the latter may be considered special cases of property rights, but they are sufficiently distinct and so often in apparent conflict with each other that they deserve to be treated separately.

To set the stage for a discussion of these rights and to demonstrate their relevance to the question at hand, I would like to describe two specific disputes. Each of these cases illustrates the application of one or more of these rights in the context of actual circumstances in which moral judgments are made. One is a controversy which took place in Michigan in the 1960s concerning the establishment of the Sleeping Bear Dunes National Lakeshore in which the principal normative issue was whether the national public

interest in preserving the lakeshore area should prevail over the asserted property rights of individual land owners. The second case is a dispute in Minnesota over the continued operation of Reserve Mining Company's taconite ore processing plant on the shore of Lake Superior. This controversy is a classic instance of the confrontation between citizens' groups and public agencies asserting rights to a clean, healthy environment on the one hand and on the other a company insisting on its property rights and workers their right to jobs.

The Sleeping Bear Dunes Controversy

At the northwest tip of the lower peninsula of Michigan lies a thirty-mile strip of Lake Michigan shoreline long considered to be one of the more beautiful scenic areas in the mid-west. Its most visible feature is a huge white sand dune which takes its name--Sleeping Bear Dune--from an ancient Chippewa Indian legend.[1] After several years of study and planning by conservation groups, Michigan's late Senator Philip A. Hart in 1961 sponsored a

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[1]According to the legend a mother bear and her two cubs were driven from the Wisconsin forests by a raging forest fire. The mother made it to the Michigan shore and climbed to the top of the sand bluffs to wait for her cubs. The big white dune lying near Glen Lake and Lake Michigan, the legend says, is the mother bear still keeping vigil for the cubs, who drowned offshore and form the Manitou Islands, which are included in the National Lakeshore park area.

bill in the U.S. Senate to create the Sleeping Bear Dunes National Lakeshore. The bill sought to establish the area as a national park to be developed and administered by the National Park Service.

As originally proposed, the Lakeshore area would encompass some 90,000 acres, with land to be acquired gradually over a period of several years by purchase or condemnation. Advocates insisted that the project would serve the interests of both the state and the nation. It would preserve the area for the rapidly growing outdoor recreation needs of the people and protect this "unique corner of creation," in Senator Hart's phrase, for the enjoyment of future generations.[2] In addition, it promised to attract tourists to the area and thereby stimulate the local economy; a Michigan State University feasibility study estimated that $10.8 million of new tourist income from 1.2 million annual visitors could be expected in the Grand Traverse region, in which the park would be situated, within five years.

Local citizens were not convinced. They felt the park threatened their accustomed way of life and, more importantly, their property rights. Residents formed

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[2]This quotation, along with much of the other information about the Sleeping Bear Dunes controversy, is taken from a chapter on the subject in Glenn L. Johnson and Lewis K. Zerby, What Economists Do About Values, pp. 73-101.

"The Citizens Council of the Sleeping Bear Dunes Area" to oppose the bill and cited six reasons for their opposition starting with "no one knows where he stands with respect to property rights." Their feelings were emotionally expressed by columnist Judd Arnett in the Detroit Free Press:

> What is involved is the "right" of bureaucracy to invade private property under the terms of an outrageous Act that contains 80 percent gibberish and 20 percent brute strength under the old "might makes right" philosophy. . . . If the act goes unchallenged and thereby establishes a precedent, then the federal government will be able to move into any developed area, at any time, and usurp what it wants "for the people."
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> . . . There is no "greater good for the greatest number" than the protection of individual rights. That is what freedom is all about. . . . This is encroachment of the most flagrant nature, and if there aren't enough people who care, then National Socialism is not a threat--it has arrived.[3]

In a thoughtful commentary on the controversy, Professors Glenn Johnson and Lewis Zerby of Michigan State University pointed out that Locke's philosophy of the natural law and inalienable rights is the basis for Arnett's criticism:

> . . . It has frequently been pointed out that of the three natural rights--life, liberty, and property--Locke seems chiefly concerned with property. The political argument against the bill is, then, that the landholders in the controversial area have a right to their land, and the bureaucrats have no right to seize or grasp it from them. There is the further argument that if such a law were to be passed in the

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[3]Detroit Free Press, 2 October 1961; quoted in Johnson and Zerby, What Economists Do About Values, p. 75.

> Senate, it would have baleful consequences: it would establish a precedent which would make it possible for the federal government to be able to move into any developed area, at any time, and usurp what it wanted "for the people." In answer to the utilitarian argument that the seashore area was to be for "the greatest good of the greatest number"--an argument that was eventually abandoned--Arnett asserts, with no supporting argument, that "there is no greater good for the greatest number than the protection of individual rights." . . .
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> . . . The distinctive thing about the theory of property being considered here is that the right to hold property is taken to be natural, inalienable, and regarded as above any legal or moral claim rather than as a legal and/or moral matter.[4]

The commentators explained that philosophers have used two sorts of arguments in justifying the institution of private property:

> . . . The first is that private property is necessary to fulfill or express one's personality. A man without rights to enjoy possessions is impoverished as a person, whereas a man with possessions is more fully a man. The second argument is that if a government takes from a citizen his property, the citizen's expectations are frustrated, and he loses faith in and respect for his government.
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> In the Sleeping Bear controversy, those who opposed the creation of the recreation area were arguing primarily from the second point of view. Not one of them was in danger of having all his property rights taken from him or, indeed, of having any property rights taken away without compensation. They were only in danger of having their expectations frustrated and losing faith in their government. . . .[5]

As matters turned out, Senator Hart, after extensive public hearings, introduced a new bill which satisfied many

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[4]Ibid., pp. 76-77.

[5]Ibid., pp. 77-78.

of the concerns of the residents by reducing the size of the park to 60,000 acres, safeguarding existing commercial interests and providing assurances against unfair condemnation proceedings. It eventually became law in 1970, despite charges by Hart's 1964 election opponent that the bill was a "subtle threat to the property rights of all Americans." By 1977, however, in reporting on the official dedication of the park, The Grand Rapids Press reviewed the long history of the dispute and concluded that "as time went on, even area residents began to accept the park. . . . Many of them, too, felt that perhaps the best way to preserve the beauty of their home area was through establishment of a national park."[6]

Ironically, the principal obstacle to final completion of the project, as of the summer of 1968, appeared to be opposition from local environmental activists, who were suing the National Park Service for alleged failure to preserve enough of the area as completely unimproved wilderness.[7]

The importance of the issue of property rights in the Sleeping Bear Dunes controversy is apparent. Later in this chapter I shall return to this question specifically

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[6]Grand Rapids Press, 6 November 1977.

[7]Lansing State Journal, 9 August 1978.

and review its application to the Dunes dispute. Now, however, I should like to turn to a somewhat more complex case, in which additional issues and their moral significance come into play.

The Reserve Mining Company Dispute

The roots of the Reserve Mining Company dispute go back to 1947 when Reserve, a joint venture of Armco Steel Corporation and Republic Steel Corporation, decided to mine low-grade taconite ore in the Mesabi Iron Range of Minnesota. The company established an open-pit mining operation in a scarcely populated area of northwestern Minnesota about 60 miles north of Duluth. A forty-seven mile long railroad was built to connect the minepit with a "beneficiation" plant located to the east on the shore of Lake Superior.

The beneficiation process concentrates taconite rock into pellets containing 60 to 65 percent iron ore. Waste materials left over after the enriched ore is extracted are known as "tailings." The plant discharges these in the form of a slurry which acts as a heavy density current bearing the bulk of the suspended particles to the bottom of Lake Superior.[8]

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[8]Information about this case is taken from several sources, principally Barton-Aschmann Associates' Draft Environmental Impact Statement (cited as Draft EIS) and several legal case reports.

Reserve's operations have benefited the economy of northwest Minnesota to a striking degree. The company developed the Village of Babbitt near the mine site and the Village of Silver Bay on Lake Superior. According to court records, the company employed 3,367 people as of June 30, 1970.[9] The company's payroll in 1974 amounted to $46.8 million and purchases in Minnesota totaled $36.8 million. Minnesota taxes for 1975 were estimated at $15.3 million.[10]

Because of the project's direct economic benefit and the spinoff effect of thousands of additional jobs in servicing the needs of the company and its employees, the State of Minnesota at first welcomed Reserve with open arms. In 1947 the Minnesota Water Pollution Control Commission (predecessor of the present Minnesota Pollution Control Agency or MPCA) and the Department of Conservation (now the Department of Natural Resources or DNR) granted permits for discharge of tailings into Lake Superior, subject to certain restrictions. After Reserve completed its initial construction program and started full-scale operations in 1956 the control agencies broadened the scope of the permits.

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[9] Reserve Mining Company v. Environmental Protection Agency, 514 F.2d 492 (1975), p. 536. (Reserve v. EPA.)

[10] Draft EIS, p. vii.

It was not until 1969 that the tailings disposal became a major issue. During that year the U.S. Department of Interior investigated the possible pollution effects of the discharge, acting under the authority of the Federal Water Pollution Control Act (FWPCA). The Minnesota Pollution Control Agency, as required by FWPCA, developed regulations to control pollution of state and interstate waters; one of these, known as "WPC 15," would have had the effect of prohibiting further discharge of tailings into Lake Superior. Reserve protested that this regulation was unreasonable, since it had built its facilities in reliance on the permits issued by the State.[11]

A spate of litigation followed. Federal pollution control agencies, along with the State of Minnesota, various environmental groups and the States of Michigan and Wisconsin, were on one side. Reserve Mining, together with its parents, Armco and Republic Steel, plus representatives of the Villages of Babbitt and Silver Bay, and the labor union representing Reserve employees, were on the other.

What turned out to be the controlling suit began in February 1972, before Federal District Judge Miles W. Lord. Trial on the merits lasted 139 days and included testimony from more than 100 witnesses, some 1,600 exhibits

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[11] Ibid., p. 5.

and 18,000 pages of transcript. Until June 8, 1973 the case was essentially a water pollution abatement case, but on that date the issue became one of an alleged imminent danger to public health. The U.S. Attorney charged that Reserve's discharges into the air and water contained minute particles of asbestos or a mineral substantially identical to asbestos; scientific evidence was introduced to show that inhalation or ingestion of asbestos fibers is a latent cause of human cancer. Reserve argued that the minerals found in its emissions and effluent were not the same as those associated with cancer risk and did not pose any "cognizable" hazard to health. The company maintained further that the tailings discharged into the water settled into the "great trough" area of the lake bottom and did not affect drinking water supplies of Duluth and other cities as opponents had charged.[12]

Judge Lord called in expert witnesses to clarify the health hazard issue and was satisfied that he "had heard in one form or another from substantially all of the world's experts" in this area.[13] He concluded that:

> The fibers emitted by the defendant into Lake Superior have the potential for causing great harm to the health of those exposed to them.

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[12] Reserve v. EPA, p. 501.

[13] United States v. Reserve Mining Company, 380 F. Supp. 11 (1974), p. 18. (U.S. v. Reserve.)

> The discharge into the air substantially endangers the health of the people of Silver Bay and surrounding communities as far away as the eastern shore in Wisconsin.
>
> The discharge into the water substantially endangers the health of the people who procure their drinking water from the western arm of Lake Superior including the communities of Beaver Bay, Two Harbors, Cloquet, Duluth, and Superior, Wisconsin.[14]

The economic effects of closing down the Reserve operation carried some weight in the judge's decision. In his memorandum accompanying the order deciding the case, Judge Lord wrote:

> The Court has been constantly reminded that a curtailment in the discharge may result in a severe economic blow to the people of Silver Bay, Babbitt and others who depend on Reserve directly or indirectly for their livelihood. Certainly unemployment in itself can result in an unhealthy situation. At the same time, however, the Court must consider the people downstream from the discharge. Under no circumstances will the Court allow the people of Duluth to be continuously and indefinitely exposed to a known human carcinogen in order that the people in Silver Bay can continue working at their jobs.[15]

In another place he added this comment:

> Defendants interject another aspect to the problem. Their refusal to make the necessary alterations to their present mode of discharge threatens the jobs of its work force if the court orders the discharge abated. The Court would be the first to agree that the work force of Reserve would suffer immensely if the plant is shut down and they are thrown out of work. Any environmental litigation must involve a balancing of economic dislocation with the environmental benefits.

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[14] Ibid., p. 16.

[15] Ibid., p. 17.

> Jobs are always an important consideration and the Court has given them due consideration in the instant case.[16]

In a footnote, Judge Lord added:

> Defendant's work force is in a particularly unhappy position. Living in a company town their sole source of employment is bound up in Reserve's operations. Unfortunately, of all the people endangered by Reserve's discharge these people run the greatest risk of contracting an asbestos related disease in accordance with the past experience of populations exposed to asbestos fibers in the ambient air. Peculiarly enough, judging from the position of the defendant intervenors these individuals as a group if given the choice would choose to continue the present exposure to themselves, their family, and friends in order to continue their present job status. If in fact the people of Silver Bay were the only ones exposed to the health risk there might be some weight to be given their conscious choice to take the associated risk involved to continue at their jobs. Even then, however, the Court would have to take a broader view of the matter. In the first place, the Court would be concerned with those who were unable to make a real choice, particularly the children who must abide by the choice made by their parents. Secondly, this Court would have to answer the question, "can this Court permit a commercial industry to require its work force to make such a choice that endangers their lives and the lives of their families, when in fact the commercial industry has the economic and technological means to eliminate any real health risk?" Consistent with governmental regulation of industrial safety and health regulations, the obvious answer is NO. In that Reserve's discharge largely endangers the lives of thousands in other communities unrelated to the activity of the company it becomes even more clear that the discharge must stop.[17]

Obviously piqued at Reserve's reluctance to cooperate in coming up with an on-land disposal plan for the tailings, Judge Lord issued an injunction ordering that the

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[16] Ibid., p. 70.

[17] Ibid., p. 70, n. 51.

discharges be halted immediately on April 20, 1974. Two days later the U.S. Court of Appeals for the Eighth Circuit granted a temporary postponement of the order. Following numerous hearings, the Appeals Court finally decided on March 14, 1975 that "no harm to the public health has been shown to have occurred to this date and the danger to health is not imminent" and that "no reason exists which requires that Reserve terminate the operations at once." However, the court also found that the discharges give rise to a potential threat to public health and violate both Federal and state pollution control laws and regulations. Accordingly, the court ordered that Reserve reduce its air emissions, taking "reasonable immediate steps," and either close down operations or convert to on-land disposal of tailings within a reasonable time. It directed that the controversy between Reserve and the State of Minnesota concerning location of the on-land disposal site be settled through established state administrative procedures.[18]

While the appeal was pending, Reserve had applied to DNR and MPCA for permits to build an on-land tailings disposal site at a location near "Mile Post 7" on the company's railroad. After hearings, the state agencies denied the application and expressed a preference for a site near Mile Post 20. A Minnesota state court

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[18] Reserve v. EPA, p. 500. See also Draft EIS, p. 7.

subsequently upheld Reserve's claim that the state agencies' decision was unreasonable and ordered them to issue the necessary permits for the Mile Post 7 site. On appeal, the Minnesota Supreme Court upheld that decision on April 8, 1977.[19]

The controversy concerning Reserve Mining Company's taconite pelletizing operations at Silver Bay brings out significant ethical issues. The U.S. Court of Appeals decided the question of whether or not to order an immediate closing of the plant on a basis of "balancing the equities" which went beyond mere interpretation of the meaning of the law. In doing so, the court made a normative judgment subject to critical evaluation on ethical grounds.

The court obviously placed a high value on the health of people who might be affected by the air and water emissions of the processing facility. If it could be shown that there was an imminent danger to health, there is little doubt that the Appeals Court would have upheld the injunction ordering an immediate plant shut-down.

This emphasis on the importance of health and its obvious connection with the preservation of human life implies the acceptance of a simple ethical principle: Whatever is an immediate threat to human life must be

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[19] Detroit Free Press, 9 April 1977. See also Industry Week, 14 February 1977, p. 24.

avoided. Few people would dispute the validity of such a proposition as this, although clearly it is not an ultimate or absolute principle. There are circumstances in which one would reasonably tolerate immediate danger to human life, for the sake of some higher good. For example, we praise the heroic father who dashes into a burning house to save his child or the passerby who plunges into a river to rescue a drowning man--even though these heroes are exposing their own lives to immediate danger. We consider it appropriate for police officers, firemen, bomb disposal squads to risk their lives as a matter of duty. And only the most extreme among pacifists would consider it immoral in every instance for a military commander to order his troops into battle. At least as a prima facie rule, however, the principle seems to be consistent with the judgment of most ethical writers.

The court's decision implicitly affirms a further proposition. Not only must a threat to human life be avoided, but it is a proper role and indeed a duty of the government to vindicate this principle. The maxim itself recognizes a right on the part of the citizens of northwestern Minnesota to enjoy health free from imminent danger. It imposes on others and, more particularly in this case, on Reserve Mining Company, an obligation to refrain from any action which would cause an imminent

health hazard. Beyond this, however, the legal action puts the full weight of the Federal government's authority into enforcement of the respective rights and obligations, pursuant to the normative judgment that this is the appropriate course to follow.

In first granting a stay of Judge Lord's decision to close down the operation immediately, and later reversing it, the appellate court made a further judgment worth reviewing for its ethical significance. This principle may be formulated: Serious adverse economic effects on a company, its employees and the community in which it is located should be avoided. Again, this is not an absolute principle and there may be overriding circumstances. In this instance, the court considered that "foremost consideration must be given to any demonstrable danger to the public health."[20]

Another possibly overriding question was seriousness of immediate harm to the environment from allowing existing pollution to continue. Formulating this in a manner similar to the other principles discussed, we arrive at: Serious immediate harm to the environment from continuing pollution must be avoided.

The court saw its problem as one of "balancing the health and environmental demands of society at large

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[20] Reserve Mining Company v. United States, 498 F.2d 1073 (1974), p. 1077. (Reserve v. U.S.)

against the economic well-being of those parties and local communities immediately affected."

> . . . Of course, foremost consideration must be given to any demonstrable danger to the public health. . . . Absent such demonstrated health danger, the public interest may arguably be served either way in environmental matters. In considering a stay application where no health hazard is shown, an appellate court must weigh, first, the seriousness of immediate harm to the environment which will result from allowing the alleged pollution to continue and, second, the economic and social dislocation to be suffered by the defendants and by the communities dependent on them if the injunction immediately goes into effect.[21]

Some guidance was found in the following comment by Chief Justice Burger in another environmental context:

> Our society and its governmental instrumentalities, having been less than alert to the needs of our environment for generations, have now taken protective steps. These developments, however praiseworthy, should not lead courts to exercise equitable powers loosely or casually whenever a claim of "environmental damage" is asserted. The world must go on and new environmental legislation must be carefully meshed with more traditional patterns of federal regulation. The decisional process for judges is one of balancing and it is often a most difficult task.[22]

Three major questions of fact confronted the appeals panel. Would continued operation by Reserve constitute a demonstrable danger to public health? Would serious immediate harm to the environment result from permitting the alleged pollution to continue? Would

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[21] Ibid., p. 1077.

[22] Aberdeen & Rockfish R. Co. v. SCRAP, 409 U.S. 1207, 93 S.Ct. 1, 34 L. Ed.2d 21 (1972), p. 7.

serious adverse economic effects on the company, its employees and their community ensue if operations were shut down? Finding negative answers to the first two and an affirmative answer to the third, the court permitted the plant to operate.

Priority ranking of the three principles is clear from the foregoing discussion:

1. Whatever is an immediate threat to human life (otherwise stated: whatever is a demonstrable danger to the public health) must be avoided.
2. Serious immediate harm to the environment from continuing pollution must be avoided.
3. Serious adverse economic effects on a company, its employees and the community in which it is located should be avoided.

The distinction between (1) and (2) is not entirely clear. However (2) apparently refers to an adverse effect on the water or ambient air which, while not an immediate threat to human life, does provide a high probability of future consequences which can be shown to endanger health. Understood in this way, proposition (2) would have the same justification as (1), with the only difference being the immediacy of the effect on people of the environmental harm and the possibility of reversal.

The validity of proposition (3)--or at least the reason for the heavy weight given to it in the court's deliberation--is not so immediately evident. It can be justified on the basis of public policy to some extent. As the court noted, "Congress has generally geared its national environmental policy to allowing polluting industries a reasonable period of time to make adjustments in their efforts to conform to federal standards."[23] The employees' union added the argument that "ill health effects resulting from the prolonged unemployment of the head of the family on a closing of the Reserve facility may be more certain than the harm from drinking Lake Superior water or breathing Silver Bay air."[24]

By the time the final decision on the appeal came out, another element had entered into the court's thinking: the effect on the steel industry of abruptly cutting off a major source of its materials. Testimony had shown that "Reserve's annual production of 10,000,000 tons of taconite pellets represents approximately two-thirds of the required pellets used by Armco and Republic Steel, . . . 15% of the production of the Great Lakes ore and about 12% of the total production of the United States." Moreover, according to the court record, "between four and six people are supported

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[23] Reserve v. EPA, p. 537.

[24] Ibid.

by each job in the mining industry, including those directly involved in the mining industry and those employed in directly and indirectly related fields."[25]

There was no doubt that continued operation of the facilities would cause further pollution of Lake Superior waters and the ambient air. Under the modified injunction which the court finally approved these would have to stop. But the company had the option of either changing its processes in such a way as to abate the pollution or phasing out the operation completely; in either case sufficient time would be allowed to accomplish the changes in a manner as little disruptive as possible to the economic system. As the court observed:

> . . . Some pollution and ensuing environmental damage are, unfortunately, an inevitable concomitant of a heavily industrialized economy. In the absence of proof of a reasonable risk of imminent or actual harm, a legal standard requiring immediate cessation of industrial operations will cause unnecessary economic loss, including unemployment, and, in a case such as this, jeopardize a continuing domestic source of critical metals without conferring adequate countervailing benefits.
>
> We believe that on this record the district court abused its discretion by immediately closing this major industrial plant. In this case, the risk of harm to the public is potential, not immediate or certain, and Reserve says it earnestly seeks a practical way to abate the pollution. A remedy should be fashioned which will serve the ultimate public weal by insuring clean air, clean water, and continued jobs in an industry vital to the nation's welfare.[26]

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[25] Ibid., p. 536.

[26] Ibid., p. 537.

Returning to proposition (3), it should be noted that this judgment does not require any positive governmental action. In context, it says in effect that the government should refrain from any action which would cause the serious economic effects that are to be avoided. This contrasts with the judgment in proposition (1), as previously discussed, which does call for the taking of immediate steps by the government, as would proposition (2).

Taking into account elements of the decision beyond the reversal of Judge Lord's immediate closure order, another normative judgment comes into view:

4. Pollution of the air and water which are potentially harmful to the public health must be abated in a reasonable manner.

It is interesting to note that the court considers that the element of potential for harm "imparts a degree of urgency to this case that would otherwise be absent from an environmental suit in which ecological pollution alone were proved."[27] Even so, the company is to be given sufficient time to work out arrangements with the state for a mutually agreeable on-land disposal site and a reasonable "turn-around" period in which to construct the facilities. Emissions of asbestos-type fibers into the air must be

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[27] Ibid., p. 538.

reduced "below a medically significant level," but a reasonable standard must be applied.

The court's principal concern throughout the controversy was to protect the public interest; it did not neglect individual rights of the parties concerned, but obviously considered the "public weal" and the "nation's welfare" paramount. This gives a special kind of significance to proposition (3). It is precisely because of the public interest that "insuring continued jobs in an industry vital to the nation's welfare" is so important, even at the expense of "some pollution and ensuing environmental damage." Avoiding the latter is certainly a desirable end, as assent to proposition (4) indicates, but the public interest places a higher priority on economic stability.

As this discussion has indicated, the Reserve Mining controversy involves numerous normative judgments which are interesting from an ethical and moral point of view. The theoretical justification of the principles associated with these judgments has its roots in the public policy decisions of the legislature and perhaps even more significantly in the whole "framework of moral conceptions"[28] which is the basis of our society and the

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[28] John Dewey, Theory of the Moral Life, p. 176.

foundation of its political system. Even the Constitution, as Chief Justice Earl Warren once remarked, "floats in a sea of morality."

Property Rights

In both the Reserve Mining dispute and the controversy over the Sleeping Bear Dunes National Lakeshore, one of the primary concerns was defense of property rights. In the latter instance the emphasis was clearcut: a direct confrontation between the property rights asserted by landowners and claims by the government that the public interest required taking of the land for recreational use. Property-right claims in the Reserve case were not quite that explicit, but were there all the same. The company's fundamental argument was that the kinds of demands being placed on their operation by the government constituted an unjust "taking" of their property. The employees contended that their jobs were being threatened--arguably a violation of their property rights. On the other side of the dispute, claims were made on behalf of citizens that pollutants emanating from the Reserve plant not only threatened their health but also diminished or destroyed the value of air and water in which the citizens held property rights under the "public trust" doctrine.[29]

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[29] For a discussion of the public trust doctrine, see below, pp. 161-171. The issue was raised in the Reserve case, but the court ultimately dismissed the plea. See Reserve v. EPA, p. 505.

To understand the merits of these claims--which represent those typically encountered in environmental disputes--it will be necessary to take a closer look at this whole concept. Our interest is in the moral aspects of property rights, but these are closely intertwined with legal considerations. As one recent writer on the subject pointed out, the basic contemporary legal question is, "What are the constitutional limitations on the public control of private property?" but the even more fundamental philosophical question is, "What is contained in the 'bundle of rights' associated with nominal title to real property?"

> While "property" is a right in both the philosophical and juristic sense, "private property" is an institution of society.
>
> One of the most profound influences upon the concept of private property throughout history has been the philosophical acknowledgment that there exist certain human rights which seem to be inalienable since they are part of the essence of humanity. Just because certain fundamental human rights are inalienable, however, does not mean that such human rights may be freely exercised without limitation. Even absolutely inalienable rights are subject to some limitation upon their exercise, if not their possession, and the distinction between possession and exercise of a right becomes important since it enables us to explain the limitations that can be justly imposed upon the assertion of certain rights under certain circumstances within the structure of certain societies without denying the existence of such rights.[30]

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[30] Victor John Yannacone, Jr., "Property and Stewardship--Private Property Plus Public Interest Equals Social Property," p. 79.

In the last chapter, I discussed the notion that human beings, as moral agents, have a natural, moral right to freedom or liberty (albeit a right with certain limitations) and that this entails the right of personal integrity in performing acts of vital interest to them as moral agents. The present question is whether this premise implies a further right to property.

The answer depends to a great extent on what is meant by the term "property." If all we mean by property is the possession of the basic means of subsistence, sufficient food for the individual and his dependents plus clothing and shelter adequate to meet the needs of physical comfort and social custom, the answer would be affirmative but essentially trivial and philosophically uninteresting. Even Karl Marx and Friedrich Engels were not opposed to property in general. As they wrote in the "Manifesto of the Communist Party":

> The distinguishing feature of communism is not the abolition of property generally, but the abolition of bourgeois property. But modern bourgeois private property is the final and most complete expression of the system of producing and appropriating that is based on class antagonisms, on the exploitation of the many by the few.
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> . . . What . . . the wage laborer appropriates by means of his labor merely suffices to prolong and reproduce a bare existence. We by no means intend to abolish this personal appropriation that is made for the maintenance and reproduction of human life, and that leaves no surplus wherewith to command the

> labor of others. All that we want to do away with is the miserable character of this appropriation. . . .[31]

The question becomes much more controversial when property is taken to be, as it is by Sir William Blackstone, an "absolute right . . . which consists in the free use, enjoyment, and disposal of all his acquisitions, without any control or diminution, save only by the laws of the land." Blackstone considers this right "probably founded in nature" but in its specific applications "entirely derived from society."[32]

As a social institution, property rights go back to ancient times. Greeks in Plato's era recognized individual ownership of lands and chattels. Roman law included the notion of dominium, the absolute right of ownership; it distinguished between the jus abutendi and the jus utendi: the former (literally the right to abuse) meant the state of having full dominion over property, being able to destroy, consume or dispose of it at will, while the latter (the right to use) limited the owner's power to use of the property without destroying its substance.[33]

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[31] Karl Marx and Friedrich Engels, Marxs and Engels: Basic Writings on Politics & Philosophy, pp. 21-22.

[32] See above, p. 54.

[33] See Yannacone, "Property and Stewardship," p. 79.

English common law, on which the law of property in the United States is largely based, developed over many centuries out of customs, royal decrees and legal decisions originating in feudal society. The basic concept was that only the Crown could own land. To raise money or gain military support or for other reasons the King would grant titles or "estates" to local leaders which gave them certain rights in specified lands, but not absolute ownership. A "freehold" estate "in fee simple" conferred on its owner full rights of possession, enjoyment and disposition of the land during his lifetime and the right to pass his interest on to his heirs. Other types of estate were more restricted in terms of use, time of tenure or rights of disposition.

Vestiges of the feudal system are still apparent in the complex system of property law which exists today. Much of the terminology relating to "freehold estates," titles "in fee simple," "leaseholds" and the like still persists. The underlying concepts of property ownership, however, have undergone radical alterations. Widespread changes, both in government through revolutions and evolution, and in economic and social structure, have given new meaning to property relationships.

The theoretical justification of private property rights stems from traditional mediaeval doctrine concerning

the natural law. According to St. Thomas Aquinas, all creation is subject to the Creator's eternal law which directs each thing to its proper end. As a rational creature, man is subject to this law in a special way. Unlike irrational beings which in a sense blindly follow the inclinations God has built into their natures, human beings through the power of reason are able to understand the natural ordinances of the eternal law and through free will choose to follow them or not. It is the eternal law as knowable by the rational creature which St. Thomas calls the natural law.[34]

The first precept of the natural law is that good is to be done and promoted and evil avoided. All those things to which man has a natural inclination, St. Thomas says, are naturally apprehended by reason as being good, and consequently as objects of pursuit, and their contraries as evil, and objects of avoidance. More specifically:

> . . . Therefore, the order of the precepts of the natural law is according to the order of natural inclinations. For there is in man, first of all, an inclination to good in accordance with the nature which he has in common with all substances, inasmuch, namely, as every substance seeks the preservation of its own being, according to its nature; and by reason of this inclination, whatever is a means of preserving human life, and of warding off its obstacles, belongs to the natural law. Secondly, there is in man an inclination to things that pertain to him more

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[34] St. Thomas Aquinas, Summa Theologica, I-II, q. 91, a. 2.

> specially, according to that nature which he has in common with other animals; and in virtue of this inclination, those things are said to belong to the natural law which nature has taught to all animals, such as sexual intercourse, the education of offspring and so forth. Thirdly, there is in man an inclination to good according to the nature of his reason, which nature is proper to him. Thus man has a natural inclination to know the truth about God, and to live in society; and in this respect, whatever pertains to this inclination belongs to the natural law: e.g., to shun ignorance, to avoid offending those among whom one has to live, and other such things regarding the above inclination.[35]

The general notion of property rights can be derived from the precepts of the natural law out of the necessity for individuals to have whatever is necessary as a means of preserving human life. But it is left to human law to determine how this is to be arranged under the concrete circumstances obtaining in a specific social situation. Human laws are formulated by human lawgivers either as specific conclusions from the principles of natural laws or as determinations that the law should be applied in a particular way under the existing circumstances.[36] The institution of private property seems to be a determination of this kind.

Between the thirteenth century in which St. Thomas wrote and the seventeenth century in which Locke developed his theories of property rights, the concept of natural law

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[35] Ibid., q. 94, a. 2.

[36] Ibid., q. 95, a. 2.

underwent many changes.[37] The Thomistic conception of "natural" as pertaining to the essential ontological structure of man and other entities had been transformed into an adjective related to a hypostatized "Nature" with a capital "N."[38] Locke's starting point was the "State of Nature":

> To understand political power aright, and derive it from its original, we must consider what estate all men are naturally in, and that is, a state of perfect freedom to order their actions, and dispose of their possessions and persons as they think fit, within the bounds of the law of Nature, without asking leave or depending on the will of any other man.[39]

Locke made clear that this was not merely a hypothetical situation as he saw it. Princes and rulers of "independent" governments all through the world were in a state of Nature and "it is plain the world never was, nor never will be, without numbers of men in that state." In fact, he emphasized, "all men are naturally in that

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[37] See an interesting discussion of this whole subject in a chapter on "The Rights of Man" by Jacques Maritain in his book Man and the State. Discussing eighteenth century natural law theories, he quotes another author's comment that ". . . eight or more new systems of natural law made their appearance at every Leipzig booksellers' fair since 1780. Thus Jean-Paul Richter's ironical remark contained no exaggeration: Every fair and every war brings forth a new natural law." (p. 83)

[38] For an extensive discussion of the distinction between "'nature' in small case" and "'Nature' in capitalized form" see Charles Frankel, "The Rights of Nature," pp. 93-114.

[39] John Locke, Concerning Civil Government, Second Essay, Great Books edition, ch. 2, s. 4, p. 25.

state, and remain so till, by their own consents, they make themselves members of some politic society."[40]

It was in the context of the state of Nature that Locke spoke of property rights. God had given the world to men in common. But every man has an exclusive right to his own person and this gives rise to the "appropriation" of private property:

> Though all the earth and all inferior creatures be common to all men, yet every man has a "property" in his own "person." This nobody has any right to but himself. The "labour" of his body and the "work" of his hands, we may say, are properly his. Whatsoever, then, he removes out of the state that Nature hath provided and left it in, he hath mixed his labour with it, and joined to it something of his own, and thereby made it his property. It being by him removed from the common state Nature placed it in, it hath by this labour something annexed to it that excludes the common right of other men. For this "labour" being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to, at least where there is enough, and as good left in common for others.[41]

This is the basis, in Locke's view, for all private property rights. It applies to the acorns one picks up under an oak, the apples gathered from the trees in the wood, the ore he digs from the earth, the water drawn from a well, the fish he catches in the sea, the deer killed in the forest. Beyond that, it applies to the earth itself:

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[40] Ibid., ss. 14 & 15, p. 28.

[41] Ibid., ch. 5, s. 26, p. 30.

> But the chief matter of property being now not the fruits of the earth and the beasts that subsist on it, but the earth itself, as that which takes in and carries with it all the rest, I think it is plain that property in that too is acquired as the former. As much land as a man tills, plants, improves, cultivates, and can use the product of, so much is his property. He by his labour does, as it were, enclose it from the common. Nor will it invalidate his right to say everybody else has an equal title to it, and therefore he cannot appropriate, he cannot enclose, without the consent of all his fellow-commoners, all mankind. God, when He gave the world in common to all mankind, commanded man also to labour, and the penury of his condition required it of him. God and his reason commanded him to subdue the earth--i.e., improve it for the benefit of life and therein lay out something upon it that was his own, his labor. He that, in obedience to this command of God, subdued, tilled, and sowed any part of it, thereby annexed to it something that was his property, which another had no title to, nor could without injury take from him.[42]

The property rights thus acquired are not unlimited. An individual can acquire only so much as he can utilize to any advantage of life before it spoils. He can claim only enough land as he can make use of for himself and his family. If he grows more grain than he can use or gathers more perishable fruit, he can exchange these products with others for items which he needs now or which will last a longer time.

Locke argued that this state of Nature continues so long as "there is enough, and as good left for others." When people began, by common consent, to use money ("something lasting that men might keep without spoiling") as a

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[42] Ibid., s. 31, pp. 31-32.

means of exchange "for the truly useful but perishable supports of life," and when the increase in population had made land relatively scarce in some particular area, the people in that place got together to form a commonwealth. In doing so, they "settled the bounds of their distinctive territories, and, by laws, within themselves, regulated the properties of the private men of their society, and so, by compact and agreement, settled the property which labour and industry began."[43]

The views which Locke expressed have had an important influence on later thinking about private property rights. His contention that men held private property as a right arising from the "laws of Nature" provided a strong argument against the pretensions of royalty to claim the power of dispensing property titles arbitrarily. His theory that property rights anteceded the formation of states, which were formed by compact largely to protect and regulate them, became the rallying point for middle-class political movements against governmental encroachment on their rights. The American revolutionaries based their slogan of "no taxation without representation" on the Lockean theory that man's property was his by natural law and could not be expropriated without his consent. Colonial declarations such as the 1780

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[43] Ibid., s. 45, p. 34.

Massachusetts Bill of Rights, which asserted that "all men are born free and equal and have certain natural, essential and unalienable rights; among which may be reckoned the right . . . of acquiring, possessing, and protecting property," reflected the same view. The fifth amendment to the U.S. Constitution was designed to protect the "natural right" of property from despotic acts of government.

Contemporary ethical discussions often reflect Locke's position. Rawls, for instance, cites Locke, along with Rousseau and Kant, as an originator of the social contract theory which his conception of justice "generalizes and carries to a higher level of abstraction."[44] Although Rawls' theory of distributive justice, relying on his "difference principle," may be inconsistent with the consequences of Locke's conception of property rights, he nevertheless identifies the "contractarian tradition," which he espouses, with "natural rights views."[45]

Another current writer, Robert Nozick, relies heavily on the Lockean tradition in developing his "entitlement theory" of distributive justice. This theory involves principles of justice in acquisition and transfer of holdings, and a principle of rectification

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[44] Rawls, A Theory of Justice, p. 11.

[45] Ibid., p. 32.

of injustice as specified by the first two. Although Nozick raises a number of questions about Locke's theory of acquisition of property and especially the proviso that there be "enough and good left in common for others," it is clear that he accepts the general line of argumentation as the basis for his entitlement theory and ultimately as the justification for the "minimal state" which he advocates.[46]

One of the difficulties of using Locke's theory to justify private property is that its principles can also be used as an argument that property should be distributed equally: where the supply is limited, a man's right to acquire land by cultivating it is constrained by the equal right of his neighbors, and each person can claim no more than an equal share. Moreover, if mixing one's labor with property originally held in common with others gives a person title to it, why should not the wage-earner's labor give him title to the product of the capitalist's factory? Or, ultimately, ownership (in common with other laborers) of the means of production?[47]

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[46] See Robert Nozick, Anarchy, State, and Utopia. Nozick discusses the entitlement theory specifically on pp. 150-153, and Locke's acquisition theory on pp. 174-182.

[47] On the last point, see Marx, "Critique of the Gotha Program," in Basic Writings, pp. 112-114.

Locke was by no means the only philosopher in the modern era to defend private property as a natural right. Kant devoted a large part of his treatise The Science of Right to this subject. In contrast with Locke's reliance on the individual's sole claim to his own labor as the basis for property rights, Kant based his theory on personal freedom, in accordance with "the postulate of the practical reason, that everyone is invested with the faculty of having as his own any external object upon which he has exerted his will."[48] In some aspects, however, Kant's teaching was similar to that of Locke. There is an original situation in which a given piece of property is not owned by any individual; it is res nullius (for reasons somewhat technically related to his philosophical method, Kant did not want to have the original ownership in common). Then one person takes possession of it and it becomes his property. Kant expressed his "principle of external acquisition" in this way:

> Whatever I bring under my power according to the law of external freedom, of which as an object of my free activity of will I have the capability of making use according to the postulate of the practical reason, and which I will to become mine in conformity with the idea of a possible united common will, is mine.[49]

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[48] Immanuel Kant, The Science of Right, Great Books edition, s. 9, p. 409.

[49] Ibid., s. 10, p. 410.

The reference to "a possible united common will" reflects the situation which prevails under a "civil state." In the "state of nature" a person can merely assert a "provisory" claim; it is only under the laws of the civil state that "juridical possession" is possible.

Both Locke and Kant related property rights to freedom, but in somewhat different ways. Locke started out with the notion of freedom in isolated individuals living in a "state of Nature." At first, it seems, each one is free because there is nobody else around. Just to survive, these individuals work the land and in doing so establish property rights to it. When the situation begins to get crowded and conflicts arise, the people form a society, mainly to protect their respective property rights. These ultimately become the substance of freedom and it is the defense of property rights against government encroachments which is of first concern in eighteenth century political struggles.

With Kant, freedom itself was more clearly the source and starting point of property rights. The very act of "prehension or seizure of an object" of which Kant spoke is an expression of free will, and is justified as such rather than as a means of sustaining life. The object seized must belong to no one; otherwise the act would conflict with the freedom of others. If it is open to

my seizure, however, I am free to declare my possession of it, "by formal designation and the act of my free-will in interdicting every other person from using it as his."[50]

Hegel also related property rights to freedom, arguing that it is only in the possession of property that a person really exists and gives expression to his freedom:

> In order that a person be a fully developed and independent organism, it is necessary that he find or make some external sphere for his freedom. Because the person as absolutely existing, infinite will is, as yet, in this entirely abstract form, we find that this external sphere which is essential to constitute his freedom, is designated as being equally something distinct and separable from himself.
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> Supplement. The rationality of property does not lie in its satisfaction of wants, but in its abrogation of the mere subjectivity of personality. It is in property that person primarily exists as reason. . . .[51]
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> As a person, I have the right to put my will into everything, which thereby becomes mine. The thing has no substantial end of its own, but only attains this quality by being related to my will. That is, mankind has the right of absolute proprietorship. . . .[52]

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[50] Ibid., s. 10, p. 410.

[51] Georg Hegel, Philosophy of Right and Law, paragraph 41; translation from Carl J. Friedrich, ed., The Philosophy of Hegel, p. 241.

[52] Ibid., paragraph 44 (p. 242). Hegel made it clear that in organized civil society "property rests on contract and on the formalities which make ownership capable of proof and valid in law." See paragraph 217 (omitted in the Friedrich edition; Great Books edition, p. 72).

The connection between freedom and property rights continues to be a hotly contested issue. With the growing complexity of economic life, however, property rights are sometimes seen as the enemy rather than the friend of liberty. In a 1964 article in the Yale Law Journal, Charles A. Reich presented a brief summary of how that change developed:

> During the industrial revolution, when property was liberated from feudal restraints, philosophers hailed property as the basis of liberty, and argued that it must be free from the demands of government or society. But as private property grew, so did abuses resulting from its use. In a crowded world, a man's use of his property increasingly affected his neighbor, and one man's exercise of a right might seriously impair the rights of others. Property became power over others; the farm landowner, the city landlord, and the workingman's boss were able to oppress their tenants or employees. Great aggregations of property resulted in private control of entire industries and basic services capable of affecting a whole area or even a nation. At the same time, much private property lost its individuality and in effect became socialized. Multiple ownership of corporations helped to separate personality from property, and property from power. When the corporations began to stop competing, to merge, agree, and make mutual plans, they became private governments. Finally, they sought the aid and partnership of the state, and thus by their own volition became part of public government.
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> These changes led to a movement for reform, which sought to limit arbitrary private power and protect the common man. Property rights were considered more the enemy than the friend of liberty. The reformers argued that property must be separated from personality. . . . During the first half of the twentieth century, the reformers enacted into law their conviction that private power was a chief enemy of society and of individual liberty.

> Property was subjected to "reasonable" limitations in the interest of society. The regulatory agencies, federal and state, were born of reform. In sustaining these major inroads on private property, the Supreme Court rejected the older idea that property and liberty were one, and wrote a series of classic opinions upholding the power of the people to regulate and limit private rights.[53]

Another complicating factor which has entered into contemporary society and its views on property rights is the phenomenon which Reich refers to as "government largess":

> One of the most important developments in the United States during the past decade has been the emergence of government as a major source of wealth. Government is a gigantic syphon. It draws in revenue and power, and pours forth wealth: money, benefits, services, contracts, franchises, and licenses. Government has always had this function. But while in early times it was minor, today's distribution of largess is on a vast, imperial scale.
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> The valuables dispensed by government take many forms, but they all share one characteristic. They are steadily taking the place of traditional forms of wealth--forms which are held as private property. Social insurance substitutes for savings; a government contract replaces a businessman's customers and goodwill. The wealth of more and more Americans depends upon a relationship to government. Increasingly, Americans live on government largess--allocated by government on its own terms, and held by recipients subject to conditions which express "the public interest."[54]

A key problem in connection with this government largess is that it is as much a form of the people's wealth

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[53] Charles A. Reich, "The New Property," pp. 772-773.

[54] Ibid., p. 733.

as traditional forms of property, but since it is freely given by the state it is not subject to the same rules which have traditionally protected private property rights. The state giveth and the state taketh away--without any rights to keep what is given on the part of the donee. In recent years the courts have tended to give increasing protection to those whose livelihood is endangered by government action such as revocation of an occupational license.[55] However, procedures are often left in the hands of administrative agencies with wide discretionary powers to decide what is in "the public interest" and to grant or withhold their largess accordingly.

As is evident in the Reserve Mining controversy, one of the foremost concerns of courts today in making equitable judgments is to serve the public interest. To do so and yet protect the property rights of individuals, as Justice Burger remarked, is often a most difficult task. One reason why this is so is that the traditional primary function of property rights is to carve out a sphere of activity in which the individual's freedom is paramount. To quote Reich again:

> . . . Property draws a circle around the activities of each private individual or organization. Within that circle, the owner has a greater degree of freedom than without. Outside, he must justify or explain his actions, and show his authority. Within, he is master,

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[55] Ibid., pp. 741-744.

> and the state must explain and justify any interference. It is as if property shifted the burden of proof; outside, the individual has the burden; inside, the burden is on government to demonstrate that something the owner wishes to do should not be done.
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> Thus, property performs the function of maintaining independence, dignity and pluralism in society by creating zones within which the majority has to yield to the owner. Whim, caprice, irrationality and "antisocial" activities are given the protection of law; the owner may do what all or most of his neighbors decry. The Bill of Rights also serves this function, but while the Bill of Rights comes into play only at extraordinary moments of conflict or crisis, property affords day-to-day protection in the ordinary affairs of life. Indeed, in the final analysis the Bill of Rights depends on the existence of private property. Political rights presuppose that individuals and private groups have the will and the means to act independently. But so long as individuals are motivated largely by self-interest, their well-being must first be independent. Civil liberties must have a basis in property, or bills of rights will not preserve them.[56]

This has the ring of typical, ultra-conservative, right-wing rhetoric; something straight out of John Locke/Adam Smith/John Stuart Mill by way of Barry Goldwater/Ronald Reagan/William F. Buckley. But Reich's argument is not quite out of the same mold. "Property," he says, "is not a natural right but a deliberate construction by society." As such, its origin ceases to be decisive in determining how much regulation should be imposed. "The conditions that can be attached to receipt, ownership,

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[56] Ibid., p. 771.

and use depend not on where property came from, but on what job it should be expected to perform."[57]

This suggests a useful starting place for considering a realistic view of private property rights. We can make out a strong case for a natural, moral right to freedom on the part of moral agents. But the best we can manage for property is a weak justification for minimal rights to the use of property needed for subsistence and the bare necessities of life. Locke's arguments for the right to private property arising from the admixture of personal labor with goods held in common in a hypothetical "state of Nature" are less than compelling. This is especially true under present circumstances in the United States where nearly all property titles can be traced to ownership by the government which gained it by purchase or seizure from the previous rightful or wrongful owners.[58] The metaphysical arguments advanced by Kant and Hegel will convince only those prepared to accept the rest of their philosophical systems. The point at which all of these classical justifications converge, however, is in a vindication of private property as a just social institution:

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[57] Ibid., p. 779.

[58] A small example: the abstract of title to my residential property begins with a patent dated 1839 from Martin Van Buren, president of the United States. Presumably he acquired the land either by treaty from the British or by whatever means from Indian claimants.

perhaps not the only possible just arrangement, but one that is at least defensible. If the further point could be made that the moral right to freedom can only be preserved through the social institution of private property, there would be justification for considering that institution a derivative moral right. Given the U.S. constitutional system, there is in this country at least a strong presumption in favor of such an argument.

On this analysis, the right to property appears to have a twofold character. Insofar as property is necessary to a person's subsistence in providing food, clothing and shelter for himself and his family, it has the character of an absolute right. The holder of the right has a moral entitlement to use property in ways that serve these vital interests and there is a moral obligation on the part of all others, including the government, not to interfere. Beyond that, however, society has created the institution of private property to serve the common good by granting property rights as a means of protecting the moral agent's more fundamental right to freedom.

Under its first aspect, in which property rights are virtually absolute, the government cannot interfere, except perhaps in situations in which there is a grave danger to society itself; this might conceivably be the case when an atomic bomb attack or some natural disaster

has contaminated the food supply and the government might have to seize all such property in order to assure fair distribution of the limited amounts available. Even here, however, the government would be acting to protect property rights of all on the basis of the equal right of all to the means of living.

In its institutional aspect, property rights are subject to two qualifications. Exercise of the right may be limited in such a way as to protect the rights of other persons or to serve the public interest. Moreover, the state, acting on behalf of society, may revoke the right itself if such action is necessary in the public interest. In either case, but particularly when the question is one of revocation, the burden of proof is on the state to show both that the public interest in the property at issue is of overriding importance and that the right-holder's freedom is not endangered.

Obvious examples of limitations on the exercise of property rights are found in laws relating to nuisance. One may not use his property for making loud noises which disturb the neighbors' right to sleep or otherwise enjoy their property. A property owner may not create an "attractive nuisance" by building a swimming pool without adequate safeguards which restrict access by children who might fall in and drown. The fundamental limitation since

time immemorial has been the legal maxim "sic utere tuo ut alienam non laedas"--"so use your property as not to injure another." More generalized public interest restrictions are seen in such modern inventions as zoning laws.

The authority of the state actually to revoke property rights is a more serious question. Lawyers and jurisprudence scholars have written volumes of material on this issue, which in the United States has come to be known as the "takings" question, referring to the provision of the fifth amendment to the Constitution which says, ". . . nor shall private property be taken for public use, without just compensation." In some instances, the reasons supporting a taking are overwhelming, as, for example, when public authorities destroy public property to prevent catastrophic damage, perhaps to create a fire-break to stop the spread of a forest fire or for security purposes in time of imminent peril.[59] There are other cases, however, when the justification is not so evident, particularly when restrictions on use, without the usual

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[59] See Michael B. Metzger, "Perspective: Private Property and Environmental Sanity," p. 811.

condemnation proceedings, constitute in effect a taking of the property.[60]

It was the question of actual taking away of property rights which was at issue in the Sleeping Bear Dunes dispute. Property owners objected to establishment of the park on the grounds that either their land would be taken away from them or at least their rights to use it as they chose would be so severely restricted that in effect their property rights would be revoked. Advocates of the law creating the proposed National Lakeshore argued that the public interest required that the park be established. In support of their position they cited the need to protect this "unique corner of creation" from commercialization, to preserve its beauty for future generations, and to provide outdoor recreation possibilities for which there was an ever increasing national demand. Concern for the safeguarding of private property rights resulted in a comprehensive rewriting of the original bill which sought to authorize establishment of the park; existing uses would be permitted, fair compensation would be paid for property acquired by the government and public authorities would be restrained from arbitrary actions which might force owners to relinquish their rights. There was no threat to the

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[60] For a detailed discussion of the takings question, particularly as it relates to environmental regulations, see Joseph L. Sax, "Takings, Private Property and Public Rights."

actual subsistence rights of the owners, but in the end the "public interest" prevailed over the "private interests" of the landholders.

It is precisely this question of what is the public interest which is the point at issue in much of the conflict between environmentalists and developmentalists.

The Right to a Decent Environment

The second case discussed at some length earlier in this chapter, that of Reserve Mining Company, illustrates the growing concern about environmental problems during the last two decades. The people of Minnesota welcomed Reserve's ore processing plant when the project started in 1947. State authorities issued the necessary permits then and even enlarged their scope as late as 1956. Opposition developed in the 1960s and by 1970 continued operation of the facility became the subject of intensive litigation.

The change in public attitudes during this relatively short time period was phenomenal, as John C. Whitaker, a key government official concerned with pollution control policies in the Nixon and Ford administrations, has pointed out.[61] The environmentalist movement had been

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[61] John C. Whitaker, Striking a Balance: Environment and Natural Resources Policy in the Nixon-Ford Years. Whitaker was a deputy assistant to the President, coordinating interdepartmental task forces that prepared special messages to Congress on energy and the environment and served as undersecretary of the Department of the Interior from 1973 to 1975.

growing more or less quietly, but began to draw widespread popular support after publication of Rachel Carson's Silent Spring in 1962. It leaped into public prominence with "Earth Day" in the spring of 1970 and by January 1971, Time magazine featured an article titled "Issue of the Year: The Environment."[62] In public opinion polls the percentage of people considering air pollution and water pollution a serious problem increased from 28 and 35 percent respectively in 1965 to 69 and 74 percent in 1970. In response to the question, "Aside from the Vietnam War and foreign affairs, what are some of the most important problems facing people here in the United States?" only 1 percent identified "pollution/ecology" in a May 1969 survey, but the number increased to 25 percent in May 1971.[63] Small wonder that politicians jumped on the environmentalist bandwagon!

Whitaker attributes the sudden environmentalist awakening to a number of factors: the actual build-up of pollutants in the water and air, the availability of new scientific expertise needed to detect dangers which had previously gone unnoticed, the prodigious waste of resources which had become even more profligate in the post-World War II period, the rise of advocacy journalism particularly

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[62] Time, 4 January 1971, pp. 21-22.

[63] Whitaker, Striking a Balance, pp. 8-10, citing Opinion Research Corporation polls.

through the television medium. But he gives first place to another factor:

> First, the environmental movement probably bloomed at the time it did mainly because of affluence. Americans have, of course, been relatively much better off than people of other nations for the past hundred years, but nothing in all history compares even remotely to the prosperity we have enjoyed since the end of World War II, and which became visibly evident by the mid-fifties. An affluent economy yields things like the forty-hour week, three-day weekends, the two-week paid vacation, plus every kind of labor-saving gadget imaginable to shorten the hours that used to be devoted to household chores. The combination of spare money and spare time created an ambience for the growth of causes that absorb both money and time. Another product of affluence has been the emergence of an "activist" upper middle class--college-educated, well-heeled, concerned, and youthful for its financial circumstances. The nation has never had anything like it before. It is, in fact, a conflict in terms--a mass elite. It is sophisticated, politically potent, and compulsively dedicated to change, to "involvement." It forms the backbone of the environmentalist movement in the United States.[64]

Prior to the emergence of the environmentalist movement in the sixties and seventies, there had been serious efforts to control water pollution for many years, generally at the insistence of "conservation" advocates. Government programs to restrict industrial degradation of water resources had been in effect in the United States for a long time. The first water pollution legislation was introduced in the Congress in 1898, but a bill was not passed until fifty years later. State legislatures, however, had taken up the problem. Michigan, for instance,

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[64] Ibid., p. 24.

established a Stream Control Commission in 1929, with power to protect the state's water resources.

Control of air pollution by government regulation is a much more recent phenomenon. For many years there was little if any control, except in the more outrageous cases in which legal action was taken under common-law "nuisance" complaints. Individuals in the scientific and technological community were concerned and persistently sought government action to clean up the air, but nothing came of it until the 1950s. Since that time, public concern has increased dramatically, culminating in the Clean Air Act of 1963 and the much tougher standards established by the 1970 amendments to that Act.

Since the conversion of the traditional "conservation" movement into one of "environmental action" over the past twenty years, many of those active in the cause have become impatient with the results achieved. Some feel that government employees--bureaucrats, to use the pejorative term--are either unwilling or incompetent to enforce laws and regulations designed to protect the environment. Tending to believe the sometimes extravagant rhetoric of those who have been predicting imminent disaster, or sometimes advocating the kind of "environmental ethic" discussed in the first chapter, they assert that citizens' rights to a decent environment are being violated and demand immediate corrective action.

The claim set forth is sometimes fuzzy and seems to fit into a category which Joel Feinberg called (in another context) the "manifesto sense" of right:

> . . . Manifesto writers . . . who seem to identify needs, or at least basic needs, with what they call "human rights," are more properly described, I think, as urging upon the world community the moral principle that all basic human needs ought to be recognized as claims (in the customary prima facie sense) worthy of sympathy and serious consideration right now, even though, in many cases, they cannot yet plausibly be treated as valid claims, that is, as grounds of any other people's duties.
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> For all of that, I still have a certain sympathy with the manifesto writers, and am even willing to speak of a special "manifesto sense" of "right," in which a right need not be correlated with another's duty. Natural needs are real claims, if only upon hypothetical future beings not yet in existence. I accept the moral principle that to have an unfilled need is to have a kind of claim against the world, even if against no one in particular. A natural need for some good as such, like a natural desert, is always a reason in support of a claim to that good. A person in need, then, is always "in a position" to make a claim, even when there is no one in the corresponding position to do anything about it. Such claims, based on need alone, are "permanent possibilities of rights," the natural seed from which rights grow. Manifesto writers are easily forgiven for speaking of them as if they are already actual rights, for this is but a powerful way of expressing the conviction that they ought to be recognized by states as potential rights and consequently as determinants of present aspirations and guides to present policies. This usage, I think, is a valid exercise of rhetorical license.[65]

Many advocates of the "environmental ethic" previously discussed seem to be making claims of the type Feinberg has in mind. There are others, however, who assert

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[65] Feinberg, Social Philosophy, p. 67.

the "right to a decent environment" in a much more specific way, not merely as an "exercise of rhetorical license." Environmental protection advocates who mean by this assertion that citizens have a right to air which they can breathe and public supplies of water which they can drink without endangering their health or normal well-being certainly have a valid and meaningful claim. It is in the vital interest of every citizen that she be able to breathe air that is not contaminated. Consequently, she has a natural, moral right to do so and this entitlement imposes a moral obligation on others. People who are engaged in industrial operations have an obligation to avoid polluting the air in a manner which would infringe this right. Those responsible for government operations likewise have an obligation to vindicate it. In the Reserve Mining case, the court was discharging this obligation in ordering the company to take immediate steps to abate the pollution caused by air emissions containing potentially dangerous asbestos-type particles. Even apart from the court order, company officials responsible for the operation had a moral obligation to avoid health-endangering air pollution as soon as it became clear that the danger existed.

Understood in this way, the right to a decent environment is clearly more than a "manifesto-type" right. Some environmentalists push the issue considerably further,

asserting that the citizen's right to a decent environment entails an actual property right in air and water on the part of the public. These advocates maintain that the "environment" belongs to everybody and that no one has the right to its use except in the public interest.

One of the strongest proponents of this "public trust doctrine" is Joseph L. Sax, professor of law at the University of Michigan. According to Sax, the theory rests on the contention that air, water and other goods which are not owned by anybody--res nullius, as the lawyers say--belong to all the people and are held in trust for them by the state. The government should exercise this trusteeship in the same way a trustee for private property holdings carries out his function, defending the owners' rights against any encroachment or misuse which would damage the value of the property. Moreover, any of the several owners-in-common, specifically any member of the public as such, should be able to bring legal action to force the trustee to act or to have the court intervene directly to protect the owners' interest.[66]

Sax traces the origin of this doctrine to ancient Roman Law, which dedicated to the public the perpetual use of common properties. English common law continued this tradition for certain limited purposes. Even American Law

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[66] Joseph L. Sax, Defending the Environment, p. 164.

has adopted the general idea of trusteeship, but has "rarely applied it to any but a few sorts of public properties such as shorelands and parks."[67]

The notion that the air (or water) belongs to everybody is not new. People have always assumed they were free to use the air as they saw fit, subject always to the restriction that in doing so they did not interfere with other people's rights to use it also. What seems to be different in Sax's approach is that the air is treated like a community-owned treasure which can be used only for purposes which are in the interest of all members of the community. This is quite different from the generally accepted concept.

In traditional economics, air and water are treated as "free goods," available to anyone to appropriate to her own use. In some cases this might mean actual consumption or conversion into some product. More frequently, it means a temporary "borrowing," in which quantities of air or water are taken into a system and later released, generally for purposes such as heating, cooling or perhaps combination with other materials. The problem comes when contaminants are added in the process. Often they can be filtered out or neutralized, leaving the quality of the air or water

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[67] Ibid., p. 164.

unimpaired. Small quantities of pollutants remaining in discharge water may not be a significant problem if the user delivers them to a stream in which the water's natural assimilative powers are able to carry out the necessary work of breakdown, absorption, oxygenation and consumption.[68] Private or public sewage disposal facilities may be able to handle larger amounts of potentially polluting materials.

In any event, the commonly accepted practice has been to concede the use of such ubiquitous resources as water and air as a matter of property right to anyone

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[68] For a general discussion of this point, see Richard H. Wagner, Environment and Man, p. 98. It might be interesting to note that some moving bodies of water have large capacities for handling waste effluent without damage. In one plant location case in which the author was involved, the company specified as a requirement a site on a stream with a minimum low-flow (under drought conditions) of 90 cubic feet per second (cfs). The planned plant facility would discharge up to five million gallons of waste water per day. Originally, the company proposed treatment of the waste to a point at which it would contain about 1,150 pounds per day of "biological oxygen demanding substances" ("BOD"). At the site selected, the stream flow record showed an average low-flow in the worst drought period of 88-90 cfs, but a usual flow during most of the year much higher. The state pollution control agency informed the company that its proposed discharge would be acceptable during high-flow periods but would have to be restricted to 200-300 pounds of BOD during low flow. After more investigation and scientific testing of the water characteristics, the agency determined that the stream could tolerate 500-700 pounds of BOD without damage to the fish or other aquatic life in the stream and without significant deterioration of esthetic qualities, even under drought conditions. Company engineers agreed to adjust their technology to meet these requirements and were able to convince their management that the additional costs would still come within established economic parameters.

wishing to use them, subject to the alienam non laedas rule. Widespread and flagrant abuse of the right, particularly by industries, coupled with overcrowding and overuse of the resources in particular localities has led to the imposition of control measures by the government. These include restrictions which specify the kinds and amounts of polluting materials which may be put into the air or certain bodies of water. In some instances they require permits which prohibit any discharge without prior approval of a specified agency.

All of these regulations presuppose the property rights of everyone--individually--in the resources; it is only their use which is restricted. The theory proposed by Sax takes a quite different view. It posits the ownership in the public at large, with full property rights reserved to the people in common. Any use by an individual is an encroachment on these rights, which will be permitted by the rightful owners--the public--only if they consider the use to be to their advantage.

Sax bases his case for this theory on three related "principles":

> . . . First, that certain interests--like the air and the sea--have such importance to the citizenry as a whole that it would be unwise to make them the subject of private ownership. Second, that they partake so much of the bounty of nature, rather than of individual enterprise, that they should be made freely available to the entire citizenry without regard to

> economic status. And, finally, that it is a principle [sic] purpose of government to promote the interests of the general public rather than to redistribute public goods from broad public uses to restricted private benefit.[69]

Opponents would reject the third proposition immediately. The statement itself is true, in general, but as an argument in support of the "trust doctrine" it involves a logical fallacy. It trades on an equivocation in the meaning of "public goods." If this means the type of goods which are dedicated to the common use of all the people for public purposes only--as a fire truck would be, for instance--then the statement used in this context is a petitio principii, since it assumes the conclusion which it purports to prove, namely, that air and water are public goods which should be used only for broad public purposes. On the other hand, if "public goods" means the type of goods which are available for anyone's private use, subject to the equal rights of others to use them for their private benefit--goods such as public grazing lands or fish in the sea--then the statement is either false or it simply does not prove the intended conclusion.

No one would argue with Sax's second statement, that certain resources "should be made available to the entire citizenry without regard to economic status." It is his first "principle," however, which is both crucial

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[69] Sax, Defending the Environment, p. 165.

to the argument and most likely to be controverted. Here Sax is asserting that resources such as air and water "have such importance to the citizenry as a whole that it would be unwise to make them the subject of private ownership."

The mere fact that something is important to the citizenry as a whole, of course, does not prove that it should not be the subject of private ownership. Otherwise, money and food, to take two obvious examples, should not be private property. What Sax is getting at, however, is a valid point. Each one of us is so dependent on certain resources, such as air and water, that the common good demands that we all have access to them. No one should be allowed to divert them to her own private benefit in such a way as to deprive others of their use; no one should be able to destroy these common resources by making them unfit for the rest of us to use. But this is no argument against private ownership: indeed, it is each person's private right to the use of the common resource which provides the basis for governmental control. It is not simply that it would be "unwise" to permit the misuse of the resource by one person in such a way as to deny its use to others; such misuse would be unjust, a denial of others' natural moral rights. To the extent that any person needs the use of the air or water for his health and minimum comfort, he has a vital interest which entails a moral

entitlement to its use and an obligation on others--even the "citizenry as a whole"--to vindicate his right.

The theory Sax advocates would deny ownership rights in the common resources to any individual person, restricting these rights to the community as a whole. Nevertheless, he insists that ordinary uses would be permitted and that the impact on development would be moderate:

> What will happen if we begin to treat these resources as rights which citizens are entitled to maintain at law? Does this mean that no development can ever go forward, that we will be condemned to remain at a standstill without another tree cut, another stream dammed, or another road built? Of course the answer is a resounding no. . . . The public right to public resources, like private rights, must be subject to the reasonable demands of other users, whether they be factories, power companies, or residential developers.
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> Thus a public right to clean air will not necessarily be a right to maintain the air as fresh as it is on the top of the highest mountain. Rather, it will be a right to maintain it as clean as it ought to be to protect health and comfort when considered against the demands for spillover use of the air by other enterprises--and with due consideration of the need for such uses, the alternatives available to the enterprisers, existing and potential technology, and the possibility of other less harmful locations.[70]

It is the threat implied in the last sentence of the passage just quoted which worries developmentalists. Not being able to use the resources as a matter of right, a developer or other "enterpriser" would no longer have the

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[70] Ibid., p. 162.

freedom to choose the location or other "alternative" which she determines is in the best interest of the enterprise (subject to the usual restrictions, of course). Instead, the "citizenry as a whole" or its trustee would make the decision; indeed, they might decide that the whole project did not provide a specific benefit to the public and deny use of the necessary resources in any location or under any conditions. It is not difficult to envision an environmental group persuading a politically sensitive trustee that a nuclear power plant or an industry which processed Canadian baby seal pelts was not in the "public interest" and consequently should not be granted use of any publicly owned resources, no matter how environmentally clean the operation. The following additional comments by Sax only serve to reinforce these concerns:

> Common property resources such as clean air and water need no longer be perceived as receptacles for the waste of industry or as free delicacies to be consumed at will by those hungry for profit, but rather as interests held in common by the entire citizenry. . . .
>
> The implementation of trust doctrine as a public right will raise the questions toward which environmental litigation has been pointing with only limited success so far. What public need supports the project sought to be built, and does the need outweigh the losses to the public resource values it threatens? What alternatives to the project are available that will minimize or avoid infringement of the public "property" rights that might be adversely affected? What, if any, specific benefits to the public are being provided to compensate for the losses that the proposed activity will engender?

> Only when we are ready to ask such questions and to recognize the legitimacy of public rights as equivalent to traditional private property interests will we truly be on the way toward creating an effective body of environmental law.[71]

An earlier discussion of property rights, in the previous section, distinguished between those necessary to protect the vital interests of a person and those created by society as an institutional means of serving the common good.[72] The property rights of entrepreneurs in common resources such as air and water clearly fall in the latter category. Consequently, society would not be violating the entrepreneur's natural moral rights in setting up institutional rules which transferred these property rights to "the citizenry as a whole." However, it would be a sharp departure from the traditional socioeconomic system. It would go far beyond the requirements of the acknowledged "citizen's right to a decent environment," since this right can be satisfied under the present system, given vigilant enforcement of reasonable environmental control regulations.

Revocation of these property rights would certainly contribute to the further erosion of personal freedom and support what many consider to be a trend toward undue governmental control of personal action. Placing these

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[71] Ibid., pp. 173-174.

[72] See above, pp. 151-152.

resources in the hand of the government as a matter of property rights could conceivably lead to depriving an unpopular minority of their use, on the basis of a decision taken by the majority on utilitarian grounds. Moreover, the restriction of entrepreneurs' freedom to make decisions based on their judgment of what is in the best interest of their projects would almost certainly have a chilling effect on economic growth, thus endangering the success of the system traditionally used in democratic society to vindicate people's right to employment--a subject to be discussed in the next section.

In itself, the citizen's right to a decent environment is clearly valid. The expression describes a moral entitlement which deserves recognition both by individual members of society and by their political institutions. Difficulties arise when this right conflicts, or seems to conflict, with the property rights of individual members of society or with the rights of people to job opportunities. Simply abrogating traditional property rights, as suggested by adherents of the "trust doctrine," would be consistent with the "environmental ethic" discussed in the first chapter. However, this would be at best a partial solution and its cost in terms of loss of freedom and associated values prized in a democratic society make it unacceptable, in my judgment.

Resolving conflicts among rights, as is the case in deciding any moral issue in the practical order, is never an easy task. But there are ethical considerations which can provide the foundation for their resolution. These will be the subject of later discussion, after considering the merits of the "citizen's right to employment" in the next section.

The Right to Employment

One of the "social and economic rights" spoken of in the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations in December 1948, was "the right to work."[73] This enactment stated, in Article 23:

> 1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
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> 2. Everyone, without any discrimination, has the right to equal pay for equal work.
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> 3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human

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[73] The text of the Declaration is easily accessible in Appendix 1 of Evan Luard, The International Protection of Human Rights, pp. 327-332. I have used the rubric "the right to employment" rather than "the right to work" because the latter expression has been appropriated widely by those who advocate so-called "right to work laws" which have been enacted in many non-industrialized states of the U.S. as a means of restricting membership in labor unions. I consider the latter a form of "doublespeak" in which the actual effect referred to is almost directly opposite that which the term purports to describe.

dignity, and supplemented, if necessary, by other means of social protection.

4. Everyone has the right to form and to join trade unions for the protection of his interests.[74]

In adopting this Declaration, the UN was not speaking in quite the same vein as had the framers of the American Declaration of Independence or of the French Declaration of the Rights of Man and Citizens. The latter groups believed they were enunciating self-evident truths based on "Nature" or perhaps on the "nature of man." The rights they defended were those of individual persons fending off assaults on their freedom by oppressive governments.

The committee which put together the UN document saw the various articles of the Declaration not as self-evident principles so much as "practical conclusions" on which all members could agree, even though there were wide divergencies within the membership concerning the premises which led to those conclusions.[75] The rights they proclaimed related to people as members of a universal society actualized in different governmental organizations, each designed in its own way to assist citizens in achieving

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[74] Luard, International Protection of Human Rights, pp. 330-331.

[75] See Maritain, Man and the State, pp. 76-80.

their common ends. The preamble to the UN Declaration says that it is intended to be

> . . . a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal recognition and observance, both among the peoples of member states themselves and among the peoples of territories under their jurisdiction.[76]

Feinberg considers the new "social and economic rights" proclaimed by the UN to be rights in the "manifesto sense,"[77] since, "unlike all other claim-rights, they are not necessarily correlated with the duties of any assignable person."[78] He goes on to say:

> These social and economic rights, therefore, are certainly not absolute rights, since easily imaginable and commonly actual circumstances can reduce them to mere claims. Moreover, these rights are clearly not nonconflictable. For example, where there are two persons for every job, there must be conflict between the claims of some workers to "free choice of employment," in the sense that if one worker's claim is recognized as valid, another's must be rejected.[79]

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[76] Luard, International Protection of Human Rights, p. 327.

[77] Feinberg, Social Philosophy, p. 67.

[78] Ibid., p. 95.

[79] Feinberg, Social Philosophy, p. 95.

In spite of this criticism by Feinberg and that of others[80] who consider the proclamation of social and economic rights to be mainly rhetoric, there is something to be said for taking the "right to employment" seriously. The argument that rights such as this one are not "correlated with the duties of any assignable person" does not seem to me to be too devastating, since the same can be said of any legal right *in rem*.[81] And as Feinberg himself points out, there are few rights, even among those commonly accepted as valid claim-rights such as the rights to property, free speech, freedom of movement and exercise of religion, which can qualify as "absolute."[82] Jacques Maritain concedes that the new social rights may seem to conflict with the older individual rights, but he adds:

> If each of the human rights were by its nature absolutely unconditional and exclusive of any limitation, like a divine attribute, obviously any conflict between them would be irreconcilable. But who does not know in reality that these rights, being human, are, like everything human, subject to conditioning and limitation, at least . . . as far as their exercise is concerned? That the various rights ascribed to the human being limit each other, particularly that the economic and social rights, the rights of man as a person involved in the life of the community, cannot be given room in human history without restricting, to some extent, the freedoms and rights of man as an

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[80] See, for instance, Maurice Cranston, "Human Rights, Real and Supposed."

[81] See above, p. 58; also Feinberg, Social Philosophy, p. 59.

[82] Feinberg, Social Philosophy, p. 95.

> individual person, is only normal. What creates irreducible differences among men is the determination of the degree of such restriction, and more generally the determination of the scale of values that governs the exercise and the concrete organization of these various rights.[83]

Feinberg's point about "free choice of employment," however, refers to a conflict with another person's right of the same kind: in a situation where there are two persons for every job, half the claims must be rejected. If the right to free choice of employment means that every worker is entitled to any job she chooses, of course, the point is valid. If, on the other hand, it means that a worker is entitled to expect that members of society, through their public and private institutions, will exert their best efforts to provide sufficient job opportunities so that workers will be able to have some kind of job which is acceptable to them, the conflict disappears.

This clearly points to the need of more careful definition of what the "right to employment" means. If we are to take this right seriously (to use Ronald Dworkin's phrase, again)[84] and consider it more than a right in the manifesto sense, we must limit the scope of the term and give it some meaningful content. The UN's International Labor Organization has made strenuous efforts along this

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[83] Maritain, Man and the State, p. 106.

[84] See Ronald Dworkin, "Taking Rights Seriously."

line. The General Conference of the ILO on July 9, 1964, adopted Convention No. 122, the Employment Policy Convention, containing the following language:

Article 1

1. With a view to stimulating economic growth and development, raising levels of living, meeting manpower requirements and overcoming unemployment and underemployment, each Member shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment.

2. The said policy shall aim at ensuring that:

   a. There is work for all who are available for and seeking work;

   b. Such work is as productive as possible;

   c. There is freedom of choice of employment and the fullest possible opportunity for each worker to qualify for, and to use his skills and endowments in, a job for which he is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin.

3. The said policy shall take due account of the stage and level of economic development and the mutual relationships between employment objectives and other economic and social objectives, and shall be pursued by methods that are appropriate to national conditions and practices.

Article 2

Each member shall, by such methods and to such extent as may be appropriate under national conditions:

   a. Decide on and keep under review, within the framework of a co-ordinated economic and social policy, the measures to be adopted for attaining the objectives specified in article 1;

b. Take such steps as may be needed, including when appropriate the establishment of programmes, for the application of these measures.[85]

This Convention may help us understand the right to employment as something more than a mere slogan to be disregarded in serious discussion. By specifying the kind of actions which the participating governments will undertake to meet their obligations required by the right, the Convention makes clear, in part at least, what it is that those enjoying the right are entitled to.

In his essay, "Human Rights, Old and New," D. D. Raphael distinguished between rights of action and rights of recipience:

> . . . The first sense I call a right of action. . . . Here we speak of a right to do something. Such a right is equivalent to an absence of obligation. If A has a right to sing in his bath, to cultivate his garden, or to give away his inheritance, this means that he has no obligation to refrain from these actions. In doing such an action, he is doing nothing wrong. . . .
>
> The second sense of "a right" I call a right of recipience. Here we speak of a right against someone else, i.e., a right to receive something from him, even if the something is simply the facility of being left alone. Such a right is equivalent to the existence of an obligation on the part of the other person against whom one has the right. . . . A right to be left alone is a right to liberty, i.e., a right to freedom from interference by other people; but this should not be confused with a right of action, which can itself be called a liberty, i.e., a freedom from obligation.[86]

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[85] Reprinted in Nagendra Singh, Human Rights and International Co-operation, p. 460.

[86] D. D. Raphael, "Human Rights, Old and New," Political Theory and the Rights of Man, p. 56.

Raphael went on to say that human rights are rights of recipience, not rights of action:

> . . . Some of the rights in the Universal Declaration are framed in a way that perhaps suggests rights of action. For example, Article 14 speaks of a right to seek asylum from persecution, Article 21 of a right to take part in government, and Article 23 of a right to work. But of course the meaning of these Articles is not that it is morally permissible for a man to seek asylum from persecution, to participate in government, or to work. Nobody needs to be told that. When the American Declaration of Independence spoke of a natural right to pursue happiness, it was not arguing against ascetics and killjoys that there was nothing wrong in pursuing happiness. And when Louis Blanc enunciated a right to work, he was not arguing against any advocates of the virtues of idleness. All these rights are rights of recipience. The right to pursue happiness, and the right to seek asylum, are claims to be allowed to do these things. Likewise, the right to work, and the right to participate in government, are claims to be given the opportunity for work and for political activity.[87]

Understood as a claim to be given the opportunity to work, the right to employment makes sense, even though it may be less absolute than the right to life, for instance, and may exist only within the context of a particular set of economic and social circumstances. To say that people--particularly the breadwinners of families--have the right to employment means that those responsible for governments, and individual members of society in a position to effect this outcome, have a moral obligation to arrange economic and social institutions in such a way that people who want to work to support

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[87] Ibid., p. 59.

themselves and their families will have the opportunity to do so. The person who holds the right is entitled to achieve this vital interest and it is this fact which creates the moral obligation just described. The arrangements for fulfillment of the obligation may well differ from one societal group to another. Whatever the arrangement, however, it must be one which vindicates the right to employment, along with the other rights which citizens enjoy.

The economic system under which the people of the United States live, of course, is capitalistic. This implies that the production of goods and services is, with few exceptions, in the hands of private individuals or business organizations. The system is dynamic and constantly undergoing change. At one time the concept of the "minimal" or "night-watchman" state prevailed, with government playing an essentially passive role concerned only with external and internal security, along with "the duty of erecting and maintaining certain public works and certain public institutions which it can never be for the interest of any individual, or small number of individuals to erect and maintain."[88] Some still see that as the ideal and even argue that it is the only morally legitimate social

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[88] Smith, The Wealth of Nations, bk. 4, ch. 9, p. 300.

arrangement.[89] But time has passed this condition by and we now have a much more active kind of state. Nevertheless, the principal economic action remains in the private sector. Under these circumstances, it is private business, generally, which provides jobs and ultimately satisfies the right to employment of job-seekers.

It is characteristic of the capitalistic system that managers of private enterprise concern themselves primarily with maximizing profits. In "pure" capitalistic theory that is essentially all they should be concerned with. Speaking of the entrepreneur, Adam Smith said:

> . . . He generally, indeed, neither intends to promote the public interest nor knows how much he is promoting it . . . and by directing [his] industry in such a manner as its produce may be of the greatest value, he intends only his own gain, and he is in this, as in many other cases, led by an invisible hand to promote an end which was no part of his intention. Nor is it always the worse for the society that it was no part of it. By pursuing his own interest he frequently promotes that of the society more effectually than when he really intends to promote it.[90]

Contemporary society is many times more complex than it was two hundred years ago when those words were written. The individual capitalist of that day has been replaced in great part by corporations managed by hired professional administrators acting on behalf of widely diffused groups

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[89] Nozick, Anarchy, State and Utopia, pp. 149, 333 and passim.

[90] Smith, The Wealth of Nations, bk. 4, ch. 2, p. 194.

of shareholders. The corporations themselves are getting bigger and bigger.[91]

The free market mechanism which provided Adam Smith's "invisible hand" still works remarkably well in allocating relatively scarce resources to those purposes for which consumers have indicated preferences. However, several factors now distort the free market. In some instances, the size of the corporations offering goods and services tends to limit competition. The strength of union organizations, protected by government in the public interest, has to some extent taken labor out of the category of a commodity whose price rises and falls in response to market fluctuations. The government now requires that producers include in their costs the value of product characteristics, such as safety and emission control equipment in automobiles, which are considered to be in the public interest but for which individual consumers do not express preference in the marketplace. Firms are now required to "internalize" costs of clean air and water which until recently were considered "externalities"--free goods available to be used without charge. Both through official state regulation and through informal moral suasion,

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[91] See Robert L. Heilbroner, The Worldly Philosophers, pp. 295-296. Heilbroner points out that in 1970 the 100 largest industrial corporations in the U.S. owned 50 percent of all industrial corporate assets, compared with 31 percent in 1960 and 25 percent in 1929.

society has brought pressure on private enterprise to assist in meeting social goals such as employment of minority or handicapped people and conservation of energy or other resources considered to be critically short in the long run.

In spite of its limitations, the private enterprise system--capitalism modified by government encouragement on the one hand and restrictions on the other--has produced a high standard of living, in material terms at least, for a large number of citizens in the United States and numerous other countries during the post-World War II era. During the 1930s, however, the same system, with much less government intervention, had led to the economic collapse of the Great Depression. Its greatest failure was in being unable to provide employment to millions of people who wanted to work. It was only then that government leaders became convinced, with the support of economic theories propounded by John Maynard Keynes, that public spending was essential to successful operation of the capitalist system in the modern world. If society were to vindicate the right of people to work under a capitalistic system, government leaders began to believe, they would have to adopt investment policies suitable to achieve that objective. Since that time one of the important goals of public policy has

become "full employment," as demonstrated by the 95th Congress in enacting the "Humphrey-Hawkins" bill.[92]

Given the kind of economic and social circumstances just discussed, it appears that the respondents to a person's right to employment are both potential employers, in a sense to be explained presently, and those persons responsible for government policy and administration.[93] Potential employers may, in some instances, be the state, which in this country currently employs some 16 percent of the civilian labor force; more commonly, private industry is the source of jobs.

With respect to potential employers, whether in the private or the public sector, the right to employment has both positive and negative aspects. On the positive side, it amounts to a claim for an opportunity to work, which imposes an obligation on the potential employer to provide that opportunity. Against the private employer this is a relatively weak claim, easily overridden by the

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[92] Public Law 95-523, officially the Full Employment and Balanced Growth Act of 1978. Its preamble states that the purpose of the Act is "to translate into practical reality the right of all Americans who are able, willing and seeking to work to full opportunity for useful paid employment at fair rates of compensation. . . ."

[93] For the sake of brevity, I sometimes speak of rights and obligations of "government," but this should be understood as referring to individual people responsible for government actions. Similarly, "corporations" in such contexts refers to people responsible for corporate acts. See below pp. 228-233.

respondent's rights. It does not imply that companies must develop make-work positions or that they must eschew automation or labor-saving devices in favor of manual, labor-intensive operations. It does mean that there is at least a weak kind of obligation to put capital to work in a productive way. This obligation becomes stronger to the extent that private organizations, particularly large corporations, become quasi-public institutions which are autonomous, in the sense that they are largely emancipated from effective control by stockholders, and substantially supported by public largess in the form of contracts or direct financial assistance.[94] As autonomous entities, legitimized by the state but otherwise almost completely independent, many large corporations have taken on the characteristics of private governments.[95] They have their own police and fire departments, their own communications, air travel, water supply and waste disposal systems; in cooperation with unions, in many cases, they supply health care, education, counseling, recreation and welfare services

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[94] See George Cabot Lodge, "Ethics and the New Ideology."

[95] See Thomas G. Kavanagh, "The Ethics of Urban Law and Practice." Discussing trends in urban law, Michigan Supreme Court Justice Kavanagh says: "As corporations reached Goliath size, they became more like government than like the 'mythical private person' once envisaged. Their collective wealth and strength became felt in more ways in more areas of life. The law's response . . . has been to provide more and more legislation to control this creature." (p. 500)

to their employees and sometimes to their families as well. With this power and independence, particularly when accompanied by subsidies and other forms of support from the official government, goes the responsibility for achieving social objectives, including satisfaction of people's right to employment. This is especially true in smaller communities in which a single major plant provides the base for the whole economy of the town. In that instance, the private employer certainly has a moral obligation to utilize some of the capital generated by the operation to continue to provide employment opportunities to the people there.

The negative aspect of the right to employment is much stronger, vis-a-vis potential employers. It simply means that a person applying for a job publicly offered has a right not to be discriminated against. This does not imply that the employer is required to accept anyone who applies for the job. In this instance, as in others involving equality among right-holders, the rule is that only relevant differences should be taken into account in treating people differently. In many jobs, differences in skills, experience and education may well be relevant. The fact that a particular applicant has a union card may be relevant in the presence of a union contract with the company; but it should not be a reason for denying a person

employment in the absence of such a contract. Sex should not be considered relevant except in special cases such as a job as attendant in a women's (or men's) locker room. It would be inappropriate to discriminate by reason of race or ethnic background; but a Spanish-speaking person with a heavy accent could hardly expect to compete successfully for a job as a radio announcer against a person with perfect English diction. Differences in need or desert pose a special problem: the employer might be inclined to give preference to a person with greater family obligations or one considered "deserving" because of special efforts in the face of a difficult situation, but might justly stand accused of discrimination if she did so.[96] The obligation to provide opportunities equally is morally binding even in the absence of specific legislation; however, a statute would define the applicant's rights and provide a procedure for deciding doubtful cases.

Philip J. Levine has made out an interesting--and to me, convincing--case for another kind of negative right to employment: protection from discharge without just cause.[97] He argues that the traditional "master-servant"

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[96] The assumption here is that the job or jobs being offered are normally assigned on the basis of merit (skills, experience, and the like). If the distribution of benefits purports to be on the basis of merit (in this sense), it would be unjust to introduce desert as a criterion.

[97] Philip J. Levine, "Towards a Property Right in Employment."

law concept, in which employment is regarded as an "at will" relationship, is outmoded. Because of the importance to the worker of his employment, under contemporary economic and social conditions, Levine maintains that an employee should have a property right in his job, which like other property rights should not be taken away without due process:

> The notion of an absolute right to property, although originally conceived of as the basis of liberty, has resulted in the subjugation of the working class. It has allowed employers to exercise dominion over their employees, without any corresponding protection of the employee's interests. This freedom from governmental restraint has enabled employers to place unconscionable conditions on employment.
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> The seriousness of the situation is compounded by the importance of employment to the individual employee. The essential elements of his life are all dependent on his ability to derive income. (I.e., his ability to support a family, provide food, shelter, etc.). His job is the basis of his position in society, and, therefore, may be the most meaningful form of wealth he possesses.
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> Old conceptions of property limited to the protection of interests in land and physical objects will no longer serve as adequate protection for the individual. Abstractions like jobs must be protected if individual liberty is to survive. Our concept of property must be expanded to encompass the employment relationship, to protect against wrongful discharge.[98]

Levine is not arguing for an absolute prohibition against discharge of employees, but only that the worker's rights should be recognized along with those of the employer:

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[98] Ibid., pp. 1084-1085.

> . . . The employer would only be deprived of his power to arbitrarily dismiss his employees; thus curbing his freedom to exercise control of activities unrelated to the job. However, the employer's legitimate business operations would not be disturbed. He would not be forced to retain employees, when there existed reasonable grounds for discharge. Any interference with his ability to manage his business would be minimal in comparison with the rights sought to be protected.[99]

In those instances in which the state is the employer or the potential employer, at least in the United States, the negative rights to non-discrimination in hiring and to some extent those prohibiting wrongful discharge have been recognized at law. The view that the government should become the "employer of last resort," supplying public job opportunities when private employment is not available, has been gaining support in this country as a response to the positive right of employment. But the state has a much wider role than that of an employer.

As the UN Declaration and the ILO Convention suggest, the state has a responsibility to vindicate the right to employment by adopting policies and "programmes" designed to accomplish the desired result. If there is widespread violation by private employers of the moral right to equal opportunity of employment, citizens have the right to expect the state to impose and enforce laws that will correct the situation. More importantly, perhaps,

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[99] Ibid., p. 1109.

the right to employment requires that the government provide the background conditions and the necessary encouragement for private enterprise to create enough employment opportunities that every person who wants to work can find an acceptable job.

The means by which the state encourages the growth of private industry and thus enhances the creation of jobs is known as "economic development." Specific policies may include (among other things) fiscal and monetary management; foreign trade policy; support services such as providing statistical and technical information; tax policy; incentives such as tax abatements and outright grants; purchase of goods and services for public use; subsidy of technological research; and direct market intervention by such devices as farm price supports and stockpiling of strategic materials. There are almost always independent reasons why the government adopts certain policies related to building roads, buying military equipment, providing welfare payments and the like. But since Keynesian economics has been in vogue, economic development considerations have played a major role in fiscal policy, having to do with the amount and timing of overall government spending, and monetary policy, having to do with controlling the supply of money in the economy. Through a combination of these various economic development policies the government

attempts, with varying degrees of success, to control the rate of economic growth. If the efforts are successful, the economy will provide the requisite number of job opportunities to enable citizens to exercise their right to employment.

Taking the right to employment seriously requires a commitment on the part of the government to adopt policies which will encourage economic development. It also demands avoidance of policies inimical to growth--a requirement which may conflict with the demands of environmentalists.

Resolving Conflicts

Inevitably, the kinds of rights we have been discussing come into conflict, in one degree or another, in concrete situations. Traditional property rights are important safeguards of individual liberty, but many of them originated under social and economic conditions which no longer obtain in today's complex world. To the extent these rights have been created by society they may have to give way to new institutions designed to meet the needs of contemporary people. The moral integrity of the individual person is still paramount; this remains the ultimate--final--public interest. As society changes, however, the newer instrumental or social rights--such as the rights to employment and to a decent environment--come into greater prominence.

The right to a decent environment was unheard of until it became apparent that air and water pollution, along with other concomitants of a crowded, industrialized society were making the world unfit to live in. People began to demand protection of their vital interests in clean air to breathe, clean water to drink and freedom to live in health and comfort. These rights appeared to conflict with the tradition that an individual could do whatever he wished with his own property. But the right to property had never been absolute to that degree and those who claimed it as a license to harm others were never on solid moral ground, whatever the legal standards may have been.

Once this newly discovered "environmental" right became popularly accepted, some of its advocates attempted to enlarge its scope. They urged curtailment of further economic expansion to conserve scarce resources, to avoid further pollution of the environment, and to preserve a "lifestyle" they perceived as threatened by additional growth. The environmental movement has become the most vocal champion of these causes. A promotional brochure issued by the Sierra Club, one of the leading environmentalist organizations, sums up these "challenges":

> While much has been done to ensure that wildlands will not vanish from our lives, too little has actually been saved. Man's rising tide threatens to engulf the little that still remains unprotected, and the quality of life everywhere declines.

> Protected areas must now be expanded. We need more national parks, wilderness areas, wild and scenic rivers, natural areas, and wildlife refuges; endangered species must be protected, estuaries safeguarded, scenic shorelines conserved, and open space reserved around our cities.
>
> The environment of the cities now also needs to be made fit for man: we must be more effective in combatting air and water pollution and the prevalence of chemical contaminants, noise, congestion and blight. Most of all, we must prevent the exhaustion of resources and control the growth of human members so that a balance may be struck between man's works and the remaining natural world. Technology must be challenged to do a better job in managing the part of the planet it has already claimed.[100]

In conflating the three issues of resource conservation, pollution control and preservation of "lifestyle"--which includes concern about overcrowding and advocacy of wilderness areas, wildlife refuges and the like--the leaders of the environmental movement have compressed an extremely complex set of problems into a simplified package. This accomplishes two results: it makes it easier to promote and sell the "cause" to the public and their legislative representatives; and it provides a broader base of political and financial support. The combination of concerns lends itself to taking over the legitimate and meaningful phrase "right of the public to a decent environment" and turning it into a slogan for the movement. At the same time, it provides the basis for a coalition of widely divergent

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[100] Sierra Club leaflet, "Why the Sierra Club?" A subheading reads, "Not blind opposition to progress, but opposition to blind progress."

interests. Many supporters are concerned about clean air but couldn't care less about wilderness areas. Others consider resource shortages to be a major problem but fail to see the connection with pollution control. Some have an interest only in protection of wildlife or endangered species. But environmentalist organizations, which lead the charge in issuing public statements, intervening in lawsuits, testifying at public hearings and mounting lobbying efforts, tend to be less selective in their judgments, since they cannot afford to offend any of their supporting members whose particular interests may be at stake. The result is that these organizations take the polar position that any action which uses resources they consider scarce, which pollutes the environment to any degree or which impinges in any way on the "lifestyle" they want to preserve is a prima facie violation of the right of the public to a decent environment; hence it is considered wrong unless the opposite can be proved. In practice, this means that any economic growth is presumed to be undesirable, since it can hardly avoid one or other of the consequences proscribed by the environmentalists.

On the other side of the coin, many of those who advocate the right to employment do not come into the dispute with entirely clean hands. Some are concerned solely with their own private profit and use the "workers'

rights" argument simply as a means to that end. In trying to avoid necessary pollution controls, they use the jobs issue as "environmental blackmail"--a tactic to which labor organizations strongly object.[101]

From the point of view of the detached moral observer, claimants to property, environmental and employment rights all have something to be said for them. In each case there is an entitlement of a moral agent to some good which could be considered a vital interest. At that theoretical level there is little if any conflict. Property which would qualify as a vital interest, that is, property necessary for life, health, freedom and the like, would not be the kind of property in any way threatened by social encroachments in the name of either environmental protection or employment requirements. Environmental rights involving vital interests are essentially rights to life, health and minimal comfort, all of which can be accommodated without infringing on either property or employment rights. Similarly, essential employment rights need not interfere with either of the other two.

When one gets beyond theory, however, and closer to the reality of concrete experience, the principles begin

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[101] See Leonard Woodcock, "Labor and the Economic Impact of Environmental Control Requirements."

to blur to some extent and sometimes seem to be in conflict. As St. Thomas remarked, "In moral discourse, since even the intermediate principles are uncertain and variable, their application to specific cases is even more uncertain."[102] The rights we have been discussing take on their full meaning only in the context of real-life social and economic circumstances and it is in that milieu that conflicts develop.

An obvious point of confrontation is between those who advocate extending the scope of environmental rights and those who are concerned with securing and enlarging employment rights. To accomplish the latter purpose would require the government to adopt policies designed to encourage economic growth. Environmentalists with more extreme views oppose such policies on principle, maintaining that a "no-growth" or "steady-state" economy is preferable. More moderate environmentalists often advocate policies which tend to inhibit growth dramatically, even though they may dissociate themselves formally from the no-growth position. A comment by Senator Daniel P. Moynihan is worth noting:

> In any event, concern for the secondary and tertiary effects of economic growth, which has most recently asserted itself as the "environmental movement," will have a sufficient dampening effect. . . .

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[102] S. Thomae Aquinatis, In Decem Libros Ethicorum Aristotelis ad Nichomachum Expositio, II, Lect. II, n. 259, p. 89. [My translation.]

> It has, for example, been estimated that the costs of achieving by 1985 the "zero-discharge" standards set by the 1972 Water Pollution Act Amendments will be somewhere between $1 and $2.8 trillion. (Cumulative federal expenditure since 1789 is just over $4 trillion.) These estimates have been challenged, and in the end it is doubtful that zero-discharge standards will ever be fully enforced, if only because of the secondary effects which environmental measures have (mainly economic, as when plants close). But a great deal will be spent, and the product will be an enhanced environment--which simply means the nation will have got back to where it once was. . . . In a word, a good deal of future investment in plant and equipment will do little to increase productive capacity in terms of end products of the economic system. Whatever else that means, it certainly signifies a long period of an economy more than adequate to meet the material needs of the society but somehow deficient in meeting social needs such as full employment. In part, at least, this will be the result of choices the society has made.[103]

On the level of governmental policy, the appropriate objective would seem to be to satisfy the economic and social rights of all the people. Any change from existing conditions should be in the direction of achieving a "Pareto-better" situation, in which at least one person is better off and no one worse off.[104] So long as actual and projected unemployment remains an unsolved problem, it is difficult to see how environmental policies such as the zero-discharge standards mentioned by Senator Moynihan can

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[103] Daniel P. Moynihan, "As Our Third Century Begins--The Quality of Life," p. 34.

[104] See Johnson and Zerby, What Economists Do About Values, p. 21 and passim, for a discussion of Pareto-better choices; also see Rawls, A Theory of Justice, pp. 66-71.

be morally justified, absent a clear showing that they are necessary to avoid violation of people's rights to a clean environment. Any such showing would have to establish either that the regulations are required for the health and minimum comfort of people rather than merely for esthetic improvements, or else that the regulations would have no adverse effect on employment.

Similar considerations apply to specific projects in which there appears to be a conflict between the right to employment and the right to a decent environment. If a job-producing project causes pollution which is an imminent threat to life or health, there is no question that the issue must be settled in favor of environmental protection; one person's vital interest in health is a more immediate moral concern than another's interest in a particular job. If the health threat is remote, however, employment concerns might take precedence, as the court ruled in the Reserve Mining case.[105] In instances where the project merely has negative esthetic effects, the moral presumption would favor employment rights, on the basis of overriding vital interests. The same would be true when the environmental claim is a matter of "lifestyle." Such concerns arise from affluence, rather than necessity, and can hardly claim priority over the basic employment needs

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[105] See above, pp. 124-129.

of people. If both can be accommodated, of course, so much the better.

Environmental claims based on the desirability of protecting wildlife or endangered species or those related to the preservation of resources for future generations are not, as I see it, matters which pertain to rights, except in the analogical sense discussed in Chapter III. This does not imply that they should be ignored, however, since they may involve obligations other than those entailed by the rights of moral agents. Such obligations will be the subject of discussion in the next chapter.

CHAPTER V

OBLIGATIONS AND THEIR PRIORITIES

In the last three chapters, the emphasis has been on the rights which an individual has as a moral agent. As we have seen, to have rights means to have certain moral capabilities and entitlements which entail obligations on the part of other moral agents. The intent of this chapter is to look at the other side of the coin and consider more specifically the obligations which moral agents have, particularly as they relate to economic development and environmental protection.

The Concept of Obligation

Like rights, obligations properly pertain only to moral agents. It doesn't make sense to say that a rock has an obligation to fall to the ground when dropped from a height of three feet; nor that a tree has an obligation to give shade or to bear fruit; nor that a lion has an obligation to care for its young or not to kill a zebra. Neither inanimate objects, nor plants, nor brute animals have obligations: only people do.

As its etymology indicates, the basic metaphor of the word "obligation" has to do with a binding of some kind.

It is something by which one is "bound." But what kind of something? Surely it is not a physical tie, like the binding which holds the pages of a book together or the leather thong or metal clamp which holds a ski in place. Rather, it is the kind of binding which is appropriate as a guide or restraint to human action: a rule or maxim or principle.

The distinctive characteristic of human acts is that they are both purposive and voluntary. To be purposive, an act must be one chosen by the agent as a means intended to accomplish a pre-conceived and pre-selected end. To be voluntary, the act must be one in which the agent is free both in his selection of the end and in his choice of means, as well as in carrying the act through to completion.[1] An obligation is a principle which guides or restrains human acts by placing a moral limitation on the agent's freedom.[2] It has both an internal and an

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[1]In this context I am referring to the immediate end of the particular act, not to the ultimate end of human conduct. The question of whether an ultimate end can be a matter of choice or even rational investigation is controversial among moral philosophers; it is not immediately pertinent to the present discussion. Sidgwick discusses the question in The Methods of Ethics, p. 8 and elsewhere; see also St. Thomas Aquinas, Summa Theologica, I-II, qq. 6-21, esp. q. 13, a. 3.

[2]"Principle" is used here in its broad sense as defined in the OED: "a fundamental source from which something proceeds; a primary element, force or law which produces or determines particular results."

external aspect. Internally, it is a rational judgment by the agent that it is morally necessary to seek some particular end rather than another or that some particular means should or should not be chosen. In making the judgment, the agent recognizes an objective relationship which obtains between himself and the state of affairs which would result from the contemplated action. This relationship is the external basis for the obligation and gives rise to the use of the term to denote a rule of conduct.

An example might help to clarify this analysis. Suppose I have had my car repaired and the mechanic working on it has inadvertently left a valuable tool in the car. Neither of us knows about it until I discover the tool some days later. The objective situation is that I have the tool and know that it belongs to the mechanic. As a moral agent I must acknowledge that I ought to return the tool to its owner; this judgment places a moral limitation on my freedom of action with respect to the possession and use of the tool. From the point of view of an observer, the situation exemplifies the maxim, or moral rule, that "found property should be restored to its rightful owner," or, to put it another way, "a person who finds property has an obligation to return it to the owner." Of course, the finder could still decide not to return the tool, since

the obligation places a moral but not physical restraint on his freedom. If he does decide to keep the tool, having himself judged that he has an obligation to return it, he is freely choosing to commit a moral fault.

It should be noted that the obligation just described has its foundation in the property right held by the mechanic. He is entitled to ownership on the basis of purchase or other presumably legitimate means of acquisition and this entails an obligation on the part of other moral agents, including the finder, to secure his possession of the property.

Moral obligations founded on rights are common enough; the very concept of rights entails the notion of obligation on the part of a respondent. In a purchase transaction, the seller's right to receive payment is the foundation for the buyer's obligation to pay; the seller's obligation to deliver the goods has its foundation in the buyer's right to possess them. In a voluntary transaction of this sort it is easy to see how a moral agent would agree to limit her freedom in one respect in exchange for an enlargement of freedom in another way. By reason of the purchase agreement the buyer has assumed an obligation to pay and consequently no longer has moral freedom with respect to the use of the money required

for the payment. The same act has enlarged the buyer's freedom by giving her a new moral capability--that of possessing the object purchased.

Even in situations which do not involve voluntary transactions, an agent's rights may provide the clear basis for an obligation which limits a respondent's freedom.[3] For example, my freedom to swing my arm as I choose is clearly limited by another person's right not to be hit by me (or anyone else) and I have an obligation to be careful in this regard. This requires no voluntary transaction between me and the other person; its basis is simply the other person's right to personal integrity.

Beyond these instances in which obligations are founded on rights of other moral agents lie those situations in which persons have moral responsibilities not directly correlated with rights. An obvious example is the whole class of obligations which have to do with the "self-regarding virtues" spoken of by Sidgwick and others.[4]

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[3]Rawls, following H. L. A. Hart, restricts the use of the term "obligations" to situations involving voluntary acts. I am using it in the more traditional, broader sense. Rawls comments: "There are several characteristic features of obligations which distinguish them from other moral requirements. For one thing, they arise as a result of our voluntary acts. . . . Further, the content of obligations is always defined by an institution or practice the rules of which specify what it is that one is required to do. And finally, obligations are normally owed to definite individuals, namely, those who are cooperating to maintain the arrangement in question." (A Theory of Justice, p. 113)

[4]See Sidgwick, The Methods of Ethics, pp. 327-331.

The obligation to preserve one's life, to avoid unnecessary physical impairments, and generally to act in accordance with the virtue of temperance is a constraint on freedom based on considerations other than the rights of others. H. L. A. Hart discusses situations in which obligations have foundations other than rights in the following passage:

> The essential connection between the notion of a right and the justified limitation of one person's freedom by another may be thrown into relief if we consider codes of behavior which do not purport to confer rights but only prescribe what shall be done. Most natural law thinkers down to Hooker conceived of natural law in this way: there were natural duties compliance with which would certainly benefit man--things to be done to achieve man's natural end--but not natural rights. And there are of course many types of codes of behavior which only prescribe what is to be done, e.g., those regulating certain ceremonies. It would be absurd to regard these codes as conferring rights, but illuminating to contrast them with rules of games, which often create rights, though not, of course, moral rights. But even a code which is plainly a moral code need not establish rights; the Decalogue is perhaps the most important example. Of course, quite apart from heavenly rewards human beings stand to benefit by general obedience to the Ten Commandments: disobedience is wrong and will certainly harm individuals. But it would be a surprising interpretation of them that treated them as conferring rights. In such an interpretation obedience to the Ten Commandments would have to be conceived as due to or owed to individuals, not merely to God, and disobedience not merely as wrong but as a wrong to (as well as harm to) individuals. The Commandments would cease to read like penal statutes designed only to rule out certain types of behavior and would have to be thought of as rules placed at the disposal of individuals and regulating the extent to which they may demand certain behavior from others. Rights are typically conceived of as possessed or owned by or belonging to individuals and these expressions reflect the conception of moral rules as not only prescribing

> conduct but as forming a kind of moral property of individuals to which they are as individuals entitled; only when rules are conceived in this way can we speak of rights and wrongs as well as right and wrong actions.[5]

Many of our obligations simply follow from the fact that we are members of human society. Membership in society is not the same as membership in a voluntary organization such as a fraternity, sorority, trade union or country club, although there are certain similarities. When a person becomes a member of a voluntary association, he does so to gain certain advantages; for example, membership in a labor union enables a worker to achieve a stronger position in bargaining with her employer concerning wages and conditions of work; belonging to a tennis club gives a member an opportunity to use the courts and other club facilities; being in a chamber of commerce provides the business person help in obtaining information about pending legislation and a forum through which to express viewpoints held in common with other entrepreneurs. At the same time these memberships impose obligations: to pay dues in support of the organization, to serve on committees, picket lines or work details, and to support joint undertakings (such as strikes, in the union case) when the membership decides on projects of this kind according to procedures established in the association's by-laws. By voluntarily joining the

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[5]Hart, "Are There Any Natural Rights?" p. 182.

association, the member agrees to limit his freedom in some respect for the good and welfare of the organization.

Human society, however, is not a voluntary association; all people are members whether they like it or not. It is simply a fact of existence that every human being belongs to society. As a member each person has certain advantages which he would not otherwise have: he lives in an organized community of moral agents; weaker members receive physical protection from the strong; each person's rights are defended; he is able to live in peace with his neighbor.

As in a voluntary association, members of society also have obligations arising from their membership: they must live within the framework of institutions established to achieve the benefits just mentioned; they must provide the wherewithal for these institutions to function; they must abide by decisions concerning the common good and welfare which are reached in accordance with the institutional rules. Here again, the individual's freedom is restricted in favor of the common good of the community. Unlike the case of the voluntary association, this is not a voluntary self-limitation. Since every person must belong to the community, since the members are by definition moral agents, and since the obligations are necessary for society to function, they have the character of moral obligations binding on every member.

The institutions through which society performs its functions have developed historically in response to community needs. One of the fundamental institutions is the family. Like other animals, human beings have a natural inclination to perpetuate the species, an inclination closely tied to sexual appetite. But human offspring depend on their parents for food, protection and education for an extended period of time; moreover, the maturing of the individual into a responsible moral agent requires a special kind of care and training. Since the development of new members is important to society as a whole as well as to the individual, the successful completion of the process is a matter of the common good. The institution of the family is society's response to this need. Because of the legitimate interest of society in the family as an institution, the voluntary decision of a man and a woman to enter into marriage and thereby establish a family is not simply a private contract. It does have some aspects of a private contract, in that the two partners (assuming a societal situation in which monagamous unions are the norm)[6] confer rights on each other and consequently assume moral obligations to perform certain duties, including acts of friendship, love, sexual intercourse, mutual support and

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[6]To discuss whether such a norm is a universal requirement based on moral principle is beyond the scope of this paper. See Sidgwick, The Methods of Ethics, pp. 254-256 and 357-359.

the like. But the general conditions for the contract are matters of concern to society as a whole, so that members of society who enter into a family contract have additional obligations which impose duties of various kinds. One obvious duty is that of taking care of children born of the marriage; properly speaking, the children do not have rights against their parents for this care but because of the obligation the parents have to perform these duties, the term "rights" is sometimes used analogically in this situation.

Like the family, the state is a fundamental institution of society. It is through political organization that members of society are able to define the institutions through which they can attain the common good. Under primitive situations, society required only a simple form of organization, such as tribal government, to meet its members' needs. With greater complexity of life, society developed additional and different needs, which required more complicated forms of organization, out of which the modern state evolved. Throughout the course of history, however, the function of political organization has remained the same: to seek the common good of its members through maintaining conditions of peace and tranquility. The former has to do with protection of the rights of members from external aggression; the

latter, establishment of conditions under which citizens would be guaranteed an opportunity to pursue their legitimate aspirations and under which the rights of each one would be protected from infringement by others within the political community. Of course there have been tyrranical regimes which sought aggression rather than peace and some which flouted the rights of citizens; to the extent they have done so these regimes have forfeited their claims to the moral obligation of citizens to obey their laws, even though they may have been able to enforce compliance by sheer violent use of physical power. These cases aside, however, citizens do have moral obligations as members of society to perform duties imposed by the state and to conform to rules of conduct prescribed in accordance with established procedure.

From one point of view, it could be said that the obligations a person has as a member of society are related to the rights of other members. H. L. A. Hart emphasized this aspect when he talked of the "mutuality of restrictions" found in political society, but he distinghished this situation from others in which there is a direct transaction involving conferral of rights:

> . . . A third very important source of special rights and obligations which we recognize in many spheres of life is what may be termed mutuality of restrictions, and I think political obligation is intelligible only if we see what precisely this is

> and how it differs from the other right-creating transactions (consenting, promising) to which philosophers have assimilated it. In its bare schematic outline it is this: when a number of persons conduct any joint enterprise according to rules and thus restrict their liberty, those who have submitted to these restrictions when required have a right to a similar submission from those who have benefited by their submission. The rules may provide that officials should have authority to enforce obedience and make further rules, and this will create a structure of legal rights and duties, but the moral obligation to obey the rules in such circumstances is due to the cooperating members of society, and they have the correlative moral right to obedience. In social situations of this sort (of which political society is the most complex example) the obligation to obey the rules is something distinct from whatever other moral reasons there may be for obedience in terms of good consequences (e.g., the prevention of suffering); the obligation is due to the cooperating members of the society as such and not because they are human beings on whom it would be wrong to inflict suffering. The utilitarian explanation of political obligation fails to take account of this feature of the situation both in its simple version that the obligation exists because and only if the direct consequences of a particular act of disobedience are worse than obedience, and also in its more sophisticated version that the obligation exists even when this is not so, if disobedience increases the probability that the law in question or other laws will be disobeyed on other occasions when the direct consequences of obedience are better than those of disobedience.
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> Of course to say that there is such a moral obligation upon those who have benefited by the submission of other members of society to restrictive rules to obey these rules in their turn does not entail either that this is the only kind of moral reason for obedience or that there can be no cases where disobedience will be morally justified. . . .[7]

The rights of other members of society are certainly important reasons for the existence of an obligation on the

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[7]Hart, "Are There Any Natural Rights?" pp. 185-186.

part of any person to comply with the rules of society. Hart is right in emphasizing this point and insisting on its superiority over the utilitarian explanation. But I question the validity of making the obligation depend, as Hart seems to, on voluntary submission to the rules, particularly in the context of an earlier statement of his that "it is true of all special rights that they arise from previous voluntary actions."[8] In the important case at hand, that of human society, participation is not voluntary. Submission to the rules in a "mutuality of restrictions" is dictated by the necessity arising out of the human condition, not the voluntary choice of the participants. The only choice a person has is whether she will act in a morally responsible manner in accordance with the recognized obligation or commit an immoral act of disobedience.

Important as the individual rights of its members are, there are other concerns which society has over and above these rights. The purpose of society is to provide the conditions under which the human species can survive and under which human beings can attain their common end. In fulfilling this purpose society vindicates individual rights and provides the institutional ground for the resolution of conflicts which may occur. At the same

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[8]Ibid., p. 185.

time, it supplies the mechanism, so to speak, for the continuation of the species, imposing obligations on its members to assure the safe introduction and formation of new entrants, to safeguard the continuity of cultural development and to husband resources necessary to the survival of future members of society.

These considerations help to clarify the notion of the "rights" of posterity. As explained previously, future generations cannot be said to have rights, in the primary sense of the term, against people now living; but we do have obligations with respect to those who will come after us. Society is a continuing institution which existed long before those now living were born and which will continue after our death. It seems reasonable to suppose that present members of society have an obligation to avoid actions which would destroy the possibility of the future continuation of this institution.

This is one of the recurrent themes running through environmental literature.[9] Time and again we are told that we must exercise restraint in our use of resources in order to preserve them for posterity. One of the strongest reasons cited for avoiding pollution of lakes and streams

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[9]See Clarence J. Glacken, "Reflections on the Man-Nature Theme as a Subject for Study," p. 367, for one of the more balanced comments on this topic.

and oceans is that they will become unfit for the use of our grandchildren and their descendants.

Some of the more pessimistic writers don't look that far ahead. They predict a collapse of our economic and social systems by the end of the twenty-first century.[10] Many commentators have questioned the validity of these predictions, generally challenging the assumption that growth will continue exponentially. Nevertheless, the idea has gained great currency in recent years, particularly due to its embodiment into figures of speech such as "spaceship earth" popularized by economist Kenneth Boulding and parables such as ecologist Garrett Hardin's "Voyage of the Spaceship Beagle."[11]

Less strident voices in the environmentalist camp avoid the doomsday rhetoric but still point out the dangers to future earth inhabitants if pollution and resource consumption go on unchecked. It has, in fact, become the stated national policy of the United States, as expressed in the National Environmental Policy Act of 1969, to have as a goal fulfillment of "the responsibilities of each generation as trustee of the environment for succeeding generations."[12]

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[10] See Meadows et al., The Limits to Growth; also Ehrlick, The Population Bomb.

[11] See Hardin, Exploring New Ethics for Survival.

[12] 42 U.S.C. 4321-47 (Supp. V, 1970).

Ironically, it is not only the environmentalist who cloaks his argument in the mantle of concern with future generations. Others use the same concern in advocating a policy of economic growth, as witness MIT economist Robert M. Solow:

> Well, then, what is the problem of economic growth all about? . . . Whenever there is a question about what to do, the desirability of economic growth turns on the claims of the future against the claims of the present. The pro-growth man is someone who is prepared to sacrifice something useful and desirable right now so that people should be better off in the future; the anti-growth man is someone who thinks that is unnecessary or undesirable. The nature of the sacrifice of present enjoyment for future enjoyment can be almost anything. The classic example is investment: We can use our labor and our resources to build very durable things like roads or subways or factories or blast furnaces or dams that will be used for a long time by people who were not even born when those things were created, and so will certainly have contributed nothing to their construction. That labor and those resources can just as well be used to produce shorter-run pleasures for us now.[13]

Both positions, those of developmentalists and their usual adversaries, in this context rest on the common assumption that the present generation owes some kind of obligation to the future. The extent to which people must go in sacrificing present benefits for the good of posterity is not entirely clear. However, Rawls offers some guidance in his treatment of "justice between generations."[14] The

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[13] Robert M. Solow, "Is the End of the World at Hand?" p. 44.

[14] Rawls, A Theory of Justice, pp. 284-293.

issue he is most concerned about is that of the "just savings principle," which requires that each generation set aside a share of its capital accumulation, including knowledge and culture as well as economic goods, for the benefit of the next and succeeding generations. This is justified, Rawls argues, by the natural duty to uphold just institutions. Because of the close relationship of this obligation to the first principle of justice, the savings rule takes priority over the "difference principle," which requires that social and economic inequalities be arranged so that they are to the greatest benefit of the least advantaged.[15] Benefits to the least advantaged in a given generation, consequently, are not to be maximized to the extent that they do not leave a fair amount of accumulated capital for the benefit of posterity.

On the other hand, according to Rawls, there are two constraints on the amount of savings which justice requires. One is that it should not reduce the condition of the representative person among the least advantaged in the present generation below the "social minimum" for the sake of succeeding generations; that is to say, the prospects of the present generation should not be caused to

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[15] The first principle of justice, in Rawls' theory is, "each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all." Ibid., p. 250.

decline because of an excessive savings rate.[16] The second constraint limits the required savings rate to that amount which would provide enough to the succeeding generation to enable it to maintain just institutions and preserve its material base. That is all that justice requires of the present generation. The people may, of course, choose to go beyond this point as a matter of generosity or a kind of supererogation.

Implicit in Rawls' notion of just savings is the preservation of resources adequate for the next generation to maintain a standard of living at least equal to that of the present generation. It would be inconsistent with the principles of social justice for the present generation to pollute the environment to such a degree that it would be unfit for their successors, or to use up resources needed by the next generation to maintain a quality of life equivalent to that of the present.

Priority Ordering of Obligations

In sorting out the obligations moral agents have it is obvious that some sort of priority ordering is necessary. As Rawls indicated in discussing the question

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[16] As Rawls points out, utilitarian ethics might well demand the contrary, since a larger future population and a high marginal productivity rate for capital might well produce a quantum of happiness which would far outweigh the required sacrifices of the disadvantaged in the present generation. A Theory of Justice, pp. 286-287.

of justice between generations, the obligation of one generation to provide for the future must be modified to assure that the minimum needs of the present generation are met. It is apparent also that the obligation to provide a clean environment may conflict with the aspirations and perhaps with the needs of people for jobs which will bring about at least some degree of environmental degradation. The final arbiter for deciding among these conflicts may well prove to be institutions of society designed to perform such functions and in the practical order this is indeed the case. However, the decisions made, if they are to be good decisions, must rest on an objective evaluation of the importance of the goods sought for which persons are required to sacrifice some measure of their freedom.

This brings us back to consideration of what the whole enterprise is about: the fulfillment of human life in a community of moral agents. Goods indispensable to this objective must take first place; other values merit consideration only after these primary requirements are satisfied. The notion of "lexical" ordering as used by Rawls may be helpful here. As he explained it:

> . . . This is an order which requires us to satisfy the first principle in the ordering before we can move on to the second, the second before we consider the third, and so on. A principle does not come into play until those previous to it are either fully met or do not apply. A serial ordering avoids,

> then, having to balance principles at all; those earlier in the ordering have an absolute weight, so to speak, with respect to later ones, and hold without exception. We can regard such a ranking as analogous to a sequence of constrained maximum principles. For we can suppose that any principle in the order is to be maximized subject to the condition that the preceding principles are fully satisfied. . . .[17]

First priority in the ordering of obligations would be assigned to those correlative with the rights of moral agents which have to do with what I have referred to as their "vital interests."[18] These relate to the physical and moral integrity of the person: the right to continue to live, to enjoy good health, to have sufficient food and shelter, to have access to truthful information, to be able to judge for oneself what is right or wrong and to be able to act on these judgments. This is not meant to be an exhaustive enumeration but it illustrates the kinds of rights which a person must enjoy in order to function as a moral agent. Without these there are no human beings in the true sense of the term and there can be no human community. People must be allowed to live, obviously, if

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[17] A Theory of Justice, p. 43. Rawls points out that "the correct term is 'lexicographical,' but it is too cumbersome." His footnote explains: "The term 'lexicographical' derives from the fact that the most familiar example of such an ordering is that of words in a dictionary. To see this, substitute numerals for letters, putting '1' for 'a', '2' for 'b' and so on, and then rank the resulting strings of numerals from left to right, moving to the right only when necessary to break ties. . . ." (p. 42, n. 23)

[18] See above, pp. 87-88.

they are to function as moral agents; health is essential to continued life; and food and shelter are necessarily related to health. But physical life is only a necessary condition for moral life: to be actually a moral agent a person must have the freedom to make moral judgments and act on them; and to do this requires availability of truthful information. Correlative with these rights are the obligations of forbearing from acts which would frustrate them and of providing the necessary means to exercise them.

Two corollaries follow: the institutions of society must be just and moral agents must be treated with a special kind of respect. The first corollary is a necessary consequence of the freedom which characterizes moral agents. Without just institutions, in which such principles as equality before the law, even-handed administration of rules and the right to due process prevail, there would be little chance for people to exercise their freedom; moreover, since moral agents as such are equally free the institutions which affect their conduct should reflect this equality. The second corollary applies to both institutions and individuals. It requires that the former be structured in such a way as to recognize the autonomy of moral agents and the sharp distinction between them and those entities which are by their nature non-rational; it imposes on individuals the obligation to recognize

other persons as by nature equal at least in the fundamental aspect of being fellow humans. Only under circumstances in which others grant this respect can people have the self-esteem which Rawls rightly considers "perhaps the most important primary good."[19]

The use of the term "moral agent" in the preceding paragraphs could lead to a certain ambiguity. Its application is clear enough in the case of "normal" adults who clearly have the essential characteristic, the capability for voluntary and purposive action. But what of the borderline cases: the child who has not quite reached the fullness of these capabilities? or the aged person who has lapsed into senility? or the person with a mental disorder or one born without the standard brain functions? Does the future person, not yet born or even conceived--"posterity"--qualify as a moral agent?

In an earlier discussion I described the infant as "virtually a moral agent," in contradistinction to persons of future generations who exist only potentially.[20] Let me now expand that distinction to add "dysfunctional" moral agents--those who are human beings at least in the biological sense, having been procreated by human parents, but

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[19] A Theory of Justice, p. 440; see also pp. 178-183.

[20] See above, pp. 94-95.

who lack the capability for rational function. I include in this category those born mentally defective or "subnormal," those suffering from mental or emotional disorders, victims of traumatic brain-damage and those whose rational functions have deteriorated in old age. Since these dysfunctional persons lack the basic characteristic which would qualify them as moral agents they cannot be the subject of rights in the primary sense of the term. However, they do lie in a continuum with actual moral agents for two reasons: first, they are biologically identical with human beings who are actually moral agents--they are part of the same genetic stream; second, in many instances they differ from the "normal" person only in degree. Since there is no sharp discontinuity separating the dysfunctional from the actual moral agent, others have the obligation of treating them with the respect due human beings--not as holders of moral rights in the primary sense associated with actual moral agents but as members of the human community, albeit defective ones. Rights are attributed to them by analogy of inequality since they participate unequally in whatever it is that makes an entity human. Nevertheless the obligation remains for others to sustain their lives, protect them from harm and suffering, defend whatever interests they may have.

Many of the same considerations apply to the treatment of infants. As virtual moral agents they do not have the rights which an adult has, but others have obligations toward them. Here the notion of a continuum is perhaps even clearer than in the case of dysfunctional persons. As children mature they gradually acquire the use of their rational capabilities; there is no specific point at which one can say that the child now is able to make voluntary and purposive judgments whereas a moment before this was not the case. The purpose of education is both to make the child more adept at the use of his rational capabilities (as well as physical development) and at the same time to make the capabilities themselves more nearly perfect. The rate of maturation varies with each individual, making it even more difficult to determine the point at which the person becomes a functional moral agent. Because of this continuity as well as the fact that children, even while immature, are part of the human community, others have the obligation of treating infants as though they were holders of rights--again by analogy of inequality. Others are obliged to sustain their lives, safeguard them from harm and suffering, help them develop their capabilities both physical and moral, and respect

them as incipient members of society.[21] Insofar as they are capable of making moral judgments, of course, they should receive the same treatment as any other moral agent.

The situation is quite different in the case of posterity. Future members of the human race can be thought of as merely potential moral agents; it would be unreasonable to attribute rights to them in the same sense that we attribute rights to existing people. No future individual has a "right to life." There is no obligation on the part of any existing person to bring about the existence of some specific future individual. The most that can be said is that if a person does come into existence she then has the rights attributable to a moral agent and members of society will then have obligations with respect to the protection of her vital interests. It seems clear to me, however,

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[21] The controversy over abortion naturally comes to mind in this context. The continuity argument leaves little room for a valid moral discrimination between the fetus a minute before birth and the child immediately afterward. In fact, the continuity seems to begin at the moment the male and female genetic elements unite to form a new entity. On this interpretation, moral agents would have the same obligations, *mutatis mutandis*, to the zygote and, *a fortiori*, to the fetus as they do to the infant or growing child. In a genuine conflict between the life of the mother and the life of the *conceptus*, I believe the former would have the stronger claim, but not in the case where the threat to the mother was remote or where the conflict was with the mother's convenience or her asserted "right to do as I wish with my body" (Judith Thomson's mythical violinist notwithstanding).

that members of society now living owe their first obligations to presently existing moral agents--including those I have described as "virtual" and "dysfunctional"--before the contingent claims of merely potential moral agents merit consideration. Let me emphasize that I am speaking here only of matters which affect the vital interests of the people in question--their continued life, health, functioning as moral agents and dignity as human beings. The obligations related to these interests of existing persons claim first priority; in the lexical ordering I have suggested, they must be satisfied first. It is only then that it becomes tenable to acknowledge obligations to posterity.

Once the vital interests of human beings present and future are secure, we can turn our attention to their other, "non-vital" interests. In the pursuit of such interests moral agents have both rights and obligations defined by their membership in human society. The institutions of society have as their purpose the common good of its members. Their rules impose duties which members are obliged to perform and also establish rights to protect them in attaining the goods which are in their interest. Within the context of these rules people are able to enjoy the amenities of life over and above the necessities to which they are entitled by natural right. At the same time,

people have the natural duty, as Rawls puts it, of supporting just institutions; they have other obligations imposed by society such as those of treating animals humanely and preserving the natural beauty of the environment in order to provide others with more pleasant circumstances in which to live.

In our contemporary society in the United States people have a right, under the Constitution, laws and customs, to acquire wealth and property far beyond their basic needs. As defined by social institutions this does not mean that everyone has a right to be a millionaire or that all have a right to a state of affairs in which everyone is equally rich. What it does mean is that each person has a right to participate in the economic system under a uniform set of rules which apply equally to everyone. A rich person stands a much better chance of getting richer than does a poor person, but the rules of contract law apply equally to both; the fact that the rich person can afford to hire a lawyer (or a better one) and the poor person cannot detracts from the justice of the system, of course. Whether our economic institutions are just is a much debated point. From the perspective of socialists and others who insist on what Nozick refers to as "end-state principles" of distributive justice, the evaluation would be decidedly negative; from the viewpoint of those like

Nozick who hold to "historical principles" such as those embodied in his "entitlement theory" the decision would be more favorable.[22] Perhaps the most that can be said of the system is that, although it does include many instances of injustice, as an institution it provides the possibility of approaching the ideals of "pure procedural justice" which Rawls has outlined.[23]

Assuming that a case can be made out for the justice or at least "near justice" of social institutions, people have an obligation to comply with the laws and follow the rules established by those institutions.[24] They are obliged to acknowledge the rights granted by the institutional rules, even though they may consider the decisions setting up the rules unwise. They have an obligation to perform duties required by the law even when the objects benefited by these duties have no claim to the benefit as a matter of right. The only case in

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[22] Nozick, Anarchy, State and Utopia, pp. 153-155.

[23] Rawls, A Theory of Justice, pp. 84-90.

[24] See Rawls, A Theory of Justice, pp. 351-355. He defines a state of near justice as "one in which the basic structure of society is nearly just, making due allowance for what it is reasonable to expect in the circumstances" (p. 351) and says later that "in a situation of near justice, anyway, we normally have a duty to comply with unjust, and not simply with just, laws." (p. 353) This duty, however, does not require us to acquiesce in the denial of our own and others' basic liberties. (p. 355)

which the obligation does not hold is one in which performance of the action would conflict with the rights or obligations relating to the vital interests of oneself or another as a moral agent. The rules themselves should provide for these contingencies: for example, a system of transfer payments for health and subsistence of the indigent, exemption from usual liability or trespass laws to encourage assistance to those in imminent danger, "conscientious objector" exemptions from compulsory military service. Even in the absence of such provisions, however, the usual rules lose their morally obligatory force in the face of need to vindicate the "basic liberties."

The obligations we have been discussing up to this point are essentially those which have to do with justice: those which arise because some action is due or owed to another person or to society as a whole. Beyond these are the obligations having to do with personal character and conduct required by traditional virtues such as prudence, temperance, fortitude and benevolence. I mention these only to note their importance in any complete treatment of obligations, but forego further discussion of them since they are not directly related to the main subject.

The following tabulation summarizes the obligations just discussed in priority order:

1. Obligations to perform acts necessary to secure the vital interests of moral agents (defined broadly to include virtual and dysfunctional as well as actual moral agents);

2. Similar obligations related to the contingent vital interests of potential moral agents;

3. Obligations defined by the rules of just social institutions related to the non-vital interests of moral agents; and

4. Obligations related to personal character and conduct.

Individual and Collective Obligations

As an individual, each person ought to recognize the moral necessity of acting in accordance with these obligations. In some instances he will be able to comply with the requirements by himself. For example, in an economic situation, an individual might be able to stay within the law and follow all the rules of existing economic institutions and yet bring about the ruin of another person, effectively depriving him of his livelihood. Since this action would violate the second person's right to protection of his vital interests, the first person would have a moral obligation to refrain from performing the act. The first person's non-vital interest in increasing his wealth must give way to the second person's vital interest in living and functioning as a moral agent. Even if the law seems to permit sharp practices which violate another person's basic rights it does not exculpate the violator from the moral obligation.

In complex modern society it is often the case that critical economic actions are undertaken by organizations rather than individuals. It is the corporation which acts rather than an isolated man or woman. Corporations as such are not moral agents and consequently we cannot attribute either rights or obligations to them in the primary moral sense. In the legal sense, yes: they are considered as fictitious legal persons having legal rights and obligations, being subject to rewards and punishment. But in the moral sense it is necessary to look beyond the corporation to the individuals who constitute it.

Ultimately, the shareholders in a corporation must bear the final moral responsibility for its actions. More practically, however, those who actually make the decisions are the individuals who manage the company's affairs: the officers and directors who set company policy and the individual functionaries who carry it out. All share in the moral responsibility for corporate acts. The individual personnel officer who dismisses an employee unjustly, citing "company policy," can no more excuse himself from moral responsibility than the soldier who blindly carries out an order to massacre innocent civilians. The voluntary character of the act--and hence the degree of responsibility--may be reduced by the coercive power of a superior manager's order, whether expressed or

implied, but some degree of responsibility remains. The heavier moral obligation rests on the person or persons who direct the subordinate's acts and especially on those responsible for setting policy. The degree of responsibility is closely related to the degree of freedom which the individual has. In many instances, the president or general manager of a corporation is the one individual most able to affect the outcome and with the greatest freedom to make decisions. But inferiors in the chain of command and those at least nominally superior on the board of directors or among the stockholders they represent have moral obligations consistent with their ability to affect the outcome and their freedom to exercise it.

Much the same can be said, with appropriate changes, of individuals acting through political institutions. Although the locutions are sometimes used, it is not appropriate to attribute moral rights or obligations to the state, except in an obviously analogical sense. The state is not a moral agent. Rather, it is a collective name for all the people organized into a single "body politic." This is clear in the case of a democracy but no less true, though somewhat less obvious, in other forms of political organization. Even in a monarchy it is the king and his subjects, taken together, which constitute the state.

In the United States, laws are enacted and other actions taken by the government in the name of the people. To a certain extent all citizens share in the moral responsibility for whatever the government does. Each one has a moral obligation to do whatever he can to see that government acts in a manner consistent with good moral order. The obligation rests more heavily on those elected as legislative representatives to decide on policies and those chosen as executive officials. In every case, however, the moral responsibility rests on some person or persons, not on a vague collective entity.

In formulating corporate policy, members of a board of directors have a serious moral obligation to be concerned about the vital interests of moral agents which that policy might affect. If they produce a product likely to endanger lives, even when it is used prudently, they are responsible morally for the deaths which may ensue. They also have a moral responsibility not to allow their factories to pollute the air or water in such a way as to imperil the health of their workers or their neighbors. Even in the absence of laws regulating such behavior, they have a moral obligation to respect the right of people to work by avoiding discriminatory hiring policies. In some cases, they may have a positive obligation to continue to provide jobs for people who have become dependent

on the corporation for their livelihood, even at the cost of damage to profit maximization. Just as individuals must take into account the priority ordering of obligations, giving preferential consideration to the vital interests of other moral agents over their own non-vital interests, so must individuals sitting as directors of corporations act in determining corporate policy. Management officials, of course, have the same sort of responsibility, so far as decisions rest in their hands. Corporate stockholders frequently have little control over such decisions; but to whatever extent they do have such discretion, the same sorts of obligations apply.

Implications for Public Policy

Similar considerations apply in the area of public policy, but with a major difference which is of overwhelming significance. The purpose of individual enterprise is to achieve the maximum advantage possible for the individual, in whatever terms she conceives her advantage, subject to the constraints implied by the obligations just discussed. Similarly, corporations exist for the maximum advantage of stockholders (and managers) subject to similar constraints. In the case of the state, however, the common good of its citizens is its paramount concern. This does not necessarily equate to the maximum advantage of any individual, although such maximization may be a desirable

secondary goal. The primary focus of the state is the protection of the vital interests of all the people equally. It must also be concerned with the future--the contingent vital interests of its future citizens. Only when these needs are satisfied can it be concerned with the achievement of non-vital goals; even here its principal concern is justice and fairness, so that optimization rather than maximization may be the state's objective.

The view just expressed may not square too well with utilitarian theory, particularly in the popular version stated in terms of "the greatest happiness (or good) of the greatest number." It is quite conceivable that securing the vital interests of all (as opposed to maximizing the non-vital interests of some) may not add up to the largest possible quantum of happiness; the majority might possibly benefit from suppressing the rights of a few. Even if this latter outcome would generate more happiness for more people, however, it would be clearly inconsistent with the principle of justice which obliges moral agents to allow other moral agents to function as such. Constrained by this principle, the utilitarian maxim is not unreasonable and would be compatible with the priority schema outlined previously. "Utilitarianism constrained by justice," in fact, seems

to be the ideal toward which capitalistic constitutional democracies tend. Constitutional principles, ideally, should safeguard the rights of all, while majority legislative decisions seek to maximize the good of the greatest number, within the limits permitted by the constitution.

Those who determine public policy have moral obligations similar to ones people have in their roles as individuals or members of corporations. As suggested earlier, the functions are different, but the obligational priorities remain unchanged. In the public policy area, however, there is greater opportunity for fulfillment of positive obligations to enhance people's vital interests, as well as obligations of a negative sort. The primary goal of public policy is to broaden the opportunities of everyone within the community in pursuing common interests. Consequently, public policy seeks to insure the physical and moral integrity of all citizens through international peace and domestic tranquility. It not only protects people's lives, but tries to enhance their opportunities to enjoy better health. It not only safeguards the property on which their physical and moral well-being depends but attempts both to assure everyone the basic material necessities and to broaden the opportunities for participation in material prosperity. It not only defends citizens from

intrusions against their moral and intellectual integrity but seeks to enhance these capabilities through encouragement of education, political participation, religion and culture.

Both environmental protection and economic development are consequences of these obligations of public policy. It is essential to the vital interests of people that life and public health be protected; consequently, pollution of the environment which threatens life or health must not be permitted and public policy must prescribe positive efforts to correct conditions which endanger them. At the same time, it is of vital interest to people that they have the opportunity to earn a livelihood; public policy must prohibit practices which would deny such opportunities to any citizen and must take positive steps to encourage the development of job opportunities.

In light of the priority ordering of obligations discussed earlier, some of the apparent conflicts between environmental and developmental policies should disappear. Public policy should foster economic development, but not the kind of project which would endanger public health. This is consistent with the appeals court ruling in the Reserve Mining case in which the company was ordered to act immediately to abate air pollution which had been shown to endanger health, but was allowed to continue

ore processing operations because of their economic importance.[25] The same court permitted the continued discharge of ore tailings into Lake Superior for a reasonable length of time until an on-land dumping site could be established, even though this did cause some pollution of the lake, on the grounds that such pollution did not pose an immediate danger to health.

Within the first category of obligations--those related to people's vital interests--some trade-offs should be allowed within reasonable limits. Public policy should not permit pollution which constitutes an imminent threat to people's health; it might well tolerate a more remote threat to health, however, if such action were necessary to safeguard other vital interests, namely, people's right to employment. It is here that some "balancing of the equities" comes into play.[26] When it comes to an apparent conflict between the first category and the second--obligations to posterity--there is no room for balancing: the vital interests of people now living clearly take precedence over the contingent vital interests of those who may come to be. Neither the health nor the right to work of this generation may be traded off against potential benefits to posterity.

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[25] See above, pp. 121-129.

[26] See above, pp. 123-124.

The third category of obligations comprises those related to the non-vital interests of people. These interests include the ability to enjoy amenities which are really not necessary to life but simply make living more comfortable and enjoyable. Along with this goes the ability to accumulate wealth over and above the minimum required to live a life of frugal comfort befitting a human being. These are important interests which just social institutions attempt to safeguard; they must give place, however, to the vital interests of both the present and future generations.

Practical implications of this priority schema are significant in the formulation of both public policy and personal decisions. For the state to effectuate a policy of economic development which seeks to maximize accumulation of wealth and production of non-essential amenities at the cost of environmental degradation which endangers public health or the viability of future generations would clearly violate primary obligations. A policy of unlimited growth regardless of environmental consequences would be morally wrong. The individual entrepreneur in a capitalistic economic system has a right, under the established rules, to make and sell what the public wants and to profit from the enterprise. But the entrepreneur also has a moral obligation not to endanger people's health or their other

vital interests in doing so. She has an obligation not to produce an unduly dangerous product, nor to endanger the health of workers producing it, nor to make the environment unlivable for people now or in the future. The same obligations apply to an individual engaged in a corporate enterprise, whether as a stockholder, director, manager or employee, with the degree of moral responsibility varying according to the person's freedom of decision and ability to affect the outcome. Individuals involved in deciding on public policy have like obligations. Again, the degree of responsibility varies, but public officials, legislators and their staffs, administrators, policy advocates and all enfranchised citizens share in the moral obligation to protect people and posterity from environmental disaster.

The same priority considerations dictate other obligations. Public policy must address the right of people to employment. Whatever may have been the case in earlier eras, in our contemporary post-Keynesian capitalistic system government plays an important role in the economy. The obligation to secure the vital interests of people requires public policies which encourage full employment and job opportunities for as many people as possible; where such policies fail or fall short of the mark, the same obligation requires

the use of transfer payments to supply the necessities of human living to all. This obligation must be met within the constraint mentioned in the last paragraph concerning health-threatening environmental degradation. But it takes precedence over environmental considerations concerned with people's non-vital interests. Environmental goals concerned simply with amenities or with mere esthetic values must be subordinated to the basic needs of people to make a decent living and provide for their families. "Fishable, swimable rivers" is a laudable objective, but not when it interferes with economic development necessary to people's lives. As in the saying about alligators and draining swamps,[27] it is difficult--and I believe morally wrong--to be concerned about wilderness areas and "pristine air quality" in Michigan's Upper Peninsula when thousands of people in the region are out of work and preservationist policies would deprive them of job opportunities.

Implications for Individual and Corporate Decisions

Just as public policy decisions must take account of obligations to secure the vital interests of people in making a living, so also must individual and corporate decisions. The primary obligation in the private sector is a

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[27] "When you're up to your hips in alligators, it's hard to remember you came to drain the swamp."

negative one: in creating jobs, individual entrepreneurs and persons acting through corporations have an obligation not to discriminate unfairly in hiring and dealing with employees. The principle of fairness requires that a potential employer offer the opportunity to any person who qualifies in terms of physical abilities, education, training and experience. To discriminate because of irrelevant considerations (where they are irrelevant) such as race, religion, sex, age or non-disqualifying physical handicaps would be unfair. In choosing among equally qualified candidates a case could be made for taking into account the applicant's need or desert; recommendations from friends, relatives or other employees could also be relevant as a reason for the employer to decide that a particular person would more likely be an effective employee.

Even though this negative obligation is primary, the entrepreneur has certain positive obligations as well. Having once hired a person, the employer has the obligation to pay him a living wage, provide decent working conditions, treat him fairly in comparison with other employees. Moreover, the establishment of an enterprise in a community creates a kind of dependency: employees cut themselves off from former income sources to commit themselves to the new employer; some workers move their homes in order

to be close to their jobs; suppliers may establish new facilities in the community to serve the needs of the enterprise; local purveyors of various services may expand operations to meet increased demand both from the employer and from the workforce. The entrepreneur benefits from all these changes in the community: the enterprise could not exist without them; but the entrepreneur also incurs additional obligations. These include the duty to pay taxes as a share of the public costs of the enterprise and the duty to support community projects, of course; but they also include an obligation to perpetuate the operation unless there is a compelling reason to discontinue it.

This latter obligation may be considered as arising from what economists speak of as "externalities." The following passage from Tibor Scitovsky, professor of Economics at Stanford University, explains the term:

> The distinction between divisible and indivisible goods is sometimes presented as that between goods whose use, or the benefit from whose use, is exclusive and nonexclusive. Bread is an exclusive good, because my consumption of it excludes its being consumed by anyone else; whereas a radio broadcast is nonexclusive, because my enjoyment of it does not exclude others' enjoying it too. Between these limiting cases is the intermediate case of goods destined primarily for the use of a single person or household but also benefiting others. A private garden gives the most enjoyment to its owners, who pay for its upkeep; but it is also enjoyed by neighbors and passersby. The free benefits the latter get are known as external economies.

> The effect of one person's consumption on another's welfare can be unfavorable as well as favorable. My radio, if turned on loud, can give my neighbors pain as well as pleasure; my picnicking is unpleasant for those who come upon the empty bottles and rusty cans I left behind. These unfavorable effects are called external diseconomies. They are a part of the social cost of my consumption and enjoyment: the part which remains uncompensated. It is not only consumption but production as well that can affect also others; these others can be consumers or other producers; and the external effects can again be favorable or unfavorable. The fumes, smells, noise emitted by a factory are the obvious example. All such cases of nonexclusivity or indivisibility, where a production or consumption activity yields unintended side effects, benefiting others or inflicting unintended costs upon them, are known as externalities.[28]

Existence of the enterprise imposes social costs upon the community in the form of the dependency described. The employer derives benefits and ought not arbitrarily walk away from these costs, which affect the vital interests of the employees and other citizens of the community, even if discontinuing the operation serves the entrepreneur's non-vital interest of maximizing profits. The obligation may be diminished to some degree if some event beyond the employer's control dictates closing of the plant, for example, a technological change which renders the product obsolete. In some instances, the obligation may shift to the public sector, as would be the case if the state imposed new safety or pollution control regulations (beyond those the employer should have been observing anyway) which made

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[28] Scitovsky, Welfare and Competition, pp. 268-269.

continued operation uneconomic. Aside from the exceptional cases, however, the entrepreneur should take these external costs into account--"internalize" them, as the economists say--in computing prices and profitability, so that the obligations could be properly discharged if it ever should become desirable to discontinue the enterprise. With the reserves accumulated, the employer could pay workers retirement or severance benefits, donate physical facilities to the community and pay for the efforts--subsidies if necessary--to get another employer to take up the slack in the local economy.

It is conceivable, of course, that the people as a whole, as a public policy option, may decide to underwrite the external social costs which should otherwise be borne by private enterprise. The benefits of greater economic stability or employment opportunities may be so desirable that the community at large is willing to pay for social risks of increased economic activity. No individual or corporate group has an obligation to start a job-providing enterprise, but may respond to an inducement offered by the public, motivated by the hope of private gain combined perhaps with a willingness to contribute to the satisfaction of the community need. The financial cost to the public would probably be defrayed by taxes which would transfer a part of the surplus wealth of citizens to this project intended to promote the common good.

The externalities associated with environmental pollution give rise to similar obligations. If damage to the environment is such that it endangers public health the obligation to abate the pollution is absolute: the individual or corporate group has a non-negotiable obligation to refrain from the activity causing the damage. If it affects only esthetic qualities of the environment, however, the social costs are finite and the possibility of trade-offs exists. It may be in the public interest for the people to accept an environment of less than perfect or optimum quality in order to enjoy the benefits of full employment or higher levels of prosperity. The obligations of social justice, in fact, would demand that the non-vital interest of maximum environmental quality be sacrificed in favor of the vital interest of minimally adequate job opportunities for all in any situation in which the two objectives might conflict.

The position outlined in this chapter is a far cry from that advocated by proponents of the "environmental ethic" discussed in the first chapter. It puts into perspective the obligations people have as individuals, members of corporate groups and citizens of the body politic. It emphasizes the moral necessity which constrains people as free and rational moral agents to restrict their own freedom in order to secure the vital

interests of other moral agents who are fellow members of the human community. At the same time it calls attention to the needs of posterity as a factor which limits people's freedom to maximize the satisfaction of their non-vital interests, while yet providing for liberty to pursue those interests within the structure of just social institutions.

The objective of this dissertation has not been to set forth firm guidelines which will solve every dispute between environmentalists and those favoring economic development. Aristotle's comment about his own discussion of ethical matters is pertinent:

> Our discussion will be adequate if it has as much clearness as the subject-matter admits of, for precision is not to be sought for alike in all discussions, any more than in all the products of the crafts. Now fine and just actions, which political science investigates, admit of much variety and fluctuation of opinion. . . . We must be content, then, in speaking of such subjects, and with such premises to indicate the truth roughly and in outline, and in speaking about things which are only for the most part true and with premises of the same kind to reach conclusions that are no better. In the same spirit, therefore, should each type of statement be received, for it is the mark of an educated man to look for precision in each class of things just so far as the nature of the subject admits; it is evidently equally foolish to accept probable reasoning from a mathematician and to demand from a rhetorician scientific proofs.[29]

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[29] Nichomachean Ethics, 1094b 12-28.

The intention has been rather to suggest a point of view which gives due weight to the importance of human considerations in a discussion which focuses on human values. If the principles expressed and the applications suggested shed even a little light on the question under discussion, the objective will have been accomplished.

CHAPTER VI

SUMMARY AND CONCLUSIONS

The ideology of environmentalism has considerable emotional appeal. Confronted with the serious problems of air and water pollution which plague mid-twentieth century civilization and the spectre of dwindling resources left for posterity, it is natural enough for people to sound the alarm. It is equally understandable that people immersed in these problems take a narrow view of what is important to society. Because of the close connection between the human environment and the subject matter of the science of ecology, it is easy to see why those concerned with environmental degradation would look to that science for solutions to the problem and end up treating human life as one more datum of ecological science.

From the point of view of the ecologist, as such, Leopold's dictum that "a thing is right when it tends to preserve the integrity, stability and beauty of the biotic community and wrong when it tends otherwise," is unassailable. To make this the supreme principle of ethical thought, however, is to neglect entirely the distinctive characteristics of human personality which set man apart

from other animals. Human beings, alone among all entities which occupy the earth (and, so far as we know, the universe) are moral agents with the capacity of voluntary and purposive action. People are, indeed, animals; as such they are part of the biotic community and can disregard its laws only at their peril. But they are more than animals in their autonomy as moral agents: it is this characteristic with which ethics is primarily concerned. As moral agents, human beings are members of a distinctively human community, a fact of far greater significance in ethical discourse than the circumstance which makes them members also in the biotic community.

As members of the human community, people have rights and obligations. These are moral terms and it makes no sense to speak of either rights or obligations except in the context of discussions about moral agents. It is obviously nonsense to talk about animals or other non-human entities having obligations. In my view it is equally nonsensical to speak seriously (or at least <u>formaliter</u>) of non-human entities having moral rights. A case can be made for this viewpoint even if rights are considered to be justified claims based on the interests of the right-holder. This position becomes even more certain if one holds, as I do, that a right is properly taken to be a certain kind of moral capability for, and entitlement to, the attainment of

some good: namely, one which entails a relationship with a respondent such that the respondent has a moral obligation either to perform acts which would result in the subject's attaining the good or to refrain from performing acts which would prevent its attainment.

The concept of rights just expressed clearly limits their application. On this analysis, it would be improper to attribute rights to infants (much less fetuses) or children, to mentally defective people, to posterity, to animals or to inanimate objects (as some environmentalists would have us do). This is precisely the position I hold. Formally and primarily, rights are predicable only of moral agents. However, it is possible to use the term, in an analogical sense, of other entities. The chief justification for this analogical predication is that moral agents do have obligations with respect to these other entities. Since some of the obligations people have to moral agents are based on their rights, writers sometimes conclude that all obligations are based on rights and erroneously (I believe), or at least analogically, attribute rights to these objects of obligations. Unless it is clearly understood that this predication is analogical, there can be all sorts of confusion about what a right is and about what kind of entity can be a holder of rights.

Once this confusion is cleared away, it is possible to get down to a discussion of some of the rights which are of primary concern in conflicts between environmentalists and the advocates of economic growth. Two cases which illustrate some of these conflicts have been discussed in some detail: the Reserve Mining controversy and the dispute about establishment of the Sleeping Bear Dunes National Lakeshore. The latter turns largely on the question of property rights, while the former concerns property rights only peripherally and focuses more directly on the right of people to work and the right of citizens to a decent environment.

The right to own private property has been the subject of ethical dispute for centuries. In the seventeenth and eighteenth centuries, aided by the philosophical teachings of writers such as Locke, it was elevated to the position of a moral absolute. Property was conceived to be one of the basic rights people had in a supposed State of Nature; when they agreed to go together to form a political commonwealth, people gave up some of their freedoms but still retained their prior rights to property, subject to limited regulation to which they gave consent. Since that time development of the concept of property through common law judicial decisions and statutory enactments has tended to mitigate the absolute character of the right. More

recently, the concept of public interest has tended to subject the private use of property to stringent government control. In terms of the notion of moral rights discussed earlier, the right to private property derives from the freedom essential to functioning as a moral agent; to the extent property is necessary to that freedom it can be defended as a moral right but beyond that point it depends on the rules of social institutions.

One of the "social" rights which has gained considerable attention in recent years is what is referred to as "the citizen's right to a decent environment." The expression is sometimes used vaguely as a support for any kind of environmentalist action and may be considered in that context as a right in the "manifesto sense," to use Feinberg's term.[1] However, it has a more specific meaning, related to the "public trust doctrine." This theory rests on the contention that air, water and other goods which are not owned by a specific individual belong to all the people in common and are held in trust for them by the state. Under this interpretation, air and water, for instance, are not "free goods" in the sense used by economists but are properties owned by the public and subject to the direct control of the government as trustee. Adoption of this doctrine could have far-reaching effects

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[1]See above, p. 159.

on economic development in confrontations with environmental activists. The arguments used in support of the theory are open to serious question. They boil down to the contention that the "public goods" under discussion are so important to everybody that no individual person should own them. This premise is true, but the most it proves is that no one should be able to use these common resources to the disadvantage or exclusion of others and that it is a legitimate exercise of governmental power to protect this interest. On the other hand, the same principle provides the basis for the conclusion that each person should have a recognized property right in the common resource, limited by similar rights of others but also limiting the power of the "citizenry as a whole" or the government to deny use of the resource to that individual person. It is precisely this limited individual property right which the public trust doctrine threatens.

Rejection of the theory just discussed still leaves ample room for acceptance of a significant "right to a decent environment" in more than a "manifesto" sense. The expression describes a moral entitlement to breathable air, drinkable water and other necessary environmental resources which deserves recognition by society.

Another of the social or economic rights sometimes dismissed as mere rhetorical expressions of widely felt

needs is the "right to work" proclaimed in the UN's Universal Declaration of Human Rights. Carefully defined, however, claims to a right of this kind appear to be both meaningful and justified under current economic circumstances, particularly those prevailing in the United States. To say that people have a right to employment means that those who want to work to support themselves and their families are morally entitled to the opportunity to do so. This entails obligations on the part of both private employers and those responsible for government policies: they must avoid actions, such as discriminatory hiring or firing practices, which would frustrate this right; and they must take positive steps to provide or encourage employment opportunities. Under our modified capitalistic system the latter requirement demands that the government undertake various kinds of economic development programs to foster job-producing growth, at the same time avoiding policies inimical to the accomplishment of this objective.

In expanding the right to a decent environment to include demands for curtailment of economic growth in order to limit use of resources, completely eliminate pollution and preserve an ideal "lifestyle," the more extreme environmentalists come into direct confrontation with advocates of the right to employment. In theory, at least, the two types of right need not conflict, but in practice they

often do so. In those instances involving legitimate claims, however, the conflicts can be resolved on the basis of the importance of the vital interests affected. For example, if a job-producing project imminently threatens health, the issue must be settled in favor of environmental protection. Employment concerns might take precedence if the health threat is remote and surely would if only esthetic values are at risk.

Rights are only part of the story. Obligations also are important, and only some of them are correlative to rights. As is the case with rights, obligations are attributed solely to moral agents. An obligation is taken to be a principle (in the broad sense of "a fundamental source from which something proceeds") which guides or restrains human acts by placing a moral limitation on the agent's freedom. Internally, it is a rational judgment by the agent concerning the moral necessity of some course of action; externally, it is an objective relationship on which this judgment is founded. One of the basic relationships of this kind is the moral agent's membership in the human community or in the natural institutions, such as the family or the state, which characterize that community.

Not all obligations arise from rights. An example of one which does not is the obligation people have to posterity. As brought out previously, people of future

generations cannot be said to have rights with respect to the present generation, since they are not actual moral agents. They exist only potentially. They have no right to come into existence in the sense of a right which imposes an obligation on existing persons to bring about that outcome. If they do come into existence, they will then have vital interests which will have to be secured, but at present these are only contingent needs. Nevertheless, because people are members of human society, which is a continuing institution of which future generations are potential members, those now living have an obligation to provide for the contingent vital interests of posterity.

Priority must be given, however, to the vital interests of actually existing moral agents. I take this to include not only moral agents in the full sense of the term but those also who can be given that name by "analogy of inequality": virtual and dysfunctional moral agents. The former includes unborn human beings and children who have not yet reached the maturity to exercise their characteristic function of voluntary and purposive action; the latter refers to human beings who are mentally defective or otherwise unable to exercise rational functions. There is a continuity between these persons and actual moral agents which makes them a part of the human community; because of

this, rational people have an obligation to provide for their vital interests even though they are not moral agents in the full sense of the term and cannot properly be said to have moral rights.

The priority ordering of obligations which I have suggested is a lexical order: the requirements of those in the first category ought to be satisfied before those in subsequent categories merit consideration. Consequently, obligations concerning the vital interests of moral agents--actual, virtual and dysfunctional--take precedence over those related to the contingent interests of merely potential moral agents. These in turn ought to be satisfied before considering the non-vital interests of moral agents--such interests as enjoyment of amenities, esthetic pleasures and possession of material goods beyond the level needed for the basic comfort and self-respect due a human being.

Obligations as I have described them are personal: they cannot be attributed to collective entities such as corporations or states. However, individuals may have obligations both as individuals and as participants in collectives. In the latter the weight of the obligation varies in accordance with the degree of freedom the individual has in making a decision on behalf of the group and the individual's ability to affect the outcome. Thus,

stockholders and employees may have a lesser responsibility for corporate actions than officers or directors; ordinary citizens may have less responsibility for public policy decisions than legislators or public officials. In every case, however, the individual, personal, moral obligation exists.

In corporate action, this means that whoever is able to influence the decision has an obligation to avoid environmental damage which would affect the health of any person. These individuals also have obligations with respect to avoidance of discrimination in hiring and regarding fair treatment of employees. They have responsibility as well for the "externalities" of consumption or production activities of the corporation, including the dependencies created in a community by the existence of a corporate operation.

Public policy decisions likewise involve moral obligations on the part of those able to influence them. This may include--with differing degrees of responsibility--legislators, lobbyists, journalists, public officials, government employees, and even voters or those who have the franchise to vote. The priority ordering may dictate regulations forbidding health-endangering pollution or the production of inherently dangerous products. It may also require that pollution control regulations going beyond

protection of public safety be subordinated to the need for policies which would provide jobs for the unemployed; it would certainly require that legislation protecting endangered species of plants and animals or providing for the preservation of wilderness areas be limited in such a way that it would not frustrate the vital interests of people in making a living. The priority schema outlined suggests that the "environmental impact statements" now required be broadened to include all of the obligations implied, in their proper priority order, and not simply those which fit the environmental ideology.

The ethical considerations discussed in this essay will not provide specific answers to every moral problem in either the private or the public sector. My modest hope is that they will help in coming to rational moral decisions, particularly in matters involving the conflict between environmental protection and economic development.

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