

## Human Rights and the Rights of Nature

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With human rights issues increasingly in the news (the fiftieth anniversary of the *Universal Declaration*, the Pinochet case, and more), we have seen a renewed interest in extending the concept of rights to nonhuman entities. Despite the well-established hesitation or even skepticism about this "extensionism" in the writings of many environmental philosophers, there is an almost casual acceptance of the idea among many others, and an assumption that it must be the next and obvious step for the enlightened mind to take. This essay goes in the opposite direction, examining the arguments for human rights and denying their applicability beyond humanity. Nor do I think *rights*, within the usual meaning of the word, can be secured for nonhuman entities by any other route.

### Introduction

Despite reservations expressed by numbers of environmental philosophers about the use of rights language for non-human entities, it has become commonplace in much of environmental writing today to assume that nature has rights analogous to those we in the liberal tradition posit for human beings. If, it is customarily argued, rights were once limited to adult male citizens and property owners and only gradually, over the centuries, expanded to include women, all adults, and ultimately human beings of whatever status, then it is only logical and really quite progressive to keep expanding the circle to include animals, forests, and whole ecosystems. It is a mark of our increasing enlightenment and ethical sensitivity to do this. Hence, it is now customary for summaries of recent environmentalist writings to announce uncritically and with some pride that contemporary ethicists now realize that "rights" extend well beyond humanity.<sup>1</sup> December 1998 marked the fiftieth anniversary of the United Nations' *Universal Declaration of Human Rights*, and our ethical sages are now pushing us to accept the next stage in the development of rights—namely, non-human rights.

But this argument is not tenable. To see why this *extensionism*, as it is often called, is not tenable and crosses an impermissible boundary, we must first pay attention to the grounding of the arguments for human rights, in order to see why these arguments do not transfer to non-human entities.

### The Natural Law-Tradition and Universal Human Rights

Historically, one of the most powerful claims for human rights—*universal human rights*—is the natural-law tradition, whose secular roots go back at least to the Stoics. The advent of the universal Hellenistic civilization left people without the comforting definitions of self provided by citizenship in small city-states. Their new anonymity—mere individuals amid a confusion of competing cults and non-existent political loyalties—made possible the idea of common, universal humanity. Henceforth, what humans are due would not be the rights of citizenship, granted by the state, or the *polis*, but something more inclusive—even, the Stoic philosophers argued, something universal, something that belonged to humans by the simple fact of their humanity.<sup>2</sup> These would not be positive rights, those stated and enforced by law, but something at once grander and more vague—moral rights, arguable claims that are not necessarily legally defined or enforced.<sup>3</sup>

The religious roots of the human-rights tradition are even longer and probably more important in their historical effect. The Bible has human beings, all of them, created “in the image of God,” and thus equally due the honors arising from that relationship. In the recurring biblical metaphor, we are all children of the one Father. From this startlingly universal and egalitarian image (startling against the background of its time and place) flows the Judaic and Christian tradition’s insistence on the inviolability of human life (the “right to life”), on the dignity of each and every person. The biblical notion that humans are free to accept or reject their divine calling also implies—requires, really—a certain basic liberty, most fundamentally, religious liberty. Granted, this heritage has been imperfectly appropriated by the very people to whom it was given; but it has been powerful and effective nonetheless. Here, human rights depend not on characteristics or qualities in our nature but on a dignity bestowed from without, an *alien dignity*, as it has been called. Hence, it is more difficult to deny (our individual weaknesses do not matter) and more dangerous to violate (the offense is not against abstract nature but against divine majesty).

These two streams of thought merge magisterially in the writings of Thomas Aquinas and descend to us in various combinations of the secular and the religious. John Locke, following this line of reasoning, held that rights belong to humans “naturally,” by virtue of our created human natures. This thought underlies the 1689 English Bill of Rights, the 1776 Virginia Bill of Rights, the Declaration of Independence, and the 1789 United States Constitution and the Bill of Rights. The same reasoning occurs dramatically in the French revolutionary Constituent Assembly’s 1789 Declaration of the Rights of Man and

Citizen. The concept of inviolable human dignity, of human beings as “ends” in themselves and never as “means” to someone else’s end, receives its most powerful philosophical voice in Immanuel Kant, and appears today not only in the Universal Declaration’s defense of universal human rights but also in many modern national constitutions.

The natural-law tradition has tended to make reason the distinctive human characteristic upon which rests morality, in general, and a theory of universal rights, in particular. Rationality is the trait or characteristic that enables us to be impartial, to see what is fair for others, to rise above self-interest and the limits of our cultural circumstances. But even where reason is not the key, there is something distinctive about being human that leads inexorably to the notion of universal rights.

There are also a number of current philosophical defenses of human rights that develop the tradition in different ways. Some examples include Alan Gewirth’s argument that the exercise of reason requires that all humans have a certain measure of freedom and well-being, that we all have plans and goals, and that these common attributes entitle us to common rights.<sup>4</sup> Similarly, Gregory Vlastos writes, “One man’s well-being is as valuable as any other’s,” and “One man’s freedom is as valuable as any other’s.”<sup>5</sup> These two sentences provide, for him, the ground for human rights. Richard Wasserstrom comments that without rights we would have a morally impoverished society, lacking the expectations and judgments that rights create. So basic rights must be those that are necessary “to develop one’s capabilities to live life as a human being.”<sup>6</sup>

Many who are unsympathetic to the natural-law tradition or its philosophical descendents have found other ways to defend universal rights. Those who were involved in the creation of the Universal Declaration in the late 1940s realized that no single philosophical outlook could bridge their differences, and yet they were able to create the document. The political realities of the time, which pitted Marxist authoritarian states against the Western liberal democratic tradition, made any agreement on the foundation of universal rights impossible. But as a practical matter, with some concessions on both sides, agreement was found on a list of rights, phrased with proper caution and some studied ambiguity. And so it is today, that agreement may be “discovered” among different nations and other groups, as long as they are permitted some latitude in their interpretation of a given human right. Practical consensus exists where theoretical, foundational agreement is lacking. From such consensus-building experiences, the human-rights tradition has grown into an independent political reality, though its rootlessness renders it susceptible to a foundationalist critique.

This practical approach can, nevertheless, acquire some sort of intellectual coherence if it is argued that human rights are the result of sympathetic identification with the plight of others, even if the others are strangers who do not share a common culture. Common sympathy can be developed through education by using the tools of modern communication, with their ability to put the plight of others before our own eyes and ears. In this way, the grossest offenses, torture, and other brutalities come to life for us, and we know instinctively that no human should experience them. Thus a concept of basic rights is born, or discovered, within us.

### **The Criticism of Universal Moral Rights**

Of course, these ideas have not gone unchallenged. Some people, such as Karl Marx, have argued that rights belong not to individuals but to collectivities—in his case, interestingly for our present purpose, to man as a species. Thus, in a curious way, Marx anticipates the quarrel familiar to contemporary environmental philosophers: whether rights belong to individuals or to species. Others have argued that rights belong primarily to groups, communities, or nations, thus allowing these entities to require individuals to sacrifice for the larger whole to which they belong. Some nations have used this argument to exempt themselves from the claims of the universalists, which is taken to be a thinly veiled piece of Western cultural imperialism. Even Western liberals are sometimes uneasy with the claim to a universal morality, because liberalism carries the germ of skepticism about any ultimate truths; thus it would be difficult to argue from political liberalism to universal human rights, much less to rights for nature. Such skeptical liberalism awards a veneer of respectability to the cultural relativists in non-Western countries, even though authoritarian regimes there often use the argument quite hypocritically to justify their own oppressive policies.

Another criticism of universal moral rights comes from the positivist school, which has attacked the vagueness of natural-rights claims. In a famous scornful phrase, Bentham called universal moral rights not only nonsense, but “nonsense upon stilts.”<sup>7</sup> Positivists insist that the only types of rights that make sense are those defined and enforced by the law of the state. If high ideals make it into the legal code, so much the better; but without that definition, they are lofty impracticalities of no meaning in the real world. Real rights require real laws.

In general, no consequentialist theory of ethics—such as Bentham’s utilitarianism—can support the idea of universal rights, because in such a theory any right could be abrogated for a desired social end.<sup>8</sup> Of course, individuals

may be protected in another way, depending on how one counts the “good” or measures the pain to be avoided. Thus Bentham is known for protecting all subjects who can experience pain, including animals. But as Peter Singer, a modern Benthamite, makes clear, this is not an argument for rights.<sup>9</sup> The protection is not absolute, not proof against a differently calculated “higher” good.

Consider also Alasdair MacIntyre’s criticism in *After Virtue*, where he says of natural rights or human rights, “There are no such rights, and belief in them is one with belief in witches or unicorns.”<sup>10</sup> This is an oft-quoted phrase, MacIntyre’s bid for an immortal *bon mot* to rival Bentham’s. All moral argument in modern culture ends, he says, in a first principle or set of principles that are simply asserted, as emotivist theories of ethics correctly claim. The Enlightenment project—the search for objective rational criteria—has failed, and our culture is thus one of moral incoherence, clashing values without fixed, agreed-upon standards. MacIntyre is not pleased by this situation, of course, and has his own route to its resolution; but along the way his analysis allows him to deny the existence of those objective standards we call *rights*, which he regards as fiction.

Another thoroughly destructive criticism of the rights tradition argues that rights cannot rest on any definition of universal human nature because in the real world people do not accept such commonality. Instead, they define their enemies as subhuman, or at least so substantially different from themselves as to deserve little respect; and from this attitude flows all manner of oppressive and brutal treatment. The argument for rights from a common human sympathy fails. In vain the liberal and universalist conscience cries “atrocious”: the protest falls on deaf ears.

But despite these and other critics, I believe the universalists are winning the day, whether by the strength of their intellectual arguments or by the appeal of their alleged “moral fiction.” The anniversary of the Universal Declaration was observed with great appreciation and fanfare. Nations pay lip service to its ideals even while they claim exemptions here and there, and ordinary people everywhere understand the power of natural rights to protect them against the arbitrary force of others. The appeal to a higher law—from Sophocles’ *Antigone* to Gandhi and Martin Luther King, Jr.—has always attracted us more strongly than the limited vision of the positivists. We understand what the phrases *war crimes* or *crimes against humanity* mean, even though no positive law can be brought to bear on them. We may not know exactly why our sentiments run in this direction; indeed, as we have seen, the philosophy or theology of natural law does not commend itself to everyone. But at least inchoately, most of us understand that the word *rights* means an overriding moral claim, not an ideal or a goal or a hope to be aimed at, but a duty to be done now. So the concept of

human rights is popular and politically powerful, even if problematic in its application, and the arguments in its favor command widespread respect.

### **Can the Natural-Law Tradition Ground Non-Human Rights?**

Our task here is not to settle the arguments for human rights but to ask whether these arguments support a claim for *non*-human rights. I doubt they can. Of course, if the critics of human rights are correct, there is nothing to be transferred to nature anyway. But let us assume that they are not, that the case for human rights has been successfully made, and that we are now concerned about its boundaries.

One major distinction between human and non-human rights claims is that human rights have a correlate in duties. It is a failing of contemporary rights language that this correlate is too readily forgotten, that the multiple claims for rights are increasingly indistinguishable from a list of personal wants. It is too easily forgotten that the other side of rights is obligations. If I have a right, as a human being, then so do others, which means that I have an obligation to respect that right in them, at whatever inconvenience to myself. Indeed, Christianity insists that one must go beyond mere respect and actually struggle to guarantee those rights to persons who are deprived of them—hence the Christian zeal for social justice. Reciprocity is always at the core of the claimed right.<sup>11</sup>

Non-human entities have no duties, no obligations, and thus no way to fulfill the reciprocity involved in any claim to rights. They are not moral agents, and their claim (or the claim offered on their behalf) to be rights-holders is accordingly compromised. To be sure, it could also be argued that many humans—babies and the mentally ill, for example—are unable to reciprocate but are still considered to be possessors of unalienable rights. It is correct to resist any attempt to take away those rights, insisting that the only losses they may suffer be strictly limited to their impairment. Thus their freedom may be restricted, but only out of concern for their fundamental dignity.

This “argument from impaired humans” is strong, but it can be answered. Impaired humans have rights because they are incomplete members of the species to whom rights belong. It must be presumed, *prima facie*, that they have full human rights, save only those contra-indicated by their particular condition. Protecting their human rights is a way of protecting our own rights, should we fall into comparably perilous circumstances. The rights belong to us because we are human, regardless of our condition. To call this *speciesism* or *human chauvinism*, as some biocentrists or ecocentrists do, seems to be little more than an arbitrary insult aimed at those whose noble motive is to defend all humanity against the perils of this mortal life.

Aside from the exceptional case of impaired humans, rights cannot be separated from responsibilities. The truth about rights is that they do not belong to solitary individuals as such, because there are no solitary individuals. Grounding rights in the needs of the atomistic self is a fiction. We live in families, communities, and networks of people. Our rights exist in the midst of obligations to others. We are *accountable* for our actions. Natural objects also exist in communities of mutual dependence, but it would be stretching the point to call these *obligations*. There is no accountability in nature. The reciprocity involved is merely instinctual, limited in extent, and indifferent—if not hostile—to other communities. It cannot be compared fairly to the moral structure of human life.

Can the natural-law tradition be extended to cover rights for non-humans? Insofar as that tradition depends on reason as the distinctive human faculty, it is inapplicable to non-humans. This is why Aquinas places the animals below humans on the “great chain of being.” Attempts to argue that animals possess faculties that resemble reason or are in some way parallel to reason have been tenuous and ultimately, I think, not convincing. In any case, it is better to avoid grounding rights in qualities or faculties, lest we inadvertently take away the rights of the impaired humans mentioned above.

Putting aside the argument from reason we may note that the idea of natural law also sponsors the wider concept of a common human nature as the basis of universal rights (at least since Locke). But this concept is of little help to “extentionists.” If anything, it sets human beings apart from the rest of creation as distinctive and different with rights that belong only to them. Some environmental philosophies have responded to this problem by defining the morally significant common element among humans in such a way that it can be found also among non-humans. Such is the case with Bentham’s familiar argument about suffering, which has wide appeal today. The distinctive element, which confers moral considerability, is the ability to suffer, which applies to all sentient beings. But there are enormous practical difficulties with this approach, involving the need to construct elaborate hierarchies of neurological development before deciding which creatures may be eaten or used for human needs. In any case, this line of thought is not even a first cousin of the natural-law lineage, as Bentham himself made perfectly clear.<sup>12</sup>

But let us suppose, to take another popular tack in environmental philosophy, that the morally significant element is not the ability to suffer, much less to reason, but merely to have interests. All living things presumably have an instinctively pursued interest in continuing to live. It is “in their interest,” whether they are aware of it or not. The survival interest is programmed into their makeup.

And—watch the jump here—this interest is a “good” with moral significance, something that we must honor. Of course, in nature, species do not honor each other’s interest in living. But we humans are enjoined to protect the interest of all living things to survive.

Unfortunately for this claim, there is no analogue in the human-rights tradition for it. It is not difficult to see why. There is no obvious reason why interests should automatically confer the right to command respect. We may have an interest in making a lot of money, or in becoming famous, or in not having our feelings hurt, but there is no corresponding reason why others should pay us according to our desires, or praise our names, or spare us criticism. Even if we could make a clear distinction between interest as desire and interest as what is good for us, which is by no means likely, an interest itself would not translate to a right. Much depends on the interest at issue; and, in fact, as we can see from the argument above, environmental philosophers who take this approach are usually talking about one particular interest: the right to live for one’s natural span of time.

Here we do have an analogy to the basic human right to life. But whether and to what degree non-human entities have this same right does not depend on their “interest,” but on whether their life has the same moral worth as human life. Since rights to life conflict among species—as seen in the natural fact of predation, which regularly shortens that natural span—we will be unable to proceed with an assumption of equal worth among all lives. The argument from interests, even the interest in continuing to live, will not lead to rights for non-human nature.

The argument for rights grounded in an interest in living also fails on another ground. Based as it is on natural processes, it makes certain assumptions about a natural life span, at the end of which presumably the right to life expires. In nature, that natural span generally ends when reproduction is no longer possible. But we humans certainly do not accept that reasoning for ourselves, or else our “natural” right to life would terminate at about age forty-five, when we are past reproducing. Nature is through with us then. But, of course, we defy nature here and assert a right to continued life that is *not* based on natural processes. If among humans even this most fundamental right is not based primarily on the workings of nature, it would not be a straightforward “extension” of that right to grant non-human entities a similar right based on their naturally programmed living and reproducing. The human right to life is of a categorically different order.

Moreover, to ground rights in interests, even within the human community, leads us into the current climate where rights are debased and ultimately re-



duced to mere self-interested wants. When our desires are clothed in the absolute language of rights, and when, as is often the case, they cannot be satisfied, we have laid the groundwork for civil strife and have brought the very idea of universal rights into disrepute. To take one notorious example, consider the “right to a paid vacation,” which actually made it into the Universal Declaration as part of the political compromises. Surely this is not an obvious “natural, universal” right but a goal of social policy for those societies where it is possible and appropriate. Calling a paid vacation a right relativizes and cheapens the real fundamental human rights. In short, the more rights we claim, the less credible they are, until the whole enterprise collapses. It is much better to be sparing in our use of the term. From this point of view, then, its extension to animals, trees, and so on, becomes yet another example of the current *prodigality* of rights talk, to use Mary Ann Glendon’s term.<sup>13</sup> It trivializes the word *right* by overusing it.

The so-called “right to a paid vacation” is an example of a relatively recent oddity in the long history of human rights—namely, the appearance of a second class beyond the basic forms of the rights to life and liberty. The first class are often called *negative rights* because they state what must *not* be done to people. The second class, positive rights (not to be confused with the sense of positive rights that means legally established rights), are commonly called *economic and social rights*, and a fair number are specified in the Universal Declaration. They were included as concessions to the Soviet bloc nations, thereby allowing the Communist states to claim success in advancing human rights by pointing to their social achievements and ignoring their violations of the basic negative rights. Most commentators today think it would have been better if the positive rights had been promulgated as goals but not as rights. In fact, the Universal Declaration admits that their fulfillment must be set within “the organization and resources of each State.” Nevertheless, they were presented in the document as rights.

Even though it can be argued that the right to life is threatened by conditions of material poverty, and that, in similar ways, the two classes of rights overlap, nevertheless, negative rights deserve primacy as duties to be fulfilled immediately (Do not kill! Do not enslave!). Combining them with positive rights that cannot be immediately accomplished (the eradication of poverty, the provision of universal quality health care) demotes them, disastrously, to aspirations for which we may have to wait a long time. Rights then become obligations only when we can honor them “without considerable self-sacrifice,” in the diluting phrase of Peter Wenz,<sup>14</sup> which is surely a weaker sense of *right* than what is generally meant by the word.

But perhaps, despite this important distinction, the historical oddity that combined these two classes of rights may be of some use to us here. We could, I suppose, follow this line of reasoning and argue that rights for nature means only the second class of rights—duties toward it for its own well-being. However, that would depend on establishing that the non-human objects in question have the same moral worth as human beings—not as a utilitarian value but in terms of comparable worth in their own right. It would have to be shown that the positive rights ascribed to non-human objects are justified as serving more fundamental negative rights to which these objects are entitled, as human beings would be. But such objects are not like human beings in this respect, so the example of economic and social rights does not take us beyond humanity.

### **The Concept of Intrinsic Value and the Foundation of Rights**

How about pursuing the concept of value as the ground for rights? Can it be plausibly argued that a thing has rights—say, the right not to be destroyed—because it has value?

Note first that value, if it yields anything resembling rights, would do so only in a rather weak sense, since we often must sacrifice something of value for something of greater value. A right implies something that may not be sacrificed except under the most extreme conditions; it is a much stronger term than *value* or *valuable*. Thus, to say that something is valuable is not to say that it has rights.

Second, notice that the valued thing, in order to gain any independent claims against us, must have an objective or intrinsic value, a value that does not depend on our variable and vulnerable appraisal of its worth, lest we cancel its value for something we deem more desirable. This is a quite popular approach among environmental philosophers, who argue that the natural world has an intrinsic value, a value of its own, which humans must honor. But this argument does not work because there is no such thing as intrinsic value, per se. Value requires a valuer. To say that something is “worthwhile” or “worthless” means that someone values it, or does not value it. Valuing something means that a person deems it worthy in some way. Value must be for someone; it does not exist independently or intrinsically.<sup>15</sup>

It is often observed that entities in the natural world have value for other entities there but not necessarily for humans. The prey has value for the predator. There are thus “objective” values—goods, that is— independent of human valuation, though of value for some other entity. But they are not necessarily values or goods that humans are obliged to consider; it would be absurd for us

to count morally the objective good of viruses.<sup>16</sup> Thus they do not yield “rights” against us.

Sometimes the phrase *intrinsic value* is used for values that, to human valuers, are non-instrumental goods, things that we deem valuable “in themselves,” meaning that we value them for themselves, not because they lead to something we prize more highly. This use of intrinsic value does not mean that a thing so valued has rights against us, since its value depends on our appraisal. Indeed, the phrase “intrinsic value-for-that-valuer”<sup>17</sup> strikes me as oxymoronic. My preference would be to use *intrinsic value* to signify a value that belongs to a thing in and for itself alone, but I do not believe that this ultimately is possible because a valuer is always needed.<sup>18</sup>

Perhaps a more familiar argument for intrinsic value is that a non-human entity is (or may be) a *subject-of-a-life*, in Tom Regan’s term,<sup>19</sup> or possesses *conation* in James Nash’s word,<sup>20</sup> and that such an organism’s striving to live and reproduce constitutes the thing’s value for itself. It has, then, a moral claim against us, even a “right” against us, just because it “wants” to live. In most creatures this would be considered non-conscious valuing, which may weaken the case. But the real question is why humans should respect this self-perpetuating drive against our own interests. The fact that an organism strives to live is irrelevant. What does matter is whether it intends us harm, or whether our use of it would, or could, bring harm to us. That a living thing automatically has a right against us just because it is alive does not follow at all, and indeed is obviously false in some clear cases, like pathogens. The presumption that all living things have a right to exist also defies the fact of predation in the animal world.

Eugene Hargrove, who agrees that mere existence does not confer rights, takes another route to establish intrinsic value, one that draws on the philosophical discipline of aesthetics. He argues that experiences of nature, like experiences of art, are aesthetic and “valuable for their own sake, without regard to their use—that is, they are intrinsically valuable experiences.” Nature unspoiled by humans is always beautiful (“positive aesthetics”) because “[it] is itself its own standard of goodness and beauty, making ugliness impossible as a product of nature’s creative activity.” Thus, as beauty is a good, and it is our duty to do good, it is therefore our duty to preserve nature’s beauty and independence from human intervention into its naturally evolving state.<sup>21</sup>

This is an ingenious and careful argument. Hargrove anticipates and discusses the obvious criticism that “beauty is in the eye of the beholder,” arguing that natural beauty is independent of human judgments and applies equally to anything nature creates through its own processes. The problem remains,

however, or at least I think it does, that the term *beauty*, regardless of its origin, is a human value term, and our use of it means only that we find something beautiful. We often differ among ourselves, too; some of us are enthralled by the natural beauty of wilderness, while others regard it as ugly. The aesthetic standard does not seem to be objective at all. Surely the human judgment that regards, say, a smoking volcanic ash field that has destroyed fields and villages, “ugly,” has merit. And there is much in nature’s creative processes that we are not called upon to preserve if we can help it—hence, our passion for the conquest of disease.

Similar to Hargrove, Holmes Rolston argues that a thing must have a prior value of its own, an intrinsic value, if it is able to be valued or appreciated by someone, whose appreciation increases its prior inherent value. Our valuing is interactive with what is already there.<sup>22</sup> I doubt, however, that this distinction solves the problem of independent value, either. The posited prior value cannot mean anything at all unless another values the entity. Kant, famous for the dictum that people must be treated as ends in themselves, says, “Respect [which is what is due those beings that are ends in themselves] always applies to persons only, never to things.” Agreeing with Kant that the respect due people as ends *cannot* apply to non-humans, Gregory Vlastos writes: “Thus of everything it will be true to say: if x is valuable and is not a person, then x will have value for some individual other than itself.... Persons, and only persons, are ‘ends in themselves.’”<sup>23</sup>

The intrinsic-value argument is only slightly different from the interests argument. Thus, when Robin Eekersley writes that self-directed, self-renewing entities, which exist for themselves *therefore* have intrinsic value and hence are “deserving of moral consideration in their own right,”<sup>24</sup> she is merely reworking the interests argument to make it yield intrinsic value courtesy of a *therefore* that does not follow.

It would make better sense to argue that nature is valuable apart from human interests not because it has intrinsic worth, but because there is indeed another valuer, a valuer outside of nature and to whom we owe allegiance—namely, the Creator. This theological argument is perfectly plausible, within certain limits, but it requires me to defend a line of argumentation that cannot be pursued here. However, in passing, I would ask my fellow theists to be candid about the theological claims we think we can make to our secular colleagues. Almost all of us, I am confident, can remember the way theologians and religious lay people who were not fundamentalists dealt with the effect of evolutionary theory on our received theology. Did we not say that evolution must be God’s way of working, that the process that brought humanity to the

forefront, the apex of creation, must be part of God's continuing creation? Indeed, many orthodox Christian theologians still argue in this way, Cardinal Ratzinger among them.<sup>25</sup> But it is no longer fashionable to make such an argument. Instead, it is now "environmentally correct" to say that God must intend the fecundity of the life process, in all its exuberance, and that humans, far from being the end product of evolution, are but a passing stage in God's grand design.

What really has changed? Surely not what God intends, as if this is any more discernible now from our limited perspective than it ever has been. What has changed is our quite secular knowledge of ecology; and far too many Christian theologians are now ready to see the plan of God in this new science, just as they once saw the divine hand in evolution. I believe both ascriptions are fatally flawed, and that theologians should exercise restraint in proclaiming what God is doing in the world. Epistemological modesty of this kind permits me to judge ecological policy simply and directly as a scientifically astute effort to preserve and enhance human life within the supportive and immensely complex natural systems that make it possible.

### Conclusion

With the failure of the intrinsic-value argument, it seems as if extensionism has reached a dead end. Suppose that the principal thesis of the essay be conceded—namely, that the arguments used to defend human rights cannot be transferred to arguments defending rights for nature. Could it not be possible, then, to argue that the two sets of reasons need not be the same, that it would be possible to maintain a "pluralism of values" and thus arrive at rights for nature by another route?

The first observation to make is that following this defense entails abandoning the claim of extensibility. An environmental ethicist would no longer be urging us simply to extend our liberal sympathies from all humans to animals and nature as a logical and inevitable progression. The dead-end would be acknowledged, and another route chosen, one with its own logic.

Second, the new reasoning would have to be investigated to see whether it could bear the freight that the term *rights* commonly carries. There should be *some* consistency among the principles used to claim rights for wilderness, ecosystems, trees, animals, and human beings. There would have to be *some* degree of commonality, or the word would be meaningless. Unfortunately, moral pluralism looks very much like an admission of *inconsistency*. Alasdair MacIntyre, he of the sharp tongue and memorable phrase, calls moral pluralism a euphemism for "an unharmonious melange of ill-assorted fragments."

"In the domain of fact," he writes, "there are procedures for eliminating disagreement; in that of morals the ultimacy of disagreement is dignified by the title 'pluralism!'"<sup>26</sup>

I, too, am skeptical of the argument for this kind of moral pluralism. My preference would be to demand a high degree of consistency in the use of the word *rights*, because those who defend them for natural non-human entities posit claims that are as strong as those for human rights. The analogy is chosen deliberately and its appropriateness must be defended.

But when challenged as to whether they really do mean equivalent rights for nature and people, defenders of rights for non-human entities begin to qualify their statements. They acknowledge that biotic rights do not have true equality with human rights, but are subject to a descending scale of only partial applicability, and can be overridden when truly significant human benefits would otherwise be lost. When faced with the inevitable conflicts that the natural world presents to us—from the grand (May we dam rivers?) to the trivial (May I swat a mosquito?)—the school of biotic rights constructs systems that allow them to rank the competing claims. James Nash uses degrees of "value-creating" and "value-experiencing" to settle the differences.<sup>27</sup> Robin Eckersley ranks by "degree of sentience" and "degree of self-consciousness."<sup>28</sup> Holmes Rolston would have the rights of animals and other natural entities "fade over a descending phylogenetic spectrum."<sup>29</sup> Lawrence Johnson, even while arguing that the interests of all beings at whatever level count morally, allows that "sentience, preferences, and rationality would give us indications of greater moral significance."<sup>30</sup>

These qualifications effectively void the common meaning of the term *rights*, which should protect rights-holders from the depredation of others. Multiply exceptions to the ordinary, human-centered use of the word as it applies to nature, and its appropriateness fairly rapidly disappears. We discover that we are not talking about rights at all but about claims of considerably less force, "duties" perhaps, or "obligations," which depend on our willingness to do our duty, not on an absolute entitlement of the other party.<sup>31</sup> The language of rights, which strongly implies the equality and inviolability of claims, does not work.

Granted, even among humans there is controversy as to the extent that rights are equal and inviolable. There are conflicts of rights that require exceptions to their exercise. I suppose one could argue that nature likewise has rights to which there are exceptions, just like human rights, only the exceptions would be much more common. However, there would still be the problem of a progressive dilution of the strength of rights as the chain of being is descended, to the point somewhere along the line where the word makes little sense. Below the level of the human, the exceptions to rights claims would be made regularly

because they conflict with a higher species, humankind. Exceptions granted to human rights are among humans, that is, among presumptive equals in the matter of rights. The exceptions with respect to biotic rights are made on an entirely different basis, and their presence thus does not argue for the extension of human rights to nature.

Defenders of human rights commonly speak of them as *prima facie* beyond violation, and always with the warning that we must be careful not to weaken the essential point that rights belong to humans, inalienably, just because they are human. According to Wasserstrom, a *right* is something held without the consent of someone else. To have a right is to be entitled to it “at least *prima facie*” without further qualification. “It is the strongest kind of claim that there is.”<sup>32</sup> Rights are “absolute” in the sense that they exist even when the *exercise* of them is disallowed for specific reasons. In such cases it is known that the right is present, and that its non-exercise has to be stringently justified. I do not think that any claim this strong can be made for the non-human world.

What is left to us, when the claim for non-human rights is disallowed, is to ask why we value nature—a very different (and much better) approach from deciding first that it has rights and acting accordingly, and from asserting that it has intrinsic value that must be honored. And, of course, I do find most of the natural world worth valuing. There are good reasons for doing so. But arguments derived from human rights are not among them. A good case can be made for valuing the natural world, but it must stand on its own merits, its own bases, and not claim support from the language of human rights.

## Notes

1. For example, see Robert McKim, “Environmental Ethics: The Widening Vision,” *Religious Studies Review* 23, 3 (July 1997): 245–50, who calls this development *extensionism* and assumes it is the best and increasingly dominant development. Earlier examples include Peter Singer, who later repented of rights talk. See *Animal Liberation* (New York: New York Review, 1975), 7–9; Christopher Stone, “Should Trees Have Standing? Toward Legal Rights for Natural Objects,” in *People, Penguins, and Plastic Trees*, ed. Christine Pierce and Donald VanDeVeer (Belmont, Calif.: Wadsworth, 1995), 113–25; and Roderick Frazier Nash, *The Rights of Nature: A History of Environmental Ethics* (Madison: University of Wisconsin, 1989), 3–86, 199–213, and *passim*. Still, pace McKim, it is worth noting that the editor of *Environmental Ethics* calls the attempt to establish rights for nature “misguided” and the use of the term *rights* in environmentalism a case of mere emotivism. Eugene C. Hargrove, *Foundations of Environmental Ethics* (Englewood Cliffs, N.J.: Prentice-Hall, 1989), 127, 177–78. Hargrove notes the frequency of articles about rights in the first five years of the journal’s publication, suggesting that thereafter the topic subsequently tapers off. Furthermore, Hargrove concedes that the effort to establish rights for non-human natural entities generally failed: “Weak Anthropocentric Intrinsic Value,” *The Monist* 75, 2 (April 1992): 183, 203, fn. 2, 3.

2. E.g., Cicero: “There is indeed a law, right reason, which is in accordance with nature, existing

in all, unchangeable, eternal ... for all nations and for all time." As quoted in *The Individual and the Political Order*, ed. Norman E. Bowie and Robert L. Simon (Lanham, Md.: Rowman and Littlefield, 1998), 44.

3. A subtler form of this argument says that the natural law tradition, which emphasized *duties* that all people have to fulfill their common human nature, became a natural *rights* tradition from Locke onward, when those properties that are natural to us form the basis of *rights*, entitlements, which we may demand as a matter of justice. A. I. Melden, ed., *Human Rights* (Belmont, Calif.: Wadsworth, 1970), 2; and H. L. A. Hart, "Are There Any Natural Rights?" in Melden, *Human Rights*, 66–68.

4. Melden, *Human Rights*, chap. 1.

5. "Justice and Equality," in Melden, *Human Rights*, 94–95.

6. "Rights, Human Rights, and Racial Discrimination," in *ibid.*, 105.

7. "Anarchical Fallacies," in *ibid.*, 32. Bentham's tract was written against the French *Declaration of the Rights of Man*, which he saw as a threat to government everywhere, an invitation to anarchy, thus "terrorist language."

8. Thus Bentham argues that all rights can be abrogated or not, depending on whether that would be "upon the whole advantageous to the society." *Ibid.*, 32. Some rule utilitarians may argue that a rule protecting human rights gives maximum social utility in the long run; but this argument does not defend human rights for their own sake.

9. In *Animal Liberation*, Singer speaks of different rights for different creatures (3). But the word *rights* is not critical to his argument, which is based on equality of consideration. In "The Fable of the Fox and the Unliberated Animals," *Ethics* 88, 2 (January 1978): 122, he admits a mistake in casually using rights language for non-humans, a mere "concession to popular moral rhetoric."

10. *After Virtue: A Study in Moral Theory* (Notre Dame: University of Notre Dame, 1981), 67.

11. H. L. A. Hart argues that although we may have *duties* not to harm other entities, such as animals, that does not mean they have a *right* not to be harmed, only that it would be wrong to harm them. A right results from a transaction between parties. "Are There Any Natural Rights?" in Melden, *Human Rights*, 66. Hart argues in this essay that there is one basic natural right, common to all people and requiring special conditions for its limitation, and that is to be free.

12. Mary Anne Warren agrees with the main thesis of this essay, that the logic of human rights cannot be extended to natural objects; but she nevertheless wants to award rights to sentient creatures because they can feel pain. But these rights turn out to be so weak that they cannot stand against serious human interests, and scarcely deserve to be called *rights* at all. And she will not extend rights, even in this weak sense, to non-sentient entities such as trees, though she says rather wistfully that she would like to see a good argument for doing so! "The Rights of the Non-Human World," *Environmental Philosophy*, ed. Robert Elliot and Arran Gare (University Park, Penn.: Pennsylvania State University Press, 1983), 109–34.

13. Mary Ann Glendon, *Rights Talk: The Impoverishment of Political Discourse* (New York: Free Press, 1991), xi.

14. Peter Wenz, *Environmental Justice* (Albany: S.U.N.Y. Press, 1988), 114.

15. Given the attention this subject has received, it probably seems presumptuous of me to dismiss it so brusquely. For example, an entire issue of *The Monist* 75, 2 (April 1992) is devoted to its complexities. But several of the essays here support my skepticism about intrinsic value for nature, and none, in my judgment, succeeds in establishing a value wholly independent of a valuer. For a classic essay largely supporting the view I argue here, see H. Richard Niebuhr, "The Center of Value," in *Radical Monotheism and Western Culture* (New York: Harper and Row, 1960), 100–113.

16. John O'Neill, "The Varieties of Intrinsic Value," *The Monist* 75, 2 (April 1992): 119, 129–32.

17. Robert Elliot, "Intrinsic Value, Environmental Obligation and Naturalness," *The Monist* 75, 2 (April 1992): 142.

18. Of all the articles in the issue of *The Monist* cited in the preceding notes, defending and criticizing the concept of intrinsic value in various ways, perhaps the one by Eugene Hargrove, "Weak Anthropocentric Intrinsic Value," 183–207, comes closest to the position argued here, though not without some relatively minor differences. See, especially, pages 190–91.



19. Tom Regan, *The Case for Animal Rights* (Berkeley: University of California, 1983), 243–48. “Subjects-of-a-life” are all capable of belief, desire, memory, a sense of the future, and emotions such as pleasure or pain; and all accordingly have equal inherent value. But, he says, even if natural objects do not fit this definition, they, too, can have inherent value; but it will be difficult to establish this, a philosophical task not yet accomplished. Cf. pages 361–63.

20. James A. Nash, *Loving Nature* (Nashville: Abingdon, 1991), 178–79.

21. Hargrove, *Foundations of Environmental Ethics*, 168–74, 184, 192, 195.

22. Holmes Rolston III, *Environmental Ethics: Duties to and Values in the Natural World* (Philadelphia: Temple University Press, 1988), 112–16. See also Rolston’s “Are Values in Nature Subjective or Objective?” in Elliot and Gare, *Environmental Philosophy*, 135–65, where his admirable fairness in presenting the views he is opposing is likely to incline a reader against his position.

23. Immanuel Kant, *Critique of Practical Reason*, trans. Lewis White Beck (Indianapolis: Bobbs Merrill, 1956), 79; Vlastos, “Justice and Equality,” in Melden, *Human Rights*, 91–92. Kant allows that emotion can be aroused by mountains, stars, or animals, but “All of this, however, is not respect.” Ibid.

24. Robin Eckersley, *Environmentalism and Political Theory: Toward an Ecocentric Approach* (Albany: S.U.N.Y. Press, 1992), 61.

25. Joseph Cardinal Ratzinger, *In the Beginning: A Catholic Understanding of the Story of Creation and the Fall*, trans. Boniface Ramsey (Grand Rapids: Wm. B. Eerdmans Press, 1996), 50–58.

26. MacIntyre, *After Virtue*, 10, 30.

27. Nash, *Loving Nature*, 176, 181.

28. Eckersley, *Environmentalism and Political Theory*, 57. To her credit, she admits that she is uncomfortable with the language of rights for non-human nature.

29. Rolston, *Environmental Ethics*, 48.

30. Lawrence E. Johnson, *A Morally Deep World* (Cambridge: Cambridge University Press, 1993), 200.

31. Cf. endnote 11.

32. Wasserstrom, “Rights, Human Rights, and Racial Discrimination,” 98–99.