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Liberty of Ecological Conscience

Aaron Lercher*

Our concern for nonhuman nature can be justified in terms of a human right to liberty of ecological conscience. This right is analogous to the right to religious liberty, and is equally worthy of recognition as that fundamental liberty. The liberty of ecological conscience, like religious liberty, is a negative right against interference. Each ecological conscience supports a claim to protection of the parts of nonhuman nature that are current or potential sites of its active pursuit of natural value. If we acknowledge the fallibility of each conscience in its pursuit of genuine natural value, a policy of indefinitely extensive conservation can be justified. Destruction of an object of current or potential natural value is like destroying a church, mosque, temple, or other holy place. This justification for environmental conservation is analogous to the standard justification for individual negative rights, as upheld by the liberal tradition of Locke, Mill, and Rawls.

I. OUR ECOLOGICAL CONSCIENCES

It is plausible to think that if we arrived at a clear and persuasive account of what is valuable in nature, it would justify conservation and show how to improve the human relationship with the rest of nature. Of course, it would be good to get it right. But in this paper, I argue instead that to some extent it may not matter. The fallibility of our ethical understanding itself justifies conservation and improvement of the human relationship with nature.

One (frankly anthropocentric) way of discussing the value of nature is to ask: Is there a human right to the pursuit of natural value? But we do not seem able to answer this question without also explaining what natural value is, so we do not seem to have gained any perspective on the central issue of environmental ethics by talking about a human right to natural value.

We can, however, look at the adjacent issue of *interference* with the pursuit of natural value. In this paper, I assume there is a human right against interference with pursuit of natural value. (At the end of the paper, I return to the contrast between rights “to” and rights “against.”) I argue that such a negative right against interference in the pursuit of natural value is a reasonable extension of religious liberty. Destruction of a part of nature actually or potentially of value to human beings is analogous to destruction of a church.

This argument begins by considering the human capability of having an idea of natural value and pursuing this as a human end. I call this capability our “ecological conscience.” It is reasonable to assume that each of us has an ecological conscience. In other words, each of us is capable of understanding

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and learning from nature that there are valuable aspects of nature and each of us is capable of acting on this understanding. But for different people there are varying degrees to which this capability is active.

We can also reasonably assume that each human being can develop his or her ecological conscience by learning more about nature. That is, we assume that the ecological conscience of each human being is *fallible*, that each human being recognizes the fallibility of his or her judgment about value in nature, and is interested in correcting his or her mistakes. These assumptions, I believe, are necessary for any environmental ethical view. They indicate that we can learn from nature about how rightly to act with respect to nature, that we are interested in doing so, and that we might be wrong about doing so.

My argument in this paper begins with detailed discussion of a case in which I make two simplifying assumptions. First I look at a case in which all the human beings involved have active ecological consciences and these consciences are the major motivating factor of these people. Actually, most ecological consciences are not very active. But I assume that everyone is capable of enlarging the activity of his or her ecological conscience by learning from nature. As we learn about natural value and correct our fallibly mistaken and partial views of what is valuable in nature, human beings can find natural value in an indefinitely great number of different natural objects. Our ethical understanding is fallible, but we do not know what aspects of nature will offer the opportunity to correct our mistakes. To an indefinitely wide extent, then, conservation of nature is justified as rational for each of us.

II. ACTIVE ECOLOGICAL CONSCIENCES

Consider three people who have active, but different, ecological consciences. Each of them represents a stereotypical ecological attitude, so let us call them characters, as in a story. One is a hunter, another an animal advocate, and yet another is a wildlife manager for a park in which the hunter hunts deer. Each of these has a definite idea about what aspects of nature are valuable.

Since their consciences are active, for each character, his or her ecological conscience is tied to practices, which are tied to the aspects of nature to which each conscience is directed. In the case of the hunter, he or she seeks a perfected experience of being a hunter. That is, the hunter cultivates the virtues of patience, stealth, and accuracy that a predator requires. Of course, the cultivation of these qualities is confirmed by a kill. However, for this idealized character of a hunter, the trophy is not the hunter's goal, as much as it is to become a really good predator, and in that way to embrace the forest and a connection with the prey that is as intimate as life and death.

The animal advocate considers the hunter's behavior to be cruel and unfair. The hunter is an animal himself or herself, but guns give the hunter an unfair technological advantage. Unlike other predators, the hunter could choose not

to hunt, and so the choice to hunt is cruel. The animal advocate's goal is to put all animals on an equal footing. Human exclusion of competing predators is unfair, so wolves should be reintroduced to the forest. (I assume that wolves have been hunted and driven away from the forest.)

To the wildlife manager, the animal advocate's focus on the well-being of a few animals is a distraction from the proper aim of preserving the integrity of the forest ecosystem. The wildlife manager is not interested in predatory virtues. Deer threaten certain plant populations unless their numbers are controlled. The animal advocate wants to protect some land with a fence, but that does not help either the deer or the ecosystem on which the deer depend. Wolves are part of the answer, but hunting is more popular than wolves. It is a good political compromise to use hunting to control deer population, and it is immediately effective. Hunting is haphazard, however, since hunters tend to stay close to roads. The solution is commercial hunting, spread out to kill deer systematically.

Each of these characters, then, has a characteristic way of seeking the good in nature as he or she sees it. Each has an ecological conscience and acts on it. The hunter seeks the predatory virtues and to achieve the predator's embrace of nature. The animal advocate seeks the well-being of all animals, and a fair treatment of animals. The wildlife manager seeks to preserve the integrity of the forest ecosystem and is willing to take the most efficient means to this end.

But we have assumed that our ecological consciences are fallible and can develop as we learn more about nature. Thus, these characters' understanding of the value of nature is not static. Aldo Leopold says that the "first precaution of intelligent tinkering" is "to save every cog and wheel."¹ But what is intelligent tinkering? It may not be possible to define it without getting caught in the circle in which intelligence preserves what is good in nature and preserving what is good in nature is intelligent. Nevertheless, it is clear that Leopold's metaphor portrays the human relationship with nonhuman nature as actively developing in response to new knowledge about what is valuable.

The hunter may learn to think about the beauty and other good qualities of animals besides deer. In particular, the hunter wants to perfect the predatory virtues of patience, stealth, and accuracy. So the hunter can learn from wolves, if these are reintroduced to the forest. For this to happen, the animal advocate may be involved. But we assume only that the hunter learns to deepen his understanding of the predatory virtues from observing wolves, and not from hearing from the animal advocate. Perhaps the animal advocate points to something not previously noticed, but that is not essential.

Animal advocates can learn about predation. As the animal advocate learns to appreciate this aspect of nature, it may turn out that the hunter's activities

¹ Aldo Leopold, *A Sand County Almanac: With Essays on Conservation from Round River* (New York: Ballantine, 1970), p. 188.

are a good example of the predatory virtues of patience, stealth, and accuracy, especially if the hunter has given up technological overkill. Identifying with the wolf and mimicking its behavior is a way of learning what the wolf is really like. At least theoretically, the animal advocate can learn through observation how hunting is not inherently wrong, even if it is usually done wrongly.

Both the hunter and the animal advocate could learn that there is more to the forest than deer and wolves. The wildlife manager can make this point, but we need only assume that hunters and animal advocates can learn it from observation of nature. But the wildlife manager's technique may in turn be improved by treating forest animals as more than parts of a ecological mechanism. Again, the hunter and animal advocate may point this out, but we need only assume that the wildlife manager can learn this from observation.

Since each character has a fallible ecological conscience, none of the characters knows whether he or she will need the insight provided by the aspects of nature beloved by the others. Since each recognizes his or her fallibility, and is interested in improving his or her ethical understanding, each has an interest in preserving the opportunities to develop his or her conscience. We have seen that the wolves admired by the animal advocate may be precisely what the hunter needs to learn from, in order to develop the hunter's own sense of natural value. The hunter's predatory virtues may, conversely, be precisely what the animal advocate needs to learn from, in order to advance the animal advocate's own sense of natural value.

Now we can see that a policy of toleration of ecological conscience is rational for each character. Toleration of the liberty of ecological conscience is a policy of restraint from interference in the active ecological consciences of the others. Each character has an interest in tolerance because he or she has an interest in preserving opportunities for learning and revising his or her ethical understanding.

Because an active ecological conscience depends on preserving the aspects of nature to which the conscience is devoted, tolerance by any of the characters demands preservation of the aspects of the nature to which other characters' consciences are devoted. Toleration thus demands wider preservation than any one individual conscience may require.

How far might such toleration extend? Not necessarily as far as we might want. It extends only as far as aspects of nature that might be recognized as valuable by someone. But we can extend it by stating toleration as a general policy, applying tolerance to developing ecological consciences. Since we assume that each ecological conscience is fallible and capable of extension, tolerance of active and developing ecological consciences requires a general policy that we should preserve a natural object if it provides what Bryan Norton calls "an occasion for examining or altering felt preference[s]."² That is,

²Bryan Norton, *Why Preserve Natural Variety?* (Princeton: Princeton University Press, 1987), p. 10.

toleration of ecological consciences as a general policy requires preservation of objects with what Norton calls "transformative value."

III. CONFLICTING INTERESTS

Thus far, the hunter, the animal advocate, and the wildlife manager have each found that it is rational to agree not to interfere with the others' pursuit of natural value. Thus, conservation of nature can be justified to an indefinitely wide extent in order to offer scope for the exercise of a human capability of understanding and learning about natural value and of acting on this understanding. But this view is frankly anthropocentric, and it may come into conflict with the value we may consider to belong intrinsically to nonhuman animals.

Suppose, for example, that the three characters are shipwrecked on a barren island, together with a dog.³ The island provides no food, but the three have managed to save just enough food to last a month until the next ship is due to arrive at the island. The animal advocate wants to save the dog's life. Meanwhile, however, the wildlife manager is calculating the cost in food of keeping the dog alive. While the hunter has sympathy for the dog, the hunter does not let that sympathy overrule the demands of survival.

This case raises a theoretical problem for any anthropocentric view. But it is not so clear that this theoretical difficulty translates into a difficulty in practice. If there is not enough food, then it is rational for the animal advocate to sacrifice the dog, despite the animal advocate's sympathy. (I dismiss the option of saving the dog by killing another human being.) But human beings and dogs are actually rather flexible in their need for food, so the scarcity in this example is improbable. Nevertheless, natural value is generally judged to depend on scarcity, so scarcity is not irrelevant.

Since it turns out that ethical judgment in the shipwreck case depends on the degree of scarcity, let us consider a case in which there is a trade-off between unique (maximally scarce) objects of value. Suppose, then, a bacteriologist is deeply engaged in study of a particular species of bacteria. Only that particular species has the characteristics that the bacteriologist seeks to understand. Unfortunately, this species of bacteria grows parasitically on the bacteriologist's baby daughter, and it is killing her. The bacteriologist has an antibiotic that will kill the bacteria, wiping out the species and destroying the bacteriologist's life work.

This case pits a uniquely valuable predator against a uniquely valuable prey. We need not and should not suppose that the right against interference with the pursuit of natural value is absolute. But that is not surprising. Presumably the bacteriologist should save his daughter. The bacteriologist has many reasons

³ This example is adapted from Michael Pritchard and Wade Robison, "Justice and the Treatment of Animals," *Environmental Ethics* 3 (1981): 55–61.

to favor his daughter over the bacteria. I think it is unlikely that we will find an illuminating example pitting the value of human life against the value of nonhuman life, but I am not certain.

This example does not address the theoretical problem, and my response relies on my ethical intuition in this particular case. Such intuitions are fallible and subject to revision as a result of theoretical reflection and comparison of cases. Ethical inquiry is based on an evidence base that changes as some evidence is found to be unreliable, and new evidence is found. Nonanthropocentric ethical views will have similar difficulties in weighing the values of competing species, or the values of individual organisms against the values of their ecosystems. The account of natural value in this paper shows that there is a broad area in which familiar anthropocentric ideas can guide us. But the best we can do in some cases is to recognize in our theorizing that ethical theories and intuitions are fallible.

Let us now consider a case involving two nonhuman objects of natural value. Suppose that there are two endangered species that occupy the same ecological niche in similar ecosystems in different parts of the world. The remaining habitat of one of the endangered species is about to be destroyed, leaving that species extinct. We can, however, transplant the remaining members of the species whose habitat is about to be destroyed into the habitat of the other endangered species. Since they occupy the same niche, the transplant will survive, but at the cost of the other endangered species.

Is there any preference as to which species to save? I think there is. Both species are presumed to be equally valuable. But since transplanting the species is interference with the human right of those who esteem the current occupant of the habitat, it is wrong. Of course, whoever destroys the habitat of the species requiring transplant also violates the rights of those who esteem it, but that is a different issue.

IV. RAWLS AND NEGATIVE RIGHTS

In this paper, I have followed a well-trodden path. A familiar argument against interference with liberty of conscience is based on the fallibility of our religious beliefs.⁴ Many human beings see their ultimate purposes and ends as described by their religions, but they disagree sharply about religious matters they care so deeply about. But each of us is fallible in our knowledge of religious truth. Thus, it is rational for each of us to agree not to interfere with the religious beliefs and practices of others, in order to preserve some basis for

⁴ This argument is found in John Locke, *Letter Concerning Toleration* and John Stuart Mill, *On Liberty*, chap. 2. John Rawls' versions of the argument are in *A Theory of Justice* (Cambridge: Harvard University Press, 1971), pp. 205–11 (sec. 33) and *Political Liberalism* (New York: Columbia University Press, 1996), pp. 310–14 (lecture 7, sec. 5).

learning and possibly changing our minds. Further, it is plausible that religious belief and practice are supported by toleration of diverse beliefs and practices. In this paper, this traditional argument against interference with liberty of religious conscience is adapted to defend liberty of ecological conscience.

Since John Rawls represents this liberal tradition now, it is useful to note how the ecological conscience fits with Rawls' influential theory of justice. Rawls assumes that persons have two fundamental "moral powers," the second of which is the ability to frame an idea of one's final ends and aims, and how these fit into the world.⁵ Included among such ideas of final ends and aims are religious ideas. In the original position, the parties agreeing to the social contract do not know their own ideas of their final ends and aims. Thus, Rawls argues, it is rational for them to agree to refrain from interference in religious practice and belief. Rawls' theory can be extended in a reasonable way by stipulating that the ecological conscience is part of the second moral power.⁶ Laws protecting endangered species and treasured lands then should be placed among the "basic structure" of ethically fundamental institutions.

In this paper, I emphasize the *fallibility* of ethical judgment, whereas Rawls' argument is based on the hypothesis of the *ignorance* of the parties of the social contract. The methodological context of Rawls' arguments is his constructivism, which allows for ethical judgments to be erroneous in a practical sense without being false.⁷ If instead we treat all ethical judgments realistically as true or false, we can arrive at ethical judgments by whatever method is appropriate. Thus, I believe it is appropriate to appeal to ethical intuitions in response to cases that pit human lives against the value of nonhuman nature. Rawls' methodology, however, makes it complicated for him in such cases. Nonhuman animals are unable to join the discussion in the original position. But human beings in other societies likewise lack such representation and according to Rawls this lack does not leave them without ethical significance in the hypothetical deliberation.⁸ Thus, we should not hastily reject the possibility of extending Rawls' contract to an agreement to protect nonhuman nature, particularly if the parties' ecological consciences are built into our reasoning from the original position.

⁵ Rawls, *A Theory of Justice*, pp. 12, 19; Rawls, *Political Liberalism*, pp. 19, 81, 103–04, 302.

⁶ Brent Singer makes the same point in different terms in "An Extension of Rawls' Theory of Justice to Environmental Ethics," *Environmental Ethics* 10 (1988): 217–31.

⁷ In Rawls, *Political Liberalism*, pp. 90–99, Rawls distinguishes the practical claims of his theory from theoretical claims to ethical truth. Doing so serves to distinguish his theory as purely "political" rather than comprehensive. In a constructive treatment of ecological value, we need a point of consensus among different claims about the ethical truth concerning nature. I suggest we can find such consensus on the assumption of a capability of recognizing natural value.

⁸ John Rawls, *The Law of Peoples* (Cambridge: Harvard University Press, 1999). Martha Nussbaum, *Frontiers of Justice: Disability, Nationality, and Species Membership* (Cambridge: Harvard University Press, 2006), discusses the problems of membership in Rawls' contractual group.

Tradition and the experience of religious conflict support the historical priority of a right *against* interference with liberty of conscience. Rights against interference are also conceptually prior to rights to any particular thing.⁹ In this paper, I have argued that a negative right exists against interference with our ecological consciences, and I have argued that it can justify conservation of nonhuman nature. But in order to make the argument that rights of some kind exist, such as environmental rights, the strength of the argument depends on how these rights are construed. Tim Hayward argues that environmental rights are equally worthy of recognition in state constitutions as other well-recognized rights.¹⁰ But Hayward wavers on whether environmental rights are positive or negative. I suggest that it is stronger to argue that environmental rights are equally worthy of recognition as the negative rights with the best status of recognition, such as that of religious liberty.

The right to any particular religious practice follows from the right against interference with liberty of conscience. The conclusion in this paper goes somewhat further than liberty of conscience, since we assume that each ecological conscience is actively engaged with the aspects of nature to which it is devoted. But it is often argued that religious toleration fosters religious practice. I claim analogously that a policy of toleration of ecological conscience is a basis for supporting natural preservation. Religious liberty protects churches, mosques, temples, and other holy places. Analogously, liberty of ecological conscience protects nonhuman nature.

Rather than hoping to find the correct human stance toward the rest of nature, the argument in this paper starts only with the assumption that each character is capable of *some* stance toward nature. Rather than attempting to state the proper human teleology with respect to the rest of nature, the argument here assumes only that each human is *capable* of a conception of the good of nature. From these assumptions we arrive at the conclusion that we ought to support a policy of preserving an indefinitely extensive portion of nature.

⁹ H. L. A. Hart, "Are There Any Natural Rights?" *Philosophical Review* 64 (1955): 175–91, argues that the "general" or defensive rights of freedom from interference (the "natural" rights referred to in the title of the paper) are needed in order to justify "special" rights that do interfere with the freedom of others.

¹⁰ Tim Hayward, *Constitutional Environmental Rights* (Oxford: Oxford University Press, 2005).