

♦ *The Rights of Nature* ♦

A History of
Environmental
Ethics

RODERICK FRAZIER NASH

The University of Wisconsin Press

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FOR HONEYDEW

♦
liberator of marmots
and dancer with the elk

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♦ Foreword ♦

The Rights of Nature is a pathbreaking work on a timely subject by an eminently qualified scholar. The deepening of environmental consciousness represents a trend of the first importance in recent American thought and culture. This consciousness is rooted in the American past, of course, as the influence of such figures as Henry David Thoreau, John Muir, and Aldo Leopold makes plain. But in recent decades it has risen to an unprecedented level of cultural visibility, intellectual sophistication, and political influence.

Roderick Nash is particularly well qualified to explore the intellectual roots and development of environmental ethics. His 1967 work *Wilderness and the American Mind* is widely recognized as a classic treatment of the subject. And there is a special appropriateness in the appearance of *The Rights of Nature* under the imprint of The University of Wisconsin Press, since Professor Nash earned his doctorate at Wisconsin under Merle Curti, a founder of the field of American intellectual history. One of Nash's early published works was a short essay on "The Wisdom of Aldo Leopold" that appeared in the *Wisconsin Academy Review* in 1961.

The Rights of Nature is not only based on deep research, vigorous argument, and comprehensive coverage. It also reflects the perspective of a person who is himself firmly committed to environmentalism as an ethical imperative and who has acted on this imperative. Nash played a leading role in shaping the local response to the disastrous Santa Barbara oil spill of 1969, for example, and was the author of the widely publicized *Santa Barbara Declaration of Environmental Rights*. In future years, I suspect, *The Rights of Nature* will be read not only as a work of impeccable intellectual history, but also as a valuable primary source illuminating the ideological perspective of advanced environmentalist thinkers and activists in the closing years of the twentieth century.

Professor Nash's view of the widening circle of environmental awareness, and of the relationship of radical environmentalism to the larger evolution of liberal theory, natural-rights doctrine, and ethical consciousness in general, will provoke discussion and perhaps disagreement. Similarly, the book will stimulate reflections on the complex problems that arise when the impulse to protect and cherish the natural environment comes in conflict with other social values and competing claims of rights. The debate over whether anthropo-

centrism is as deplorable as many of the environmentalist thinkers considered by Nash apparently believe will doubtless be intensified by this work. But all those drawn into this discourse will, I feel confident, recognize *The Rights of Nature* as an important and seminal work by a gifted intellectual historian.

From the first, the Wisconsin Series in the History of American Thought and Culture was conceived as having a dual purpose: first, to offer the best and most original scholarship in the fields of American intellectual and cultural history; second, to contribute in meaningful and thoughtful ways to the ongoing discussion of public issues of contemporary interest and importance. *The Rights of Nature* fulfills both of these objectives admirably. I welcome it as a distinguished addition to the series.

Paul S. Boyer

♦ Preface ♦

I grew interested in the history of what came to be called "environmental ethics" as a graduate student assistant in the early 1960s when I began to collect and order the papers of Aldo Leopold in the archives of the University of Wisconsin-Madison. It was in Madison, in the 1930s, that Leopold began to formulate his land ethic. When he died in 1948, few outside of a small circle of conservationists knew of his writings. The dramatic growth of scholarly and popular interest in his work since 1965 is one indication of changing priorities within American civilization. After considering a biography of Leopold, I left that project to others,¹ preferring to concentrate on one of Leopold's primary interests: the significance of wilderness in American history.² Now it is exciting to return to a consideration of the history and implications of what I take to be one of the most remarkable ideas of our time: the belief that ethical standing does not begin and end with human beings.

The approach of this book to its subject matter requires a prefatory note. The process of jury selection theoretically weeds out persons with strong feelings about the case to be tried. The opposite is true in scholarship. It would be hard to find anyone qualified to write about recent American environmental history who did not have strong personal opinions about the controversial matters it concerns. I admit to such beliefs, but let me declare my intention in what follows to be an historian rather than a partisan. Although I have done so in other writings,³ I will not here advocate the extension of ethics to include the natural world. I will not split logical hairs with the philosophers and theologians nor biological ones with scientists. It seems to me that the first responsibility of an historian of ideas must be to report accurately what was thought in the past. If those thoughts strike some readers as illogical, biased, emotional, unreasonable, or just plain wrong, the fault, if any, is that of the thinkers under discussion. In *The Rights of Nature* I am not trying to write philosophically about environmental ethics or natural rights or liberalism; I am not prescribing ways to think about the rights of human beings balanced against those of nature. I am not endeavoring to find universally acceptable definitions of tough words like "nature," "liberalism," and "rights." Many of the people I discuss do offer such prescriptions and definitions, but their ideas are not necessarily

my ideas—or at least that is not the issue of concern in this book. I am, then, less concerned about whether a particular ethical position is politically responsible, philosophically correct, or scientifically valid than I am with the fact that it was expressed, the context in which the expression occurred, and its consequences for further thought and action. The biblical account of creation and the idea that the world is flat, for example, have been largely discredited, but they are vitally important to the historian of ideas. Of moment, after all, is not whether an idea won or lost, but how it functioned in history.

A history of environmental ethics necessarily involves many disciplines, some that transcend my professional competence. I am grateful to the philosophers, theologians, lawyers, and ecologists who have read portions of what follows and provided important suggestions for documentation and analysis. Among them, let me express special thanks to Thomas Attig, Richard Baer, Bill Devall, Edward Grumbine, Eugene C. Hargrove, J. Donald Hughes, Ernest Partridge, John Rodman, Holmes Rolston III, Donald Scherer, Paul Shepard, Kristin Shrader-Frechette, Christopher D. Stone, Michael Tobias, E. O. Wilson, and Donald Worster. J. Baird Callicott has supported this project for years, most recently in connection with his editorship of *Companion to A Sand County Almanac* (1987), which contains an abridgment of Chapters 2 and 3. George Sessions, who, with his publication of the newsletter *Ecophilosophy*, has done more than anyone to organize and clarify thinking about environmental ethics, provided continual encouragement. Indeed it was Sessions's 1980 observation that "a philosophically perceptive history of the shift from 'conservation' to 'ecological consciousness' in the 1960s and 1970s has yet to be written"⁴ that led me into the often turbid seas of this subject. If I have not fully satisfied his plea for philosophical perception, I hope I have at least clarified some of the subject's main historical parameters.

My colleagues at the University of California, Santa Barbara, especially Daniel Botkin, Ray Ford, Nancy McCagney, Bill Powell, Arent H. Schuyler, and Inez Talamantez, and my friends Ron Hayes and Rick Smith, have offered helpful and repeated criticism. Bruce Stenslie contributed valuable research assistance and draft writing, particularly for Chapter 6. Alice Van Deburg and Anne Knowles of the University of Wisconsin Press took a personal as well as a professional interest in the quality of the manuscript and made many helpful suggestions. Marylee Prince's magic word processor accomplished the herculean task of keeping track of my revisions, addi-

tions, and second thoughts. A month's residency at the Rockefeller Foundation's Bellagio Study and Conference Center in Italy facilitated the start of this project. The dedication addresses my debt to Lindamel Murray, whose commitment to the rights of nature cheered and encouraged me along the scholarly trail.

Santa Barbara, California
May 1987

♦ THE RIGHTS OF NATURE ♦

♦ PROLOGUE ♦

*Ethical Extension and
Radical Environmentalism*

How narrow we selfish, conceited creatures are in our sympathies! How blind to the rights of all the rest of creation!

—John Muir, 1867

I believe in the rights of creatures other than man.

—David R. Brower, 1971

A kind of ultimate democracy is practiced. Plants and animals are also people, and . . . are given a place and a voice in the political discussions of the humans. They are "represented." "Power to all the people" must be the slogan.

—Gary Snyder, 1972

What is crucial to recognize is that the human capacity for empathy and identification is not static; the very process of recognizing *rights* in those higher vertebrates with whom we already empathize could well pave the way for still further extensions as we move upward along the spiral of moral evolution. It is not only the human liberation movements . . . that advances in waves of increased consciousness.

—Laurence Tribe, 1974

What is proposed here is a broadening of value, so that nature will cease to be merely "property" and become a commonwealth. . . . If we now universalize "person," consider how slowly the circle has enlarged . . . to include aliens, strangers, infants, children, Negroes, Jews, slaves, women, Indians, prisoners, the elderly, the insane, the deformed, and even now we ponder the status of fetuses. Ecological ethics queries whether

we ought to again universalize, recognizing the intrinsic value of every ecobiotic component.

—Holmes Rolston, 1975

We must constantly extend the community to include all. . . . The other beings—four-legged, winged, six-legged, rooted, flowing, etc.—have just as much right to be in that place as we do, they are their own justification for being, they have inherent value, value completely apart from whatever worth they have for . . . humans.”

—Dave Foreman, 1987

This book concerns the history and implications of the idea that morality ought to include the relationship of humans to nature. Focusing on American intellectual history, it traces the relatively recent emergence of the belief that ethics should expand from a preoccupation with humans (or their gods) to a concern for animals, plants, rocks, and even nature, or the environment, in general. One way to think of this is as an evolution of ethics from the natural rights of a limited group of humans to the rights of parts or, in some theories, all of nature. The use of “rights” in this connection has created considerable confusion. Suffice it to say, for now, that while some use the term in a technical philosophical or legal sense, others take it to mean that nature, or parts of it, has intrinsic worth which humans ought to respect.

From this perspective one can regard environmental ethics as marking out the farthest limits of American liberalism. The emergence of this idea that the human-nature relationship should be treated as a moral issue conditioned or restrained by ethics is one of the most extraordinary developments in recent intellectual history. Some believe it holds the potential for fundamental and far-reaching change in both thought and behavior comparable to that which the ideal of human rights and justice held at the time of the democratic revolutions in the seventeenth and eighteenth centuries.

Two drawings may help clarify these thoughts, though at the inevitable risk of oversimplification. The first should be regarded as an ideal type and not as an historical description of the actual thought of any specific individual or group of people. Figure 1 attempts to show what exponents of evolved or sequential ethics believe. The time line along the figure's left margin suggests that ethics awaited the development of an intelligence capable of conceptualizing right and wrong. And even then, for long periods of time, morality was usu-

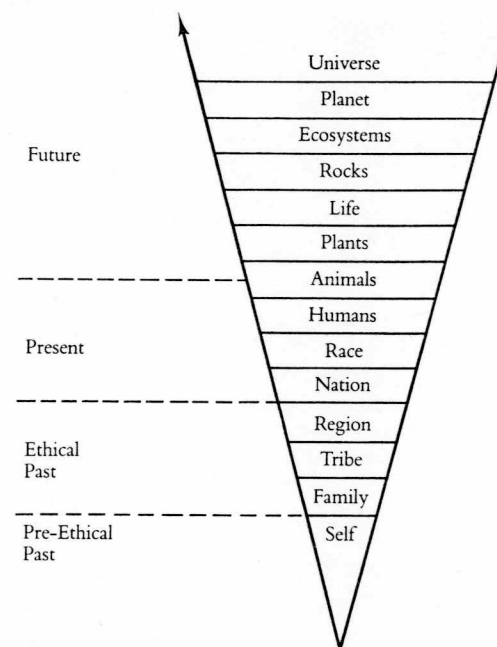


FIGURE 1 The Evolution of Ethics

ally mired in self-interest, as for some it still is. Some people, however, pushed the circle of ethical relevancy outward to include certain classes of human beings such as family and tribal members. At this point it is important to remember that as self-imposed restraints on conduct, ethics are ideals. Some humans, after all, commit suicide and kill members of their families. Still, there is a concept of right and wrong that applies to such behavior and laws that implement the ideals of the community.

Geographical distance eventually ceased to be a barrier in human-to-human ethics, and in time people began to shake free from nationalism, racism, and sexism. The abolition of American slavery in 1865 marked an important milestone in this process. Humans could no longer be owned, and ethics evolved beyond the level labeled “race.” Blacks, women, and all human beings gained a place in the sun of ethical theory if not always in practice. But “speciesism”¹ or “human chauvinism”² persisted and animal rights was the next logical stage in moral extension. By the 1970s there was growing support in

Anglo-American thought for what Peter Singer was the first to call "animal liberation."³ At the same time a lawyer raised the ethical stakes by proposing that humans give trees legal rights.⁴ Further expansion was almost inevitable. As early as 1867 John Muir proposed respect for "the rights of all the rest of creation."⁵ Albert Schweitzer discussed "reverence for life" in 1915 and in the same year an American horticulturist, Liberty Hyde Bailey, urged ethical consideration of "the holy earth."⁶ Demonstrating the impact of ecology on ethics, Aldo Leopold argued in the 1940s for a holistic, biocentric morality he termed "the land ethic."⁷ More recently there have been calls for "the liberation of nature,"⁸ "the liberation of life,"⁹ "the rights of the planet,"¹⁰ and even defenses of the right of the solar system and universe to be free from human disturbance.¹¹

The new ethically oriented environmental movement seethes with such unprecedented ideas. The self-styled "deep ecologists" are advancing "ecological egalitarianism."¹² An educator discusses abuse of the environment in terms of "prejudice against nature" and relates it explicitly to racial, sexual, national, and economic prejudice. He aspires to nothing less than liberating the earth.¹³ Ecotheologians recommend a morality based on the "spiritual democracy" of God's creation, including everything from subatomic particles to spiral nebulae.¹⁴ One Christian environmentalist is prepared to defend the "inalienable rights" of all the "citizens" in a Kingdom of God expanded to the entire ecosystem.¹⁵ A Pulitzer prize-winning poet calls for an "ultimate democracy" in which plants and animals join people as rights holders.¹⁶ The journal *Environmental Law* carries an essay proposing a constitutional amendment stating that wildlife must not be deprived of "life, liberty or habitat without due process of law."¹⁷ Clearly the old boundaries that limited liberalism to human freedom are breaking down.

The second drawing, Figure 2, is a schematic view of the historical tradition of extending rights to oppressed minorities in Britain and then in the United States. At the center are the natural rights tradition and the concept of intrinsic value that date to Greek and Roman jurisprudence. The diagram lists the key document that codified each new minority's inclusion within the circle of ethical consideration. Figure 2 does not imply that the minority immediately attained full rights in practice as well as theory on the given date, nor that only the documents listed were important in establishing minority rights. Its purpose is merely to show that ethics have expanded over time and that some thinkers and activists now regard nature (or certain of its components) as deserving liberation from human domina-

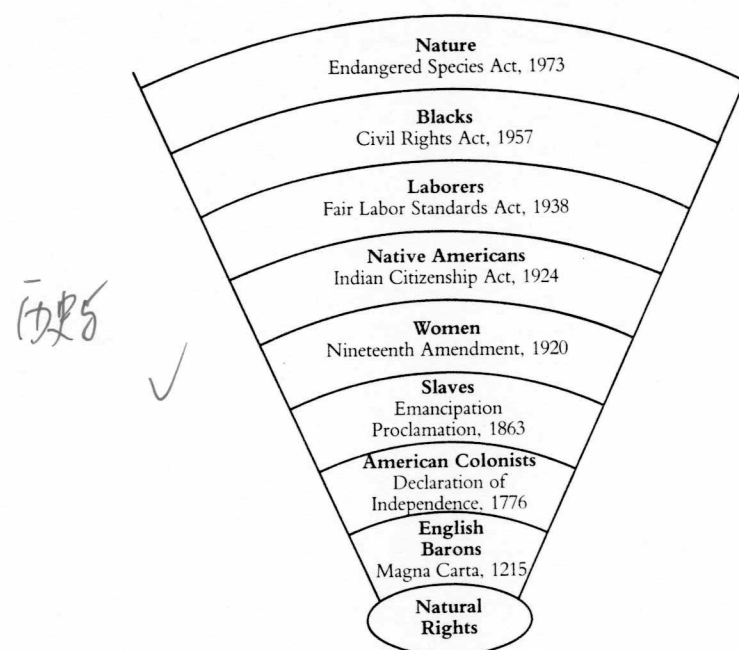


FIGURE 2 The Expanding Concept of Rights

tion. For people of this persuasion natural rights has indeed evolved into the rights of nature.

Ideas like these, to be sure, are on the far frontier of moral theory. From the perspective of intellectual history, environmental ethics is revolutionary; it is arguably the most dramatic expansion of morality in the course of human thought. We will encounter confusion, contradiction, and inconsistency in many of the concepts explored in the following pages, but this, too, is part of the history of ideas. We might remind ourselves, however, that human-to-human ethics have not been entirely clarified. The important point for the historian is that in recent years many people have found compelling the notion that nonhuman life and nonliving matter have moral standing. The majority still regards this idea as incredible. But with an eye to the changes diagrammed in Figure 2, historians are aware that the same incredulity met the first proposals for granting independence to American colonists, freeing the slaves, respecting Indian rights, integrating schools, and adding an Equal Rights Amendment to the

Constitution. As John Stuart Mill put it, "every great movement must experience three stages: ridicule, discussion, adoption."¹⁸ What happens in the process, Christopher Stone reminds us, is that the "*un-thinkable*" becomes conventional—sometimes gradually and peacefully through legislative and legal processes, as Stone proposed, but often, as we know of the events in Figure 2, violently.¹⁹

The problem has always been that certain groups of people benefited from the denial of ethics to other groups (or to nature) and were reluctant to relinquish those benefits. Changing laws and institutions often required force. The American Revolution, after all, was a war, and slavery in the United States was not negotiated away. For similar reasons it might be unreasonable to expect that what Aldo Leopold was the first to call "the enslavement of . . . earth"²⁰ could be abolished without profound social disruption. The appearance in recent years of not only civil disobedience but violence and outright law-breaking on behalf of whales, seals, redwoods, and wildernesses supports this conclusion. Earth First! rallied behind the slogan "No Compromise in Defense of Mother Earth!" A century and a half earlier William Lloyd Garrison shouted, "No Compromise with Slaveholders!" Contemporary liberators of animals liken themselves to John Brown in his 1859 raid on Harper's Ferry, Virginia. Harriet Beecher Stowe's *Uncle Tom's Cabin* (1852) and Rachel Carson's *Silent Spring* (1962) share a moral viewpoint. "Whether anyone likes it or not," a spokesman for Greenpeace declared in 1979, "force will eventually have to be brought to bear against those who would continue to desecrate the environment."²¹ A participant in the raids of the Animal Liberation Front on animal-research laboratories explained her position as "like the Underground Railroad and slavery . . . sometimes people have to go outside the law. . . . Any movement for social change has required disobedience."²² Henry David Thoreau would have understood her point. But even legal actions, such as the Marine Mammal Protection Act (1972) and the Endangered Species Act (1973), represent in some estimations the remarkable idea "that a listed nonhuman resident of the United States is guaranteed, in a special sense, life and liberty."²³

An ethical rather than an economic approach to environmental protection lay behind ideas like these, and its presence helps explain changes in the character of American conservation. One of the most useful insights into recent American history concerns the qualitative difference between "environmentalism," as it emerged in the 1960s, and what used to be called "conservation."²⁴ When Gifford Pinchot named it in 1907, conservation stood squarely in the American main-

stream. The Progressive conservationists made every effort to plant their seedling notion in the fertile soil of national growth and strength. Utilitarianism and anthropocentrism marked the early movement. Time and again Pinchot, the first Chief of the U.S. Forest Service, pointed out that conservation did not mean protecting or preserving nature. On the contrary, it stood for wise and efficient *use* of natural resources. The idea was to control nature and serve the material interests of humankind but with an eye to long-term needs. Under this philosophy the dam-building Bureau of Reclamation and the timber-producing Forest Service became the showcases of early twentieth-century conservation. But a half century later these same agencies found themselves under heavy fire from a new breed of environmentalists. Impoundments and clearcuts, they alleged, infringed not only on the rights of people to experience and enjoy nature but on the rights of nature itself.

The change is explained in part by the rise of the science of ecology and its diffusion into a widespread popular enthusiasm. By creating a new conception of the meaning of biological community, the ecological sciences also suggested a new basis for moral community. Indeed, "ecology" tells us as much about the years after 1960 as "efficiency" does about the Progressive mind and the first surge of interest in the protection of what were called "natural resources" at the turn of the century. If, as Samuel Hays has shown, the conservationists of Theodore Roosevelt's and Gifford Pinchot's America believed in a "gospel of efficiency," then the new environmentalists could be said to subscribe to what I have called, elsewhere, a "gospel of ecology."²⁵ The quasi-religious fervor of the recent concern for nature, and some of its political muscle, can be understood as resulting from the introduction into traditional, utilitarian conservation of the idea that respecting the environment was an ethical, not just an economic, matter.

But what does it mean to say this? Speaking simply and in general terms for the time being, environmental ethics has come to signify two things. First, some people believe that it is right to protect and wrong to abuse nature (or certain of its components) from the standpoint of human interest. This idea gave an unprecedented moral dimension to the old prudential or utilitarian argument for conservation. But the more radical meaning, and the one that really pushes American liberalism to its conceptual limits (or, some say, beyond them), is that nature has intrinsic value and consequently possesses at least the right to exist. This position is sometimes called "biocentrism," "ecological egalitarianism," or "deep ecology," and it ac-

cords nature ethical status at least equal to that of humans. The antipode is "anthropocentrism," according to which humans are the measure of all value. The difference between the two viewpoints is the difference between feeling that cruelty to animals is bad for humans—as the old Anglo-American humanitarians believed²⁶—and the recent belief that cruelty violates animals' rights. From these perspectives environmentalists can either think that people have a right to a healthy ecosystem or that the ecosystem itself possesses rights.

Of course, nature does not demand rights, and some moral philosophers even question whether anything so general as the "rights of nature" can exist at all. But, as we shall see, others use the term confidently. At the same time they recognize that wolves and maples and mountains do not petition for their rights. Human beings are the moral agents who have the responsibility to articulate and defend the rights of the other occupants of the planet. Such a conception of rights means that humans have duties or obligations toward nature. Environmental ethics involves people extending ethics to the environment by the exercise of self-restraint. In what follows, one of the central concerns is to analyze the significance of these ideas for ecology, theology, and philosophy, their implication for action, and their impact on the American environmental movement since World War II.

Another concern is the character and influence of American liberalism. Few would disagree that liberty is the single most potent concept in the history of American thought. The product of both Europe's democratic revolutions and, following Frederick Jackson Turner's hypothesis, the North American frontier, liberalism explains our national origins, delineates our ongoing mission, and anchors our ethics. Natural rights is a cultural given in America, essentially beyond debate as an idea. The liberal's characteristic belief in the goodness and intrinsic value of the individual leads to an endorsement of freedom, political equality, toleration, and self-determination. The most successful reform efforts in American history have occurred in the context of this liberal tradition.²⁷ When environmentalists began in the 1960s to talk about the rights of nature and the need to liberate this new oppressed minority from human tyranny, they used the language and ideals of liberalism. Old-style conservation, recast in ethical terms and plugged into the American liberal tradition, became the new, radical environmentalism.

Critics of the new environmentalism attacked the movement's negativism, charging it with not only being un-American but anti-human. The new "ecofreaks" and "druids" were said to set themselves squarely in the path of the American dream. Interestingly,

many environmentalists accepted, even welcomed, this negative image. "Naturalists," Paul Shepard said with pride in 1969, "seem always to be *against* something."²⁸ Shepard's statement appeared in a book with the word "subversive" in its title. In fact, as early as 1964 Paul Sears had employed that word to characterize the broader implications of ecology, and seven years later political scientist Lynton Caldwell referred to "the subversive implications of ecology."²⁹ The point of the strong adjective was that the American propensity for unlimited growth, intense competition, and the domination of nature ran directly counter to ecological ideals such as stability, interdependence, and a community consciousness extended to include nonhuman beings and biophysical processes. So Shepard could conclude with reference to traditional American values and behavior that "the ideological status of ecology is that of a resistance movement. Its Rachel Carsons and Aldo Leopolds are subversive."³⁰

Pushing this point still further, contemporary environmental philosophers such as Murray Bookchin called for a full-scale dismantling of America's "institutional and ethical framework." Without these "revolutionary changes" and the resulting establishment of an anarchistic "ecological society", Bookchin grimly predicted "the end of humanity's tenure on the planet."³¹ Herbert Marcuse felt that the "liberation of nature" depended on the "coming revolution" against American economic and political traditions.³² And William R. Catton, Jr., wrote about the inevitable crash of modern civilization that could be prevented only if it underwent "revolutionary change."³³ Theodore Roszak likewise called for sweeping and fundamental changes in American ideals and institutions on behalf of the rights of the planet. He, too, labeled contemporary environmentalism "profoundly subversive" because its aim was nothing less than the "disintegration" of contemporary American society and culture.³⁴ The deep ecologists added that meaningful reform was predicated on restructuring the nation's dominant social paradigm. From these points of view there seemed little about American culture worth building the brave new ecological world upon.

Much of the new environmentalists' criticism of American traditions is warranted, but in adopting a subversive, countercultural stance, they overlooked one important intellectual foundation for protecting nature that is quintessentially American: natural-rights philosophy, the old American ideal of liberty that they themselves were applying to nature. Conceived of as promoting the liberation of exploited and oppressed members of the American ecological community, even the most radical fringe of the contemporary environmental

movement can be understood not so much as a revolt against traditional American ideals as an extension and new application of them. The alleged subversiveness of environmental ethics should be tempered with the recognition that its goal is the implementation of liberal values as old as the republic. This may not make modern environmentalism less radical, but it does place it more squarely in the mainstream of American liberalism, which, after all, has had its revolutionary moments, too. Finally, from this point of view the goals of the ethically oriented environmentalists may be more feasible within the framework of American culture than even they themselves believe.³⁵

♦ CHAPTER I ♦

*From Natural Rights to
the Rights of Nature*

The American war is over: but this is far from being the case with the American revolution. On the contrary, nothing but the first act of the great drama is closed.

—Benjamin Rush, 1787

We are finally coming to recognize that the natural environment is the exploited proletariat, the downtrodden nigger of everybody's industrial system. . . . Nature must also have its natural rights.

—Theodore Roszak, 1978

It began, appropriately enough, outdoors—in a June-green meadow called Runnymede alongside the River Thames. The English barons who gathered there in 1215 forced King John to accept a lengthy list of concessions which came to be known, in the Latin in which it was written, as *Magna Carta*. Although the barons hardly thought of it in such terms, they were in fact dealing with ethical dynamite that revolutionaries five centuries later would call “natural rights.” The tendency of this concept to take on expanded meaning is one of the most exciting characteristics of the liberal tradition. Whether this tradition should expand to include nonhuman interests—perhaps even nature as a whole—is the proposition under examination in the present volume.

While it is easy to overstate and modernize the significance of *Magna Carta*, there are some reasons for regarding it as the cornerstone of liberty in Anglo-American culture. Set forth in this document for the first time was the idea that a certain segment of society,

in this case some twenty-five barons, possessed rights by virtue of their existence, independent of the will of England's king. Clause thirty-nine, for example, prohibited imprisonment or banishment except in accordance with law and as a result of the judgment of one's peers. *Magna Carta* placed other limitations on the royal power to tax property and confiscate land without the consent of the Great Council.¹ The concept of natural rights, and even some of the charter's wording, later figured in the making of the American government. Of course the barons at Runnymede would have been appalled at such extension of their principles. They had no conception of the rights of anyone save a male in the upper crust of English nobility. But time was on the side of ethical expansion.²

The thought of English philosopher John Locke (1632–1704) became the most important source of American natural-rights tradition.³ As outlined in his *Two Treatises of Government* (1690), Locke's ideas contained a logic particularly compelling to a people engaged in building a society in a wilderness. The "state of nature" that underlay Locke's ethical system was a pre-social, pre-government condition in which all people were equal and free before God and each other. The natural or fundamental law that existed in this situation consisted of absolute and unchanging or, as Americans preferred, "unalienable" moral axioms. The most important of them was that every person, by the simple virtue of their existence, shared a natural right to continue existing. From this Locke derived his list of the natural rights of mankind: "Life, Liberty, Health, Limb or Goods."⁴ In regard to "Goods," or what he alternately called "Property or Possessions," Locke believed a person had a right to that which he labored to produce. This principle would later prove troublesome in the case of slaves, and Thomas Jefferson, as we shall see, neatly avoided the difficulty in his 1776 formulation by the substitution of "happiness." Much later the sanctity of property would create a problem when environmentalists sought to treat the environment itself as having rights superior to ownership.

Locke did not go so far as his fellow philosopher Thomas Hobbes (1588–1679) in characterizing life in the state of nature as "solitary, poor, nasty, brutish and short,"⁵ but he did acknowledge sufficient insecurity in nature to persuade rational people to organize a society and a government. He called the process a "social contract." Through it each individual surrendered some of the complete freedom characteristic of the state of nature, but retained the natural, pre-social or God-given rights to life, liberty, and property. Indeed the whole point of social and political organization was to safeguard these fun-

damental values. From this recognition stemmed one further right, revolution. If the government acted in ways that menaced the natural rights of the people, they were justified, according to Locke, in renouncing its power. Through revolution individuals reclaimed the protection of natural rights they had entrusted to the state through the social contract.

It followed that subscribers to Lockean principles favored constitutional forms of government (democracies and republics) over monarchies, where concentrated power was susceptible to corruption. Locke wrote his *Treatises* as a defense of England's "Glorious Revolution" of 1688, which tempered royal power with a written statement of the people's rights.

The potency of natural-rights ideology is such that one revolution breeds another. So it was that soon after the Glorious Revolution, and increasingly after 1760, English colonists in America began to flex their ethical muscles against yesterday's revolutionaries, now consolidated as the government of the mother country. What Bernard Bailyn calls "the transforming radicalism of the [American] Revolution"⁶ was the idea that the English Parliament and monarchy were denying the colonists their natural rights. Going back five hundred years for justification, American revolutionaries like James Otis contended that "Magna Carta itself is a . . . proclamation" of the people's uncompromised possession "of their original, inherent, indefeasible, natural rights."⁷ Time and time again, as independence approached, Americans employed words such as "tyranny," "slavery," and "oppression" to describe their condition. Liberty was the objective, and the revolutionary mind elevated it to the status of a sacred and secular mission.

The Declaration of Independence of 1776 marked the fullest flowering to that date of natural-rights philosophy. As Carl Becker was among the first to understand, Jefferson's manifesto was not so much original thought as it was a compilation of ideals that had circulated widely in England, France, and North America for at least a century. But Jefferson's phraseology was especially felicitous. "The laws of nature and of nature's God," he wrote, are the foundations from which reason and conscience reveal "self-evident" truth, namely, "that all men are created equal" in their possession of "certain unalienable rights." The three Jefferson chose to enumerate were, of course, "life, liberty, and the pursuit of happiness."⁸

But Jefferson did not really mean what he wrote. In practice some people were more equal than others. Women, for example, were not full partners in the spirit of 1776. Neither were slaves nor Indians,

and most of the states initially required even white males to be property holders and taxpayers. Most of the restrictions on white male suffrage withered away in the early nineteenth century,⁹ but blacks were not constitutionally enfranchised until 1870 and a half century more elapsed before females (1920) and Indians (1924) achieved suffrage. Civil rights for blacks dominated social protests in the 1950s and 1960s. Clearly the American Revolution did not create an egalitarian product so much as it started a process.¹⁰ Two centuries after Jefferson's articulation of America's preeminent ideal its fullest implications were still being discovered in the movement for the rights of nature.

Natural-rights principles exploded into Western thought in the seventeenth and eighteenth centuries. They spawned one revolution in Massachusetts which, in turn, helped inspire a powerful wave of liberalism throughout the Western world. The magic circle of rights holders was widening. This was the sense of Benjamin Rush's 1787 comment, above, about the ongoing American Revolution. Subsequent acts in Rush's "great drama" would take the democratic impulse far beyond what the eighteenth-century revolutionaries imagined possible or even desirable. According to Robert R. Palmer, the liberal leaders in revolutionary America were "groping toward a new kind of community."¹¹ Only the most radical among them understood that the concept of community might be extended beyond the confines of the human race. The idea, however, was not entirely new.

Greek and Roman philosophers had a clear conception of natural, as opposed to man-made, law. Although they did not speak about "rights," they understood that people had existed prior to government or indeed any civil order. This state of raw nature was organized according to certain biological principles centered on the facts of existence and survival. In Latin these principles were called *jus naturae* or *jus naturale*. In contrast, the ideas of justice that humankind overlaid on this basic order were thought of as the *jus commune*, the common law applied to the people and embodied in the laws of states and nations.¹² But where did nonhuman beings fit? It was obvious to classical thinkers that humans had not been alone in the wilderness, Eden, or whatever state of nature one chose to place at the dawn of history. Animals were there, too, not to speak of less sophisticated forms of life, along with the inanimate components of the environment. What, then, was the right relationship of humans to these fellow travelers in the stream of time?

Concerned about these questions, Romans found it logical to assume the existence of another body of moral precepts: the *jus ani-*

malium. It implied that animals possessed what later philosophers would call inherent or natural rights independent of human civilization and government. As the third-century Roman jurist Ulpian understood it, the *jus animalium* was part of the *jus naturale* because the latter includes "that which nature has taught all animals; this law indeed is not peculiar to the human race, but belongs to all animals."¹³ Granted, Ulpian included only animals in his concept of justice, but it derived from the idea that nature as a whole constituted an order that humankind should respect.

After the decline of Greece and Rome and the advent of Christianity, nature did not fare well in Western ethics.¹⁴ Increasingly people assumed that nature, animals included, had no rights, and that non-human beings existed to serve human beings. There was no extended ethical community. It followed that the appropriate relationship of people to nature emphasized expediency and utility. There need be no guilty consciences because the only values of nature were instrumental or utilitarian—defined, that is, in terms of human needs. The Christian version of this argument turned to Genesis for evidence that God gave humankind dominion over nature and the right to exploit it without restraint. Understandably, early philosophers such as Hugo Grotius (1583–1645) and Samuel Pufendorf (1632–1694) could believe that the human relationship to the environment was not a subject for ethical concern. Departing from Ulpian, they argued that natural rights did not derive from a pre-social state of nature but only from *human* nature. This meant that law did not originate in fundamental principles of justice common to people and animals. Rather it represented a set of manmade rules that reflected human interests. So Pufendorf could conclude, "there is no common rights/law between man and brutes." John Rodman has identified this seventeenth-century rejection of animal rights as a "turning point in the history of thought."¹⁵

In the early modern period discussion of the extent to which ethics should be applied to nature swirled around the question of vivisection. At its worst this practice involved cutting up unanesthetized animals that had been tied or nailed live to a board. As medical science emerged in the seventeenth century, it relied on vivisection to study the workings of the body. But the practice drew the wrath of early humanitarians, and the vivisectors turned to René Descartes (1596–1650) to justify their research methods. A celebrated mathematician, physiologist, and psychologist, Descartes provided a general philosophy of the irrelevance of ethics to the human-nature relationship. Animals, according to Descartes, were insensible and

irrational machines. They moved, like clocks, but could not feel pain. Lacking minds, animals could not be harmed. They did not suffer. They were, in Descartes's sense of the term, unconscious. Humans, on the other hand, had souls and minds. Thinking, in fact, defined the human organism. "I think, therefore I am" was Descartes's basic axiom. This dualism, the separateness of humans and nature, justified vivisection and indeed any human action toward the environment. Descartes left no doubt that people were the "masters and possessors of nature."¹⁶ The nonhuman world became a "thing." Descartes understood this objectification of nature as an important prerequisite to the progress of science and civilization.

An alternate, but extremely minor, train of Western thought that challenged anthropocentrism derived in part from the classical Greco-Roman idea that animals were part of the state of nature and the subjects of natural law. Although Christianity weakened the ideas of an extended community, the principle of *jus animalium* persisted in European thought. Intriguing but fragmentary evidence suggests that from time to time in the Middle Ages courts of law conducted criminal trials of animals that, for instance, killed humans.¹⁷ This practice makes the argument of the 1970s that trees and other natural objects should have standing before the law less novel than it might appear at first glance.¹⁸

Interestingly, the first record of a law respecting the rights of nonhuman beings, or at least human duties toward them, appeared in the Massachusetts Bay Colony. The author of "The Body of Liberties," which the General Court adopted in 1641, was Nathaniel Ward (1578–1652). A lawyer and later a minister, Ward came to New England in 1634, settling in Ipswich. At the request of the court he prepared the first codification of the colony's statutes. Ward's list of "rites," by which he meant "rights," contained as the ninety-second item the stipulation that "no man shall exercise any Tirranny or Crueltie towards any bruite Creature which are usuallie kept for man's use." The ninety-third "rite" obliged persons who "leade or drive Cattel" to rest and refresh them periodically.¹⁹ Obviously, utilitarianism is evident here—only domestic creatures are protected—but it is significant that in 1641, at the height of Descartes's influence in Europe, the first New Englanders endorsed the idea that animals were not unfeeling machines. And the use of the word "Tirranny" seems to imply the idea of the natural rights or freedoms of nonhuman beings in the tradition of *jus animalium*. Perhaps the task of creating a new society in a wilderness made the Puritans more mindful of comprehensive ethical principles derived from a state of nature similar to the one they occupied.

The treatment of animals was not a major concern with John Locke but property was, and the fact that animals could be owned resulted in their acquiring some rights in his philosophy. These, of course, derived from the rights of the owner, not the animal, and were otherwise related to human interests. In *Some Thoughts Concerning Education* (1693) Locke reasoned, in opposition to Descartes, that animals can suffer and be harmed and that harming them needlessly is morally wrong. It becomes clear that this is not due to the natural rights of animals but to the effects of cruelty to animals on people. Locke notes that many children "torment, and treat very roughly young Birds, Butterflies, and other such poor Animals, which fall into their Hands." He feels this behavior should be stopped and corrected because it "will, by Degrees, harden their Minds even towards Men." People, Locke continues, "who delight in the Suffering and Destruction of Inferiour Creatures, will not . . . be very compassionate, or benign to those of their own kind." Locke concludes this discussion with a commendation of a mother of his acquaintance who made sure her children took responsibility for the welfare of their "Dogs, Squirils, Birds," and other pets. He felt these children were on their way to becoming responsible members of society. In his 1693 discourse, then, Locke moved beyond a strict concept of utility. Not only customarily owned and useful animals like cattle and horses should be well treated, but also squirrels, birds, insects—indeed "any living Creature."²⁰

Nathaniel Ward and John Locke were not alone in opposing cruelty to animals. As early as the fifteenth century, and increasingly in the seventeenth and eighteenth, protests sounded over practices such as vivisection, cock-fighting, staged fights with dogs known as bull- and bear-baiting, fox hunting, and the sort of purposeless brutality Locke addressed in 1693. Two arguments appeared most frequently. The early English humane movement pointed, like Locke, to the adverse effects of cruelty to animals on its human perpetrators. It also contended that since animals were part of God's creation, humans, as the most favored and powerful form of life, had the responsibility of being good trustees or stewards of their welfare on God's behalf. Some formulations of this argument even hinted that God would keep account of cruelty and dole out appropriate punishments. The first humanitarian protests in no way questioned the assumption that nature existed for mankind. But they did call for the human dominion to be as gentle as possible.²¹

Amidst the undeniable potency of anthropocentrism and dualism in Western thought in the seventeenth and eighteenth centuries, one finds a weaker yet persistent notion that leads directly to the concept