

April 1983

Reverence for Life and Rights for Nature

Steven Chananie

Follow this and additional works at: <https://digitalcommons.pace.edu/plr>

Recommended Citation

Steven Chananie, *Reverence for Life and Rights for Nature*, 3 Pace L. Rev. 689 (1983)

DOI: <https://doi.org/10.58948/2331-3528.1659>

Available at: <https://digitalcommons.pace.edu/plr/vol3/iss3/15>

This Article is brought to you for free and open access by the School of Law at DigitalCommons@Pace. It has been accepted for inclusion in Pace Law Review by an authorized administrator of DigitalCommons@Pace. For more information, please contact dheller2@law.pace.edu.

Reverence for Life and Rights for Nature

I. Introduction

Over the years, a number of writers, both legal and non-legal, have criticized what has been identified as society's "homocentric" attitude towards nature.¹ This attitude, it is said, is founded on a vision of the world that sees nature as existing solely for the benefit of man; wildlife and natural objects are not viewed as having any inherent worth in and of themselves.² In the field of environmental regulation, this homocentric attitude has been reflected in "legislation which protects nature not for its own sake but in order to preserve its potential value for man."³

In response to the narrowness engendered by this attitude, some writers have advocated the importance not only of recognizing the inherent value of natural objects, independent of any use they might have for man, but also of developing a sense of human obligation towards nature and of actually extending to wildlife and natural objects a variety of substantive and procedural rights.⁴ These suggestions, however, have not yet found a secure foothold in the law.⁵ In fact, to many the thought of

1. See, e.g., Tribe, *Ways Not to Think About Plastic Trees: New Foundations for Environmental Law*, 83 YALE L.J. 1315 (1974) [hereinafter cited as Tribe I]; White, *The Historical Roots of Our Ecological Crisis*, 155 SCI. 1203 (Mar. 10, 1967) [hereinafter cited as White]; Stone, *Should Trees have Standing? — Towards Legal Rights for Natural Objects*, 45 S. CAL. L. REV. 450 (1972) [hereinafter cited as Stone]; A. LEOPOLD, *A SAND COUNTY ALMANAC, WITH OTHER ESSAYS ON CONSERVATION FROM ROUND RIVER* 217-241 (1966) [hereinafter cited as LEOPOLD]; E. ASHBY, *RECONCILING MAN WITH THE ENVIRONMENT* 81-87 (1978) [hereinafter cited as ASHBY].

2. Tribe I, *supra* note 1, at 1325-36.

3. *Id.* at 1325.

4. Tribe, *From Environmental Foundations to Constitutional Structures: Learning from Nature's Future*, 84 YALE L.J. 545, 551-52 (1975) [hereinafter cited as Tribe II]; Tribe I, *supra* note 1, at 1340-46; Stone, *supra* note 1; Dichter, *Legal Definitions of Cruelty and Animal Rights*, 7 B.C. ENVTL. AFF. L. REV. 147, 161-64 (1978) [hereinafter cited as Dichter]; Burr, *Towards Legal Rights for Animals*, 4 B.C. ENVTL. AFF. L. REV. 205, 224-29 (1975) [hereinafter cited as Burr].

5. See *Sierra Club v. Morton*, 405 U.S. 727 (1972), where the suggestions concerning standing for natural objects made by Christopher Stone, *supra* note 1, were rejected. *But*

recognizing rights in nature is “unthinkable”⁶ or “idiosyncratic at best and incoherent at worst.”⁷

Yet, a possible theoretical framework for making sense of such an extension of rights can, perhaps, be constructed. In particular, Albert Schweitzer’s ethic of “Reverence for Life” might provide the foundation for such a framework by replacing the parochialism of the prevailing homocentric perspective with a broader understanding of the meaning of human life. In describing what he meant by Reverence for Life, Schweitzer wrote as follows:

A man is ethical only when life, as such, is sacred to him, that of plants and animals as that of his fellow men, and when he devotes himself helpfully to all life that is in need of help. Only the universal ethic of the feeling of responsibility in an ever-widening sphere for all that lives — only that ethic can be founded in thought. The ethic of the relation of man to man is not something apart by itself: it is only a particular relation which results from the universal one.⁸

Obviously, integrating such an ethic into legal theory and practice will require a rethinking of what our obligations and duties as human beings are and what our relationship to the natural world, and to life itself, really involves. It will also require a re-evaluation of our assumptions about the fundamental nature of law.

This Comment will attempt to sketch the general outlines of a legal framework built on an ethic of reverence for life, and will explore how such a framework can make sense of bestowing enforceable rights on nature. Before doing so, however, this Comment will first examine the homocentric perspective — its premises and historical roots, its influence, and some of the criticisms of it.

see Justice Douglas’ dissent, which adopted Stone’s suggestions. *Sierra Club v. Morton*, 405 U.S. at 741 (Douglas, J., dissenting).

6. Stone, *supra* note 1, at 450-57.

7. Tribe I, *supra* note 1, at 1329.

8. A. SCHWEITZER, *OUT OF MY LIFE AND THOUGHT* 158-59 (1961) [hereinafter cited as SCHWEITZER].

II. The Homocentric Perspective

A. *Its Premises and Historical Roots*

The homocentric perspective can best be characterized as a view of the world that denies sanctity, inherent worth, or sacredness to anything but human life. According to this perspective, nature is somehow inferior to and separate from man; and man, due to his superior intellect and mastery of technology, has the "right" to manipulate, dominate, and control nature as he pleases. Simply, all meaning flows from man and depends on man's continued existence and creative activity.⁹

In the realm of modern day law and policy, these attitudes translate into making the satisfaction of human wants and needs the highest goal. To achieve this goal, utilitarian calculations are applied to often conflicting individual human needs in an attempt to maximize some overall benefit to society as a whole. The natural world, of course, sits outside these calculations and outside the web of humanly created rights and duties.¹⁰ Thus, according to the homocentric perspective, man's duties are owed only to other men; law exists for the sole purpose of ordering human society; and man's sense of duty never extends beyond himself.

Although there may be a general agreement as to these basic characterizations of the homocentric perspective, no similar agreement exists as to its historical roots. Lynn White, Jr., for instance, has traced the roots to the Judeo-Christian tradition of transcendence.¹¹ This tradition, White argued, removed whatever inhibitions man may have had to exploiting nature for his own ends. It did so by destroying the older animistic religious belief that all natural objects possessed "spirits" that had to be revered, feared, and placated.¹² Simply, the Judeo-Christian tradition replaced spirits immanent in real objects with a transcendent Spirit who, made in the image of man, created the

9. Tribe I, *supra* note 1, at 1329, 1335-36, 1341; Stone, *supra* note 1, at 493-95; White, *supra* note 1; Hart, *The Environmental Movement: Fulfillment of the Renaissance Prophecy?*, 20 NAT. RESOURCES J. 501, 515 (1980) [hereinafter cited as Hart].

10. Tribe I, *supra* note 1, at 1325-26.

11. White, *supra* note 1.

12. *Id.* at 1205.

universe for man's use.¹³

Others have argued that the true root of the homocentric perspective is the "secularization of science."¹⁴ According to this line of reasoning, the Judeo-Christian tradition advocated not only the superior position and powers of man, but also the sanctity of the universe as a divine creation. Science initially adopted both these views, but as Christianity's vitality waned, the view of creation's sanctity was discarded, and a greater emphasis was put on man's unrestrained ability and right to dominate nature.¹⁵

A third explanation for the origins of the homocentric perspective is that such an attitude is inherent in man. The proponents of this theory note that despite all the talk of the influence of Western science and religion on man's disregard for nature, the facts are clear that the environmental destructiveness of man has not been limited to parts of the world dominated by Western science or religion.¹⁶ Possibly, the psychological roots of

13. *Id.* In *Genesis*, for example, God said to the first-created male and female, "Be fruitful, and multiply, and replenish the earth, and subdue it; and have dominion over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the earth." *Genesis* 1:28.

One criticism of White's analysis is that he did not appreciate correctly the presence of a doctrine of divinely inspired stewardship within the Christian religion. Tribe I, *supra* note 1, at 1333-34. Such a doctrine was apparently suggested by some of the writings of Aquinas and was later expressed in a more complete form in the thought of St. Francis of Assisi. *Id.* If such a doctrine in fact exercised much influence over Western Europe's religious life, then White's evaluation of Christianity's disregard for the value of nature might clearly be in error. White asserted that St. Francis' reverence for all life, although praiseworthy as a model for modern man, was heretical in its own time to the mainstream of Western Christianity. White, *supra* note 1, at 1206-07.

14. Hart, *supra* note 9, at 512-16. Lawrence Tribe called this the "secularization of transcendence." Tribe I, *supra* note 1, at 1334-35. White's lecture does indicate that he was aware that early Western science had a strong religious motivation that later disappeared, but he uses this fact as further proof of the influence of the Judeo-Christian tradition on science's domineering attitude towards nature. White, *supra* note 1, at 1206.

15. Hart argued that as the Christian ideals of the middle ages lost their influence, and as the scientific pursuit became more and more secularized in the centuries following the Renaissance, "the ethical limitations implicit in the past between God and man lost their efficacy." Hart, *supra* note 9, at 516. Specifically, he claimed that the harshness of the Baconian creed of mastery of nature through science was originally tempered by the religious view that the world was a divine creation and therefore sacred. *Id.* at 508-12. Hart wrote that, "[f]or Bacon and his contemporaries, religion had provided the framework for understanding science as a human activity." *Id.* at 516.

16. C. SOUTHWICK, *ECOLOGY AND THE QUALITY OF OUR ENVIRONMENT* 135-36, 119-32 (2d. ed. 1976) [hereinafter cited as SOUTHWICK]. It has also been claimed that the Chi-

the homocentric perspective reach very deep into the human psyche, and can emerge even in cultures that believe in the sanctity of nature. According to this view, man's destructiveness toward nature is ahistorical and is merely a function of the fact that "there are an increasing number of humans, with increasing wants, and there has been an increasing technology to satisfy them at 'cost' to the rest of nature."¹⁷

B. *Influence of the Homocentric Perspective*

Whatever the historical roots of the homocentric perspective actually are, the influence of the perspective on the modern world can clearly be seen working in many of our environmental laws as well as in our debates and discussions concerning environmental protection. Environmentalists, for instance, who are uncomfortable with homocentric attitudes nonetheless often find themselves couching their arguments for conservation in terms of the potential benefits to man, and ignoring other, nonhomocentric lines of reasoning.¹⁸ It has been suggested that such environmentalists may

want to say something less egotistic and more emphatic but the prevailing and sanctioned modes of explanation in our society are not quite ready for it. In this vein, there must have been abolitionists who put their case in terms of getting more work out of the Blacks.¹⁹

As for our environmental laws, many of them clearly reflect underlying homocentric motivations. The duties they create toward nature often arise not from a sense of obligation toward nature, but from the presence of a human interest that has been identified with nature's well-being.²⁰ Take, for example, animal anticruelty statutes which, it has been argued, are actually more

nese belief in the unity of nature and man, an apparently nonhomocentric belief, failed to prevent ruthless and continuous deforestation in China. Stone, *supra* note 1, at 494, citing Murphy, *Has Nature Any Rights to Life?*, 22 HASTINGS L.J. 467, 477 (1971). And the American Indians, who supposedly lived in such harmony with nature, apparently expanded their pursuit of the buffalos to fill the technological potential created by the acquisition of rifles. Stone, *supra* note 1, at 494.

17. Stone, *supra* note 1, at 494.

18. Tribe I, *supra* note 1, at 1330-31.

19. Stone, *supra* note 1, at 490.

20. Tribe I, *supra* note 1, at 1325.

concerned either with an owner's property interest in an animal or with controlling certain types of human behavior thought to be corrupting of men's morals, rather than with the actual well-being of the animal.²¹

Consider as another example the wording of the stated purpose of the Clean Air Act²²

to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population.²³

Or look to the congressional findings in the Endangered Species Act,²⁴ which are concerned with the "esthetic, ecological, educational, historical, recreational, and scientific value" of threatened and endangered species to "the Nation and its people."²⁵ As with the animal anticruelty statutes, a strong motivation behind both these Acts, at least according to their statutory language, appears to be to protect nature because of possible ill-effects or benefits to man, not for nature's own sake.²⁶

Some other environmental laws, however, may reflect a hopeful mix of homocentric and nonhomocentric motivations. The National Environmental Policy Act (NEPA),²⁷ for example, sets forth a Congressional declaration of national environmental policy that speaks of "restoring and maintaining environmental

21. Dichter, *supra* note 4, at 149; Burr, *supra* note 4, at 207.

22. The Clean Air Act of 1955 was completely revised by the Clean Air Act Amendments of 1977, Pub. L. 95-95, 91 Stat. 685, codified at 42 U.S.C. §§ 7401-7642 (Supp. IV 1980). In this paper, references to the Clean Air Act mean the Clean Air Act Amendments of 1977.

23. Clean Air Act § 101(b)(1), 42 U.S.C. § 7401(b)(1) (Supp. IV 1980).

24. Endangered Species Act of 1973, 16 U.S.C. §§ 1531-1543 (1976 & Supp. V 1981).

25. *Id.* § 2(a)(3), 16 U.S.C. § 1531(a)(3) (1976).

26. Despite the homocentric language, the Endangered Species Act, at least, has been applied in dramatic nonhomocentric ways. See, e.g., *Tennessee Valley Auth. v. Hill*, 437 U.S. 153 (1978).

It is ironic that statutes with homocentric language, such as the Endangered Species Act, have sometimes been broadly construed by the courts, (see the discussion of the Marine Mammal Protection Act, *infra* notes 30-33 and accompanying text), while other statutes, such as the National Environmental Policy Act (*infra* notes 27-29 and accompanying text) which was hoped to be a major breakthrough for environmental law, has been narrowly construed by the courts. See, e.g., *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519 (1978); *Strycher's Bay Neighborhood Council, Inc. v. Karlen*, 444 U.S. 223 (1980).

27. National Environmental Policy Act of 1970, 42 U.S.C. §§ 4321-4370 (1976 & Supp. IV 1980).

quality to the overall welfare and development of man," but then turns around and speaks of creating and maintaining "conditions under which man and nature can exist in productive harmony."²⁸ Although the overall emphasis seems to be homocentric, the beginnings of a non-homocentric appreciation of nature can be seen. Commenting on this aspect of NEPA, Christopher Stone has written that

Because the health and well-being of mankind depends upon the health of the environment, these goals will often be so mutually supportive that one can avoid deciding whether our rationale is to advance "us" or a new "us" that includes the environment.²⁹

Another hopeful example of the move away from strict homocentric motivations is the Marine Mammal Protection Act (MMPA).³⁰ The District of Columbia Court of Appeals in 1976 held that this Act is "to be administered for the benefit of the protected species rather than for the benefit of commercial exploitation."³¹ And a House committee report stated that the Act takes "the interests of the animal as the prime consideration."³² The MMPA, so construed, seems to reflect an appreciation of the intrinsic worth of porpoises, whales and the other marine mammals that the Act was designed to protect, except that the language of the Act itself reveals that it still is firmly rooted in homocentric assumptions and values. One of the Congressional findings set forth in the Act is that

marine mammals and marine mammal products either-
(A) move in interstate commerce, or
(B) affect the balance of marine ecosystems in a manner which is important to other animals and animal products which move in interstate commerce,
and that the protection and conservation of marine mammals is therefore necessary to insure the continuing availability of those

28. *Id.* § 101(a), 42 U.S.C. 4331(a) (1976).

29. Stone, *supra* note 1, at 489. See *supra* note 26.

30. Marine Mammal Protection Act of 1972, 16 U.S.C. §§ 1361-1407 (1976 & Supp. V 1981).

31. *Committee for Humane Legislation v. Richardson*, 540 F.2d 1141, 1148 (D.C. Cir. 1976).

32. H.R. REP. NO. 92-707, 92d Cong., 2d Sess. 22 (1971), reprinted in 1972 U.S. CODE CONG. & AD. NEWS 4144, 4151.

products which move in interstate commerce.³³

Statutes such as MMPA and NEPA, like other environmental statutes, reflect strong homocentric concerns, but more importantly, they also may reflect the beginnings of an awareness that man is only part of a larger life and community that exists on this planet. This awareness is partially a result of the growth of the ecological sciences, which have begun to reveal how intricately intertwined and interdependent all life is.³⁴ As one ecologist has written:

A quality environment . . . must involve more than simply human interests. It must consider the living fabric of the entire world, for it is becoming more and more apparent that what is best for the world as a whole is ultimately best for its human populations.³⁵

It is here, where human interests and environmental well-being intersect, that homocentric and nonhomocentric approaches and attitudes can work together toward a common goal — as perhaps they already do in statutes like NEPA and MMPA.

C. *Criticisms and Suggested Alternatives*

Even when the homocentric perspective acknowledges the interdependency of the web of life, it is still tainted with a narrow-minded arrogance that distorts man's vision of the world. A "pure" homocentric attitude towards nature that ignores the lessons of ecology is dangerous to humanity's and the planet's physical well-being.³⁶ But, an enlightened homocentrism that incorporates an awareness of man's dependency on the intricacies of nature is still dangerous, but there the danger is to man's mental and spiritual well-being.

33. Marine Mammal Protection Act of 1972, § 2(5), 16 U.S.C. § 1361(5) (1976). The findings go on to refer to marine mammals as "resources of great international significance, esthetic and recreational as well as economic." *Id.* § 2(6), 16 U.S.C. § 1361(6) (1976).

34. See Manaster, *Law and the Dignity of Nature: Foundations of Environmental Law*, 26 DE PAUL L. REV. 743, 745-46 (1977) [hereinafter cited as Manaster]; see generally SOUTHWICK, *supra* note 16.

35. SOUTHWICK, *supra* note 16, at xviii.

36. For an excellent overview of much of the destruction man has and is inflicting on the environment and the possible resulting health dangers, see SOUTHWICK, *supra* note 16, at 12-68.

Lawrence Tribe, for example, has argued that the homocentric perspective takes "the primal ethical impulse — the sense of duty beyond self—" and flattens it into an "aspect of self-interest."³⁷ In many people, Tribe argues, there is a deeply felt, but often inchoate, sense of obligation to nature which has little to do with perceived human priorities but which becomes distorted and narrowed to fit into a human-wants view of life.³⁸ Truly ethical and altruistic attitudes towards nature are transformed into mere computations of self-advantage.³⁹

Further, even if the homocentric perspective acknowledges the need to protect nature, it does so out of no sense of obligation, with no respect for other life, and with no willingness to move beyond the narrow boundaries of the human self. At its best, it limits our ability to feel empathy for living beings who are not like us; it reinforces the regrettable human tendency to view other creatures as *things* devoid of inherent worth except insofar as we can use them — or insofar as we are forced to respect their integrity to protect our own well-being. Such "thingification," in times past and with different objects, turned nonwhite peoples into rightless *things*, even property, which could be enslaved and oppressed.⁴⁰ Such insensitivity to other lives, at either the human or nonhuman level, surely undermines our humanity and potential for true civilization.

As an alternative to the inadequacies of the homocentric perspective, Christopher Stone, in his landmark article *Should Trees Have Standing? — Towards Legal Rights for Natural Objects*,⁴¹ suggested that natural objects be allowed to have standing to sue for their own injuries and further be allowed an award of some relief for those injuries. Specifically, he advocated a scheme allowing human guardians or trustees to represent the natural objects' interests in court, much as guardians represent the interests of incompetents and infants who are incapable of representing themselves.⁴² This scheme would make natural objects holders of legal rights: they would "count jurally" and

37. Tribe I, *supra* note 1, at 1331-32.

38. *Id.* at 1329-32.

39. *Id.*

40. Stone, *supra* note 1, at 453-56.

41. *Id.*

42. *Id.* at 464-65.

would have a "legally recognized worth and dignity in [their] own right, and not merely to serve as a means to benefit" humans.⁴³

Lawrence Tribe has also suggested that the perception that "'nature exists for itself'" be given institutional expression,⁴⁴ and that a sense of obligation "to plant and animal life and to objects of beauty" be developed.⁴⁵ He listed several concrete possibilities. First, environmental impact statements could refer explicitly to man's obligations to nature; second, new techniques of policy analysis might be developed to account for such obligations; and finally, natural objects could be given rights as Stone suggested.⁴⁶

Both Tribe and Stone recognized, however, that their suggestions would sound odd to many people who are used to thinking in homocentric terms.⁴⁷ Stone wrote that "[t]his is partly because until the rightless thing receives rights, we cannot see it as anything but a *thing* for the use of 'us' — those who are holding rights at the time."⁴⁸ Compounding this shortsightedness is the prevalent homocentric assumption, already described, that law as a human creation is confined to ordering rights and duties only within human society.⁴⁹ This preconception makes it even more difficult to justify or even imagine legal rights in nature.

Thus, before an extension of rights to nature can make sense, the law's view of itself and its function in human society has to be broadened; and a new perspective must be adopted that will allow us not only to develop new legal forms, but also to reevaluate the purposes that the law, society, and we as individuals should be serving. Does — or should — law aim only at

43. *Id.* at 458. Stone also suggested that private corporations might be required to prepare internal reports concerning the adverse environmental effects of a corporation's activity and to establish a Vice-President for Ecological Affairs. *Id.* at 484-85.

44. Tribe II, *supra* note 4, at 551-52.

45. Tribe I, *supra* note 1, at 1341.

46. *Id.*

47. *Id.* at 1328-29, 1341; Stone, *supra* note 1, at 455.

48. Stone, *supra* note 1, at 455. In a footnote Stone continued, [t]hus it was that the Founding Fathers could speak of the inalienable rights of all men, and yet maintain a society that was, by modern standards, without the most basic rights for Blacks, Indians, children and women. There was no hypocrisy; emotionally, no one *felt* that these other things were men.

Id. at n.24.

49. See *supra* note 10 and accompanying text.

satisfying our collective and transient wants and needs? Are our aims as individuals and as a society merely to fulfill ourselves? Or, at some point, do we have obligations that extend beyond ourselves? And if so, on what are those obligations based, and how should the law deal with them?

The remainder of this Comment will suggest possible answers to these questions and will explore how the homocentric perspective might be replaced by a perspective based on Schweitzer's "Reverence for Life."⁵⁰

III. The Perspective of Reverence

A. A Simple Model

The following simple, and rather limited, model is proposed from which to start. This model is based on the premise that in the world certain things have an inherent worth, in and of themselves, simply by the fact that they exist. Following from this premise is the assertion that society, in the course of its development, can come to recognize this inherent worth and value it, regardless of considerations of utility. If society values sufficiently the inherent worth of a thing, then it can bestow legal rights upon the thing. These rights would be conferred in order to protect the thing's inherent worth from abuse by human society by creating duties which would require people to respect that inherent worth.⁵¹ If these duties are violated, then specified liabilities would be imposed.⁵²

50. See *supra* note 8 and accompanying text.

51. "Rights" and "duties" are being used here in the Hohfeldian sense. "A duty . . . is that which one ought or ought not to do. 'Duty' and 'right' are correlative terms. When a right is invaded, a duty is violated." Hohfeld, *Some Fundamental Legal Conceptions as Applied in Judicial Reasoning*, 23 YALE L.J. 16, 31-32 (1913) (quoting *Lake Shore & M.S.R. Co. v. Kurtz*, 10 Ind. App. 60, —, 37 N.E. 303, 304 (1894)).

52. To be fully understood, the rights just described must be distinguished from rights that are designed to protect things that are valued for their usefulness, their benefits to man, or their economic worth. These rights are not concerned with the inherent qualities of a thing. Rather, they are concerned with fostering some utility or benefit to human society. Generally, the thing that is valued for its usefulness does not receive the right. Instead, the person to whom the thing is of use receives the right. The thing itself is only a means to the right holder's end. Property rights are the prime example of this type of right. Land is valued for the benefit it gives the one who uses it, and through that person for the benefit it gives all of society; therefore, that person is given certain rights protecting his use of the land. The land benefits from the rights only indirectly, if at all.

One must distinguish at the outset the concept of inherent worth, which is the premise of this model, from the concept of natural rights, which envisions the existence of certain fundamental rights that are intrinsic to humans due to the operation of some kind of natural law. According to theories of natural rights, such rights are not created by man, and can invalidate humanly created laws that conflict with them.⁵³ Inherent worth, by contrast, is an ineffable quality, not a right, which humans can ignore or which they can come to value. If they value it, then a sense of moral obligation can develop which in turn can lead to the creation, *by man*, of rights and duties. The existence of rights and duties are therefore dependent on man, even though the inherent worth is not.⁵⁴ As opposed to the natural rights view, the *legal* validity of humanly created laws does not hinge on their recognition of inherent worth.

This is not to say, however, that all binding obligations upon man come only from the operation of law. Moral obligations arising from the existence of relationships between beings that have inherent worth may in some circumstances arguably be superior to conflicting legal obligations. This thought will not be developed here; the point is simply to stress that the model being presented should not be too quickly labelled as falling into one of the traditional jurisprudential camps, be it natural law, positivism, legal realism, or some other variation. The ultimate lesson of the model, at least within the confines of this discussion, is simply that if society fails to recognize and value the inherent worth of a thing, then society will also probably fail to mobilize its *legal* resources to protect that thing for the thing's own sake.⁵⁵

Given this general framework of the model, there is no reason why, at least theoretically, inherent worth need be recog-

53. See generally C. ANTIEAU, *RIGHTS OF OUR FATHERS* (1968); D. LLOYD, *THE IDEA OF LAW* 70-95 (1964); R. TUCK, *NATURAL RIGHTS THEORIES* (1979).

54. This process of recognizing inherent worth and creating rights must also be distinguished from legal theories, such as that of Roscoe Pound, where various 'interests' are recognized by society through the creation of legal rights. Inherent worth is neither a synonym for a naturally existing right nor for an interest — human or otherwise — waiting to be recognized. See *infra* notes 59-63 and accompanying text for a discussion of what is meant by "inherent worth."

55. Society might, of course, protect it for its use-value to man. See *supra* note 52.

nized only in human beings as is presently the case. It also could be recognized in other creatures or even in "nonliving entities like canyons and cathedrals."⁵⁶ Although one of the functions of law is to structure human responsibilities and duties, those responsibilities and duties need not be limited to humanity, but can include any part of existence for which humanity feels respect or reverence — or for which it feels it ought to feel reverence. Law can order human society not only for society's own benefit, but also in the service of other obligations that transcend our own wants and needs.

Simply, society can come to recognize and value the inherent worth of an aspect of existence and can limit, for the sake of the thing itself, society's own abusive and destructive tendencies. Of course, once this has occurred, the *thing* no longer can be treated as a *thing*; that is, it can no longer be an object of pure use and manipulation, but becomes imbued with its own, perhaps unknowable, meaning and purpose: it becomes its own end, and not merely the means to some other's end. The black man can no longer be property and enslaved; the woman becomes a full person in her own right; the child's existence is respected as that of an adult;⁵⁷ and perhaps the endangered species' right to exist will also be recognized.

The homocentric perspective is not necessarily outside the confines of this model. It can, and perhaps does, recognize the existence of inherent worth, but when it does so, it limits it to human beings.⁵⁸ The central issue is, of course, whether such recognition of inherent worth *within* human society should be extended to things *outside* of human society.

In the light of the model set forth above, this issue can best be approached by looking at three separate questions. First, what is really meant by "inherent worth" and where does it

56. Tribe I, *supra* note 1, at 1345.

57. Stone, *supra* note 1, at 451, 453-56.

58. The homocentric perspective's approach to anything outside of human society may be utilitarian, valuing nature for its use-value only, but its treatment of fellow humans may admit to a greater degree of altruism. Much of modern American constitutional law's concern with "fundamental rights" and the innate dignity of the human person arguably revolves around a recognition of a human being's inherent worth. At least in theory, this worth is recognized no matter the individual's race religion, social status or economic station.

come from? Second, whatever it may be, why recognize it and value it in nature? And third, if we do admit the possibility of valuing the inherent worth of nature, what does this mean for the law? Each of these three questions will be addressed in turn.

B. *Inherent Worth*

First, it is necessary to look more closely at what is meant by "inherent worth." Basically, to say that something has inherent worth is to say that it has a significance which is intrinsic to it and which is not dependent on anything or anyone else. It is also another way of saying that the thing has a sanctity or sacredness immanent within its very essence.

Several religious and scientific explanations for the source of this inherent worth can be given. For instance, from a Judeo-Christian perspective, it might be argued that a Divine Being imbues life with a sanctity it otherwise would not have. St. Francis of Assisi, who overflowed with love for all life, perhaps best reflected this understanding in his life and thought. He saw "all things animate and inanimate, [as] designed for the glorification of their transcendent Creator"⁵⁹ and "tried to depose man from his monarchy over creation and set up a democracy of all God's creatures."⁶⁰ A variation of this viewpoint might replace the transcendent God of St. Francis of Assisi with a pantheistic spirit or life force immanent in all of existence. Or from a scientific viewpoint, inherent worth might be seen as arising from the unique function each part of life performs in the intricate ecology of nature.⁶¹

Each of these explanations, although praiseworthy in many respects, is not completely satisfactory for the purposes of the model being developed here, for each conceives of inherent worth as being dependent on a reality or essence which either transcends a thing's existence or can be separated, at least intellectually, from it. To this extent, the source of sacredness is placed outside the thing itself. The result is that, as Thomas Merton wrote, "[e]verything always points to something else

59. White, *supra* note 1, at 1207.

60. *Id.* at 1206.

61. See Tribe I, *supra* note 1, at 1337; LEOPOLD, *supra* note 1, at 230-236; ASHBY, *supra* note 1, at 81-87.

. . . Nothing is allowed just to be and to mean itself: everything has to mysteriously signify something else."⁶²

The concept of inherent worth being developed here, in contrast, is actually closer to the Buddhist concept of "suchness," which has been described as being a concept that "indicates the world just as it is, unscreened and undivided by the symbols and definitions of thought."⁶³ According to this view, the sanctity of existence arises from the flux of life as it is, in itself, independent of human conceptions that try to limit and define it.

Thus, sanctity does not necessarily arise because the wildflower glorifies the transcendent God, or because the forest vibrates with a universal and immanent life force, or because a species is tied into a greater ecology. Rather, it arises — under this model at least — from the simple fact that all these things actually exist and are as they are. Nothing else need be pointed to; and all that is required of man is an awareness of "[t]he indescribable wonder of being . . . [that] is seen to spread until it envelops an object as common and natural as the tree in your backyard."⁶⁴

The underlying assumption beneath this entire discussion is that there is an ineffability to existence which imbues life with an innate meaning or sanctity which is *independent* of human understanding and thought. Scientific or religious thought may help us appreciate its wonder, but the innate sanctity or worth itself cannot be actually described by such thoughts: it is a mystery that can be respected, but never penetrated or subjugated by man.

It is here, in this assumption that life is "unfathomably mysterious," that the perspective based on the ethic of "Reverence for Life" finds its roots.⁶⁵ Schweitzer asks simply, "[w]ho among us knows what significance any other kind of life has in itself, and as a part of the universe?"⁶⁶ According to this per-

62. T. MERTON, *ZEN AND THE BIRDS OF APPETITE* 50 (1968).

63. A. WATTS, *THE WAY OF ZEN* 67 (1957).

64. H. SMITH, *THE RELIGIONS OF MAN* 150 (Perennial Library ed. 1965). The quotation in the text is taken from Smith's discussion of Zen Buddhism.

65. SCHWEITZER, *supra* note 8, at 158. Schweitzer also writes that true ethics arise from the recognition that "life as such is the mysterious value with which [ethics has] to deal." *Id.* at 232.

66. *Id.* at 233.

spective, the true purpose of human life is to reach beyond our self-preoccupations and begin to appreciate the wonder of another's existence — be it human or nonhuman.⁶⁷

C. *Valuing Nature for its Own Sake*

The next question to be addressed is why we should recognize and value the inherent worth of nature? One response is to argue that considerations of human advantage may force us to do so. As man poisons and upsets the delicate web of life, he creates greater and greater dangers to his own physical well-being, as well as that of the planet.⁶⁸ These growing dangers can be averted, the argument goes, only if profound social changes take place, and such changes mandate “a serious reconsideration of our consciousness towards the environment.”⁶⁹ By coming to value nature for its own sake, our perception of our place in the universe changes and we supposedly gain the flexibility and willingness necessary to make the sacrifices needed to avert ecological disaster.⁷⁰

At a more fundamental level, however, it must be realized how homocentric the question “why recognize and value nature’s inherent worth?” is. In essence, it is asking, “what’s in it for us humans?” If the only purpose and reason for man’s life is to maximize human wants, pleasures, and needs, then ultimately there can be no justification for valuing the inherent worth of the life of nature. From such a perspective, nature can only be valued for its usefulness and value to man.

A true justification for valuing nature’s inherent worth is therefore possible only if homocentric biases are renounced and a new understanding of the purpose of man’s life is adopted. Christopher Stone has written that

we have to give up some psychic investment in our sense of separateness and specialness in the universe. And this, in turn, is hard

67. *Id.* at 231. Schweitzer writes that “[a]s a being in an active relation to the world [man] comes into a spiritual relation with it by not living for himself alone, but feeling himself one with all life that comes within his reach.” *Id.*

68. Southwick, *supra* note 16, at 12-68; Manaster, *supra* note 33, at 746; Stone, *supra* note 1, at 492.

69. Stone, *supra* note 1, at 493. *But see generally* Ashby, *supra* note 1.

70. This is, in essence, a homocentric argument for reevaluating the homocentric perspective itself.

giving indeed . . . Yet, in doing so, we — as persons — gradually free ourselves of needs for supportive illusions.⁷¹

In recognizing the inherent worth of something other than ourselves, we also recognize our own limits, that we are not the source and measure of all meaning in the universe. Our parochialism is diminished; our appreciation of our interdependence with all of life, human and non-human, is increased; and the self-preoccupied arrogance of the homocentric perspective is undermined.

It is interesting to note that some scientists have begun to move toward an appreciation of these points. Eric Ashby, for instance, has pointed out that modern day scientists have become the "most effective defenders of nature," due in part because they have developed an I-Thou, as opposed to an I-It, relationship with nature.⁷² Ashby writes that this attitude has arisen because,

[s]cientists have become more and more impressed — awed is perhaps a better word — by the interdependence of things in nature. Animals, green plants, insects, bacteria are partners with man in the same ecosystems. No one can predict the full consequences of tinkering with any part of an ecosystem. Even the non-living environment has properties without which life as we know it would be inconceivable. The idea of man as lord of nature is, in the minds of scientists, replaced by the idea of man in symbiosis with nature.⁷³

Although such considerations may not lead to a description of what inherent worth is, they can lead to an appreciation of and a sensitivity to its value. For Ashby and other scientists these considerations constitute the beginnings of an environmental ethic whose "premise is that respect for nature is more moral than lack of respect for nature."⁷⁴ This ethic justifies preserving an endangered species, a landscape, or a valley filled with wildlife because such things are "unique," "irreplaceable," and "part of the fabric of nature, just as Chartres and [a] painting by Consta-

71. Stone, *supra* note 1, at 496.

72. ASHBY, *supra* note 1, at 82.

73. *Id.* at 82-83.

74. *Id.* at 84.

ble are part of the fabric of civilization.”⁷⁵

D. *The Legal Implications*

The final question to be addressed is what does all of this mean for the life of the law? First and foremost, by replacing homocentric aspirations and values with ones derived from a perspective of reverence, it becomes reasonable for the law to recognize the existence of human obligations to the nonhuman world and to enforce those obligations through the creation of legal rights and duties. Even if we as individuals can not yet feel reverence for that which is of no “use” to us, we can give legal expression to the conviction that we *should* feel such reverence. At the very least, and as a first step, we can admit our tendency to thoughtlessly destroy, waste, and abuse nature for our own purposes, and use the coercive force of law to limit our “‘enthusiasms of exploitation.’”⁷⁶

Further, the incorporation into legal decision making of the ideals of reverence for life, along with related concrete proposals, such as giving rights to wildlife and natural objects, could affect a subtle change in the entire legal endeavor. Consider, for example, the following reasoning:

[T]he vocabulary and expressions that are available to us influence and even steer our thought. Consider the effect that was had by introducing into the law terms like “motive,” “intent,” and “due process.” These terms work a subtle shift into the rhetoric of explanation available to judges; with them, new ways of thinking and new insights come to be explored and developed. In such fashion, judges who could unabashedly refer to the “legal rights of the environment” would be encouraged to develop a viable body of law — in part simply through the availability and force of the expression. Besides, such a manner of speaking by courts would contribute to popular notions, and a society that spoke of the “legal rights of the environment” would be inclined to legislate more environment-protection rules by formal enactment.⁷⁷

Possibly, if the rhetoric of reverence gained a degree of respect-

75. *Id.* at 85.

76. H. BROOKS, ENVIRONMENTAL DECISION MAKING 120, *quoted in* ASHBY, *supra* note 1, at 85.

77. Stone, *supra* note 1, at 488-89.

bility it could also enrich other fields of law besides that of environmental law. The effect in areas such as human rights law, poverty law, or even international law is impossible to predict, for as our values and assumptions about the legitimate function and scope of the law shift, so will our legal expressions and institutions.

On a more immediate level, the thought of giving rights to the environment might still be disturbing to lawyers and jurists unable to free themselves completely from their lifelong homocentric conditioning. They might ask, with concern, "How fundamental will nature's rights be?" and "Will human interests and rights be sacrificed to those of nature?"

Recognizing rights in nature does not mean that nature will receive the same rights and treatment as people. Christopher Stone writes that,

to say that the environment should have rights is not to say that it should have every right we can imagine, or even the same body of rights as human beings have. Nor is it to say that everything in the environment should have the same rights as every other thing in the environment.⁷⁸

Just as there is a variety of rights for people which sometimes come into conflict, so will there be a variety of environmental rights,⁷⁹ each carrying a different weight and effect. They too will sometimes come into conflict with each other and with other classes of rights. The courts will then be left to their traditional task of balancing the conflicting rights and interests according to the degree with which society has decided to value each. At times, human interests will be sacrificed for the benefit of nature's well-being, and at times they will not. It will depend on the facts of each case.

Also, admitting that nature can be valued for its own sake

78. *Id.* at 457-58.

79. One commentator, for instance, in writing about animal rights has pointed out that

[t]he difference between humans and animals would obviously give rise to different treatment and different rights, just as the differences between children and adults may give rise to different kinds of rights. Thus, it could be ridiculous to give infants the right to vote or dogs the right to free speech, since these rights would be meaningless in terms of capacity to utilize the rights.

Dichter, *supra* note 4, at 163.

does not mean that all of nature is suddenly sanctified and frozen as is, or that all else must be sacrificed to preserve that sanctity.⁸⁰ The inherent worth or sacredness of a life may in some sense be "absolute," but society's recognition of it varies depending on society's moral, ethical, and legal development.⁸¹

Similarly, just as human rights to life and liberty can be overridden by our criminal justice system, hopefully only after due process of law has been served, so too might nature's rights be overridden — but hopefully only after their importance has been carefully considered and appreciated. As Schweitzer recognized,

man comes again and again into the position of being able to preserve his own life and life generally only at the cost of other life. If he has been touched by the ethic of Reverance for Life, he injures and destroys life only under a necessity which he cannot avoid, and never from thoughtlessness. So far as he is a free man he uses every opportunity of tasting the blessedness of being able to assist life and avert from it suffering and destruction.⁸²

But, if it does become necessary to destroy life, then in the legal arena careful consideration of the problem should include the recognition that human society bears "the responsibility for the life which is sacrificed."⁸³

One way of insuring this recognition is by imbuing natural objects and wildlife with procedural rights to sue on their own behalf as well as by creating substantive rights through legislation. And one way of making sense of such an extension of

80. Tribe feared that "[t]reating the existing order as sacred . . . might well relegate to permanent subjugation and deprivation those many who are not now among the privileged, freezing the social evolution of humanity into its contemporary mold." Tribe I, *supra* note 1, at 1337-38. The framework being set forth here will, it is hoped, avoid this problem, since it does not sanction idolizing humanity's present or future appreciation of the sacredness of the world, but admits to an evolving and changing recognition of the sacredness of both the human and nonhuman aspects of existence.

81. For instance, society may come to value the inherent worth of an entire species, especially if it is endangered, and recognize its right to exist to be more fundamental than the right to life of a single tree who may have only limited individual rights.

In a similar vein, Stone has suggested that a list of "preferred objects" in the environment be compiled that would be analagous to a list of "preferred rights" in humans. Both would invoke a courts highest scrutiny when violated. Stone, *supra* note 1, at 486.

82. SCHWEITZER, *supra* note 8, at 234.

83. *Id.* at 233.

rights, as we have seen, is by replacing our homocentric biases and assumptions with a view of the world that recognizes and values the inherent worth of all life simply out of a sense of reverence.

IV. Conclusion

This Comment has attempted to sketch the outline of a legal framework that can justify an extension of rights to nature. This framework requires from us a degree of altruism and a commitment to the inherent worth of things beyond ourselves. Such a commitment, it has been argued, can make sense to us only if we broaden our perspective from that of a creature preoccupied with its own needs and desires to one that is able to recognize responsibilities to the large community of life. By extending legal rights to the environment, we can give institutional expression to this expanded sense of responsibility. But, extending rights to the environment does not mean that human interests will be automatically subjugated to those of nature, although it may change "the role of *Homo sapiens* from conqueror of the land-community to plain member and citizen of it."⁸⁴ Such a change can be humbling. It forces us to re-evaluate our place in the universe and the meaning and purpose of our lives. But by doing so, the door is opened to developing a more civilized and gentler relationship, founded in law, with the rest of nature.

Steven Chananie

84. LEOPOLD, *supra* note 1, at 219-20.