

base of society—if not the entire biosphere. The neo-Malthusian rejection of the democratic component of progressive conservationism grows out of their disbelief in the optimistic claims this conservationism made about natural resource abundance. Having rejected this claim, the neo-Malthusians retain the administrative form of progressive conservationism—scientific management—but abandon faith in political democracy and expanding economies, leaving only the element of managerial optimism found in the earlier American conservationism.

Neo-Malthusianism is therefore best viewed as progressive conservationism cut away from its classical commitment to democratic equality. Once this break has been made, Ophuls is right to suspect that the Leviathan is the most obvious political option remaining. In this sense the neo-Malthusians are correct to view their project as a radical break with the past. On the other hand, what they are left with is the scientific management of the environment, which had been pioneered and promoted by the first great American conservation movement. As such, they have developed a strand of the very American political tradition they believed themselves to have rebelled against.

3

Liberal Reformulations of Progressive Conservationism

One of the penalties of an ecological education is that one lives in a world of wounds.

—Aldo Leopold

For all the conceptual and empirical problems found in the works of the neo-Malthusians, they are not alone in their belief that the environmental conservationism of earlier generations is inappropriate or ineffectual in the context of the latter half of the twentieth century. Historians of American environmentalism have commonly distinguished between the conservationism of the Progressive Era and the environmental movement as it developed in the 1960s and 1970s. For Roderick Nash, recent environmentalism has broken away from its earlier roots in Pinchot. In the place of progressive utilitarian attitudes toward nature, he sees an emphasis on the intrinsic values and “rights” of nature.¹ Samuel Hays argues that while progressive conservationism can best be understood as part of the history of American production (stressing wise use of resources and efficiency), environmentalism in its more recent incarnations is a part of the history of American consumption patterns. As living standards rose in the period following World War II, Americans began to value wilderness and the natural environment as a resource not only for production, but for recreation and aesthetic experience. “Environmental and ecological values were an integral part of the continuous search for a better standard of living. They reflected changing attitudes about what constitutes a better life. . . . The search for environmental quality was an integral part of this rising standard of living.”² At the same time that many environmentalists, like the neo-Malthusians, were becoming increasingly nervous about the ability of contemporary society to pro-

tect and maintain its base of natural resources, others were beginning to think of the natural world as more than a reservoir of material goods to be wisely and efficiently administered. These environmentalists viewed nature as a refuge from commercial society and a source of experiences of significantly greater value than those offered by material affluence.

Although there may be some truth to Hay's thesis, the shift in attitude within the environmental movement of the 1960s and 1970s can also be traced to the same developments that motivated the neo-Malthusians. There was, first, a growing sense that American conservation practices were proving inadequate for protecting natural resources and the environment as a whole. Rachel Carson, in her influential study of the pollution caused by the widespread use of pesticides, expresses the fear that we live in an "age when man has forgotten his origins and is blind even to his most essential needs for survival."³ In the drive for commercial and agricultural development, we have waged "relentless war" on life itself.⁴ Carson warns that we may be destroying not only the material foundation of contemporary society, but the very ecosystem that supports both human and nonhuman life. Our failure to protect the environment grows out of a second and perhaps deeper flaw in progressive conservationism: It embraces an inappropriate understanding of the proper relationship between civilization and the natural world. As Carson concludes *Silent Spring*, "The 'control of nature' is a phrase conceived in arrogance, born of the Neanderthal age of biology and philosophy, when it was supposed that nature exists for the convenience of man."⁵ The technological and administrative optimism of progressive conservationism is based on the dangerous presumptions that nature exists primarily for humanity's sake and that we are capable of manipulating it solely for our purposes. The result is environmental deterioration and moral failure.

This increasing unease with the progressive conservation inheritance is found not only in the works of dissident scientists, but in the writings of officials at the very highest levels of American government. In 1963, President Kennedy's secretary of the Interior, Stewart Udall, published *The Quiet Crisis*, in which he argues that "modern life is confused by the growing imbalance between the works of man and the works of nature."⁶ Although Udall commends the legacy of

conservationism handed down from the Progressive Era,⁷ he nonetheless believes that the United States has ravaged and wasted its natural resources as a result of a "Myth of Superabundance,"⁸ to say nothing of the greed and shortsightedness that had disturbed Pinchot half a century earlier.⁹ Udall quotes with approval President Kennedy's message to Congress in 1962, in which Kennedy, in standard progressive conservationist language, defined conservation as "the wise use of our natural environment."¹⁰ Despite his conventional language, however, Udall clearly believes that American society needs to develop new ways of thinking about the natural environment and new principles for managing it. He praises traditional Native American attitudes toward nature, and in a break with Pinchot's commitment to the multiple use of public lands, he argues that it is now essential to protect some wilderness areas from all commercial development. "More and more Americans see . . . that in this increasingly commercial civilization there must be natural sanctuaries where commercialism is barred, where factories, subdivisions, billboards, power plants, dams, and all forms of economic use are completely and permanently prohibited, where every man may enjoy the spiritual exhilaration of the wilderness."¹¹ Although he is not as critical of the American conservation tradition as Carson is, Udall is convinced this legacy has been unable to satisfactorily protect and preserve the natural environment. What is now needed is a "new land ethic for tomorrow" to "inspire those daily acts of stewardship which will make America a more pleasant and more productive land."¹² The call for increased productivity places Udall squarely within the Progressive framework, but by juxtaposing this with the need for a "more pleasant" nation, he is also attempting to introduce new aesthetic values into this tradition. The implication is that the progressive conservation program, lacking such values, has proved to be incomplete and a partial failure.

Two years after the appearance of *The Quiet Crisis*, Supreme Court Justice William Douglas published *A Wilderness Bill Of Rights*. Like Udall, Douglas believes humankind faces a crisis in its relationship to the environment. "Around the world, predatory man has indeed despoiled the land."¹³ The focus of Douglas's concern is the destruction of wilderness areas. Although he admits that the people who admire, use, and find worth in wilderness constitute a minority in American society, he argues that they embody certain values essential for Amer-

ican civilization, and so they deserve to have their "rights" to wilderness protected by law. "Wilderness people are at the opposite end of the spectrum from any standardized product of this machine age; yet they represent basic values when they protest against automation for the wilderness and for their grandchildren."¹⁴ Douglas proposes a "wilderness bill of rights," which would "protect those whose spiritual values extend to the rivers and lakes, the valleys and the ridges, and who find life in a mechanized society worth living only because those splendid resources are not despoiled."¹⁵ Although he is not opposed to the general principle of multiple use,¹⁶ he believes that commercial development is threatening to overrun the last remaining wilderness areas. Thus, Congress should act to set aside more pristine wilderness,¹⁷ since the "minority rights" of those who cherish wilderness can only be protected if the government steps in to preserve it from relentless commercial development.¹⁸

Douglas takes the wilderness minority so seriously because he believes the values they represent must survive and flourish in order for American society as a whole to develop a more appropriate relationship with nature. Douglas argues that we "must learn to live with the land, not off the land,"¹⁹ that we need "a new land ethic that restates man's relation to the earth from which he comes."²⁰ Wilderness, and those who care for it, can teach us to "look at the land with reverence" so that we "honor the biotic community that keeps the life of the woods and fields in balance."²¹ Like Udall and Carson, Douglas believes that new moral sensibilities that transcend the utilitarianism of progressive conservationism need to be cultivated if the natural environment is to be adequately protected and appreciated.

When Udall and Douglas write of the need to develop a new "land ethic," they are referring to the language and ideas of Aldo Leopold. Leopold's beautiful little book, *A Sand County Almanac*, was influential during the 1960s and has since become a classic in environmentalist circles. In many respects, Leopold was a generation or two ahead of his time. Educated at the Yale Forestry School (which was founded with money from the Pinchot family), Leopold, like Pinchot, pursued a career in the Forest Service. His experiences with game management in the southwest, and later with forest management in Wisconsin, eventually led him to reject what he saw as the commercial and utilitarian values informing American forestry. He criticized the prac-

tice of conquering wilderness solely for the purpose of converting it to economic use, and he incisively noted that "a stump was our symbol of progress."²² Toward the end of his life he attempted to articulate a new and more suitable ethical relationship with nature. *A Sand County Almanac*, which appeared a year after his death in 1948, was the precursor to much of the environmental literature from the 1960s and 1970s that aimed to reform and perhaps even replace what were thought of as the ethical weaknesses of conventional progressive conservationism.

Rather than defining conservationism as the wise use of natural resources, Leopold suggests it be described as "a state of harmony between men and land."²³ The utilitarianism of progressive conservationism places too much stress on the economic exploitation of nature, and this has led to a lack of respect for its nonutilitarian qualities. Referring to the extinction of the passenger pigeon, he writes, "The gadgets of industry bring us more comforts than the pigeons did, but do they add as much to the glory of the spring?"²⁴ Conservationism has for too long supported the "modern dogma" of "comfort at any cost" and is thus implicated in the reckless destruction of natural ecosystems.²⁵ "We abuse land because we regard it as a commodity belonging to us."²⁶ If we are to treat the land in a more ecologically sound manner, it is essential that we develop new and more substantial moral and intellectual foundations for conservation practices. "What conservation education must build is an ethical underpinning for land economics and a universal curiosity to understand the land mechanism. Conservation may then follow."²⁷

Leopold suggests that such an ethic must be based on the recognition that humans are a part of the greater ecological community, rather than superior creatures standing above ecological processes. "When we see land as a community to which we belong, we may begin to use it with love and respect. There is no other way for land to survive the impact of mechanized man, nor for us to reap from it the esthetic harvest it is capable, under science, of contributing to culture."²⁸ If people viewed the environment in this way, they would learn to feel an appropriate "sense of shame in the proprietorship of a sick landscape."²⁹ Leopold outlines his idea of the three-tiered historical development of human ethics. On the first level are ethical relations between individuals, as symbolized by Mosaic law. The second

consists of relations between individuals and society and is represented by the "golden rule" and democratic principles. The third addresses the ethical relationship between people and the earth and has yet to be developed and integrated into moral thinking. "The extension of ethics to this third element in human environment is, if I read the evidence correctly, an evolutionary possibility and an ecological necessity. It is the third step in a sequence."³⁰ Such a "land ethic" would transcend the economic orientation of contemporary conservationism, and would give the biotic community as a whole moral standing.³¹ "In short, a land ethic changes the role of *Homo sapiens* from conqueror of the land-community to plain member and citizen of it. It implies respect for his fellow-members, and also respect for the community as such."³² The science of ecology can aid us in understanding the land as a "biotic mechanism" worthy of respect and love, thus laying the foundations for the land ethic.³³ "That land is a community is the basic concept of ecology, but that land is to be loved and respected is an extension of ethics."³⁴

Although Leopold did not live to work out this concept of the land ethic in more detail, the idea was sympathetically received by later writers like Douglas and Udall. During the 1960s and 1970s, even those who were loyal to the tenets of progressive conservationism realized that there are environmental problems this tradition seems ill-equipped to handle and environmental values for which it fails to account. Unlike the neo-Malthusians, this group of environmentalists does not detect an impending environmental catastrophe—although environmental degradation does constitute a dire and urgent problem in need of remedy—nor are they willing to jettison their liberal political values and principles in their search for a solution to environmental problems. Rather, they see their task as locating the central flaw in the progressive conservation tradition and proposing remedies that fall within and reinforce the broader framework of democratic liberalism.

There is widespread agreement about where the fault lies in progressive conservationism: Its utilitarianism is identified as its primary weakness. Such a heavy emphasis on the use of natural resources for human needs has the effect of translating all questions concerning the environment into questions of economic utility. Nature is viewed primarily as natural resources, and natural resources are in turn defined in narrow economic terms. Thus, although Pinchot championed the

multiple use of public lands (which included use for recreation), commercial pressures on these lands ultimately overwhelmed any other consideration or rationale for protecting them. Wilderness, if it has no significant market value, is very difficult to defend on grounds of utility, and wilderness is in fact quickly succumbing to the demands of the market. Pinchot's intellectual legacy offers little to prevent this from happening. Following Leopold, many now hold that progressive conservationism's emphasis on utility is incapable of respecting all of the values that people either do or should locate in nature. The growing unease in American society with the commercial development of increasingly larger proportions of public and nonpublic lands is testimony to the tradition's failure on this count. As chronicled by scientists such as Carson, progressive conservationism is also guilty on a second count: that of failing to prevent the commercial exploitation and despoliation of the environment.

Although there is consensus on the need for an alternative to the utilitarianism of traditional conservationism, there remains uncertainty about what perspective should replace it. In the time since Leopold (and Udall and Douglas) called for a new land ethic, there have been two major liberal answers to this question. The first, represented here by the writings of Roderick Nash and Christopher Stone, develops and applies the legal and moral concept of rights to the natural environment as a way to protect and preserve nature. The second answer, found in the work of Mark Sagoff, replaces the Progressive focus on utility with the democratic conversation promoted by liberal pragmatism. Both of these alternatives attempt to build on the foundations of liberal political theory to reform, revitalize, and perhaps transform the tradition of progressive conservationism.

In his recent study of the development of environmental ethics, Roderick Nash argues that the emergence of this body of literature in the 1970s "represents the farthest extension of ethical theory in the history of thought."³⁵ The reasoning behind this bold claim is quite simple: Before the appearance of environmental ethics, ethics was more or less confined to relationships between humans. Environmentalist philosophers, however, are now working out ways to extend ethical theory to include all manner of nonhuman creatures, plants, and even

the earth as a whole. This project can be thought of as "arguably the most dramatic expansion of morality in the course of human thought."³⁶ The theory that is currently unfolding is replacing anthropocentrically oriented ethics with a biocentric ethical philosophy that extends "the esteem in which individual lives were traditionally held to the bio-physical matrix that created and sustained those lives."³⁷

Nash views this development as an extension and transformation of conventional American political philosophy. The environmental movement since the 1960s has broken away from the progressive conservation tradition inherited from Pinchot, Nash argues, and has begun to think of the natural world less as a body of resources for human use and enjoyment and more as an abused sector of the ecological community. This changing view of nature has allowed environmentalists to draw on American political values that have previously been used to explain and justify various liberation movements. "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."³⁸ Although this stretching of liberal values (in particular the concept of rights) to include nonhuman entities is a significant challenge to conventional thinking, Nash contends that it is well within a historical trend in American politics and society toward gradual expansion of the community within which political and moral rights are recognized. "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."³⁹

Nash believes that the extension of rights to nature represents "the cutting edge of liberal thought" in the late twentieth century.⁴⁰ The environmental movement of the 1960s and 1970s had its roots in the black and women's liberation movements of that period,⁴¹ but it took the idea of liberation beyond the human community to nature. What abolitionism was for American liberalism in the mid-nineteenth century, environmentalism is for our own time.⁴² Thus, in some significant sense, environmental ethics represent the pinnacle of the Ameri-

can political tradition. By rejecting the utilitarian and anthropocentric perspective of progressive conservationism and substituting a more satisfactory rights-based liberalism, environmentalism is responsible, in Nash's words, for "rounding out the American revolution."⁴³

In *The Rights of Nature*, Nash is careful to claim that he is only presenting the ideas of the environmental ethics movement; he is not acting as an advocate either for or against them.⁴⁴ Elsewhere, however, Nash does present these arguments himself. For example, he states in a previous work that environmental pollution is ultimately a problem of "ethical myopia."⁴⁵ What he refers to (in an even earlier piece) as "man's biotic arrogance" grows out of a "failure to accord to all life and to the environment itself an ethical status comparable to that which he normally accords to his fellow man."⁴⁶ Conservation must become a matter not simply of calculating what is desired by human beings, but of determining in a more absolute moral sense what is right and wrong in our relationships with nature. "Conservation must become a matter of morality, not merely a matter of economics or of aesthetics or even of law. We must be concerned about environmental responsibility not because it is profitable or beautiful, and not even because it promotes our survival, but because it is right."⁴⁷

The task, then, is to extend the most important category of liberal ethics and political theory—rights—to the natural world. In so doing, we will be completing a natural evolution of American liberalism, perhaps even completing the liberal project. Nash does not see overwhelming conceptual problems in such an extension, although he does not work out this reconceptualization in any detail. Rather, he suggests that intuitively the notion of rights for at least some nonhuman entities seems reasonable to Americans. For example, he argues that most of us feel that killing a dog "is as morally reprehensible if not yet so legally punishable an act as killing a person."⁴⁸ If this is so, then the concept of granting moral, and perhaps legal, rights to dogs makes sense within our shared moral framework. Only one further step is required to imagine moral rights for not only other living things, but for nonliving nature as well: "It is possible to conceive of the rights of rocks. From such a perspective, stripmining would be as heinous a crime as the rape of a neighbor's daughter. The extermination of a species would rank with genocide."⁴⁹

Nash does not believe that bestowing rights on nonhumans neces-

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sarily anthropomorphizes nature. Granting animals rights, for instance, does not require that we think of them as people. Rather, it is a way of recognizing "the worth of animals as animals."⁵⁰ This process, he contends, is not especially different from what has been done by acknowledging the rights of women, blacks, or other previously excluded members of the human community. "This is really only an extension of the same ethical growth that had to occur when, say, white people accepted black people into the ethical community. The point here was not to make black men white, but to affirm blackness."⁵¹ The purpose of extending rights to the nonhuman world is to clarify our appreciation of the moral standing of this world and to formulate an ethical perspective that respects natural entities as intrinsically valuable. Thinking of nature as bearing rights also furthers the project proposed by Leopold: thinking of ourselves as members of a larger ecological community. Using rights to perform this task, Nash argues, links the "new environmentalism" he is advocating with the "revolutionary democratic theory so central to America's beginnings and subsequent history."⁵²

There are a number of significant problems and ambiguities in Nash's arguments. Perhaps the most basic challenge is offered by Thomas Hobbes in *Leviathan*, when he writes against the possibility of granting rights to animals: "To make covenants with brute beasts, is impossible; because not understanding our speech, they understand not, nor accept any translation of right; nor can translate any right to another: and without mutual acceptance, there is no covenant."⁵³ Rights are based on principles of equality, mutuality, and agreement between members of a community. This community, therefore, must be composed of a membership capable of embodying these qualities—which means it must be a human community, for only humans are capable of making rights a coherent notion. To confer rights on animals (or any other part of nature) is literally incoherent, since it would involve the "category error" of assuming that animals (or the rest of nature) have qualities and capacities they obviously lack.

Consider also Nash's claim that granting rights to nature is not qualitatively different from acknowledging the rights of black people (or women, or any other human group). Here Nash appears to be confused about the moral significance of accepting blacks into the rights-bearing community. The point of recognizing the rights of blacks is

not to "affirm [their] blackness"; that can equally occur in a community such as the antebellum United States, in which blackness of skin was affirmed by white America as the significant characteristic that justified a peoples' exclusion from full and equal participation in the community. Recognizing the rights of blacks, it is true, is not intended to make "black men white," but neither is it meant to "affirm blackness," whiteness, or any other skin color. Rather, the purpose is to respect the common humanity between people and eliminate skin color as a pertinent consideration for moral and legal standing in society. Respecting the rights of previously excluded peoples affirms a shared human status within which race, gender, and so forth are morally and legally irrelevant. Humankind's diversity remains but is strictly subordinate to a more universal human equality.

It is obvious that such an equality is simply not comparable to the type of relationship we might have with animals or other segments of the natural environment. Nash is sensitive to this, and yet the key metaphor in his discussion is the parallel between acknowledging the rights of blacks and extending rights to nonhumans. This parallel can only hold, however, under one of two conditions (neither of which, presumably, would be acceptable to Nash himself). First, if Nash disclaims an anthropomorphic intent in granting rights to nature, then he is dangerously close to actually *dehumanizing* blacks by implying that their inclusion as rights-bearing members of the community is on the same moral plane with the inclusion of animals or rocks. On the other hand, if Nash means to suggest that nature can be incorporated into the rights-bearing community in a manner as morally significant as the incorporation of black people, then he is dangerously close to smuggling anthropomorphic conceptions of nature in through the back door. By stressing this parallel, then, Nash implies either a degradation of the moral standing of blacks or the upgrading of animals and other natural entities to a level of equality within the moral community. Either option raises serious objections.

Nash does not resolve these issues, and the language he uses to clarify his position tends to exacerbate them. To explain how we might come to grant nature a higher moral status than is found in conventional conservationism, Nash employs such terms as democracy, community, rights, oppression, and liberation—all overtly political words.

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Yet it is not at all obvious how natural entities are to be incorporated into a political community in which such terms take on meaning. The result is that Nash's conceptual claims about the rights of nature remain very unclear and undeveloped, if not actually incoherent.

A related problem with Nash's discussion is found in his empirical claims about the moral sensibilities that most Americans share. Although most people would be morally outraged by the cruel or wanton killing of a dog, it strains credibility to argue that they would find this as morally reprehensible as killing a person. And no matter how censurable strip-mining may be, most Americans will probably never view it as being "as heinous a crime" as rape, nor would we necessarily want to live in a world that contained such a moral calculus. Nash's claim that it makes sense within the tradition of American moral and legal values to think of human and nonhuman lives, or living and nonliving entities, as commensurable, is empirically implausible. And since his case for the rights of nature rests on this claim, his argument is quite unconvincing.

Finally, even if we were to accept Nash's claim that nature has rights, it is not clear from his discussion how these rights would be integrated into the universe of rights held by people. How would the rights of an animal compare with the rights of a human in the event of a conflict? Or the rights of a dog with the rights of a rock? Although there are conceivable answers to these questions (the construction, for example, of a hierarchy of rights), Nash is largely silent on these issues.⁵⁴

These problems in Nash's writings are very serious, but his work, especially *The Rights of Nature*, illustrates the appeal that the concept of rights has to environmental theorists who hope to use liberal political principles in reformulating a more satisfactory environmental ethic. Nash's work also reveals the difficulty of presenting a coherent account of how liberal rights might serve this purpose. However, when we turn from Nash to Christopher Stone, we find a much more sophisticated version of the case for the rights of nature. In developing his argument, Stone has undertaken the task of not only rethinking the legal status of natural objects, but providing a detailed moral theory that he hopes will serve to replace conventional ethical views of the nonhuman world.

Stone, a professor of law, was first moved to write on environmental

issues by a court case, *Sierra Club v. Morton*, which was reviewed by the Supreme Court in 1972. The case involved a permit granted by the U.S. Forest Service to Walt Disney Enterprises to construct a ski resort in the Mineral King Valley of Sequoia National Park. The Sierra Club sued and received a temporary restraining order against the permit. On appeal, however, the court ruled against the Sierra Club, basing its decision on the club's "want of standing." Because the Sierra Club had not demonstrated that it or any of its individual members would be directly harmed by the construction of the resort, it did not have proper legal standing for bringing suit against the project.

Knowing that the case was pending review by the Supreme Court, Stone quickly prepared a law review article, "Should Trees Have Standing?—Towards Legal Rights for Natural Objects" (later published in book form), in which he suggests that natural objects should be allowed independent legal standing. Then cases such as *Morton* could be decided directly on their merits, rather than being sidetracked by issues of who can or cannot properly bring suit on behalf of objects like Mineral King Valley.

Stone does not aim in *Should Trees Have Standing?* to make an argument about the moral rights or status of nature. Rather, he addresses the particular question of how the law might be constructed in order to conceptualize and protect legal rights for natural objects. Stone believes that it is feasible and desirable to deal with the legal issues surrounding these objects "as one does the problems of legal incompetents."⁵⁵ Just because legal incompetents—such as children, the comatose, or the mentally deranged—are unable to pursue their own interests or speak on their own behalf does not mean that they do not qualify as holders of legal rights. In fact they do hold such rights, which allow them to claim independent legal standing, to have their personal damages count in determining awards by the court, and to be the beneficiaries of such awards.⁵⁶ In other words, their legal incompetence does not prevent them from having legal rights and pressing legal claims. They are protected by a court-appointed guardian, whose job is to see that their rights are respected and, when necessary, to bring suit on their behalf. By extension, then, a series of rights could be constructed for natural objects, such as Mineral King Valley or bald eagles, and these rights could be represented by court-

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appointed guardians, such as the Sierra Club and the Audubon Society.

If Stone's proposal is to make sense within the conventional legal framework that has evolved for dealing with human legal incompetents, he has to demonstrate that natural objects have identifiable interests (in a manner as meaningful as when we say, for example, that children do) and that it would be reasonable for courts to award damages to them should their rights be violated. Regarding the first issue, Stone argues that "natural objects *can* communicate their wants (needs) to us, and in ways that are not terribly ambiguous."⁵⁷ The example he uses is of his lawn: When it is dry, it is visibly and unambiguously in need of water. Likewise, biologists are presumably able to determine what animals require, even desire, to live a normal life. Therefore, ascertaining the "wants" or needs of nature does not present an overwhelming obstacle to granting them legal rights. On the issue of awarding damages to natural objects, Stone suggests that any recompense should be paid directly to the natural object itself (that is, to its legal guardian) and that the determination of amounts could be based on calculations of what it would cost to restore the natural object to its pre-violated condition. Stone contends that his proposal would not halt industrial and economic development—activities that inevitably alter or pollute the environment to some degree. "The idea of assessing damages as best we can and placing them in a trust fund is far more realistic than a hope that a total 'freeze' can be put on the environmental status quo."⁵⁸ His claim is that granting legal rights to nature will provide greater protection for it than is currently accorded by our legal system, without requiring the imposition of unworkable or unrealistic environmental standards.

If it is not legally unimaginable to develop and enforce legal rights for natural objects, the question remains as to why we might want to do so. As noted, Stone believes that it would be legally expedient: By conferring on natural objects legal standing, we would simply allow the courts to address environmental issues more directly and forthrightly than they can at present. Perhaps more important, Stone fears that if human utility is the only factor taken into account when assessing environmental issues, development and pollution will frequently get the better of the argument; it is likely, for example, that more people would use a ski resort in Mineral King Valley than a

relatively undeveloped area. Even if this were not the case, he believes that arguments from human utility, even when offered by environmentalists, fail to acknowledge all of the values we might, or should, recognize in nature: "I myself feel disingenuous rationalizing the environmental protectionist's position in terms of a utilitarian calculus, even one that takes future generations into account, and plays fast and loose with its definition of 'good.' . . . One feels that the arguments lack even their proponent's convictions. I expect they 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."⁵⁹

If the law were developed in the direction Stone suggests, it might be a first step toward expanding our appreciation of and respect for the natural world. Stone hopes that the courts can lead the way to a "radical new conception of man's relationship to the rest of nature" that can aid in not only solving environmental problems, but encouraging "such a changed consciousness from the point of making us far better human beings."⁶⁰ Thus, the courts might potentially play an educational role in raising our moral sensibilities on environmental issues, just as they have on issues of desegregation.⁶¹

Although the Supreme Court rejected the Sierra Club's appeal in *Morton*, accepting the appellate court's view that the organization lacked legal standing in the case, Justice Douglas dissented and paid tribute to Stone's article in the first paragraph of his opinion.⁶² However, as Stone points out in the opening pages of his later work, *Earth and Other Ethics*, the legal importance of his arguments in *Should Trees Have Standing?* has decreased over time. The courts in the intervening years have liberalized the grounds for hearing environmental litigation and have thus made the strategic purpose of granting legal rights to natural objects less critical than it originally appeared to Stone (and Justice Douglas). The greater significance of *Should Trees Have Standing?* is that it gave Stone the opportunity to begin formulating a more detailed conception of an environmental ethic that could replace conventional progressive conservationism. Echoing other writers (like Udall, Douglas, and Nash), Stone now wishes to place his overall project within the context of Aldo Leopold's concerns: "I would be pleased to have the present enterprise associated with Leopold's en-

Why does nature need rights?

treaty that we develop a 'land ethic'—or something, or some things, of that sort."⁶³

Stone's intent in *Earth and Other Ethics* is to expand his discussion of the status of the environment to include not only legal issues but moral evaluation as well. First, Stone broadens his earlier focus on legal standing for natural objects to a more comprehensive conception of "legal considerateness," in order to demonstrate that there are many ways in which natural objects can be respected and protected by law. He is no longer as certain as he was in *Should Trees Have Standing?* that all natural objects can be thought of as being subject to harm or benefit in a conventional sense.⁶⁴ For instance, a polluted lake is not a living organism that has identifiable concerns or interests in its condition. Nonetheless, it is still plausible to imagine a legal system that would protect such ecosystems—perhaps through a notion of "intactness" that would not require a direct reference to the "rights" of these systems. Stone's purpose is not to undermine his previous emphasis on rights so much as it is to illustrate that there are a host of ways (including the granting of rights) in which a legal system can regard natural objects as legally considerate and give them protection on their own terms, irrespective of the human interests that may or may not be related to an object.⁶⁵ "The basic point I want to carry forward is this. As concerns the positioning of Things in law, the range of options we can coherently implement is much wider than is commonly recognized."⁶⁶

Acknowledging the legal rights or legal considerateness of an object does not necessarily imply that we are recognizing its moral rights as well.⁶⁷ Even so, Stone's central project in *Earth and Other Ethics* is to investigate how the natural world can be thought of as having moral, and not just legal, standing. For this task, Stone rejects the option of granting moral rights to nature. Although at a high level of generalization, perhaps like that found in Nash's writing, thinking about the rights of nature might create a moral predisposition to respect natural objects more than we conventionally do, Stone suspects that rights claims will provide little guidance in evaluating specific cases. "Rights expressed on such a broad level of generality are possibly effective in contouring moral discourse, but are fated to exercise weak gravity on the final outcomes of actual conflicts."⁶⁸ Instead, Stone suggests that we extend the idea of "considerateness" for natural objects from the

legal to the moral realm. Although the difference between "considerateness" and rights is primarily one of degree, the emphasis of the former is more on our duties than on entitlements owed to nature. "When we so regard rights functionally, we see that much of what is sought can be equally well secured, and, I think, in the case of Nonpersons be more plausibly secured, by speaking of our duties."⁶⁹ Although Stone maintains a commitment to legal rights for nature (within the more general category of legal considerateness), he rejects rights as the most appropriate vehicle for conceptualizing our moral obligations to the natural world.

Turning from legal to moral philosophy, Stone believes that conventional moral thought places significant limitations on environmental ethics. He is thus forced to use his investigation of environmental ethics "as the occasion to reexamine the metaethical assumptions that underlie all of moral philosophy."⁷⁰ The problem with traditional moral thought, be it utilitarian or deontological, is that it is "monistic," or linked to a single moral system that must accommodate our entire universe of moral concerns and inquiries. Stone rejects moral monism because he thinks it is incapable of actually delivering on its universalistic promises. In reality, moral evaluation is necessary in many different contexts, requiring various kinds of reasoning. Because of this plurality of moral contexts, Stone proposes that moral pluralism supplant moral monism. To illustrate the difference between these two approaches, Stone uses the following example: "The Moral Pluralist holds that a public representative, a senator, for example, might rightly embrace utilitarianism when it comes to legislating a rule for social conduct (say, in deciding what sort of toxic waste program to establish). Yet, this same representative need not be principally utilitarian, nor even a consequentialist of any style, in arranging his personal affairs among kin or friends, or deciding whether it is right to poke out the eyes of pigeons."⁷¹ Moral pluralism spurns the monist attempt to find one set of principles to cover all these moral relationships and problems and instead holds that different relationships may require different types of moral reasoning.

The importance of moral pluralism for environmental ethics is that it allows us to grant nature moral consideration without requiring that we also grant it a moral status (for example, rights) that may strain credibility. Roughly speaking, Stone believes that deontological eth-

ics, or Kantianism, seems most fitting for intimate human relationships, utilitarianism is more appropriate for legislation, and general ideas of "goodness" or justice should be applied to those most removed from our community (both humans and nonhumans).⁷² Moral pluralism means that we evaluate moral choices and conflicts from a variety of perspectives (he refers to them as moral "maps"), rather than relying on one single calculus or standard. As a result, moral judgement becomes more richly textured than it tends to be at present, and this richness and complexity reflects the real nature of the moral problems we face in our relationships with environmental objects. "Pluralism nurtures the emergence of different frameworks for analysis, each capable of producing guidance that is less vague and general than if all problems had to answer to the same governance."⁷³

If we accept Stone's analysis to this point, the next step is to test the actual use of moral pluralism to investigate ethical problems. If we invoke different moral frameworks (utilitarian, Kantian, and so forth) to settle a problem but arrive at basically the same solution, then moral pluralism might be defended on the grounds that it presents us with a stronger reason for favoring that resolution than we would have if we had only employed a single moral perspective. (Here Stone shows his legal background by noting that "lawyers are not embarrassed to cast an appeal on plural grounds."⁷⁴) A problem arises, however, if pluralist analysis ends up generating conflicting solutions to a problem. The question then becomes, which plane of analysis should guide our decision? Stone suggests that in this case some "master rule" or "lexical ordering of planes" might be introduced to resolve the issue. If such an ordering is unavailable or unacceptable, Stone concludes that we have to sort out this particular problem intuitively: "In many cases, it may be that we are left to make those a-versus-b resolutions *as best we can*, creatively, and there is nothing more we can say. Indeed, does the continuing mystery of the human brain not lie precisely in this, that it has the power to create solutions not fully causally ordained by its antecedently programed 'instructions'?"⁷⁵

This is the central problem with Stone's moral pluralism: When pluralist analysis produces contradictory answers to moral problems, we may then turn to a master rule or lexical ordering of moral planes. It is difficult to see how, in the final analysis, such an appeal is any differ-

ent from moral monism. Stone recognizes this problem and offers the following defense: "One might respond that by legitimating an appeal to a master rule in certain cases, we are thereby endorsing a sort of Monism 'after all.' But it is an 'after all' significant enough to keep Pluralism from collapsing into Monism."⁷⁶ But Stone's claim here is not convincing. A master rule, even if introduced on an *ad hoc* basis, is a rule designed to prefer one "moral plane" over another. This raises the fundamental question of why one moral plane should be thought of as superior to another, which brings us back to moral monism. Stone may have provided an outline for a more complex or eclectic form of traditional theory, but it does not appear that he escapes the moral monism he has set out to criticize. As J. Baird Callicott notes, "When we are forced to choose between 'planes,' we make a metaphysical commitment as well as a moral choice."⁷⁷ And it is precisely this metaphysical commitment that Stone wishes to avoid.

Stone is critical of the attempt by legal theorists and philosophers to develop universalistic and metaphysically grounded moral theories. In fact, he argues that human intuition and emotion must be the ultimate guide in moral issues. The moral pluralism he defends must be thought of mainly as a mechanism to be steered by intuitive insight, rather than an analytic blueprint for solving the kind of moral issues that environmental ethics addresses. These insights are better represented in our arts and literature than in our academic moral and legal theorizing. "That is why the planar choices, those that go to the ground rules of each plane and the whole assembly of planes, are less under the sway of the stuff we academics do than of literature, folk songs, war, art, landscape, and poetry."⁷⁸ But Stone's own theory requires the very "stuff we academics do" in order to generate a plurality of moral frameworks in the first place. If there is no philosophical justification for utilitarianism (or Kantianism, or any other ethical plane we might employ), it is unclear why it should be included within our analysis. Stone is at pains to distinguish his moral pluralism from moral relativism, and he claims that, like the monist, he is assuming the perspective of an "independent moral observer."⁷⁹ In other words there are (at least in principle) universally correct answers to moral problems, and moral pluralism can evoke moral reasoning that appeals to principles beyond what people simply happen to believe, for historical or sociological reasons, at the moment.⁸⁰ If this is

so, however, Stone's choosing of appropriate moral planes requires precisely the type of defense that he has abandoned. Either his choice of planes becomes historically contingent (and perhaps, in that sense, philosophically arbitrary), or his moral pluralism is less a break with moral monism than it is a system of multiple monisms. In the former case, it seems that Stone has failed to offer the kind of moral tool for environmental ethics that he set out to develop. In the latter, it does not appear that Stone's moral pluralism replaces conventional moral thought in the manner he originally intended.

Following the publication of *Should Trees Have Standing?* Laurence Tribe wrote in an influential essay that assigning legal rights to endangered species might be thought of as "a convenient technique for concentrating congeries of otherwise diffuse aesthetic and ecological concerns ultimately reducible to human interests—in other words, as a useful but quite transparent legal fiction."⁸¹ If this were all that could be gained from such an innovation, he argues, it would nonetheless be significant. Yet Tribe, like Stone, suggests that this legal device might lead to a more general refocusing of our moral sensibilities toward nature. "But we might plausibly hope for more. At least so long as we remain within empathizing distance of the objects whose rights we seek to recognize, it seems reasonable to expect the acknowledgment of such rights to be regarded as more than fictitious."⁸² Granting legal rights to nature can be thought of as a way to cultivate a greater respect and empathy for the natural world in both our moral and legal thinking.

Yet Stone's investigation of this more general moral view of nature confronts significant obstacles. His suspicion that conventional liberal theory, be it utilitarian or Kantian in origin, does not permit an adequate moral understanding of nature leads him to offer what he considers an alternative moral perspective. As we have seen, however, Stone is forced to assume many of the elements of the liberal theory he intends to criticize. He assumes the feasibility of conventional theoretical approaches and then incorporates them into an eclectic synthesis of methods—without justifying their use to the degree that ethical theory requires. Furthermore, Stone casts doubt on his entire philosophical project through his appeal to intuition and emotion. One senses that at these moments he is no longer confident that a pluralist environmental ethics can really be an effective guide in reasoned debate about environmental issues. Leopold's call for the de-

velopment of a land ethic, as Stone suggests, may require moral categories beyond liberal rights and perhaps even beyond liberal theory as a whole. But Stone's attempt to use liberal legal and moral categories to articulate such a land ethic leaves him fluctuating between an uneasy embrace of the original approaches and an apparent rejection of them altogether.

If Stone and Nash approach the development of a Leopoldian land ethic by considering the relevance of liberal rights for this task, Mark Sagoff approaches the problem by drawing on a different strain of liberal thought: democratic pragmatism. One of the central questions facing Sagoff, like the other theorists discussed in this chapter, is whether liberalism can actually provide a defense of environmentalism: "May liberals support environmental laws even when these conflict with the utilitarian and egalitarian goals we usually associate with liberalism?"⁸³ Unlike Stone and Nash, who attempt to use one or more of these conventional liberal goals to develop their environmental theory, Sagoff looks elsewhere within the liberal tradition to explore environmentalist values.

In what should now be recognized as a familiar theme, Sagoff draws a contrast between Pinchot's conservationism and Leopold's call for a new land ethic.⁸⁴ "The environmental, or 'ecology,' movement that arose in the 1960s and 1970s differs from conservationism in defending a nonutilitarian conception of man's relationship to nature."⁸⁵ Inspired by Leopold, this new perspective does not collapse environmental values and concerns into economic evaluation. In fact, in Sagoff's view, the tendency to reduce environmental problems to economic analysis—as is found in much of the contemporary environmental regulation literature—is the direct legacy of Pinchot's conservationism. The burden of Sagoff's argument is to demonstrate that this type of analysis, and the public policy that has grown out of it, are untenable and unhealthy for both environmentalism and American democratic institutions.

The focus of Sagoff's attack is on what he sees as the overriding utilitarianism found in environmental policy debates and in social regulation generally. The form this utilitarianism usually takes is economic cost-benefit analysis, which Sagoff claims is inappropriate for two reasons. The first is that cost-benefit analysis makes a conceptual error in

assuming that social regulation can be reduced to an evaluation of individual preferences. The second error flows from the first: Since it is based on this assumption, cost-benefit analysis short-circuits the political process through which legitimate political decisions must be made.

Sagoff contends that the first error is the result of economic reductionism, or thinking of people simply as individual bundles of interests and personal preferences. If this were true, democratic decision making about environmental (or any other) issues could be achieved simply by taking a poll of individual preferences and allowing the majority to rule. Sagoff, however, draws a strong distinction between our roles as consumers and as citizens. To illustrate this point, he uses the example of the proposed development of Mineral King Valley, which generated the *Morton* case. When Sagoff asked students in an environmental ethics class if they would enjoy visiting a ski resort at Mineral King Valley, there was overwhelming enthusiasm about the prospect. When asked if they would visit the valley in its undeveloped state, very few students thought they would ever wish to do so. As consumers, Sagoff's students clearly preferred a developed to an undeveloped Mineral King Valley. Nonetheless, when he asked them if they believed that Walt Disney should be allowed to build the ski resort, the response was overwhelmingly negative. Although their consumer options would be increased by having a resort there, few believed that it should actually be built. For Sagoff, this surprising combination of preferences demonstrates that a policy question can be analyzed on two distinct levels. The first level is utilitarian and simply tallies consumer preferences. The second, however, involves a moral evaluation of the proposed policy. In Sagoff's view, when the students drew on this second, moral capacity, they expressed their opinions as citizens, not as consumers.⁸⁶

The problem with cost-benefit analysis, and the utilitarianism on which it is built, is that it considers only the first level of analysis and ignores the second. The result, obviously, can be perverse: In this case, it leads quite clearly to what Sagoff sees as the wrong decision. Cost-benefit analysis conflates our values with our preferences, our public interests with our private interests, and our citizenship with our consumership. In so doing, cost-benefit analysis replaces moral judgment with a scientific method for calculating individual prefer-

ences or utility. In Sagoff's terms, the virtues of moral discourse and evaluation are replaced by a false methodological certainty, and public deliberation is replaced by scientific management. Economists and analysts have attempted to integrate individual concerns and values about the environment into their cost-benefit computations—through the concept of "externalities" or the creation of "shadow prices"—but they are actually making a logical error. Environmental values—in fact, all values—are qualitatively different from consumer or utilitarian preferences and thus the two cannot be equated. "When analysts expand the notion of an externality . . . to embrace the opinions and beliefs of the citizenry, which are central to environmental legislation, they make a bald attempt not to inform but to replace the political process. . . . Thus, cost-benefit techniques, when they go beyond the confines of determining efficiency in the narrow sense, do not provide useful information. Rather, they confuse preference with ethical and factual judgment."⁸⁷

Sagoff's claim is that environmental legislation and policy must be based on shared national values that are not necessarily reducible to individual consumer preferences: "People in communities know purposes and aspirations together they could not know alone."⁸⁸ It is only through democratic participation and dialogue that these purposes and aspirations can be discovered and expressed. "The ability of the political process to cause people to change their values and to rise above their self-interest is crucial to its legitimacy. Political participation is supposed to educate and elevate public opinion; it is not, like economic analysis, supposed merely to gratify preexisting desires."⁸⁹ Sagoff believes that environmental legislation will only make sense if we think of it as an expression of our moral values as a nation, rather than as the outcome of a struggle between competing interests.⁹⁰

Social regulation most fundamentally has to do with the identity of a nation—a nation committed historically, for example, to appreciate and preserve a fabulous natural heritage and to pass it on reasonably undisturbed to future generations. This is not a question of what we *want*; it is not exactly a question of what we *believe in*; it is a question of what we *are*. There is no theoretical answer to such a question; the answer has to do with our history, our destiny, and our self-perception as a people.⁹¹

It is to our history and to the moral content of our decisions as a nation, rather than to individual utility and cost-benefit analysis, that the legislator and the public servant must attend when considering environmental policy.⁹² To do otherwise is to replace moral evaluation with utilitarian calculation, and this undermines the integrity and legitimacy of environmental policy.

Sagoff's critique of conventional liberal conservationism is not confined to its utilitarian incarnations. He is equally wary of deontological or Kantian arguments that attempt to use the language of rights to defend environmentalist positions. To speak of the "rights of nature" is, he believes, incoherent, since the concept of rights applies to individuals rather than to aggregations or groups. On these grounds alone, theorists like Nash are wrong to use the concept in their environmental ethics.⁹³ Others, who employ arguments about the rights of future generations to justify environmental protection in the present, are actually defending long-term cost-benefit analysis—that is, Sagoff regards this tactic as just one more version of the utilitarian case he has already criticized.⁹⁴ Both of these approaches are guilty of the same error found in traditional progressive conservationism: One view attempts to account for the preferences of nature, while the other considers the preferences of future generations of humans, but both replace moral evaluation with utilitarian calculation. As such, both threaten to subvert the democratic process required for generating collective ethical values toward nature by substituting instead the opinions of experts. Finally, Sagoff is suspicious of the self-righteousness of those rights theorists who compare the granting of rights to nature with the liberation of previously oppressed members of the human community. In an early article he summarizes these views by criticizing Stone and Tribe:

At a stroke, Stone and Tribe seem to reconcile the assumption that all policy is to be directed by desires and interests with the felt need to find some rationale for preserving the natural environment. All that has to be done, so it seems, is to countenance the interests of nature along with our own. Secondly, the proposal to give rights to nature immediately indicates the need for, and therefore the employment of, more social and technical planners—professionals who measure the needs or wants of nature

and represent them in court. This increases the level of expertise available to society. . . . Finally, the suggestion that trees have standing smothers the authors with glory: it ranks them as emancipators, almost as great as the emancipators of the Jews, blacks, and women.⁹⁵

Most important, rights-based arguments circumvent the democratic process and, like utilitarianism, reduce the moral issues of environmental protection to technical questions of needs, wants, interests, and preferences.⁹⁶

Related to Sagoff's criticism of utilitarian and deontological environmental ethics is his claim that these approaches mistakenly tie environmental ethics to a more comprehensive theory of distributive justice. His position, on the contrary, is that "an environmental ethic cannot be derived entirely from a theory of justice."⁹⁷ The moral values that should inform environmental legislation and policy are logically and practically distinct from the norms of justice that appropriately inform our concerns about the distribution of goods between citizens. National values that evolve to guide and support environmental protection should emerge independently from considerations of human equality and liberty.

Sagoff views the history of environmental law from the New Deal to the 1960s as a "continuous compromise . . . between those who approach the protection of public health, safety, and the environment primarily in ethical terms and those who conceive it primarily in economic terms."⁹⁸ The environmental legislation from the 1960s and 1970s, however, represents a victory for the former, since it is largely written in the language of absolute moral goals. For example, Sagoff contends that the Endangered Species Act is an example of precisely the type of legislation he is advocating: "Because the plain language, as well as the judicial interpretation, of the Endangered Species Act explicitly prohibits an interest-balancing or cost-benefit test, the statute has worked rather well."⁹⁹ This act and similar legislation, such as the Clean Air Act, set absolute moral standards of environmental integrity that the nation is committed to uphold and thus escapes the amoral utilitarianism of much environmental policy and administration.

Somewhat surprisingly, however, Sagoff contends that the absolut-

Critique of rights based approach

Moral Legislation

ist ethical language of environmental legislation from this period is no longer appropriate today. Although the legislation correctly substitutes moral standards for economic calculation in determining environmental policy, many of its standards are not realizable in contemporary society. Sagoff therefore concludes by reconsidering the role that economic analysis may legitimately play in determining environmental legislation and policy.

The problem for social regulation today . . . is not to determine what is efficient from an economic point of view; it is to weigh ends and means together in order to set targets and standards that are reasonable in relation to the efforts necessary to achieve them. It is to make this appraisal, insofar as possible, to begin with, rather than to make compromises afterward, at the level of enforcement. We may do more, in this way, to achieve goals appropriate to a caring, compassionate nation that respects its natural environment.¹⁰⁰

If environmentalists continue to demand environmental standards that ignore the complex material realities surrounding their enforcement, legislation may be discredited in practice and the door opened once again to those who would reduce environmental questions to economic calculation. Appealing to John Dewey, Sagoff writes that "To will the end, we must also will the means, and therefore we should make some effort to assess goals in relation to the obstacles, constraints, and costs that make them difficult to achieve."¹⁰¹ The point is not to subordinate our moral principles and goals to economic considerations, as Sagoff believes cost-benefit analysis does, but to realistically weigh technical and economic issues relevant to achieving our goals. "The important thing is for administrative actions to bear a reasonable relationship with statutory values in the context of all the 'realities' that make the assessment and control of risk so difficult. There is no general theoretical path to achieve this kind of relationship; it depends on the minute particulars of each case."¹⁰² A pragmatic assessment of the relationship of means to ends does not mean that we are compromising the ethical content of the ends themselves. Sagoff believes that since our environmental knowledge is so much greater than it was in the 1960s and early 1970s, the absolutist tone of much of

the legislation from this period can be softened without compromising the moral perspective that informs it.¹⁰³

Sagoff's theoretical defense of a Leopoldian "land ethic," therefore, rejects both utilitarian and deontological liberal solutions in favor of a pragmatic evaluation of U.S. environmental values as he believes they are embodied in our cultural history, legislation, and democratic discourse as citizens. He fears not only that the utilitarianism of progressive conservationism fails to account for these national values, but that many of the critics of this tradition, such as theorists of the rights of nature, circumvent democratic traditions and dialogue in developing their own version of environmental ethics. In contrast to these other theorists, Sagoff contends that the goals of environmental policy must "be determined through a political process in which citizens participate constrained only by rights of the kind protected by the Constitution. These goals are not known beforehand by a vanguard party of political economists or by an elite corps of philosopher-kings."¹⁰⁴

The danger of Sagoff's position, however, is precisely in his appeal to historical environmental values. He is certainly correct to believe that if we examine American history, we can find a tradition of respect and care for the environment. But it is equally true (as his own account suggests) that other trends in American political and cultural history do not support the type of environmental ethic Sagoff proposes. In light of this, Sagoff provides few philosophical arguments to explain why we should accept one of these traditions as legitimate and the rest as unacceptable. Sagoff's analysis relies heavily on the empirical claim that Americans, when acting in their capacities as citizens rather than as consumers, will choose to support and enforce environmentalist policies and values. If he is right, environmental policies will continue to expand and strengthen to the degree that American political democracy expands and matures. If he is wrong, however, democratic politics might prove to have negative environmental consequences (if, say, after legitimate democratic deliberation we decide, as citizens, to prefer shopping malls to undeveloped wilderness). In this event, Sagoff offers very little philosophical ammunition with which to protect the environment from democratic society. Christopher Stone criticizes Sagoff on this point: "I am not sure, frankly, that even this modest mileage he now hopes to get from na-

Recreation
of
wilderness
economies?
Special
Designation?

tional symbols provides much basis for an *environmental ethic*. It would be destined, at its best, to form an inappropriately relativist, culture-bound basis for an epoch that is getting goosebumps over the ozone layer and the oceans."¹⁰⁵

Case against utilitarianism

Summary

All the environmental thinkers discussed in this chapter share a concern that the theoretical and practical legacy of Pinchot's progressive conservationism has a severe flaw; the overt utilitarianism promoted as the basis of society's relationship to the natural environment. They also all hope to find the theoretical and political tools with which to repair this tradition within liberal political thought and institutions. For Nash, the concept of liberal rights, if expanded appropriately, can be fashioned to incorporate and protect the nonhuman world. For Stone, legal rights, combined with an eclectic pluralism of liberal moral values, can perform this function. For Sagoff, democratic pragmatism can avoid the problems associated with both utilitarian and rights-based liberalism, even as it uncovers and illuminates an American environmental tradition that can direct environmental legislation and administration.

Two important consequences flow from their project. The first is that in rejecting Pinchot's utilitarianism in favor of adopting some other liberal principles to guide their environmental ethics, these thinkers have also discarded the element of progressive conservationism that was the source of its political popularity and democratic integrity: its commitment to democratic equality. Nash, Stone, and Sagoff all reject the materialist foundation of this equality as it is found in Pinchot's work. After more than half a century, it has become clear to these theorists that not only does Pinchotian conservation inadequately protect the environment, but its emphasis on providing the basis for democratic equality by means of access to wealth and natural resources has been responsible for public policies that actually exacerbate the exploitation and deterioration of nature. Of these theorists, Sagoff alone remains committed to reformulating environmental protection within the context of democratic politics and suggesting a new connection between the two. As Sagoff points out, those who promote a conception of the rights of nature have difficulty avoiding

solutions that are potentially as technocratic as those found in Pinchot's legacy.

A second consequence of the attempt to develop an alternative liberal environmental ethic is that while the most sophisticated positions, those of Stone and Sagoff, may challenge the conceptual boundaries of liberal theory, they may also be unsatisfactory to the environmentalist constituency to which they appeal. Both Stone and Sagoff aspire toward an environmental ethic and a political theory that will, in the tradition of Leopold, respect the intrinsic value and moral importance of natural objects apart from their usefulness to human beings. Stone's moral pluralism thus promotes, in effect, a balancing of moral interests between human and nonhuman beings. For example, on the issue of whether or not the Inupiat Indians of northern Alaska should be permitted to hunt bowhead whales (an endangered species), Stone endorses the Alaska Whaling Commission's decision to allow the Inupiat a limited number of harpoon strikes each year.¹⁰⁶ To Stone, this policy correctly balances the moral claims of the Inupiat to practice their traditional lifestyle with the interests of bowhead whales in surviving. Stone's approval of the commission's compromise, however, might seem a bit too complacent to those concerned about the plight of endangered species.

Likewise, Sagoff finds that his own pragmatic attempt to discover a "middle way" between morally absolute environmental goals and economic realities has been supported by recent court decisions.¹⁰⁷ Although he contends that pragmatic evaluation does not threaten the moral commitments we have to environmental protection, his policy conclusions appear to be much more moderate than the thrust of much of his own analysis. While praising the strong (even if unrealistic) moral standards found in much environmental legislation twenty years ago, his position is that we are now knowledgeable and environmentally committed enough to moderate the tone of our environmental legislation and administration. Again, those who are less complacent about U.S. environmental commitments may view Sagoff's position as undermining the moral force of his theory.

Although Sagoff is quick to criticize rights-based theorists such as Stone and Nash, there is actually much common ground between them. Nash hopes to nourish an understanding of the rights of nature, but his appeal finally rests on his own intuitions about the moral

sensibilities of his fellow citizens rather than on deontological claims about the moral status of the nonhuman world. Stone, likewise, grounds his system of pluralist environmental ethics in the general cultural and artistic norms he purports to find in American society. Just as Sagoff's reading of the environmentalist commitments of Americans is vulnerable to empirical invalidation, so also are Stone's and Nash's optimistic readings of the environmental values shared by Americans generally.

The authors discussed in this chapter believe that our established political institutions and discourse already have what is needed to shape and defend a new environmental ethic—one that not only solves our environmental problems, but reshapes our attitudes toward nature in a way that will strengthen our commitments to environmental protection in the future. Those who are less optimistic about conventional institutions, moral legacies, and theoretical traditions, however, must take their inspiration and guidance from lesser known and even nonliberal sources of the American political and environmental heritage.