

**CREATING A NEW UNIVERSAL DECLARATION OF RIGHTS:
A CRITICAL RECONSTRUCTION OF EARTH JURISPRUDENCE'S
GLOBAL LEGISLATIVE FRAMEWORK**

A thesis in partial fulfilment of the
requirements for the degree of

MASTER OF ARTS

of

RHODES UNIVERSITY

by

GEORGES ALEXANDRE LENFERNA

June 2012

ABSTRACT:

This thesis aims to critique the Universal Declaration of the Rights of Mother Earth and its underlying moral justification in order to provide a stronger and improved version of both.

In Chapter 1 I explore what sort of moral justification is necessary to establish the Universal Declaration on firm grounds and explore its relation to environmental ethics and rights discourse. I argue that a non-anthropocentric perspective is necessary to justify the Universal Declaration's rights. In Chapter 2 I explore the underlying justification of the Universal Declaration as discovered in the works of Cormac Cullinan and Father Thomas Berry. I argue that their ethical framework is indeterminate, has many ambiguities and uncertainties, and, among other problems, it does not provide a clear action-guiding framework. In Chapter 3 I develop an alternative justification for the Universal Declaration. I argue against many predominant moral theories, that in light of our best scientific and moral understanding we should expand the realm of moral concern to include all living beings, a moral theory I call Life's Imperative. In Chapter 4 I illustrate that Life's Imperative is a much stronger, more coherent justification for the Universal Declaration, one that coheres with both our best understanding of the natural world and our relation to it, and to an environmental ethic reflective of that relationship. Unfortunately many of the weaknesses in the current implicit justification of the Universal Declaration have also led to it enshrining rights that are themselves problematic. In order to address these issues, I revise its rights to accord with the stronger justification that I established in Chapter 3. The end result of doing so is a revised version of the Universal Declaration.

TABLE OF CONTENTS

ACKNOWLEDGMENTS.....	4
INTRODUCTION: THE PHILOSOPHY OF EARTH JURISPRUDENCE.....	5
CHAPTER 1: FROM ANTHROPOCENE TO EOCENE.....	12
CHAPTER 2: THE UNIVERSAL DECLARATION’S PROBLEMATIC RIGHTS JUSTIFICATION.....	41
CHAPTER 3: A NEW KINGDOM OF ENDS.....	67
CHAPTER 4: TOWARDS A UNIVERSAL DECLARATION OF RIGHTS.....	87
APPENDIX 1: THE UNIVERSAL DECLARATION OF THE RIGHTS OF MOTHER EARTH.....	115
APPENDIX 2: THOMAS BERRY’S TEN UNIVERSAL PRECEPTS.....	118
APPENDIX 3: TREE OF EVOLUTION.....	119
APPENDIX 4: THE UNIVERSAL DECLARATION OF RIGHTS.....	120
REFERENCE LIST.....	123

List of Tables and Figures

<i>Figure 1 – The Ecocentric Picture</i>	<i>19</i>
<i>Figure 2 – The Anthropocentric Sufficiency Picture.....</i>	<i>19</i>
<i>Figure 3 – The Holistic Anthropocentric Sufficiency Picture.....</i>	<i>23</i>

Acknowledgments:

I hope that this work will be one of the billions of acts needed to create a more just and equitable future for all; that it will contribute to the Great Work.

As with any list of acknowledgements, the list will never be complete, for the people, circumstances and forces that shape our lives are too many and too complex for us to know, never mind adequately acknowledge. Bearing this in mind, I would like to firstly thank everyone and everything that has allowed me to occupy the privileged position needed to complete this work, and, secondly, to ensure you that to the best of my abilities I will use these privileges to help make a better world.

More specifically, I would like to make the following acknowledgements:

To the Mandela Rhodes Foundation for their invaluable support & for helping me become a better man;

To the National Research Foundation for their financial support of this thesis;

To Samantha Vice for her diligent, patient & thorough supervising; it would be difficult to exaggerate the extent of your contribution to this work;

To Marius Vermaak, Francis Williamson and the rest of the Rhodes University Philosophy Department for helping me come to terms with the problem of essences, and so many others;

To my loving parents: one for encouraging me to never accept what was generally accepted, and the other, for helping me to focus on and expand what is possible. Together... you have helped me to strive for the virtuous mean;

To my friends and numerous others for their friendship & support, even in times of accidental deletion;

To all of you, thank you.

I would also like to acknowledge the awe-inspiring, humbling, respect-deserving 'natural' world. For those willing to listen, its lessons are great.

I do hope that the potential demise of trees that this might be printed upon and the concomitant environmental degradation associated with the production of this work does not occur in vain. Please feel free to distribute electronically, especially if you do so to people who run on renewables, and please avoid printing where possible.

A human being is a part of a whole, called by us ‘Universe’, a part limited in time and space. He experiences himself, his thoughts and feelings as something separated from the rest... a kind of... delusion of his consciousness. This delusion is a kind of prison for us, restricting us to our personal desires and to affection for a few persons nearest to us. Our task must be to free ourselves from this prison by widening our circle of compassion to embrace all living creatures and the whole of Nature in its beauty

– Albert Einstein (quoted in Burdon 2011, 61)

We must question the value and legitimacy of any law that surpasses the ecological limits of the environment to satisfy the needs of one species.

- Peter Burdon (2011, 69)

As regards law, the basic orientation of American [as well as most of the world’s] jurisprudence is towards personal human rights and towards the natural world as existing for human possession and use. To the industrial-commercial world the natural world has no inherent rights to existence, habitat, or freedom to fulfil its role in the vast community of existence. Yet there can be no sustainable future, even for the modern industrial world, unless these inherent rights are recognised as having legal status. The entire question of possession and use of the Earth, either by individuals or establishments needs to be considered in a more profound manner than Western society has ever done previously... To achieve a viable human-Earth situation a new jurisprudence must envisage its primary task as that of articulating the conditions for the integral functioning of the Earth process...

– Thomas Berry (1999, 60)

“[Giving rights to nature] constitutes an act of justice by which the law advancing in its process of development, confirms the distinctive values inherent in the natural world, leaving behind the indefensible anthropocentric vision of earth according to which the planet and all that exists upon it are but the environment of human kind, having no other value than their usefulness for the human species”

- Godofredo Stutzen (2002, 25).

Stutzen's rich but dense statement provided in the last opening quote needs some unpacking if we are to properly understand what the Rights of Nature are, and what the Rights of Nature movement aims to achieve. As the name suggests, the Rights of Nature movement aims to give legal rights to the natural world, such that nature can be represented within our legal system. Although the meaning of the term 'natural' is indeed a contested one (cf. Herring 2001, 187) what is important to remember, according to the Rights of Nature movement, is that although humans form part of the natural world, the sort of representation that is sought for nature is not through its use or value to humans (or at least not solely) but it is rather representation determined by the value that nature has in itself independent of human interest. More specifically the Rights of Nature movement argues that the 'moral considerableness' of nature should be translated into legal standing for nature itself.

Moral considerableness, a term coined by ethicist Kenneth Goodpaster, refers to something that "falls within the sphere of moral concern, that is morally relevant, [that can] be taken into account when moral decisions are made" (Goodpaster 1978, 308). As nature is seen to be morally considerable due to its intrinsic worth or value, according to proponents of the Rights of Nature, it thus merits consideration under our legal system through granting it legal standing. Legal standing, as Judith Koons (2011) points out, is the right to be legally represented in one's own stead. Thus in granting nature legal standing we recognise nature's interests as a legitimate grounding for rights. As Shannon Biggs and Mari Margill (2011) point out, under existing environmental laws, a person needs to demonstrate personal harm from environmental degradation, but under the Rights of Nature, the harm sought to be addressed is against nature itself, not nature as a proxy for human interest, but nature as represented by its own interests. Thus if we grant rights to nature, it is not protected (at least not solely) as a proxy for human interest, but rather because of its independent 'moral considerableness'.

Christopher Stone (1972) points out that there are numerous ways for something to be represented within the legal system. Proponents of the Rights of Nature, however, argue that the best vehicle through which to ensure the representation of nature within our legal systems and to ensure that it receives legal standing is through granting nature rights. As such the Rights of Nature movement is a vehicle through which to grant nature standing in the legal system and, in doing so, nature and its constituent parts are recognised as legal personages capable of holding rights.

The Rights of Nature movement furthermore is an expression of Earth Jurisprudence – a legal philosophy representing an emerging branch of critical legal theory, which, according to Burdon, is "consistent with the widely accepted critique advanced in environmental philosophy, [which] contends that Western law and jurisprudence [unjustifiably] reflects an anthropocentric worldview" (Burdon

2011, 59). It is the focus and purpose of Earth Jurisprudence to move the legal system beyond the anthropocentric worldview to an Earth-centred or ecocentric perspective that recognises the role that humans play within our broader ecosystems as well as sources of value outside of the human realm. In other words, Earth Jurisprudence is a form of jurisprudence which seeks to make the law cognisant and responsive to its broader context, and not only to narrow, short-sighted anthropocentric needs. In doing so Earth Jurisprudence aims to break the anthropocentric bias that exists within our legal system.

“Anthropocentrism” is a key term here, as it is what Rights of Nature proponents seek to move beyond, overcome, or rectify. It is therefore worth defining the term at length. Albert Einstein describes anthropocentrism as the “delusion of human consciousness” which regards “humanity as the centre of existence” (Burdon 2011, 61). According to Thomas Berry, anthropocentrism accords no intrinsic value to other forms of life apart from human life, and so non-human life is seen “to have reality and value only through their use by the human” (Berry 1999, 4). The *Macquarie Dictionary* defines anthropocentrism as an adjective that “[r]egards man as the central fact of the universe”; “[a]ssumes man to be the final aim and end of the universe”; and “[v]iews and interprets everything in terms of human experience and values” (1985, 113). Anthropocentrism is thus the view that humans are the measure of all things and the only beings that are valuable in themselves. The Rights of Nature movement asks of us to break this ‘delusion’ and incorporate a broader realm of value and meaning, not only into our legal systems, but into our morality and way of being.

Earth Jurisprudence is both reflective and precipitative of a growing recognition and response to the perceived fallacy inherent in anthropocentrism, and the unsustainable nature of the current predominant commercial-industrial paradigm, which has been the source of so much environmental destruction, inequality, poverty, injustice and the oppression of both humanity and nature. The pervasiveness of this realisation has resulted in the emergence of many different forms and guises of Earth Jurisprudence. For instance in India there is a strain of Earth Jurisprudence referred to as Earth Democracy. According to Vandana Shiva, an Indian philosopher, physicist, environmentalist, activist and author of *Earth Democracy* (2005), it is key for Earth Jurisprudence to emphasise the importance of local governance, as often the local people who are grounded in the place – who know it, its beings, its ecosystems and the inter-relatedness of human life with the broader ecosystem – are in a better position to “speak and care for the lands, waters, and beings of that community” (Koons 2011, 54). But it is also important to realise that Earth Jurisprudence “connects the particular to the universal, the diverse to the common, and the local to the global” (Shiva 2005, 1), and thus problems must be dealt with in relation to their broader context. Shiva thus describes Earth Jurisprudence as a “living

democracy”, which is built from the bottom up, but which takes into account and is informed by its broader context. Seen in this light, Earth Jurisprudence, as Judith Koons points out, “is not just an environmental philosophy; it is also a political philosophy” (2011, 54).

Earth Jurisprudence and the Rights of Nature movement thus realises that certain problems and solutions are appropriate to particular spatial and temporal frames and so different forms of governance from the local, regional, national and international level, are appropriate to different concerns. As a result of this contextual sensitivity enshrined in Earth Jurisprudence, any expression thereof must take into account and be sensitive to the particularities that exist within each locality and their relation to the broader whole. Bearing this in mind will help us understand the difficulties of expressing a form of Earth Jurisprudence, which holds across all cultures, or universally.

The Universal Declaration of the Rights of Mother Earth, however, was created to fulfil just that role (see Appendix I). That is, the Universal Declaration of the Rights of Mother Earth, hereafter referred to as the Universal Declaration, is meant to be a document which enshrines the principles of Earth Jurisprudence and the Rights of Nature Movement in such a way as to be the global legislative framework within which to develop Earth Jurisprudence. The Universal Declaration, which will be the focus of this thesis, thus plays an important role by providing the broader legislative framework under which the Rights of Nature movement and Earth Jurisprudence is meant to develop.

As the creators of the Universal Declaration of the Rights of Mother Earth sought for the rights therein enshrined to have a global reach, it is worth noting the timeliness of, and support for, Earth Jurisprudence, the Rights of Nature Movement and the Universal Declaration across the globe. The Rights of Nature movement and the development of Earth Jurisprudence are growing movements. It is a movement that is starting in my home country of South Africa, where calls for the Rights of Nature are being sounded by grassroots social movements. It found particularly strong resonance in the emergence of the Universal Declaration at a global summit hosted by the Bolivarian Alliance for the Peoples of our America where over 20,000 people called for its recognition. It found further resonance in the re-emergence of recognition of Earth Jurisprudence within African customary law and practices in Kenya , Ethiopia, Ghana, Botswana, among the Venda people of southern Africa, as well as among the African Biodiversity Network, related NGO’s, and beyond. It is finding recognition in Australia’s academic work on Earth Jurisprudence (Burdon 2011), in the swiftly growing Earth Democracy movement in India (Shiva, 2005) and importantly in Ecuador and Bolivia’s Constitutions which recognize the Rights of Nature. In all of these places and others the Rights of Nature movement is emerging, growing and gaining strength and popularity. Furthermore, according to the Global Alliance of the Rights of Nature

(2011), currently approximately 25 jurisdictions in three countries have formally enacted laws reflecting the Rights of Nature. Filgueira and Mason (2011), who undertook an analysis of a cross-section of environmental law across the globe, found that 17 of the 24 laws that they analysed contained elements of Earth Jurisprudence. The spread of Earth Jurisprudence across the globe is thus vast.

As Koons points out, Earth Jurisprudence is something that “has long animated environmental reformers, social activists, indigenous rights movements and grassroots campaigns for sustainability” even if only implicitly (2011, 46). Many believe, however, that Rights of Nature are just a third world eco-socialist fantasy, which cannot be realistically implemented, as a trawl through many online articles on the Rights of Nature will illustrate. In contrast to this belief, however, the Rights of Nature has found footing even in the US where the Centre for Earth Jurisprudence formed in Miami and the Community Environmental and Legal Defence Fund (CELDF) has been successfully incorporating the Rights of Nature into various different local ordinances across the US. Moreover, one of the late forefathers of the Rights of Nature Movement, Father Thomas Berry, came from the US, and now the Thomas Berry Foundation, which continues his work, is situated in one of the centres of academic power of the USA, Yale University. Beyond that, Rights of Nature are starting to move into the international arena via the United Nations. In 2011 the Universal Declaration was tabled as a draft treaty under the United Nations and at the United Nations Framework Convention on Climate Change 17th Conference of the Parties, Rights of Nature were included in a draft text on Long Term Cooperation, an agreement which if adopted would have included over 190 countries. Even in the United Nations World Charter for Nature of 1982 it was recognised that “each form of life is unique, warranting respect regardless of its worth to man”. The World Charter for Nature involved the most “inclusive and participatory process ever associated with the creation of an international declaration” (Mackey & Engel 2011, 318) and has been formally recognised by over 4800 organisations. Thus, even if the Rights of Nature are indeed a third world eco-socialist fantasy, as some of its detractors claim, it is a fantasy shared by many and one gaining increasing traction through the emergence of a rapidly growing global movement.

Further motivation for the adoption of the Rights of Nature is often found in the recognition that traditional anthropocentric jurisprudence, governance, conceptual frameworks, institutions and law have failed to stem the tide of global and local environmental and even economic crises that many of our societies are now facing, a fact that a large portion of our youth, especially the poor and vulnerable, must spend their lives grappling with and suffering the consequences thereof. However, whether Earth Jurisprudence is a tool that can effectively help steer us away from this situation is still an open question, for anthropocentrism is firmly embedded in many if not most places within our cultures and

displacing it will be no easy task. More than that, corporate power corrupts even anthropocentric institutions, and Earth Jurisprudence must thus tackle both corporate-centrism and anthropocentrism simultaneously, if it is to gain any real traction. Although the Rights of Nature are starting to take hold in some jurisdictions, as Burdon points out, “the lack of uniform and consistent legislation on this issue leaves the natural world vulnerable to the needs of a growing industrial economy” (2011, 63). Earth Jurisprudence therefore has an uphill battle if it is to gain cultural acceptance and effective footing within our societies against anthropocentrism and corporate-centrism, and to do so consistently it needs a strong overarching conceptual and legislative framework. The Universal Declaration is meant to be just that. However, as it stands, as I shall argue throughout this thesis, the Universal Declaration’s ability to play that role is undermined by weaknesses in both itself and its underlying justification. Thus although organisations like the Global Alliance for the Rights of Nature are currently calling for the adoption of the Universal Declaration in its current form, by bodies such as the United Nations, it is arguably worth revisiting the Declaration to ensure it has sufficient strength to pass muster before doing so. One of the best ways to develop the strength of the Universal Declaration is to promote scrutiny of it. As Amartya Sen claims:

Like the assessment of other ethical claims, there must be some test of open and informed scrutiny, and it is to such scrutiny that we have to look in order to proceed to a disavowal or an affirmation. The survivability of these ethical claims must be dependent on their survivability in unobstructed discussion” (Sen 2000, 477).

In a spirit similar to Amartya Sen’s statement above, Miguel Brockmann points out that “[the Universal Declaration] is not the final word, but the draft declaration, and subsequent documents that build upon it will be instrumental in the eventual adoption of a Universal Declaration.” In light of the above what I aim to do in this thesis is to contribute towards that drafting process by critically analysing the Universal Declaration and its current justification. I will argue that there are major problems with both, which need to be rectified, if we want to establish a more effective legislative framework for Earth Jurisprudence and the Rights of Nature movement. Furthermore I will provide ways to rectify those problems. In doing so it is my aim that in some small way, this thesis can help Earth Jurisprudence in its overarching aim of linking human law to the common good of the comprehensive Earth Community.

In Chapter 1 I explore what sort of underlying moral justification is necessary to establish the Universal Declaration on firm grounds. I also explore its relation to environmental ethics and rights discourse. I argue, contrary to many who believe that an anthropocentric viewpoint is sufficient to protect nature's interests, that a non-anthropocentric perspective is necessary for the Universal Declaration. In Chapter 2 I explore the implicit underlying justification of the Universal Declaration as discovered in the works of Cormac Cullinan (the lead drafter of both the Universal Declaration and Ecuador's Constitution) and Father Thomas Berry (one of the forefathers of Earth Jurisprudence). I argue that the ethical framework that their justification provides is indeterminate, has many ambiguities and uncertainties, and, among other problems, it does not provide a clear action-guiding framework upon which to establish the Universal Declaration. In response to my findings in Chapter 2 I develop an alternative justification for the Universal Declaration in Chapter 3. I argue against many predominant moral theories, that in light of our best scientific and moral understanding we should expand the realm of moral concern to include all living beings, a moral theory I call Life's Imperative. In Chapter 4 I illustrate that Life's Imperative is a much stronger, more coherent justification for the Universal Declaration, one that coheres with our best understanding of the natural world and our relation to it, as well as to an environmental ethic reflective of that relationship. Unfortunately many of the weaknesses in the current implicit justification of the Universal Declaration have also led to the Universal Declaration enshrining rights that are themselves indeterminate, vague and even at times misanthropic. Thus, in order to address these issues, in Chapter 4 I also rectify the problematic rights by revising them to accord with the stronger justification that I established in Chapter 3. The end result of doing so is a proposed revised version of the Universal Declaration, which I put forward in Appendix IV of this thesis. In doing so it is my hope that the thesis will suggest a stronger and more determinate Universal Declaration that coheres with the best possible understanding of the world we live in, both empirically and morally. The Universal Declaration that I propose is substantially different to the original Universal Declaration of the Rights of Mother Earth, which is a reflection of the many problems that the latter held. Through rectifying those weaknesses my proposed Universal Declaration provides a stronger more effective legislative framework with which to develop Earth Jurisprudence and the Rights of Nature.

Chapter 1- FROM ANTHROPOCENE TO ECOCENE

“The devastation of the natural world is due [in part, to Anthropocentric Constitutions], which guarantee to humans participatory governance, individual freedoms, and rights to own and dispose of property – all with no legal protection for the natural world. The jurisprudence of supporting such a constitution is profoundly deficient. It provides no basis for the functioning of the planet as an integral community that would include all its human and other-than-human components. Only a jurisprudence based on concern for an integral Earth community is capable of sustaining a viable planet.”

– Thomas Berry (1999, 74)

In April 2011 the United Nations General Assembly debated whether they would adopt the Universal Declaration as a declaration akin in legal stature to the Universal Declaration of Human Rights. The Universal Declaration, as an expression of Earth Jurisprudence, is unlike most other legal declarations in that it recognises that inherent rights belong not only to human beings, and not only to animals, but “to Mother Earth and *all* beings of which she is composed”.¹ In this chapter, I aim to partly² elucidate the relation of the Universal Declaration to current rights discourse and clarify what sort of moral justification is necessary for the Universal Declaration to pass muster and be justifiably incorporated into law. I shall do this by trying to resolve a longstanding debate within environmental ethics: whether the interests of nature can be adequately represented by an anthropocentric moral theory. I shall argue that nature’s interests, as represented by the Universal Declaration, cannot be adequately protected by an anthropocentric moral justification and that therefore the Universal Declaration requires more than just an anthropocentric moral foundation. Although an anthropocentric foundation can provide a certain amount of protection for nature, it cannot adequately represent and protect all of nature’s value due to a conflict between anthropocentric interests and the intrinsic value of nature.

¹ My emphasis. Also, according to Article 4.1. of the Universal Declaration “the term ‘being’ includes ecosystems, natural communities, species and all other natural entities.”

² I will return to a full elucidation of the relationship in Chapter 4 of this thesis. The partial elucidation provides only what is necessary for this Chapter.

1.1) Moving Away from Anthropocentrism

In the preamble to the Universal Declaration it is claimed that in order “to guarantee human rights it is necessary to recognize and defend the rights of Mother Earth and all beings in her” (Appendix 1). This may sound morally anthropocentric, that is, it may seem as if the Declaration views the world only in terms of what is valuable to humans. However, the rights enshrined by the Universal Declaration move beyond mere anthropocentrism, as the Declaration claims that what deserves moral consideration and recognition of rights is not only what is of value to humans. Rather, there are sources of value that are independent of what is valuable to us, which warrant moral consideration as well. This can be seen in Article 2.1, which states that Mother Earth and all beings of which she is composed have certain ‘inherent rights’.

An inherent right is a right that does not derive its legitimacy from an outside source, but rather indicates that a being has a right by virtue of the being it is in itself. This can be made clear by examining what it means to call something “inherent”. According to C.I. Lewis (1947) to call something “inherent” is to realise that it is an intrinsic property of an object or experience. To say that a property is intrinsic, according to Christine Korsgaard, refers to the fact that the property is in the object itself, and not external or extrinsic to it (1983, 170). However, an inherent property is not just an intrinsic property of an object. If we look to the etymological roots of inherent, coming from Latin ‘inhæreere’, meaning roughly to ‘stick to’, we can see that an inherent property is a property that “exists in someone or something as a permanent or essential attribute” of it (Oxford English Dictionary, 2004). Drawing from this definition of inherent, we can say that an inherent right derives its rights status from an essential intrinsic property of an object, or that it is a property that is essentially intrinsic to an object. Just what sort of intrinsic property is required for a rights claim, shall be explored in the following chapters; for now it is sufficient to note, that when referring to an inherent right of an object or being, we refer to a right derived intrinsically from the object or being, not from a source external to it such as instrumental human valuation. Certain essentially intrinsic properties of beings, which are said to be of intrinsic value or worth, are thought to determine whether a being merits holding rights or not. Intrinsic value or worth, as a subset of intrinsic properties, is “the value that a thing has ‘in itself,’ or ‘for its own sake,’ or ‘as such,’ or ‘in its own right’” (Zimmerman 2010, OE³).

³ OE= Online Edition for which a page number is not available.

Bryan Norton (1991), however, points out that there are two different interpretations of what it means for something to have value independent of humans – to have intrinsic value. The first, which he terms ‘inherentism’, holds that all value in nonhuman nature is dependent on human consciousness – according to this view there has to be a conscious valuer in order for value to exist. However, inherentism allows that some of nonhuman nature’s value is not derivative upon its instrumental value to humans. For example, a coral reef might be seen to be valuable independent of its use to humans, but this value only comes into existence upon recognition from a conscious valuer, such as ourselves. The second interpretation, ‘intrinsicism’, claims that some value in nature is independent of both human valuation and human consciousness. Under this view human consciousness is not necessary for there to be value, and there exists value independently of consciousness. For example, a coral reef under this view could be valuable even if it had not been recognised by a conscious valuer. Despite the difference between these two views, if one accepts either of them, then one recognises the possibility of sources of value that are not valuable because they are instrumentally valuable to humans or are dependent on human interests. One would thus recognise sources of value that are intrinsically valuable, which we as conscious valuers can recognise. The question which separates inherentism and intrinsicism, that of whether value exists without a valuer, is arguably moot for our purposes, as a valuer does indeed exist. Considering this we can come up with a neutral definition of inherent rights, which favours neither ‘intrinsicism’ nor ‘inherentism’. Such a definition holds that inherent rights are rights that are derived from the essential, intrinsic properties of objects and as such are not dependent or derivative upon human interests.

If we accept this description of what it means to call something an inherent right, it is clear that the Universal Declaration, and other like-minded legal frameworks, are non-anthropocentric, for the rights recognised, being inherent to “Mother Earth and all beings of which she is composed”, are not derived from human interests, but rather from the intrinsic value that such beings have in themselves. Most other legal declarations, such as the Universal Declaration of Human Rights, the South African Constitution and the American Declaration of Independence, are fundamentally anthropocentric and so do not recognise nature’s inherent value as a legitimate source for rights. This, as Paulo Tavares (2011) points out, translates into the fact that environmental rights under these constitutions are rights to ownership and usage of the natural environment possessed by legal entities, such as humans, communities and corporations, rather than Rights of Nature itself, which is what the Universal Declaration is calling for. Thus the emergence of such non-anthropocentric laws marks a radical shift in legal thought about nonhuman nature, and seems to also mark a related shift in moral thought. The

supposed shift is from 'light green' or anthropocentric environmentalism, which values nature only from anthropocentric concerns, to a much 'deeper green' or ecocentric environmentalism, which ascribes independent moral status to both human and non-human nature through recognition of the intrinsic value of nature. However, whether such a shift in moral thought is truly necessary is a point of contention in environmental ethics, and the major point of contention of this chapter. Thus let us begin to explore whether the move from light green anthropocentric environmental moral thought to deeper green (or ecocentric) moral thought, which recognises the intrinsic value of nature, is necessary in order to properly underpin the 'inherent rights' of nature enshrined in the Universal Declaration.

1.2) The Eco/Anthro Divide

There is debate around the importance of the distinction between anthropocentric and non-anthropocentric theories. Many believe that if we do not adopt ecocentric legal and moral theories, then much of our planet's value will be lost because of the inadequate representation of nonhuman nature's intrinsic value under anthropocentric theories.⁴ More specifically, according to this view, the interests of nature and humans often conflict, and thus ascribing to anthropocentrism will result in the loss of much ecocentric value. I will call those who fall into such a category 'ecocentrics' for they hold that anthropocentrism does not suffice as a foundation upon which to protect nature. For ecocentrics it is thus clear that the distinction between anthropocentric and ecocentric interests is an important one, as the recognition of nature's intrinsic value and its conflict with anthropocentric interests is central to their position.

On the other hand, many have claimed that the difference between anthropocentric and ecocentric theories is exaggerated and/or unnecessary such that we can adequately protect the planet's value under an enlightened anthropocentric view, which takes into account nature's full value to humans. Their claim is that from an anthropocentric view, once we understand our proper relation to nature, we will find that we must protect nature just as much as we would under an ecocentric stance. For example, E.O. Wilson holds that "across [a] great philosophical divide, it does not matter whether species have independent rights or, conversely, that moral reasoning is uniquely a human concern. Defenders of both premises seem destined to gravitate toward the same position on conservation" (1994, 351). Likewise, John Benson (2000) holds that all the resources necessary for proper protection of nature can be found within an adequate account of human well-being. According to Benson, if we consider this we can

⁴ Cf. Christopher Stone (1972) and Arne Naess (1973).

resolve the supposed conflict between anthropocentrism and ecocentrism, by realising that there is in fact no such conflict and that an environmentally enlightened anthropocentrism suffices to protect nature. Holders of such views are what I shall refer to as 'anthropocentric sufficers'. Although all anthropocentric sufficers adhere to enlightened anthropocentrism, which holds that nature needs to be more valued than it currently is under anthropocentrism, those who adhere to a form of enlightened anthropocentrism are not necessarily anthropocentric sufficers. In other words, the two views are not co-extensive for it is possible to believe that nature needs to be more protected under anthropocentrism because one holds an enlightened anthropocentric view, without believing that this would protect all of nature's own interests or intrinsic value.

One further perspective on the importance of the eco/anthro distinction, which Peter Wenz terms 'environmental synergism' or 'synergistic environmental ethics', holds that "in the long run outcomes for both people and nature are better when both people and nature are considered valuable in themselves" (Wenz 2001, 14), in other words, as holders of intrinsic value. Thomas Berry (1999), Cormac Cullinan (2002) and Peter Wenz (2001) are all believers in such a view. Where synergists differ from anthropocentric sufficers is that they believe in the importance of recognising the intrinsic value of nature, whereas anthropocentric sufficers believe such recognition is irrelevant, for if we properly take into consideration nature's value for humans under an anthropocentric approach, sufficers claim that this would be sufficient to protect nature's interests. Synergistic environmental ethics is thus an apparent hybrid between ecocentrism and anthropocentric sufficiency in that it grants that human and environmental interests are to a certain extent convergent, as do anthropocentric sufficers. However, synergists claim furthermore that in order to protect both the interests of humans and nature in the long run, we should value nature in itself, a view which anthropocentric sufficers do not hold.

It is worth noting that in practice, many who were proponents of deep ecology in their personal writing would resort to anthropocentric ethical claims when engaging in politics, public discourse and environmental work to protect nature. Environmentalists on this list include eminent individuals such as John Muir, Aldo Leopold, Joseph Krutch and Rachel Carson (Nash 1989). This might indicate that such authors believed that enlightened anthropocentric environmental approaches are sufficient to protect nature's interests, as anthropocentric sufficers claim. It might also indicate, however, that such environmentalists were willing to sacrifice their ecocentric values to agree with public norms or more likely, on the other hand, were aiming for a more pragmatic and accepted approach to environmentalism than ecocentrism. I myself, due to a recognition of what works politically and practically, have employed such a selective focus in my work before. Although it may not be clear

exactly what the motivation of such writers was, if we can establish that anthropocentric sufficiency is indeed sufficient to protect nature's interests then the distinction between ecocentrism and anthropocentrism would be irrelevant for environmental law. The reason for this is that the distinction, while perhaps of academic interest, will not have any hold in practice. Furthermore, as Richard Watson (1983) suggests, why should we then bother with all the theoretical and practical problems – or as he calls them, the “intellectual acrobatics” – associated with ecocentrism and granting nature rights when an ecologically enlightened anthropocentrism could suffice to protect nature? Indeed this is an important question to ask given the amount of effort that is currently going into the development of the Universal Declaration and Earth Jurisprudence. Hence let us consider the role of the eco/anthro divide, starting with examining the verity of anthropocentric sufficiency.

1.3) The Ultimate Insufficiency of Anthropocentric Sufficiency

In order to clearly navigate our way through the discussion on the supposed sufficiency of enlightened anthropocentrism in representing nature's interests, it is important to keep in mind what J. Baird Callicott (1980) terms “the triangular affair” of environmental ethics, according to which there are three different concerns which compete for our attention in ethics. The three concerns identified are: (a) anthropocentric concerns, according to which human concerns warrant ethical consideration for their own sake; (b) individualistic non-anthropocentric concerns, according to which individual animals or non-human beings warrant ethical consideration for their own sake; and (c) holistic non-anthropocentric concerns, according to which the ecological community or ecosystem warrants ethical consideration for its own sake. According to the triangular affair approach each of these concerns competes with the other. That is not to say that one cannot hold all three concerns at once, but that if one does so one will be deeply divided between conflicting ethical concerns. Anthropocentric sufficiency, on the other hand, holds that nature's interests can be adequately represented by an anthropocentric viewpoint, so it would have to show that the three concerns do not compete with each other, and, in doing so, illustrate that anthropocentrism can protect nature just as much as an ecocentric perspective would. To link this discussion back to the broader aims of this thesis, if enlightened anthropocentric environmental concerns turn out to be sufficient to protect nature's intrinsic value, then either an ecocentric foundation would not be required for the Universal Declaration, or alternately, the Universal Declaration, being as it is, an ecocentric declaration, would not be required as anthropocentrism would suffice to protect nature's interests.

To reiterate, the anthropocentric sufficer's task is to illustrate that rather than compete, anthropocentric and ecocentric interests actually converge, such that an environmentally-enlightened anthropocentrically motivated action will produce the same results as an ecocentrically motivated action. An anthropocentric sufficer will need to show that rather than the world painted in Figure 1 below, where anthropocentric and ecocentric interests point out differing and competing policies and actions, an environmentally enlightened anthropocentrism will lead to Figure 2, where a point of convergence is available between ecocentrism and anthropocentrism, such that nature's interests can be adequately represented by anthropocentrism. In short, we can say that by doing so, anthropocentric sufficiency attempts to bridge the eco-anthro divide. Thus having outlined the aims of our discussion let us turn to a few examples in order to examine whether anthropocentric sufficiency can in fact bridge the eco-anthro divide.

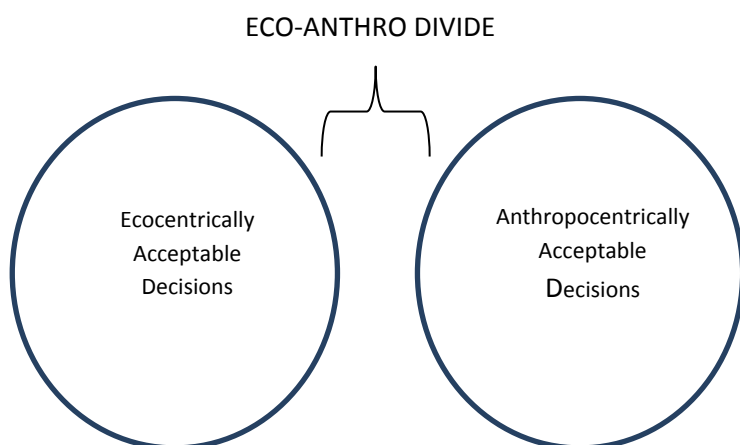


Figure 1 - The Ecocentric Picture - Ecocentrists hold that there isn't always overlap between ecocentric and anthropocentric interests, and hence there exists a divide between the eco and anthro.

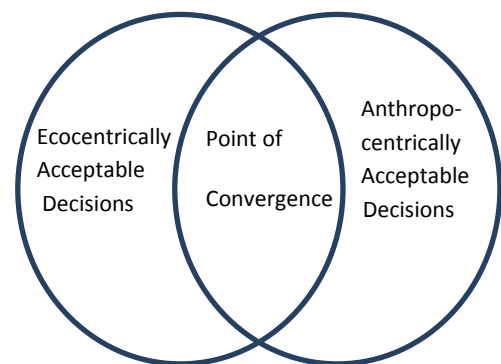


Figure 2 – The Anthropocentric Sufficiency Picture - According to anthropocentric sufficiency a path can be chosen from the intersection of ecologically and anthropocentrically acceptable decisions.

1.4) Anthropocentric Sufficiency, Broadly Speaking

Peter Wenz (2001) in *Environmental Ethics Today* uses the example of modern mass agriculture, which uses large monocultures, pesticides, fertilisers and other artificial means to sustain the massive yields currently attained. Wenz illustrates that such agricultural methods, through reducing biological diversity, introducing harmful chemicals into ecosystems and destroying topsoil (among other forms of environmental degradation) are thus not ecologically sound. Although in the short term such practices produce higher yields of food, in the long run they have detrimental effects on the natural environment and those who rely on it, including humans. Wenz claims that it is in both our own interest and that of

the ecosystem to adopt agricultural processes that better protect the biodiversity and ecological integrity of the land. Wenz uses such an example as a case where enlightened human self-interest would lead to more “ecologically responsible behaviour” thus serving the interests of both humans and the natural environment.

Similarly, we can use the example of vegetarianism or reduced meat consumption, for the effects thereof generally include: less agricultural produce being required in food production and thus more food being available for consumption; improved and healthier diets; reduction in land needed for agriculture; less resources and environmental degradation required for food production; and a reduction in animal cruelty and slaughter (Cf. Emel & Neo, 2011). Indeed, enlightened self-interest seems to be more than sufficient in both cases to motivate humans to adopt a more ecologically responsible approach than is currently prevalent. However, even though convergence might seem possible upon first glance, and the eco-anthro divide thus bridged, if we look closer we will begin to encounter problems.

What is true about prevalent agricultural and meat-eating trends in Western society is that they can be changed so as to have a more positive benefit to both human societies as well as to the ecosystems on which we depend, as was shown earlier. Hence anthropocentric sufficiency seems to hold. However, this is only because currently predominant practices are extremely ecologically inefficient, so much so that they are against both enlightened human self-interest *and* the good of ecosystems. There does, however, come a point where the good of nature and people no longer converge. If we all became vegetarian and adopted more eco-friendly methods of agriculture, although we would have become substantially more ecologically responsible, and would have contributed greatly to human well-being as a result, we would still need to eat and survive. The perhaps tragic fact of human existence is that in order to survive we are bound to have an impact on the world, which affects the ecosystems of which we are inextricably part of. Although there are ways of living that lessen that impact and decrease the conflict between anthropocentric and ecocentric interests, our impact, albeit smaller, would still be felt.

The conflict between ecocentric and anthropocentric concerns becomes increasingly clear when we examine examples within human health and medicine. The history of human medicine is filled with battles against the natural world. For example, scientists are constantly working on ways to eradicate viruses such as HIV/AIDS, tuberculosis and small pox, and one of the greatest innovations in biomimicry for human health comes from mimicking the surface-structure of shark skin in order to create surfaces where bacteria cannot form – an anti-life surface if you will. Another illuminating example comes in the

form of the Black Fly (*Simulium damnosum*). The Black Fly, a blood-sucking parasite, which causes river blindness, has long been the object of population suppression programmes within United States of America, for even the USA's Endangered Species Act of 1973 excludes bacteria, viruses and insect pests from its realm of protection (Nash 1989, 176). These are all examples of a clear antagonism between humanity and nature, and although there are certainly cases where, perhaps through ecosystemic feedback systems, the eradication of such viruses and pests would eventually end up harming the ecosystems on which we rely and in doing so harm us more than eradication would benefit us, many cases, especially within the realm of medicine, would suggest that our war against certain aspects of nature has been very much to our own benefit.

Ecocentrics such as David Ehrenfeld (1978) and Lynn White (1978), argue, however, that even such viruses and pests have intrinsic value, and they consider it ethically acceptable to protect the right to life of even a virus such as small pox, whose only function⁵ is to prey on people. In these instances, surely anthropocentrism cannot bridge the eco-anthro divide, for the antagonism between human and nature's interests is too great for convergence to be found? Furthermore, this will not only be the case with pesky viruses and other organisms which we consider pests and struggle to have imaginative empathy for, but would also extend to other realms in nature and apply to weeds and certain predators for instance. It thus seems that the eco-anthro divide, while sometimes bridgeable by anthropocentrism, cannot always be bridged, as there are indeed instances of a fundamental antagonism between anthropocentric interests and non-anthropocentric interests. It seems to follow that if we are to truly protect non-human concerns we cannot rely on anthropocentric views alone.

1.5) Towards More 'Holistic' Convergence

One possible response to my previous argument might be found by reconsidering the triangular approach to ethics. Recall that the triangular approach traditionally consists of three competing ethical claims, those of anthropocentrism, non-anthropocentric individualism, and holistic non-anthropocentrism. An anthropocentric sufficer might concede that always finding a point of convergence or intersection between all three parts of the triangular approach is indeed an impossible task. For instance, Mark Sagoff claims that even between non-anthropocentric individualism and non-anthropocentric holism there is a "bad marriage" that demands "a quick divorce" (1984, 304). This "bad marriage" can be demonstrated by the example of the practice of culling which sacrifices individuals for

⁵ Function is not used here in such a way as to refer to any ethical significance, but simply to indicate what the small pox virus, as a matter fact, does.

the good of the greater whole. Given this “bad marriage” environmental synergists and anthropocentric sufficers may concede similarly that there is regrettably an antagonism between anthropocentric interests and individualistic non-anthropocentric interests. This, however, does not mean that anthropocentric sufficers cannot bridge the eco-anthro divide, for if they shift the focus from anthropocentric and non-anthropocentric concerns generally, to the relationship between anthropocentric concerns and *holistic* non-anthropocentric concerns, this might overcome some of the previous obstacles. Let us examine whether such a shift can indeed do so.

An analogy that is often used to illustrate the supposed convergence between holistic non-anthropocentric interests and anthropocentric interests is that of the human body. The analogy goes as follows: it would not be in the interest of a particular cell or organ within the human body to go against the interest of the body itself, because its own health is inextricably linked to that of the body. Likewise, it would not be in human interests to go against the health of our broader ecosystem as our own well-being is similarly tied up with the health of the Earth’s ecosystems. What is often overlooked, however, is that the same analogy can be used to highlight antagonism between anthropocentric and holistic non-anthropocentric concerns. Think of the example of cancer cells, flu, tuberculosis, HIV/AIDS and so on. Given that some of the cells have a life span that is much shorter than that of the body itself, it would be in the interests of many of them to grow and proliferate, for even if this may negatively affect the broader whole of which they are part, they will not necessarily live to experience the effects thereof, and may thus promote their own well-being by jeopardising the integrity of the broader system. Likewise human lifespans are short enough that humans may not live to feel the negative effects of their detrimental actions on their broader ecosystem, and will rather receive mostly benefits and increased welfare from their exploitation of nature, as has been the case with many previous generations. This indeed seems to be the type of thinking that has informed much of the industrial era (hence the oft-occurring comparison of the human presence on earth as akin to a cancer). So it seems that anthropocentric sufficers cannot even bridge the eco-anthro divide between anthropocentric concerns and holistic non-anthropocentric concerns.

Anthropocentric sufficers may, however, be able to respond to the failure to show convergence between any parts of the triangular approach by expanding it to a quadrangular approach. They may do so by objecting that the triangular approach ignores an important distinction: that anthropocentric concerns need to be split into individualistic anthropocentric concerns and holistic anthropocentric concerns – holistic anthropocentric concerns being the social total or aggregate of human interests across both current and future generations. Working within this new framework, sufficers could then

concede that while anthropocentric sufficiency does indeed fail to bridge the eco-anthro gap in the traditional triangular approach, it can, however, bridge the gap between holistic anthropocentric concerns and holistic non-anthropocentric concerns. By shifting the focus to holism, they might claim that we can avoid the problems inherent in the previous focus, for if through holistic anthropocentric concerns we value humanity as a collective, which persists across generations, then it is in our interests to protect the system on which humanity is reliant.

Let us use the example of climate change to illustrate the seeming convergence between holistic anthropocentric and non-anthropocentric concerns. Scientific consensus, as indicated in the 4th Intergovernmental Panel on Climate Change Report (2007) and many other related papers⁶, points to the fact that if we do not protect the atmospheric conditions that have allowed the earth to evolve in the manner that it has recently (or at least within the past few hundred thousand years), then this will negatively affect both human societies and the ecosystems we rely on. If we are to avoid what Stephen Gardiner (2011) refers to as an “intergenerational arms race” – whereby humanity races to the bottom as each successive generation depletes the earth’s resources and worsens the conditions for human existence and the ecosystems on which we rely – then we need to tackle climate change a lot more urgently than we do currently. Unfortunately, an honest look at the global response to climate change will show that we are far from adequately protecting holistic anthro- and non-anthropocentric concerns, as more short-term individualistic anthropocentric concerns, represented by an unjust global order, are dictating much of the direction of negotiations. Nonetheless, this example serves to illustrate that while enlightened anthropocentrism may not be able to bridge the eco-anthro divide in the triangular approach it can do so with regards to holistic anthropocentric concerns and holistic non-anthropocentric concerns, as both concerns point in the same direction, and we are seemingly left with the adjacent picture in Figure 3:

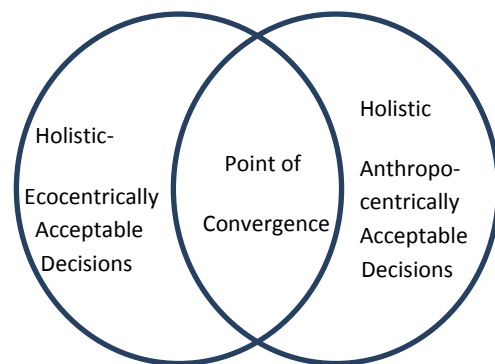


Figure 3 – The Holistic Anthropocentric Sufficiency Picture - According to holistic anthropocentric sufficiency a path can be chosen from the intersection or convergence between holistic ecologically and anthropocentrically acceptable decisions.

⁶ For an overview of some of the consensus around climate change, see for instance: <http://www.ucsusa.org/ssi/climate-change/scientific-consensus-on.html>

Indeed, the example of climate change might make it seem that we can adequately represent nature's holistic interests through an enlightened holistic anthropocentrism that realises our reliance on nature and, in doing so, bridge the eco-anthro divide on the level of holism. If this is so it seems that we do not need the intellectual acrobatics involved in giving nature independent moral status. However, there are a number of reasons why we should not be so quick to come to this conclusion. The first involves taking a closer look at holistic anthropocentrism and holistic ecocentrism, in order to uncover differences between how they represent nature's interests. Such an analysis can expose that the supposed convergence between the two is limited. The other reasons, which will be dealt with in section 1.9, are related, and have to do with the practical implementation of holistic anthropocentric ethics. Taking these points into account, I will show that a conclusion can be reached which shows that anthropocentric sufficiency is false and thus, that an ecocentric justification and protection of nature is needed to properly protect nature's interests. In doing so, I will uncover the importance of the Universal Declaration and its adherence to ecocentrism in protecting nature's interests.

1.6) Holism and Norton's Convergence Hypothesis

Looking back at the extremely broad picture that I painted earlier with regards to climate change as an example illustrating the supposed verity of holistic anthropocentric sufficiency, it seems that holistic anthropocentric and ecocentric concerns will converge – we need to tackle climate change and reduce our emissions for the sake of both humans and nature. In relation to this example the question that should be asked is how we implement such broad and abstract ideals into more local praxis and policies. A look into the history of the global response to climate change will show that agreement on an overarching holistic goal does not necessarily reflect convergence at the local level. Rather, conflict has arisen as to just what action is required on the local level in response to an overarching holistic goal of, for instance, 350 parts of carbon per million (ppm) in the atmosphere. What this illustrates is that convergence on broad overarching holistic goals, may mask real conflicts and divergences that underlie such a holistic goal, conflicts which are often resolved in favour of more narrow anthropocentric concerns, rather than broader ecocentric concerns. For example, the implementation of 'Reducing of Emissions from Deforestation and Forest Degradation' (REDD) a mechanism under the international climate framework, which is intended to help us attain the goal of 350ppm, has often led to the reduction of biodiversity and the health of ecological systems (Cf. Bumpus and Liverman 2011). How then do we reconcile supposed holistic convergence with such conflicts? Bryan Norton (1991) – a defender of what he refers to as 'the Convergence Hypothesis', a version of holistic anthropocentric

sufficiency – proposes an answer to this question, in the form of ‘contextualism’. Norton’s Convergence Hypothesis holds that the interests of humans and the interests of nature usually converge, but he allows that sometimes they do not. However, according to Norton, despite these divergences, for all intents and purposes, when we engage in the practical realm of decision- and policy-making these divergences will not have a significant effect – the reasons for which we will explore below. Thus Norton holds that anthropocentrism does indeed suffice to protect nature’s interests, and that an ecocentric perspective is therefore not required in order to do so. Norton’s defence of this view, which is one of the most thorough and critical attempts to establish the verity of anthropocentric sufficiency, is worth examining at length to see whether one can adequately justify belief in Holistic Anthropocentric Sufficiency.

Norton primarily uses a restructuring of John Rawls’ (1991) ‘Veil of Ignorance’ in order to demonstrate the efficacy of the convergence hypothesis. This will be the very same tool we shall use to illustrate its inefficacy. In Rawls’ original veil of ignorance we are asked to imagine being behind a veil. Behind the veil we are trying to decide on the sort of world that we would like to come into. The veil, however, blocks our knowledge, such that when making the decision “no one knows his place in society, his class position or social status, nor does anyone know his fortune in the distribution of natural assets and abilities, his intelligence, strength and the like” (Rawls 1999, 11). Furthermore, behind the veil of ignorance “the parties do not know their conceptions of the good or their special psychological propensities” (Rawls 1999, 11). The point of putting ourselves into this position is to force us to create a conception of justice as fairness. In other words, behind the veil we would supposedly create a society that is fair to all regardless of their particular characteristics.

In order to illustrate the verity of the Convergence Hypothesis, Norton expands the veil of ignorance to include ignorance of which species one might end up being on the other side of the veil, as well as to which generation one will be part of – let us call this the ‘eco-veil of ignorance’. The point of doing so would be to create a world which would be fair and just not only across the human species, but across all species and generations. That is because if you are ignorant as to which species or generation you will be part of after the veil has been lifted, then, it is supposed, you will create a just global community of beings that does not unnecessarily leave one species or generation worse off, in case you end up being part of that species or generation.

As Norton realises, in order to test the Convergence Hypothesis, we also need to come up with a veil of ignorance that represents human interests in the long-term, as we need to see whether policies serving human interests across current and future generations are similar to policies serving ecocentric

interests as represented by the eco-veil. Thus we can create the 'anthro-veil of ignorance' which includes ignorance of which generation you would be in, but not of which species you would be; under the anthro-veil you know you will be human. Thus the anthro-veil promotes fairness across all human generations, whereas the eco-veil promotes fairness across all species and all generations. In order to illustrate the validity of the Convergence Hypothesis, Norton would have to show that the resulting environmental perspectives from either the anthro-veil or the eco-veil of ignorance would lead us to similar positions on environmental protection. So, in order to test this, let us engage in a comparative analysis between the two veils of ignorance and their subsequent positions, beginning by looking at the eco-veil of ignorance.

1.7) Eco-Ric's Conservation Approach

Let us imagine, as Norton (1991) does, a being – call him eco-Ric – standing behind the eco-veil of ignorance. Eco-Ric is trying to decide which environmental policies and perspectives would create the best possible world to enter into. In doing so eco-Ric would of course have to keep in mind his ignorance of which species he will be on the other side of the veil as well as which generation he will be part of. When pondering his situation he would also have to consider whether he should adopt policies that protect every individual equally or whether he should protect every species as a species, or perhaps whether he should adopt some other approach. If eco-Ric decided to go for the individualistic approach he would come across a few problems. Firstly, he would face infinite and irresolvable conflicts between individuals. As Norton (1991) points out, to be 'fair' individualistically speaking would involve interfering daily in the lives of species, and even involve regulating the kills of predators. Aside from the Sisyphean nature of such an approach, eco-Ric would most probably be faced with a rather large ignorance of the effects that such regulation might have on the broader systems, and the quite real possibility that such individualistic justice might disturb the natural regulation that usually maintains ecosystem health. Eco-Ric would thus have to pay attention to the fact that each individual should be seen as a part of a larger, systematic, and autonomously functioning whole. He will then realise that in order to maintain the health of the broader whole upon which individuals rely, the interests of individuals will not always be protected, and thus certain 'injustices' will have to be tolerated in order to protect the broader whole and in doing so secure the interests of as many individuals as possible. This realisation will force eco-Ric to move to a more holistic approach. Holism, however, by focusing on the broader health of the ecosystems, often neglects the salience of the boundaries between individual lives. For instance, by making such a shift, eco-Ric would apparently have to condone the sacrifice of individuals for the

greater good in particular circumstances, in a manner similar to culling. From a purely holistic ethics perspective one can argue that there is nothing particularly wrong with this, as some proponents of deep ecology have done, and the ethic behind a group like Earth First maintains (Nash 1989). Even Arne Naess, one of the forefathers of deep ecology, realised that in order to protect more individuals we would have to shift to a more holistic ethic. He argued that “any realistic praxis necessitates some killing, exploitation and suppression” (1973, 95). Similarly, for eco-Ric, standing on the other side of the eco-veil, a more holistic approach would surely be more favourable than an unfeasible individualism, despite its inevitable injustices to individuals.

Given the problems with individualism, Norton claims that eco-Ric’s best decision behind the eco-veil is to adopt “a criterion of righteous management based on interspecific impartiality”, whereby each species, not each individual within a species, is counted as equal (1991, 224). Furthermore, according to Norton, adopting such “a criterion of righteous management” is equivalent to the Safe Minimum Standard of Conservation Approach (SMS) (1991). The SMS approach attempts to maximise the preservation of species by requiring that “only prohibitive costs” (1991, 226) count as legitimate reasons for engaging in activities which threaten a species – what defines a prohibitive cost will be a point of contention in section 1.8. The link between the SMS Approach and broader ecosystem health can be made clearer if we better understand Norton’s definition of ecosystem health. So, although I do not have space to go into a full elucidation of Norton’s definition of ecosystem I will draw out the aspects that make the link clearer.

According to Norton, ecosystem health should be defined in relation to an understanding of contextualism. “Expressed metaphorically, contextualism is organicism – the biota is a living system, which has an internal, self-perpetuating organization – but organicism minus teleology” (1992, 105).⁷ Like organs, which function with a purpose relative to a broader whole, so organicism is used to define the relation of parts to a broader whole as is the case with ecosystems and their constituent parts. The “minus-teleology” qualification, however, is intended to “demystify organicism by stripping it of any connotations of intentional activity on the part of ecological systems” (Steverson 1995, 140). This is not to say that ecosystems cannot be damaged, merely that an ecosystem does not have a directed intentionality or a *telos*. Rather, the health of an ecosystem depends on a number of changing, dynamic and non-intentional factors, or what Norton refers to as “the creative complexity embodied in ecosystems” (1991, 145). As Norton points out, “a key aspect of contextualism is the recognition that

⁷ To say that something has a *telos*, is to claim that it is a goal directed process. *Telos* is Greek for the end of that process. The final cause in relation to a *telos*, according to Aristotle is “the end, that for the sake of which a thing is [or is] done” (Falcon, 2011).

there are emergent characteristics of ecological systems (characteristics not reducible to characteristics of their component individuals or species)” (1997, 96). Contextualism thus adopts a management approach which focuses not so much on interspecific interactions or individual species, but rather on observable system level characteristics, which are indicative of the health of an ecosystem, as defined by its “creative complexity”.

To understand just what Norton means by creative complexity we can turn to one of his examples:

Zoos are more diverse than natural systems, but the species in zoos have not co-evolved with each other as they have in natural systems, because the relationships among the species are artificially limited by fences and cages. Indeed zoos are not really systems unless one includes the zookeepers and their activities of feeding, breeding, and culling. Diversity, in short, is one aspect of complexity, but it is really multi-level complexity that should be the object of protection [because of the defining role it plays within ecosystem health] (1991, 145).

The example of the zoo shows that Norton ascribes to a ‘multi-levelled’ conception of creative complexity as the defining factor of ecosystem health. So what does he mean by ‘multi-levelled complexity’?

Norton ascribes to a conception of multi-level complexity put forward by Robert Whitaker (1970), which holds that there are three levels of diversity within an ecosystem or habitat: (1) within-habitat diversity, which refers to the diversity within a habitat; (2) cross-habitat diversity, which refers to the “complex relationship of the many interlocking habitats and microhabitats in the multiple stories of an ecosystem” (Norton 1991, 145); and (3) total diversity, which is the product of within- and cross-habitat diversity. These three levels of diversity jointly make up multi-levelled complexity. It is these complex, interrelated levels, which change in different scales of time and space, that Aldo Leopold (1939) claims is indicative of the ‘integrity’ of an ecosystem. Norton follows Leopold in this and takes total diversity to be indicative of ecosystem health, and he also realised that total diversity is not a static concept, but rather is something that fluctuates over time due to the dynamic nature of ecosystems. Thus an ecosystem’s health is defined by its dynamic stability; in other words, its ability to dynamically respond to changes, but return to a high total diversity.

It is also important to understand ecosystem health, as Norton does, within the framework of hierarchy theory, according to which: a) ecosystems are made up of sub-systems which rely on the

broader ecosystem for its health; and b) ecosystems may themselves be sub-systems reliant on a broader whole for its continued dynamic stability. As such, ecosystems can be seen to be part of a hierarchy of dependency. This hierarchy can be seen on many levels, such as, cell/organ, organ/organism, organism/microhabitat, microhabitat/ecosystem, ecosystem/bioregion, bioregion/earth system and so on. Thus “natural systems are seen as organized units embedded in a hierarchy, with larger, slower-changing systems (the environment or context) determining the range of choices available to the smaller systems” (Norton 1991, 149).

Bringing together hierarchy theory with an understanding of creative complexity, Norton is thus able to conclude that ecosystem health could be defined by dynamic stability situated within a hierarchical context. Understanding that species diversity plays an integral role within such a conception of ecosystem health, as it is a defining characteristic of multi-levelled complexity, we can then make sense of why Norton claims that eco-Ric would adopt two principles. Firstly, the SMS Approach to Conservation, which states that “only prohibitive costs” count as legitimate reasons for engaging in activities which threaten a species. Secondly, a Principle of Interspecific Impartiality, according to which each species should be treated with impartial consideration. Given eco-Ric’s species specific ignorance, and assuming he shares our understanding of ecosystem health, he would adopt both principles for two reasons: firstly, to ensure that all species get as much protection as possible, seeing as he could never be sure which species he would be; secondly, to protect each species because of its potential role in contributing to the creative complexity that maintains the health of the broader context of which all species are part. In doing so he would ensure the protection of as many species as possible, because of the hierarchical reliance each species has on its broader whole.

1.8) Eco- and Anthro-Ric – Worlds Apart?

Having established eco-Ric’s position under the eco-veil, as adhering to the SMS and Species Impartiality Principle, what Norton attempts to establish, in order to illustrate the truth of the convergence hypothesis, is that someone would be similarly inclined behind the anthro-veil of ignorance. Thus, following Norton, let us imagine someone standing behind the anthro-veil of ignorance; let me call him anthro-Ric. Anthro-Ric is not sure what generation he will be in but he knows he will be human. Anthro-Ric thus needs to decide on the best possible environmental policy to adopt that will ensure his interests across all possible generations. He will realise, of course, similarly to eco-Ric, that we do not develop or survive in isolation but are rather parts within broader wholes within a particular hierarchy of contextual dependence. In light of this realisation anthro-Ric knows that the health and interests of current and

future generations rely on the health of the broader context within which they exist, for no long-term human values can exist without the protection of the context in which they evolved. Thus, in order to ensure human interests across generations, anthro-Ric must adopt policies that protect this broader context, without unnecessarily jeopardising human interests on the altar of ecocentric interests.

So, in order to protect human interests in the long run, anthro-Ric would need to protect the dynamic stability of the systems which make up the health of the systems that we are part of and, given the interrelated nature of our earth, this would include protection of the holistic global system. But as our account of how ecosystems function shows, subsystems will have effects on different spatial and temporal scales. Because of these considerations of scale not all subsystem changes will have significant effects on broader and connected systems. For instance, “one cell turning malignant will not affect an organism significantly unless it represents a trend toward malignancy” (Norton 1994, 148). Thus, as Steverson points out, the distinctive character of contextual management is that the focus is not so much on individual actions as on their collective effects on the larger system, as well as their effects on trends across time (1995, 143). The goal for Anthro-Ric would then be to prevent trends in behaviour which would disrupt the dynamic stability of the various systems that humans are dependent on across generations.

What we need to ask ourselves now is whether anthro-Ric’s commitment to protect the dynamic stability of ecosystems under the anthro-veil is equivalent to eco-Ric’s commitment to both the principle of interspecific impartiality and the SMS Approach to Conservation. I will argue that: (a) Anthro-Ric’s position does not entail the principle of interspecific impartiality; (b) although it does entail the SMS Approach, the implications of the approach are different to those under the eco-veil; and we can therefore conclude that (c) the Convergence Hypothesis fails to hold as the eco- and anthro-veils of ignorance lead to different policies on environmental protection, and thus eco- and anthro-Ric would create different worlds from behind their respective veils of ignorance. Following this I will discuss the implications this has for the Universal Declaration.

In order to begin to illustrate these claims, starting with claim (a), we need to ask ourselves how flexible dynamic stability is. Recall Norton’s claim that “one cell turning malignant will not affect an organism significantly unless it represents a trend towards malignancy” (1994, 148). Likewise, the contextualist (or holistic) approach is concerned with the loss of individuals, or even individual species, only if the loss represents a trend which affects overall ecosystem health, unless we already have reasons to value all species impartially, which Anthro-Ric does not. And so the loss of individuals or an individual species is not a concern in itself for Anthro-Ric unless they are a human loss. This clearly leads

to the conclusion that if a species loss does not lead to deterioration in the overall health of an ecosystem, then, under the contextualist approach, its loss will not be cause for dismay. Following from this, if Anthro-Ric's goal is purely an anthropocentric holistic one, as it is, he Anthro-Ric would arrive at what might at first seem a fair principle of partiality, fair in that it is needed to ensure impartiality: we should be partial towards protecting species whose loss would be detrimental to ecosystem health or dynamic stability. This, however, would allow that in instances where human interests are at play, it would be permissible for us simply to eradicate a species, if doing so did not damage ecosystem health, and was in the interests of human beings. This goes quite clearly against the principle of species impartiality. However, some might contend in response to this that all species are valuable for ecosystem health and thus the objection, while relevant in theory, is baseless in practice. This, however, is an empirical claim, which can be contested. In response it is worth quoting Brian K. Steverson at length:

[I]t is the nature of ecosystems, as autopoietic systems,⁸ to display the capacity for 'creative' responses to environmental changes and internal disturbances, such as fluctuations in species abundance and demographics. [Thus] it makes sense to assume that ecosystems have tolerance levels. Due to their structural and functional complexity, they may, within certain parameters, perhaps, withstand the loss or decline of individual species and still maintain their autopoietic capacity at higher levels of organization (Steverson 1995, 145).

Indeed if we acknowledge that the components that make up ecosystems are constantly changing and that species loss is a natural phenomenon, then Steverson's claim is evidently true. Even Norton himself grants this point when he claims that "diversity must be understood dynamically, in terms of healthy processes, rather than merely the maintenances of current elements in the system" (1992, 249). Given this natural flexibility of ecosystem, Anthro-Ric would be justified in adopting policies that favour human interests, and which could result in the destruction of animals, trees and species, so long as it did not affect the overall ecosystem health on which humans depend. So, we can thus conclude that the principle of interspecific impartiality does not necessarily hold behind the anthro-veil of ignorance, but only behind the eco-veil of ignorance, where eco-Ric, being ignorant of which species he will be, will

⁸ An autopoietic system is a system that has the capability of self-production and maintenance.

have reason to want to be impartial to all species. This confirms claim (a). So what implication does this have for our approach to conservation?

Recall that Norton's Convergence Hypothesis should claim that regardless of whether one was standing behind the eco- or anthro-veil of ignorance, one would still adopt both the Principle of Species Impartiality and the SMS Approach to Conservation, which attempts to maximise the preservation of species by requiring that "only prohibitive costs" count as legitimate reasons for engaging in activities which threaten a species. Remember that we have established that there are different motivations for maximising preservation of species under the eco-veil in comparison to the anthro-veil. Under the anthro-veil we protect species because of a contextualist motivation, which might allow for the loss of species if it is in human interests and not deemed to have a significant impact on the dynamic stability of systems. Under the eco-veil on the other hand, we have the same motivation as the anthro-veil, plus adherence to the principle that every species is valuable in itself. If we consider the difference here we can then see that what might count as a "prohibitive cost" under the eco-veil would be quite different under the anthro-veil.

For eco-Ric what would count as a prohibitive cost would be either a threat to overall ecosystem health or a threat that might endanger other species, more than the loss of the species in question would do. What would count as an acceptable prohibitive cost would thus involve a balance of species interests and an application of the impartiality principle. For anthro-Ric, on the other hand, a prohibitive cost would be any threat to the ecosystem health, which would cause a loss in human interests in either the short or long run. That, however, might give much leeway for the loss of species in line with the flexibility of the dynamic stability inherent in ecosystems. Thus Steverson can come to the following conclusion on a similar analysis of the Convergence Hypothesis, which would apply to anthro-Ric:

Once the ecological necessity of preserving an individual species no longer holds, one can plausibly argue that since society can avoid the socioeconomic costs that would be incurred if attempts were made to save the species, and in doing so create no or little risk to ecosystemic health, then, in accordance with the management goal of balancing environmental and socioeconomic concerns, the most reasonable *management* decision to make is to allow the species to continue to decline or go extinct (1995, 146).

So, to sum up, we have shown that eco-Ric and anthro-Ric would end up choosing different approaches to conservation and would thus adopt different policies when it comes to environmental protection.

Eco-Ric would adopt a more vociferous defence of species, one based on impartiality and the value of all species (given the possibility that he might end up being any one of them). Anthro-Ric, on the other hand, would adopt a less stringent position on species conservation and would potentially allow for the decline and extinction of species if their extinction caused little or no risk to ecosystemic health. We can thus conclude that the Convergence Hypothesis does not always hold, because eco-Ric will create different environmental policies to anthro-Ric.

The implications of such a conclusion is that the Anthropocentric Sufficiency theory does not hold. Thus we have been able to illustrate the importance of an ecocentric approach in protecting nature's interests or value, for without an ecocentric approach there is room for the loss of nature's interests and value under a more anthropocentric approach. We can therefore conclude that the picture painted in Figure 3 is false and that while there may often been convergence, often, too, we will be faced with a picture like Figure 1 (repeated below), where there is a divergence of interests.

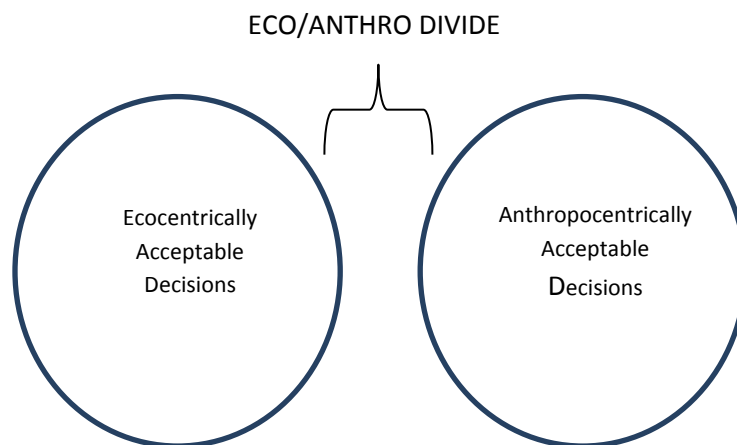


Figure 1 - The Ecocentric Picture - Ecocentrists hold that there isn't always overlap between ecocentric and anthropocentric interests, and hence there exists a divide between the eco and anthro.

1.9) Ignorance Outside of the Veil of Ignorance

There is, however, one important objection to this conclusion which we need to consider, one which I call the objection from ignorance. The objection is put forward by both Bryan Norton (1997) and Bryan Steverson (1995) and has to do with our epistemic situation in relation to the potential role that a species might play in maintaining ecosystem health. According to the objection we need to consider that we have very limited knowledge with regards to how ecosystems function and what would and would

not be detrimental to ecosystem health. The following poetic quote from Aldo Leopold illustrates the gist of this objection:

The emergence of ecology has placed the economic biologist in a peculiar dilemma: with one hand he points out the accumulated findings of his search for utility, or lack of utility, in this or that species, with the other he lifts the veil from a biota so complex, so conditioned by interwoven cooperations and competitions, that no man can say where utility begins or ends (1939, 727).

Indeed, as Norton points out, complete knowledge of the value of a particular species has proven to be unobtainable, for knowing the value of each species requires predicting the results of processes so complex that it is beyond the scope of what we can currently know *with certainty* (1997). Considering how ignorant we are, it is claimed that we are not yet capable of being in a position to confidently deem what species loss would or would not be detrimental to a system's health. Given such ignorance, it is argued that it would be best for us to adopt the precautionary principle⁹ when dealing with species loss and assume that all species are valuable. Thus, because we would never be in a position to fully judge a species' true contribution to ecosystem health, Norton argues that in practice there would be no difference between the application of anthro-Ric's and eco-Ric's policies on nature conservation.

This objection is right insofar as we are often ignorant as to what role a particular part or species might play in the broader ecosystem. However, if we consider the reality of environmental decision-making, there is a balance of interests at play, and the precautionary principle cuts both ways here. Consider an environmental manager faced with a choice between damaging a species in order to accrue socio-economic gains, on the one hand, and saving a species in order to protect its potential role in contributing to overall ecosystem health, on the other. Imagine furthermore that although he is uncertain of the exact role that the species plays in contributing to ecosystem health because of necessarily limited knowledge about the ecosystem, what evidence he has seems to suggest that it is not a keystone species and that doing the damage will not detrimentally affect human interests in the long run. He is obviously faced with a tough decision for the species might have potential value of which

⁹ According to the World Commission on the Ethics of Scientific Knowledge and Technology, the precautionary principle in its most basic form can be described as "a strategy to cope with scientific uncertainties in the assessment and management of risks. It is about the wisdom of action under uncertainty" (2005, 8). More specifically it is a principle of decision making that says that we need to factor in and balance all potential risks involved in a decision in order to make the best possible decision when taking action, in order to protect "human health and the environment against possible danger" (2005, 8).

he is unaware, but a decision he must make nonetheless and he would need to operate from the position of having limited knowledge available to him. An appeal to a species' potential value for ecosystem health can only go so far, especially in the face of countervailing interests which are a lot more clear and tangible. He would need to weigh the probabilities of further potential species value against the benefits he stands to gain from damaging the species, and, arguing from my experience as an environmental and social activist, in environmental management there is a prevalent anthropocentric developmental bias at play, which would also work against the efficiency of the precautionary principle in protecting the potential value of a species. More than that, many environmental impact assessments and estimations of the value of ecosystems presume to have such knowledge, and considering the limited knowledge actually available to them, this often leads to an undervaluation of species because of an incomplete grasp of their importance. Even if environmental impact assessments do not presume to have such knowledge, they must work with the limited knowledge available to them, and given the real possibility for difficult choices, like the one above, this may often lead them to conclude that the loss of a species or the damage of an ecosystem may be for the long-term benefit of humans.

To reinforce this point it is important to note that towards the end of one of Norton's papers, in which he responds to Steverson's attempt to debunk the Convergence Hypothesis, he states that the Convergence Hypothesis does not "claim that the interests of humans and interests of other species *never* diverge, but only that they *usually* converge" (1997,100).¹⁰ This concession is important, for despite the fact that we may not always be able to tell exactly with one hundred per cent certainty when those interests diverge, and when they do not, we must operate with the limited knowledge available to us, and work with our best estimations as to when those divergences would occur. That would lead to the fact that in practice, because we have to operate despite our limited knowledge, there would be a real difference between the application of anthro-Ric's and eco-Ric's policies on nature conservation because, where such perceived divergences occur, anthro-Ric would clearly choose the path that most probably favoured human interests whereas eco-Ric would choose otherwise.

Additionally, as our knowledge about ecosystems progresses, as Steverson points out (1995), we are moving closer to the point where we will be able to more accurately estimate the role that components play within ecosystems. As we do, the objection from ignorance, based as it is on our ignorance, loses more of its sting as we will be more able to determine what sorts of species loss or

¹⁰ Such an interpretation of the Convergence Hypothesis would make it seem that Norton is not an anthropocentric sufficer, however, because he believes that when applying the Convergence Hypothesis, such divergences won't make a difference in principle, then he is, for all intents and purposes, an anthropocentric sufficer.

ecosystem damage can be endured without damaging human interests. Therefore, considering the combined force of the above responses, the objection from ignorance, while important to consider, does not salvage anthropocentric sufficiency and so the importance of both ecocentrism for protecting nature's interests and the Universal Declaration's role in doing so remains. Thus we cannot claim, as Norton does, that:

given the present state of knowledge and concerns for other species, policies that score high on the safe minimum standard criterion, applied from an anthropocentric, contextualist perspective, will do as much good in protecting the moral commitment of deep ecologists as any other possible policy that could be undertaken given what we know now (1997, 99).

Anthropocentric sufficiency is thus not sufficient to protect nature's interests.

1.10) Environmental Synergism and Ecocentrism

The objection from ignorance, while not successful, does provide a neat segue to the next step in the discussion. It sheds light on the fact that when engaging in discussions on environmental policy and environmental ethics, we must take into consideration the very real limitations and shortcomings of the humans and human institutions that apply them. It is at this point, having revealed the shortcomings of the anthropocentric sufficiency view, that we must consider the supporting arguments for the importance of ecocentrism, provided by environmental synergists. Recall that environmental synergism is the belief that in the "long run outcomes for both people and nature are better when both people and nature are considered valuable in themselves" (Wenz 2001, 14). By exploring the arguments put forward by environmental synergists, we can further illustrate the importance of an ecocentric protection of nature, and in doing so highlight further the role that the Universal Declaration has to play in doing so.

Environmental Synergism can be ambiguous at times with authors slipping between different interpretations. By examining environmental synergist positions I have been able to separate them into three different camps. The first holds that anthropocentric and ecocentric interests converge, and in the long run outcomes for both people and nature are better when both people and nature are considered valuable in themselves; or, in other words, are considered to have intrinsic value. This camp, however, relies on the verity of anthropocentric sufficiency, and seeing as we have just established the insufficiency of the anthropocentric sufficiency view, such an interpretation is not worth considering. The

second interpretation grants that conflicts between anthropocentric and ecocentric interests occur but holds that because of the inadequate environmental protection generally experienced under anthropocentric policies and institutions, and considering our reliance on the environment, our interests, as well as nature's, will be better protected in the long run if nature is considered valuable in itself. Under this interpretation it may even be pragmatic, if possible, for those who are anthropocentrically inclined, to adopt an attitude of respect for the supposed intrinsic value of nature in order to better promote anthropocentric concerns (even if paradoxically they do not believe nature has any such intrinsic value). This could be termed 'indirect ecocentric anthropocentrism'. The third interpretation, which is adopted sometimes tacitly, sometimes explicitly, takes a neutral stance as to whether ecocentrism and anthropocentrism lead us down different paths in theory. The crux of their argument lies rather in the application of the underlying ethic. According to this third camp, ecocentrically motivated practices and institutions produce more beneficial results than anthropocentrically motivated practices and institutions, even if their underlying ethic would call for the same policies and decisions. Although the third and second interpretations are different, by combining insights from them both, we can highlight the practical importance of an ecocentric justification.

Peter Wenz (2001), who seems to slide between the second and third camps, argues that enlightened self-interest is not actually a sufficient motivator for truly ecologically responsible behaviour, and argues that in order to promote truly ecologically responsible behaviour, a belief in environmental synergism, or the belief that nature and humans are valuable in themselves, is required. Wenz provides three arguments along those lines. The first argument points towards the historical record, which, although filled with examples of environmentally-oriented anthropocentric actions, continually results in biodiversity loss and environmental degradation. This continues to take place despite all that we know about our reliance on the integrity of the earth's ecosystems, and thus supposedly provides an empirical argument illustrating anthropocentrism's insufficiency. Wenz's second argument, is that it is "hard to see how anthropocentric projects can incorporate the holistic perspective that environmental protection and long-term human well-being require" (2001, 186). Finally, Wenz's third argument is that we should adopt environmental synergism because people are too ignorant to control nature in human interest. Furthermore, anthropocentric points of view often lead to arrogance with regards to nature, which causes us, despite our ignorance, to try and control nature in ways which are detrimental to the environment and those who rely on it.

In all three instances Wenz attempts to argue for the insufficiency of anthropocentrism in protecting nature through pointing to deficiencies in its application. However, such deficiencies, barring

instances where ecocentric and anthropocentric interests conflict, are more likely caused by an insufficiently enlightened anthropocentrism, or a disjunction between ethical theory and practice, or a combination of both, rather than the insufficiency of the underlying ethic. Even though the historical record is filled with examples where anthropocentrism failed to adequately protect nature, such ecologically irresponsible actions were most likely *not* motivated by truly environmentally-enlightened anthropocentrism. Rather, as is so often the case, ecological concerns may have been subverted by short-term economic or other interests, or insufficient knowledge may have been available or considered for the action to be considered truly enlightened. Even if many attempts at anthropocentric environmental protection may have failed to incorporate holistic understanding and protection of nature, this does not necessarily point to a flaw in the anthropocentric ethic itself, but rather to a misapplication of that ethic due to moral corruption, limited knowledge, a misunderstanding of the consequences of one's actions or perhaps other reasons. If 'enlightened' anthropocentrism does indeed require a holistic perspective in the protection of nature, then what is surely needed in order to bring this about is to foster that understanding more, not to adopt a new ethic. The problem here seems to be with a lack of knowledge and understanding as well as faulty applications of that ethic. If we are ignorant about the proper management of nature, then that will be equally so whether we adopt anthropocentrism or environmental synergism. Furthermore, if applied correctly, enlightened anthropocentrism would require of us to check our arrogance regarding nature and act in accordance with the limits of our knowledge. If the problems actually lie with misunderstanding and misapplication of the ethic rather than the ethic itself, then what evidence do we have to suggest that an environmental synergist approach would address the shortcomings of anthropocentrism?

The reasons that Wenz gives above do not answer that question, but one reason that he does provide, does provide an answer. If we value nature for its own sake this will provide us with better motivation to protect nature, even if sufficient reason was already provided by enlightened self-interest. For example, if anthropocentrism says that we should not pollute for its own sake, synergism will reinforce that claim, by saying that we should also not pollute for nature's sake. Thus synergism will reinforce the claims made by an enlightened anthropocentrism, and make us lean toward a more conservative approach towards nature through its double enforcement. Another reason for accepting environmental synergism is that by adopting an ecocentric perspective we no longer have to show the link between environmental degradation and human well-being before preventing environmental destruction. As Christopher Stone (1972) points out, it would be a good idea to implement the Rights of Nature for then it would not be necessary to show that someone degrading/destroying nature was

harming another human being in order to get a court injunction against that person. Even Bryan Norton admits, somewhat contradictorily, that:

appeals to rights of nonhuman species proved judicially unnecessary and politically unacceptable. And yet environmentalists have been remarkably successful in the courts and maintain a congressional coalition that often blocks attempts to reduce important environmental decisions to economic ones (1994, 154).

Furthermore, because of a respect for nature's intrinsic value, we will adopt a conservation approach perspective more along the lines of eco-Ric, which would promote a stronger conservation of nature than anthropocentrism does, as I have shown.

The benefits of ecocentrism can help us to deal with limitations in the application of an anthropocentric environmental ethic. However, it is important to remember, as I have argued, that there will sometimes be a conflict between human interests and ecocentric interests. So considering the benefits that an ecocentric perspective might have for us, we have arrived at a position somewhat similar to the second interpretation of environmental synergism, but more nuanced – let us call it “environmental semi-synergism” – which recognises: (a) both the benefits and losses to humanity that the adoption of ecocentrism holds; and (b) that nature's interests will not be properly represented under an anthropocentric framework. Environmental semi-synergism can play an important bridging role for those who recognise the failures of the current anthropocentric environmental legal framework, as well as the intrinsic value of nature. It does so while recognising that conflicts will inevitably occur between human interests and ecocentric interests, and thus maps more accurately on to the reality of our oft-conflicting relationship to nature.

Having realised that anthropocentric sufficiency does not suffice to protect nature's intrinsic value, as environmental semi-synergism claims, we can now go on to examine the implications that this has for the Universal Declaration, by illustrating how an ecocentric perspective can be incorporated into our legal frameworks and how that would differ from the currently predominant anthropocentric legal frameworks. I will argue that if we consider our conclusions with regards to the inaccuracy of the anthropocentric sufficiency and the strength of environmental semi-synergism, along with the inefficiency of current rights discourse to properly represent nature's intrinsic value, then the Rights of Nature movement has an important role to play in representing eco-Ric's (in other words, ecocentric) interests. Let us begin doing so with a brief analysis of current rights discourse.

1.11) Returning to Rights

“Law is at the heart of human governance and rights are central to the functioning of contemporary legal systems” (Cullinan 2011c, 90). Indeed rights have played a central role in our legal systems and are often the key to protecting the environment, as many environmental policies are founded on particular constitutional rights with regards to nature. The intrinsic value and interests of nature are strongly dependent on the nature of rights discourse, but such discourse has historically excluded mention or representation of the intrinsic value of nature. Traditionally there are four different types of rights: a) civil and political rights; b) group rights; c) environmental rights; and d) social rights (Nickel 2010). Rights of Nature, however, do not quite fall within this traditional categorisation, for as Paulo Tavares points out (2011), traditional environmental rights are rights to ownership and usage of the natural environment possessed by legal entities, such as humans, communities and corporations, rather than Rights of Nature itself. Under the traditional view nature is treated as “the primordial object of property”, for environmental rights traditionally understood are designed as a means to protect collective and individual access to nature, rather than to protect nature’s intrinsic value (Balibar 1994; (Serres 1995). When considering the role that the Rights of Nature might play, we must remember that similarly to the realm of ethics the realm of rights is one of conflicting claims, as is explored further in section 3.9. Various different interests conflict, and rights talk is often the method to check, constrain and mediate different interests as they do so. Thus, given the prominence that rights discourse plays, if we are to protect nature’s value or interests beyond their anthropocentric value, given the insufficiency of anthropocentric sufficiency, then a shift in the nature of rights discourse seems to be required. It seems then that Watson’s dreaded intellectual acrobatics are indeed required, for if the Rights of Nature have a place after all, then a non-anthropocentric justification is required in order to support them.

It may be objected, however, that the need for an ecocentric justification for the Rights of Nature only arises if one takes too moral or ontological a view of rights.¹¹ Rights, it may be argued are, merely state or institutional artefacts, or, as Susan Marks sees it, rights can be seen as “a body of practice, a form of discourse and a set of institutions that exist as historical phenomena”. Rights under her view are simply vehicles people use to advance particular claims (Marks 2010, 2). If one accepts this view of rights, then one might be tempted to adopt a prescriptive interpretation of rights, whereby, to paraphrase Alan Gewirth (1979), rights are simply demands or claims made on other persons (or in the

¹¹ This discussion very much mirrors a similar discussion put forward by Alan Gewirth (1979) when examining human rights.

case of the Rights of Nature, other beings), which are institutionally enforced, and are not necessarily related to morally normative considerations or knowable facts about the world. Hence it might be claimed that a justification for ecocentrism is irrelevant to judgments on the Rights of Nature.

Such a conclusion, however, is not warranted, as although the prescriptive interpretation of rights is partly true, this does not nullify the need for a justification. There are two reasons for this: Firstly, different persons and entities make different claims, as we have seen, and thus if we are to mediate between these interests we need a proper justification to guide us in doing so. Our legal judgements otherwise become arbitrary, and given their anthropocentric short-sighted bias, will often sway in favour of an anthropocentric bias. Furthermore, as Gewirth puts it, “ascriptions of correctness of justification are intrinsic to rights-judgments: these consist not only in certain claims or demands but also the implicit view by the person who makes them, that the claims have sound reason in their support” (1979, 1147). Therefore, whether one adopts a normative or ontological approach to rights, or if one takes an institutionalist approach to rights, either way an ecocentric justification is required for the purposes of justifying the Universal Declaration.

In summary, we have shown that the Anthropocentric Sufficiency view is false, and that environmental semi-synergism is closer to the truth. Furthermore this realisation, coupled with our analysis of the current nature of rights discourse, illustrates the need, if one is ecocentrically inclined, to provide an improved legal framework to protect the interests of nature against conflicting interests. Such a framework can arguably be provided by granting rights to nature. Furthermore, if environmental semi-synergism is correct, then the Rights of Nature movement may in the end benefit human interests to a certain extent. However, that will not always be the case, and so we would need to adopt a non-anthropocentric ethic to support the Rights of Nature movement and the Universal Declaration, as we cannot rely on an enlightened anthropocentrism to provide adequate protection for nature.

Despite the conclusions of this chapter, it is worth keeping in mind that the most effective current vehicle through which to protect nature is most probably through anthropocentric arguments. This, however, is what the work of the Universal Declaration is set to change. For as Christopher Stone suggests, “there is something of a seamless web involved [here]: there will be resistance to giving [nature] ‘rights’ until it can be seen and valued for itself; yet it is hard to see and value [nature] for itself until we can bring ourselves to give it rights” (1996, 456). The question that we need to ask is whether the rights enshrined in the Universal Declaration, and their justification, are strong enough to guide us through that seamless web, overcome the resistance to giving nature rights, and do so in a manner that properly recognises and protects the value of all beings.

Chapter 2- THE UNIVERSAL DECLARATION'S PROBLEMATIC RIGHTS JUSTIFICATION

The fact is that each time there is a movement to confer rights onto some new 'entity', the proposal is bound to sound odd or frightening or laughable. This is partly because until the rightless thing receives its rights, we cannot see it as anything but a thing for the use of "us" – those who are holding rights at the time.
– C. Stone (1972, 455)

Law was necessary where morality had failed, and morality was necessary where love had failed – Thomas Berry (1992, 258)

Having established the need for a non-anthropocentric justification for the Universal Declaration in the previous chapter we need to begin the task of examining the actual justification underlying the rights enshrined in the Universal Declaration. Thus in this chapter I will elucidate the current underlying justification and critically examine its merits and weaknesses. I will argue that the justification has many problems that need to be addressed if we are to provide a solid justification for the Universal Declaration. The purpose of this chapter is to bring out those problems so that in the following chapters we can rectify them, and in doing so provide a more solid foundation upon which to establish the Rights of Nature and the Universal Declaration.

2.1) Uncovering the Roots of the Universal Declaration

Where then does one find the justification for the Universal Declaration? According to Article 1.4 of the Universal Declaration, "the inherent rights of Mother Earth are inalienable in that they arise from the same source as existence." Although this particular justification for Mother Earth rights is not particularly lucid in itself, if we look to the origins of the Universal Declaration we can expand and clarify the justification behind such a statement. Where, however, do we turn for an idea whose origin is as diversely located as Rights of Nature, as was shown in the introduction? Despite the fact that the Rights of Nature movement is finding resonance in so many places across the globe and has its roots in the traditions of so many indigenous peoples, Thomas Berry is considered by many to be the father of the modern day Rights of Nature movement. Peter Burdon, for instance, claims that Berry is "arguably the most influential modern advocate for the Rights of Nature... and the inspiration behind Earth

Jurisprudence” (2010, 86). Furthermore, Berry, having studied the indigenous beliefs of many different cultures, has incorporated their insights into much of his work. Thus, even though, like a river, the Rights of Nature movement has so many different sources, Berry has tracked many of these sources and condensed them into one main current in his work. Furthermore, Cormac Cullinan, the lead drafter of both the Universal Declaration and the Ecuadorian Constitution,¹ worked with and drew on the philosophical work of Berry to develop the ethical framework for a new Earth Jurisprudence, of which the Universal Declaration is an expression. As Burdon points out “the Declaration expresses the fundamental tenets of Berry’s Proposal [for nature’s rights] with great clarity” (2010, 76). Thus, there are not many better places to turn to for a clarification on the nature of the inherent rights enshrined in the Universal Declaration and their underlying justification, than the work of Berry and Cullinan. I will turn to their work in order to examine the strength of the Universal Declaration’s implicit underlying justification.

2.2) Exploring Berry’s Notion of Rights

The quintessential expression of the Rights of Nature in Berry’s work is to be found in his *Origin, Differentiation and Role of Rights* (2002), which states ten basic precepts (as Berry calls them) outlining the nature and justification of rights. The first four precepts provide the justification for why it is that nature can hold rights, while the other precepts are supposed to flesh out the nature of those rights (for the full list of precepts see Appendix II). Thus, in order to answer the question of what the underlying justification behind the Universal Declaration is, I shall focus initially on the first four precepts, which are as follows (quoted from Berry 2002, 28):

1. *Rights originate where existence originates. That which determines existence determines rights.*
2. *Since it has no further context of existence in the phenomenal order, the universe is self-referent in its being and self-normative in its activities. It is also the primary referent in the being and activities of all derivative modes of being.*
3. *The universe is a communion of subjects, not a collection of objects. As subjects the component members of the universe are capable of having rights.*

¹ The Ecuadorian Constitution was the first constitution to enshrine the Rights of Nature.

4. The natural world on the planet Earth gets its rights from the same source that humans get their right: from the universe that brought them into being.

The precepts by themselves are rather hard to decipher and, without an understanding of Berry's work, seem to make unwarranted logical leaps. In light of this I have been working on deciphering them and uncovering their underlying justification. I have done so by piecing together the work of Cullinan (2002, 2008, 2011a, 2011b, 2011c) and Berry (1988, 1991, 2002, 2003, 2006a, 2006b, 2011) as well as the work of their commentators. Thus in order to shed light on the precepts, allow me to elucidate the justification that I have been able to piece together, by examining the precepts one at a time:

1. Rights originate where existence originates. That which determines existence determines rights.

The claim here seems to be: that which exists, by virtue of its existence, is a holder of rights. In other words, that which exists has rights because it exists. If this claim is true, it seems to be working with a very different conception of rights to what is generally conceived, for under this conception absolutely everything that exists (even the AIDS Virus and a galaxy far-far away) has rights. This precept makes a claim very similar to the Universal Declaration Article 1.4, which states that "the inherent rights of Mother Earth are inalienable in that they arise from the same source as existence." Both clearly need justification, which can be found through examining the other precepts.

2. Since it has no further context of existence in the phenomenal order, the universe is self-referent in its being and self-normative in its activities. It is also the primary referent in the being and activities of all derivative modes of being.

The language used here is somewhat abstruse, but what Berry seems to be suggesting is two related points, which correspond to each sentence. The first point is that since the universe is all that exists in the phenomenal order – in other words, it is all that exists insofar as we can tell by our senses - it is thus the source of all normativity, including moral normativity. (Its role in moral normativity is made clear by the fact that Berry derives a rights justification from it, as we will see later.) The implicit claim in the first sentence is that neither the supernatural, nor solely the human realm is the correct source of our norms; rather it is the universe in its entirety as available to our senses.

Berry then claims that “[the universe] is also the primary referent in the being and activities of all derivative modes of being.” Although this sentence seems to border on the tautological there is more to it than initially meets the eye. When the sentence refers to the “being and activities of all derivative modes of being” it is referring to all beings and activities that derive their existence from the universe, which, because everything (within the phenomenal order) derives its existence from the universe, refers to all beings and actions. The sentence is thus claiming that all beings and actions have the universe as the primary referent. But what does it mean to say that something is a primary referent? If we understand the term ‘referent’ as used in linguistics it means “the thing in the world that the word or phrase denotes or stands for” (Soanes & Stevenson 2004, 1208). To use the term in this way would make the sentence mean that the universe stands for or denotes every being and activity that exists, which seems tautological for the term ‘universe’ means just that. This tautological claim, however, is not what Berry is after; rather he intends to make a deeper claim than this, a more prescriptive claim. Berry wants to reinforce the idea that the universe in its entirety, not merely the human realm, should be the source of our norms. The precept is thus a call to step outside of an anthropocentric mode of thinking.

The claim makes more sense if we consider alternatives to what it means to live with the universe as our primary referent. Berry, in *The Great Work* (1999), provides a critique of the current, fundamentally anthropocentric norms within human society, such as measuring the success of a society through GDP, human happiness, or by technological ‘progress’. These modes of thinking are fundamentally narrow-minded and unjustifiably anthropocentric. What Berry prescribes in their place is that our actions should refer beyond this limited scope to the universe in its entirety for their validation. This is confirmed by what Berry (1988) claims follows from these points, which is that we must realise that the ecological community is not subordinate to the human community. Rather we must move “from our human-centred to an earth-centred norm of reality and value” (1999, 56), and beyond that Berry claims we need to think of “the universe as the supreme norm of reality and value, with all the component members of the universe participating in this context, each in accord with its own proper role” (1999, 80). Thus the second precept seems to be making a claim that may have been much more controversial fifty years ago, but with the expansion of environmental ethics has become more prevalent. The claim is that the realm of value and normativity is broader than just the human realm; rather it is situated within “the universe community” (1988, 202). Berry’s precept is thus asking us to break free of what Einstein, once again, referred to as the “delusion of human consciousness” which regards “humanity as the centre of existence”; in other words, Berry’s precept is claiming that anthropocentrism is false.

The precept is also making a further point that the universe in its entirety is what is available to our senses, and thus we cannot refer to anything over and beyond it as a source of our norms. As Berry claims, “we have no immediate access to anything intellectually or physically prior to or beyond the universe” (1999, 114). Thus as a source of our norms we cannot appeal to the supernatural or anything beyond the universe. Thus Berry adopts a strictly naturalistic and religiously neutral perspective, which is especially appropriate given the universal aspirations of the Universal Declaration.

3. *The universe is a communion of subjects, not a collection of objects. As subjects the component members of the universe are capable of having rights.*

In order to understand what this third precept means, one must come to terms with Berry’s view of how the universe functions. Berry (1988) claims that there are three principles according to which the universe functions; these three principles govern the existence of the universe and each of its component parts. Everything in the universe operates according to these three inter-related principles, which are *subjectivity, differentiation and communion*. The principle of differentiation is a “primordial expression of the Universe” (Berry 1999, 45), and is a description of how everything in the universe tends to move away from homogeneity towards differentiation, which prevents the world from collapsing into a “homogeneous smudge” (Swimme and Berry 1992, 73). The principle of communion, to which I shall later return, “indicates that the entire universe is bonded together in such a way that the presence of each individual is felt throughout its entire spatial and temporal range” (Berry 1999, 163). This is as opposed to a universe consisting of “isolated singularities of being” (Berry & Swimme 1992, 73). This principle was confirmed when “Isaac Newton brought forth our understanding of gravitational attraction; Darwin offered evidence of genetic connections in the web of beings; Einstein and quantum theorists presented new understandings of relatedness in the universe at sub-atomic levels” (Koons 2011, 47); and when the big-bang theory illustrated the original and continued inter-connectedness of all matter.

The principle that is most important for Berry’s third precept, however, is that of subjectivity. For it is as a *subject* that “the component members of the universe are capable of having rights.” The idea of subjectivity or what it means for something to be considered a subject is a tricky notion with differing interpretations, which we need to explore if we are to understand how ‘subjects’ warrant rights. What is important to note, is that the term ‘subject’ does not refer to subjects in the traditional

manner, as in a subject of experience. Rather, it refers to anything that possesses subjectivity, which is a term that has a particular meaning for Berry, and requires a separate discussion.

2.3) Subject and Subjectivity

According to Swimme and Berry (co-authors of *The Universe Story*) the principle of subjectivity is derived from “a post hoc evaluation of cosmic evolution” (1992, 72), in other words, by observing how the universe has developed. For Berry and Swimme the principle of subjectivity, along with the other universe-governing principles, is complex beyond any simple definition (1992). Furthermore they believe that “each individual thing in the universe is ineffable” (1992, 74). However, rather than stagnating in the face of the “ineffable” (for how could the ineffable be a clear guide to action or law?) let us bear the world’s supposed ineffability in mind and try as best as we can to explore Berry’s notion of subjectivity and see whether, as his third precept claims, the possession of subjectivity is sufficient grounding for something to have rights.

Berry initially described subjectivity as relating to an increase in “the complexification of being” guided, as everything is, by the principle of differentiation (1988). However, as Dalton (1999), a commentator on Berry’s work, points out, Berry’s notion of subjectivity began to shift throughout his work, and the notion of subjectivity was gradually associated with *autopoiesis*, a Greek term for self-production. In fact Berry eventually used *autopoiesis* and subjectivity interchangeably. So, assuming that Berry is partial to his latter interpretation of subjectivity as equivalent to *autopoiesis*, it is important for us to explore the notion of *autopoiesis*. According to Anne Dalton, *autopoiesis* “refers to the tendency of an organism or system to act in its own interests, i.e., for its own self-preservation” (1999, 83). Berry’s definition, however, although somewhat similar to Dalton’s, is different in important ways. Berry claims that *autopoiesis* points to the “interior dimension of [all] things” which is made up, at least in part, of “the self-organising powers” that allow it to “participate directly in the cosmos-creating endeavour” (1992, 75). For Berry the universe is not so much a *cosmos* but is rather a *cosmogenesis*; “that is, a universe ever coming into being through an irreversible sequence of transformations moving...from a lesser to a greater order of complexity” (1999, 26). Thus, put in different words, *autopoiesis* refers to the power with which each thing in the universe comes into existence, specifically, the inherent powers that allow it to become what it eventually becomes and in doing so evolve alongside, and in communion with, the rest of the universe.

Thus, bearing in mind: a) that Berry uses *autopoiesis* interchangeably with subjectivity; b) Swimme and Berry's proscription against the possibility of producing a simple definition of subjectivity; and c) that such a definition would be more of a summary of the previous thoughts than a stand-alone definition; we can produce the following condensed description of subjectivity: subjectivity is the particular² intrinsic ability of things to dynamically and creatively³ become both what they are and, in the future, what they will be and in doing so participate and contribute to cosmogenesis – the creative unfurling of the universe.

For Cullinan and Berry it seems self-evident that moving from this notion of subjectivity within all things, we can then conclude that each being by virtue of it being a subject is capable, or deserving, of rights. For instance Cullinan states that:

In essence, [Berry] argues that the rights of all beings are derived from the most fundamental source of all, the universe. Since the universe is, in his words "a communion of subjects and not a collection of objects", it follows that all the component members of the universe are subjects capable of holding rights. (2002, 105)

Cullinan concludes that if we accept both Berry's proposition that the earth is a communion of subjects and that rights originate where existence originates, it follows that "we cannot claim that humans have rights without conceding that other members of the Earth Community also have rights" (2002, 106). However, within rights discourse, rights are traditionally warranted because of some special quality of

²Subjectivity is particular to each object as a result of its inextricable link to the principle of differentiation, which holds that each object tends toward differentiation.

³ What Berry means by creativity is difficult to define, as there are various and not clearly consistent descriptions of it throughout his work. One is that the universe moves not randomly nor in a determined manner, but rather it "moves from lesser to greater complexity" (1999, 169). Berry, however, doesn't make it clear what the alternative might be if something doesn't operate randomly or in a determined or intentional fashion. Furthermore some of Berry's descriptions of creativity are often obscure and rhetorical as opposed to helpful. For example, Berry claims that "creativity is neither a rational deductive process nor the irrational wandering of the undisciplined mind, but the emergence of beauty as mysterious as the blossoming of daisies out of the dark of the Earth" (1999, 31). At an earlier stage in his career Berry also described creativity as a "groping toward an ever more complete expression of the numinous mystery that is being revealed in this process. Groping implies a disquiet, an incompleteness; it also has the excitement of discovery, ecstatic transformation, and the advance towards new levels of transformation" (1988, 221). Occasionally Berry even seems to lean towards a teleological account of the universe, whereby it is self-directed in an almost conscious manner towards some elusive end point. The one consistent theme throughout his statements on creativity is that it is somehow an intermediary between a random and determined process. Although there are many aspects of Berry's work that are not clear, what is clear, as shall be explored later in this chapter, is that the mystical lacuna that is creativity is a weak point in Berry's position, as it underpins his entire ethical view, but is not clearly defined. However, to give credit to Berry, he did admit to the ineffability of what he was trying to describe.

the rights-bearing object, as in the case with human rights where rights are justified on the basis of basic human needs (in relation to what theorists think it is to be human, to live a dignified human life and other concerns) (Cf. Nussbaum 1997 & Sen 2005)⁴. Likewise in much contemporary animal rights discourse animals are said to have rights because of particular characteristics that they possess (Cf. Singer 1975, Regan 1983 & Wise 2002). To make progress then as to how Berry's position can justify rights, we need to ask whether his notion of rights as underpinned by subjectivity picks out a peculiar quality and, whether or not that is so, if it is sufficient to underpin such a rights claim.

In order to begin to answer these questions it is important to understand what Berry means by the term 'right'. Berry's fourth precept helps here, but only insofar as it states that humans derive their rights from the same source as all other beings, the universe. More helpful is that Berry defines rights as "giving every being its due" (2006, VI).^{5,6} Thus in order to understand how it is that a being merits a right we need to unpack what it means to give every being its "due" and how this relates to the idea of subjectivity and the universe's self-normativity.

2.4) The Natural Right-ness of Giving What is Due

Berry drew substantially, both explicitly and implicitly, from the Natural Law Ethics tradition in developing his argument for why subjectivity warrants rights-bearing status. Thus, in order to understand Berry's position and what it means to give every being its due, it is important to compare Berry's position to natural law ethics. Somewhat similar to Berry's idea of subjectivity, natural law ethicists such as Aristotle and Aquinas, the forefathers of natural law ethics,⁷ thought that each object had within it a particular essence, in Berry's terms, an interior dimension, which made it what it is. Due to this belief in essences both Berry's and the Natural Law Ethics' view are opposed to the atomistic conception that holds that objects are at base simply the movement of fundamental particles, and thus simply matter; as opposed to matter directed or informed by an essence (or in Berry's terms an interior dimension), which acts as a unifying and directing principle of matter. Because of natural law ethics' opposition to the modern atomistic conception, many consider it to be incorrect and to rely on an

⁴ This will be explored further in Chapter 4.

⁵ Video interview, therefore, no page number available for the quote.

⁶ This idea of rights is consistent with inherent rights, as what is due to each being can be dependent on the intrinsic properties and value of each being. The relationship will be explored further in Chapter 4.

⁷ Natural Law Ethics begun with Aristotle, and was subsequently 'baptized' by Aquinas. What I mean by this is that for Aristotle essences were something that existed in nature, and were not necessarily reliant on the existence of God, whereas for Aquinas it was God that created and directed the essence of each being.

outdated metaphysical view. Berry, however, claims that our “observational sciences” have moved beyond this atomistic, or, as he calls it, Newtonian, understanding of the world. Contrary to atomism, Berry claims that “if we know the elements simply in their isolated individual reality we have only minimal knowledge of what they really are” (1999, 25). For Berry, to gain fuller knowledge of atoms we must understand both their interior dimension (or, for Natural Law Ethicists, their essence) and their context as molecules, megamolecules, cellular life, organic life and within the broader web of existence. Bearing this in mind, let us thus explore the idea of an essence and how it relates to Berry’s idea of subjectivity.

According to natural law ethics, the nature of an essence is hylomorphic, meaning that whatever exists is made up of both form and matter (Kaye 2008). This is what Aquinas refers to as his first act of being: that existence is simply form informing matter (McInerny 2004). The following example can be used to clarify what is meant by referring to something as having both form and matter: an acorn is not simply a collection of atoms; rather the acorn is greater than the sum of its parts, for within an acorn is contained a particular form, that of an oak tree. The acorn, while not actually an oak tree, has the form of an oak tree. The form is a guiding principle which directs the development of the acorn, a type of blue print if you will. That is, although the acorn is not currently an oak tree, if allowed to realise its potential, the acorn will become an oak tree – it has the form of an oak tree in potentiality. Thus to say that the acorn has an essence is to point out that an acorn is matter *informed*. The form, in a sense, is what directs the matter, or to utilise Berry’s terminology, the form is the interior dimension of the object that compels and directs the self-organising powers of an object.

Aquinas refers to the actualisation of form in a final way (for example, an acorn becoming a fully grown flourishing oak tree) as the second act of being. In Aristotle’s terminology, what is meant by saying that an object has instantiated its second act of being is that it has reached its *telos* or goal, that it has actualised its final cause (Aristotle 2000).⁸ For an object to actualise its final cause or to achieve its second act of being is considered a good in itself. In other words, what defines the good for a being is whether it achieves its final cause or instantiates its second act of being. Likewise, according to Berry’s view, for an object to express its subjectivity is a good, for it allows it to express its “inner value” (Berry

⁸ Recall that to say that something has a *telos*, is to claim that it is a goal directed process. *Telos* is Greek for the end of that process. The final cause in relation to a *telos*, according to Aristotle is “the end, that for the sake of which a thing is” (Falcon, 2011).

1999, 81).⁹ To give every being its due for Berry would then be for it to be allowed to express its subjectivity.

It may seem at this point as if Berry has made a simple unproblematic extension of the natural law ethics position. However, this is not so, for the moral claim that natural law ethics makes with regards to the good of an object can only be made because of its particular commitment to the relationship between essences and their *teloi* and/or second act of being. Berry's view, on the other hand, differs quite substantially from natural law ethics on this matter and in ways that affect the sorts of moral claims that he can make. Where Berry and the natural law ethicists part company is on the nature of the creative process that directs cosmogenesis, or the unfurling of the universe, and by extension each component member of the universe. For Aristotle and Aquinas every object in the universe develops according to patterns of action that are determined by each one's essence. Berry on the other hand believes that the universe's "creative process", which is intrinsic to every thing in the universe, is not "a predetermined pattern of action" that leads to a fixed condition, such as a *telos*, but it is rather a "groping toward an ever more complete expression of the numinous mystery that is being revealed in the process [of cosmogenesis]" (1988, 221). By so defining the creative process Berry avoids one of the major shortfalls of natural law ethics.

According to natural law ethics there is a specific and unchanging final form or *telos* that is specific to all members of a species or kinds of object, for instance, all humans, or all rocks or all cows. Each essence, which is specific to a particular species or category of objects, is unvarying for natural law ethics. Such a view, however, is incompatible with scientific discoveries of the dynamic nature of evolution and the constantly unfurling processes of the universe.¹⁰ Berry recognised that contrary to the natural law ethics view of shared common essences across species, "each individual is not only different from every other being in the universe but has its own inner articulation, its unique spontaneities"

⁹ The question of whether normativity can be derived from subjectivity or from the essential nature of an object is a deep metaethical question, which shall be left aside for the following reasons: a) such metaethical questions are beyond the purview of this chapter; and b) if the implications of the view are themselves untenable then engaging with the trickier underlying metaethical question becomes somewhat irrelevant. Bearing this in mind I grant the verity of the ethical move from subjectivity to an ought, in order to examine what the implications of such a view are.

¹⁰ Stephen Pope (2012) claims that the natural law ethics claim to a *telos* can be reconciled with the modern evolutionary understanding of nature. Pope claims that we can tell what the *telos* or purpose of something is by examining what it is like when it is fully developed and has flourished. But in order for us to be able to tell when something has fully flourished or developed, we would have to have some sort of idea of what it means for it to develop and its *telos*, for we can only tell whether something has flourished in relation to some conception of its good. This leads us to circularity, for in order to determine something's *telos* we have to originally have assumed a *telos* to do so. Pope is content with the circularity and says it is not necessarily a fatal circularity, but I disagree.

(1999, 163). This he expressed jointly in the principle of differentiation and subjectivity, according to which each object aims towards constant differentiation, guided by its own subjectivity.¹¹ Thus Berry's view of cosmogenesis avoids the shortfall of natural law ethics' static conception of essences. However, it may have done so at the expense of the strength of the moral claim that such a view afforded natural law ethics, for if each being is taking part in an incomplete creative process how can we make sense of a *telos*? Similarly, can we identify a final cause, if the constant process of creativity makes such identification constantly elusive? Consequently, what would define the good if there were no final good to which each being was aspiring?

To understand the gravity of these questions for Berry's view, it is important to explore further what Berry means by creativity. Berry ascribes to a view propounded by Theodore Dobzhansky that the universe, and all of its component parts, is neither random nor determined, but creative (Berry 1999). What this means in part is that there is no strict form guiding the actions of beings, as is the case with natural law ethics.¹² Thus under Berry's view there is as yet no final cause, or no *telos*, for it is still being created, it is partaking in the creative process. For Berry then, the good of an object, as defined by the expression of its subjectivity, would be for it to be allowed to take part in the process of cosmogenesis, that is, to be allowed to undertake the creative processes that bring it into being and allow it to become what it is – that would apparently be what it would mean to giving every being its due. Following from that, what would then be bad, unethical or against giving every being its due is anything that goes against this creative process. While this may sound appealing in theory, in application such an ethical theory would be nigh on impossible to live by as we would not be able to identify what the final cause of a being is, and thus would not be certain whether we are contributing to its good or not. For how could we know when human interaction was part of the process of cosmogenesis, or when our involvement or interference would go against the process of cosmogenesis? How do we even know when we are disturbing or enhancing the process of cosmogenesis, if there is no definite direction it is heading towards? Would it even make sense to think of human activity as interfering with cosmogenesis if we are part of the universe and thus part of the process of cosmogenesis? If we cannot know these things, then how can we know what the right of each being is, or what it would mean to give every being its due? As far as I can tell, Berry never addressed this mystical lacuna at the core of his conception, and he has left us with a rather indeterminate ethic upon which to construct the Rights of Nature movement,

¹¹ Berry, however, did also realize that there were certain commonalities amongst species, which make it such that often members of a particular species could, without much contention, be said to have the same rights granted to each individual. For instance, Berry claims that "in the living world rights are species specific" (Berry 2006, 111).

¹² See footnote 3 for a fuller treatment of creativity.

even though, as we will shortly explore, he draws many more definite conclusions from it. These are serious problems indeed, if not intractable ones, but before going on to examine their implications for the Universal Declaration there is another layer to Berry's conception of rights (or what it means to "give every being its due"), which needs to be considered.

2.5) What's in a Role?

Moving on from the basis of rights that he sets out in his first four precepts, Berry then goes on to elaborate on the nature of the rights he believes to follow from such a basis in his later precepts. It is in doing so that he brings another layer in his conception of rights to bear. According to Berry's fifth precept:

- 5. Every component of the Earth community has... the right to fulfil its role in the ever-renewing processes of the Earth community*

Such a right is based "on the relations that the various components of the Earth have to one another" (Berry 2011, 229). Similarly Berry also holds that each being's inner subjectivity is also expressed through its role within its broader 'biosystems'.¹³ Likewise, article 1.6 of the Universal Declaration states that all 'beings' have rights which are "appropriate for their role and function within the communities within which they exist." Thus, apart from rights being aligned to subjectivity, the right of each being is also defined as its being allowed to play its role within the Earth community, and within the Earth community, its role within its particular biosystem(s). These are what I shall call 'role specific rights' or 'role rights', because although they belong to the individual they are situated and derived from the supposed role that the individual plays within the whole or broader community or system of which they are part. Although such rights are role specific and may be similar for members of the same species, they are still individual rights, for according to Berry's eighth precept:

- 8. Since species exist only in the form of individuals, rights refer to individuals, not simply in a general way to species.*

¹³ According to the *American Heritage Stedman's Medical Dictionary* a biosystem is a "living organism or system of living organisms that can directly or indirectly interact with others."

Although it might seem strange for Berry to move from individual rights, which are founded upon subjectivity – what I shall hence forth refer to as ‘subjective individual rights’ or ‘subjective rights’ – to role rights, his move is not completely unfounded. Recall the three principles according to which Berry claims the universe functions. One of those is the principle of communion, which states that “the entire universe is bonded together in such a way that the presence of each individual is felt throughout its entire spatial and temporal range” (Berry 1999, 163). Combining the principle of communion with that of subjectivity, Berry claims that the universe is a “*communion* of subjects and not a collection of objects”.¹⁴ What is meant by a *communion* of subjects is that each subject within the community is dependent on, and related to, every other component. Furthermore, Berry states that “even beyond the Earth, the sense of community would extend throughout the entire universe seen as a single coherent community that has emerged into being with a total dependence of each component on all the others” (1999, 80). Berry adds that we must realise that such a community functions as “an integral community and no part of that community can be guided in its actions except with reference to the total community” (2003, OE¹⁵). Berry points out that “just like a body cannot function in some parts without integration with all other parts” so the distinct yet connected parts of the universe rely on each other, and their relationship of communion in order to exist as they do (2003, OE). Its more specified applicability is that we must realise that within each biosystem the individual components are dependent and reliant on the broader biosystem, as the broader biosystem is reliant on the broader bioregion, and so on, up the two-way ladder of contextual hierarchical dependence. Thus we can see that Berry, although not explicitly, adheres to the concepts of contextualism and hierarchical dependence from the previous chapter.¹⁶ It is with this understanding of the interconnected nature of the universe that Berry develops the idea of role rights. But, given this understanding, how do we make sense of an individual’s role within its broader biosystem and the rights that stem from it?

Berry describes his broader ecosystem ethic in the following quote from *The Great Work*, where he describes his sentiments in relation to a childhood encounter with a meadow:

This early experience, it seems, has become normative for me throughout the entire range of my thinking. Whatever preserves and enhances this meadow in the natural

¹⁴ The three principles do not operate independently. They are separable conceptually, but in reality are constantly in interplay.

¹⁵ OE = Online Edition for which no page number is available.

¹⁶ It is a two-way ladder because although subsystems are reliant on their broader systems and individual organisms are reliant on their ecosystem in order to exist, broader systems are in turn made up of their subsystems and individual organisms and are therefore reliant on them in turn.

cycles of its transformation is good; whatever opposed this meadow or negates it is not good... These evolving biosystems deserve the opportunity to be themselves and to express their own inner qualities... what is good recognises the rights of this meadow and the creek and the woodlands beyond to exist and flourish in their ever-renewing seasonal expression even while larger processes shape the bioregion in its sequence (1999, 13).

Within this ethic it would appear that every individual's role within their broader system would then be to "preserve" and "enhance" "the natural cycles" of its broader ecosystem and through doing so contribute to the ecosystem's "opportunity to be [itself] and express [its] own inner qualities". This language reveals that Berry's ecosystem ethic sees an ecosystem to be a 'subject' and, as a subject, to have subjective rights and a good of its own as defined by the expression of its subjectivity. This is a claim that is consistent with the Universal Declaration, which holds ecosystems to be rights holders. The role of each component with the ecosystem, according to this view, is to contribute to the overall good of its ecosystem, as defined by the expression of its subjectivity. Thus a role right would be the right that each being has to contribute to the good of the overall ecosystem of which it is part, and thus contribute to the right of each ecosystem to express its own inner subjectivity. However, in relation to such a conception of role and ecosystem rights, an important question needs to be asked: How do we reconcile the ideas of subjective individual rights, role rights and ecosystem rights?

2.6) Reconciling Rights

Berry at this stage has three different types of rights operational in his environmental ethic, and the picture is beginning to get complicated. The first is the right of individual subjects to express their inner subjectivity (subjective rights). The second is the right for individuals to play their role within the broader ecosystem (role rights). The third is the right of biotic communities or biosystems to express their subjectivity as defined by Berry's biosystem ethic (ecosystem rights). The picture is less complicated by the fact that we can easily reconcile role and ecosystem rights, for an individual playing its role within the broader system is defined as contributing to the overall health of the system. This, like Aldo Leopold's famous Land Ethic (1966), sees a species' proper role as functioning in ecosystems somewhat like organs do within a body, by contributing to the overall good of the body. Thus the two conceptions of rights enshrined in role rights and ecosystem rights are mutually enforcing, as the role of

an organism is defined in relation to the overall good of its biosystem.¹⁷ Despite this overlap, however, there is still a potential conflict between individual rights and role rights, for, like a disease in a body (as shown in the previous chapter), an individual entity's interests may not always coincide with that of the broader ecosystem. In order for Berry's rights to be instructive when faced with such a situation it seems that some sort of compromise, resolution or hierarchy would have to be available between the conflicting rights.

Berry and Cullinan both admit the potential conflict: for instance, Cullinan approvingly paraphrases Marcus Tullius Cicero and points out "that each of our rights and freedoms must be limited so that others can be free" (2011b, 233). He claims furthermore, "that individual and collective human rights [and presumably all natural rights] must be limited, and balanced against, the other members and communities of the Earth" (2008, OE). But what happens when the rights conflict? How do we go about imposing limitations and balances? Berry holds two potentially competing conceptions of rights, that of individuals and that of role and ecosystem rights, so which comes first or holds priority in the case of conflict? Berry and Cullinan claim that we must give precedence to the health of the broader whole. Cullinan, drawing from Berry, created his own principles of Earth Jurisprudence, the first of which claims that we "give precedence to the survival, health and prospering of the whole Community over the interests of any individual or human society" (2002, 111), and, I assume, any other society or community as well, whether it be ant, elephant or ape. Similarly Cullinan's third principle of Earth Jurisprudence states that "the rights of each being are limited by the rights of other beings to the extent necessary to maintain the integrity, balance and health of the communities in which they exist" (Cullinan 2011b, 13).

This subservience of component parts to the broader system must be understood in the light of the hierarchical contextualist conception of ecosystems and individual health, explored in chapter 1, that both Berry and Cullinan adopt. Both argue that each individual and ecosystem must be seen within its context, and that we must realise that the "context of an atom is a molecule; of a molecule, a cell; of a cell, an organ; of an organ, a body; of a body, its habitat, or ecosystem" (Mason 2011, 36). As Bryan Norton, who supports a similar view, points out, natural systems including living organisms are organized units embedded in this hierarchy, with larger, slower-changing systems (the environment or context) determining the range of choices available to smaller systems within the hierarchy (1991). Accordingly both individual and ecosystem health are situated and highly context dependent and thus,

¹⁷ Although it might be that individuals have particular roles to play within one community, but a different role to play within another overlapping and/or broader community, which might make holistic individual rights and holism conflict occasionally, this would be resolved by appeal to the health of the broader system. The health of the broader whole would always take precedence, according to Cullinan (2002).

according to Berry and Cullinan, must be subservient to the broader context of their existence when it comes to rights claims. Berry and Cullinan thus adopt a contextual hierarchical approach, with the hierarchy representing a pecking order, whereby the larger system comes first, and the component units' interests come second.

As a proponent of a contextualist approach, I grant that both the individual's and the ecosystem's health should be considered within its hierarchical context. However, a number of questions need to be asked in response to the claim that subjective individual rights are subservient to ecosystem and role rights as claimed in the 1st and 3rd principles of Earth Jurisprudence. Firstly, we need to ask whether it makes sense to talk about ecosystem rights, or the good of an ecosystem, if it is not grounded in individual rights or the good of individuals. Relatedly, even if an individual's health is dependent on its broader context, does that mean we can justify transgressing individual rights in order to protect the ecosystem and, if so, why? But, most importantly, as this is the yardstick in relation to which all rights claims are to be measured under Berry's framework, we need to ask what it means for an ecosystem to express its good or subjectivity. The good of an ecosystem is relative to its subjectivity, according to Berry. Likewise in this chapter talk of something being 'good for', 'the good of' or 'in the interest of' an individual, unless otherwise stated, is relative to subjectivity.

2.7) For the 'Good' of Ecosystems?

To answer the above questions, let us examine an example of an ecosystem – as an example of a broader biotic community within which individuals play their allotted roles – in order to see what it would mean for us to protect the good of such an ecosystem. Let us, like Cullinan, take a river system as our paradigmatic example of an ecosystem. Cullinan (2002), in answering the question as to whether a river can have a good of its own, claims that a river can have an essence. Cullinan here uses the term "essence" but as his conception is derived from Berry's environmental ethic, he should use the term "expression of inner subjectivity", for to speak of essences is to ignore the distinction between Natural Law Ethics and Berry's view, as explored earlier in this chapter. Cullinan, perhaps unaware of the difference between the two, use the terms interchangeably. The slip is permissible in order to allow for continuity between Cullinan's text and mine, but I shall use 'essence' as a placeholder for "the expression of subjectivity" as I am hoping Cullinan meant to, and use *essence* without scare quotes to refer to the proper or natural law ethics interpretation of the term.

The river's 'essence' then, according to Cullinan, entails that rivers should flow, be able to flood, be oxygenated, be relatively clean, and have a particular viscosity. While these might indeed be necessary characteristics of a river that supports life, and life of a particular sort that we associate with green meadows, for even a stagnant river can support life such as bilharzia, it is not clear how these contribute to the good of the river itself rather than merely to the good of the living beings that rely on the river. It is also not clear what it means to say that a river or a meadow has an 'essence' in the first place.

Cullinan and Berry perhaps need to claim that the 'essence' of riverhood would be to support life and that characteristics like viscosity and the ability to flow, because of their role in supporting life, are thus part of the river's 'essence'. The South African National Water Act of 1998 makes a similar move and defines river health in relation to human needs. This is understandable given the anthropocentric nature of South Africa's Constitution,¹⁸ which recognises the reliance of humans on the environment. Even the World Wildlife Fund (WWF) defines ecosystem health through environmental flows, which are measured as the "quantity, quality, and distribution of water required to maintain the component function and processes of aquatic systems on which people depend" (O'Keefe 2011).¹⁹ For the WWF a river's health is thus defined relative to human needs, but is also on occasion defined relative to other species needs, according to Professor Jay O'Keefe, former WWF Professor of Freshwater Ecosystems (2011). This is also understandable given WWF's set agenda of wildlife protection. However, Berry and Cullinan would need to show how the river's essence is linked to life in their ethic and cannot define their link by fiat if their ethical framework is to achieve what it sets out to achieve. Without doing so they would simply be imposing a characteristic onto a river, which is not necessarily or clearly part of its 'essence' as there were certainly times in the earth's history when rivers did not support life.

Indeed, it is not clear how the ability to support life and other related characteristics would be inextricably linked to the idea of riverhood or be part of the 'essence' of rivers, except if we are working with a preconceived idea of riverhood that is conceptually linked to the ability to support life. Furthermore because the type of life that a river can support can vary so much, it would have to be life of a particular sort, or perhaps just as high a level of life as possible, which would need further definition or clarification. If we were to define an ecosystem's good as related to a particular mode of existence, without further justification this would privilege one state of being over another without proper reason.

¹⁸ For evidence of the anthropocentric nature of South Africa's Constitution see, for instance, Filgueira and Mason 2011.

¹⁹ The quote is from a presentation given by Prof O'Keefe.

Furthermore, another reason for not being able to assume the connection between life and its broader system comes from the fact that the Universal Declaration states that rights should be recognised without “distinction of any kind”, including (logically) that between living and non-living beings, and Berry’s ethic, as we shall explore later, is somewhat similar in its approach. More, then, is surely needed to establish a link between a river’s essence and life.²⁰

Another possible solution is to choose a particular point in a river’s life by which to define its good. This, however, would buy into a flawed preservationist ethic, which ignores the fact that river systems, like all ecosystems, constantly undergo change. By a flawed preservationist ethic, I mean an ethic that holds that we should preserve ecosystems in a particular point in their development. This view adheres to a static conception of conservation as opposed to an appropriate dynamic approach, which allows for the continual evolution and change that occurs within ecosystems as part of the natural process of ecosystem development. An ecosystem, after all, is merely a human-conceived construction or abstraction which attempts to delineate the interactions and relations of a constantly evolving and changing biological community and their environment. Indeed, just as much was illustrated in the previous chapter’s discussion on ecosystem health and dynamic flexibility.

Given these problems, perhaps alternatively we could say that the good of the river is defined by the sum of its constituent parts. However, these are constantly changing, which would mean that there is no clear essence for the river, and the river would suffer from the same, if not more, indeterminacy as individual objects experienced under Berry’s ethic. Recall that each individual component of the universe takes part in an incomplete creative process, which prevents us from identifying its *telos*. This problem would then be compounded by appeal to the river’s ‘essence’ as a sum of its component parts, as we would be combining a number of indeterminate constantly changing parts into some sort of ‘whole’. This ‘whole’ would then consist of a much higher level of indeterminacy than the individual level, which was already a problematic guide to ethical action. By indeterminacy we mean that the ethical guidelines provided are insufficiently clear to be action guiding in a decisive manner. Where then can we turn for a more determinate ethical idea of an ecosystem’s ‘essence’?

²⁰The first successful case of the Rights of Nature in Ecuador, coincidentally, was focused around the supposed rights of the Vilcabamba River (Greene, 2011). The court declared that “the defendant is violating the right that nature has to be fully respected in its existence and maintenance of its vital cycles, structure, functions, and evolutionary processes” (2011, OE). However, the reasons for prosecuting the offending company were decidedly anthropocentric in that they focused a lot on how the river had increased in speed subsequently causing damage to property further downstream, as well as the effects on future and current generations. It also focused on damage to land around the river, but not to the river specifically. Thus in this case it is not clear what it would mean for a river to be damaged itself, and so, unfortunately, this case is not instructive for our attempt to clarify what it means to refer to the ‘essence’ of a river or an ecosystem.

2.8) The Elusive Face of 'Gaia'²¹

Christopher Stone (1996) suggests that we can talk of an ideal state of riverhood, but that this would have to be defined in reference to some higher goal or purpose to which the river contributed. Following the contextual hierarchy, Berry and Cullinan claim that such a goal should be that each subject and comprehensive entity within the Earth Community should give preference to the overall good of the whole, the whole being Gaia²² or the Earth community.²³ Thus the ideal state of riverhood would be the state that best contributes to the overall good of the Earth Community or Gaia. For those familiar with the Gaia theory, this may at first seem like a solution to the problem of indeterminate 'essences', but what this move really does is shift the problem of 'essences' to another level in the contextual hierarchy, for now we need to identify the overall good or 'essence' of the Earth System or Gaia.

We could define Gaia's 'essence' as being made up of the combination of the 'essences' of its components parts. However, if the problem of indeterminate 'essences' was an issue at the individual level because of indeterminacy, and more so at the ecosystem level, then appeal to Gaia, a much more complex entity made up of many more complex, interchanging, indeterminate parts, would surely compound this problem even further. Therefore, appealing to Gaia to solve indeterminacy, under this conception of Gaia's 'essence', is no solution to the problem of indeterminate essences. Furthermore we cannot solve Gaia's indeterminacy by appealing to some greater good over and above Gaia or the Earth, for this would simply be another step up the ladder of indeterminacy and as such only make matters more indeterminate and even lead to an infinite regress. Thus another conception of Gaia's 'essence' or good is surely required.

Many argue that just such a conception can be found by examining the nature of the Gaian or Earth system. It is argued that in order to respect Gaia we must ensure that all our actions do not disturb the ideal balance that the self-regulating mechanism of Gaia is contributing towards; that we do not disturb the point of homeostasis that our living systems have reached, where homeostasis is defined broadly as the ability to maintain equilibrium. But this claim, I argue, stems from ascribing to an antiquated view of the Gaia Hypothesis whereby there is some ideal state around which the world

²¹ I use Gaia in scare quotes just this once, for although I use the term, I do so hesitantly, as many attach certain meanings to the term Gaia, as well as that of Mother Earth, which I seek to avoid.

²² The Gaia Hypothesis is defined as "the theory that the Earth and everything on it constitutes a single self-regulating living entity", according to the Collins English Dictionary (2011).

²³ This is articulated in article 1.7 of the Universal Declaration, which states that if there is any conflict of rights between beings they must resolved "in a way that maintains the integrity, balance and health of Mother Earth."

maintains equilibrium or homeostasis, which the earth's regulatory systems moves towards. Working from this misunderstanding, and the often accompanying idea that the Earth is some sort of superorganism, many have mistaken this as meaning that the Earth has an identifiable state for which we should strive. For instance, Edward Goldsmith argues that ecology understands, "living things [as] differentiated parts of the hierarchy of natural systems that make up the [Earth System], and the [Earth System] has a critical structure which enables it to maintain its homeostasis in the face of environmental challenges and to provide each of its subsystems with an *optimum* environment" (1998, 12).²⁴

This conception of Gaia, however, while partly true, does not provide a very clear guide to action, as the highly fluctuating history of the Earth, humans and the six great extinctions can show. The Daisyworld computer simulations run by Lovelock and Watson (1983) did show that it is plausible for large systems, such as our Earth's, to have feedback systems which keep us round a point of homeostasis. However, because the earth's systems are so complex and involve so many interrelated systems, as well as external input, the homeostasis is so erratic and fluctuating that it can hardly be a guide to action. What scientific records indicate, in Berry's own words, is that "the Earth (and indeed the Universe) can be seen as a vast network of interrelationships that is also a *process* because it is constantly *changing*" (1999).²⁵ Indeed, as Ben Pile (2011) has argued, "rather than [available evidence] demonstrating [that] there is a self-regulating system [with a particular point it aims towards], isn't there an equally plausible argument that the endurance of life systems on Earth demonstrates that no such 'self-regulating system exists at all'?"²⁶

I do not deny that there are certain interrelated feedback systems that exist which allow for the flourishing of life. However, a look at glacial, geological and other historical records will show that the Earth's climate and relatedly its component ecosystems have varied so much over the ages that it seems hard to believe that there is a particular point of stasis that the world is aiming for. Even if there is such a point it is taking Gaia so long to find it, that because of its elusive nature it hardly seems a feasible guide to our actions, never mind an adequate basis for all rights.²⁷ Rather than Gaia always providing the optimal conditions for life, it seems that life in its myriad manifestations is able to adapt to the

²⁴ My emphasis.

²⁵ My emphasis. Page number unknown.

²⁶ Although Ben Pile is hardly the friend of environmentalism, he occasionally has some good points to make on the matter, and as such his views should not be discarded tout court.

²⁷ It does not follow from this that we can thus treat the world as we wish and it will be fine, as Pile leans towards when he, for instance, proposes using rivers as stores for waste. Rather it simply means that a Gaian ethic may be a mistaken ethic to guide our actions. Nonetheless there are certain boundaries that have been identified beyond which life-supporting systems on Earth would begin to decline.

constantly varying climate and conditions that has characterised the Earth's history. Furthermore I would argue that rather than Gaia being the source for which we must turn for an ethic, the inverse is true. For any conception of Gaia we must turn to its component parts and systems, for it is they that make up the global system and the processes of Gaia. As the component systems are processes developing and changing, so Gaia is, as Green (2011, 133) argues, both "dynamic" and "hierarchically emergent" from below, and is furthermore in a constant process of reflexive feedback with the systems that make it up. Thus our Earth's system is engaging in a dynamically emerging process. Gaia can thus be more accurately described as an imagined abstraction which attempts to delineate the dynamic and emergent feedback among various different but related systems that make up the Earth.

It seems then that by this route too we arrive at an indeterminate conclusion by appealing to Gaia as the source of our ethics. Furthermore, given his belief in the dynamic nature of Gaia, Berry does not seem to ascribe to the antiquated static view of the Gaian Hypothesis. It seems then that both Berry and Cullinan are unaware of the indeterminacy involved, or they must be happy to use this emergent indeterminate process as a guide for ethical action. But how, given the indeterminacy of such an account, can Gaia play the role that they want of it, as the yard stick against which all rights claims are measured? Immanuel Kant once accused Aristotle's ethic as being insufficiently action-guiding (McAleer 2005), and Berry's ethic seems similarly deserving of such an objection for we cannot solve the problem of indeterminate 'essences' at the ecosystem level by an appeal to an ideal state of riverhood or ecosystem-hood in relation to the higher goal or good of Gaia, for the 'good' of Gaia is also indeterminate and more so than the ecosystems which make it up.

To bring the discussion back to its relevance for rights, it seems as if, even if we grant that subjective individual rights are subservient to role and ecosystem rights, we cannot be certain what that would entail, as just what makes up the 'essence' or good of an ecosystem is unclear under Berry's framework. Either both role and ecosystem rights appeal to a static conception of ecosystem health and Gaia which buys into an unfeasible preservationist ethic, or else role rights are constantly changing, emergent and indeterminate and are thus impossible to clearly define in a way that can sufficiently guide action. It seems then that at the level of both the individual and the ecosystem, there are some rather serious issues of indeterminacy within Berry's ethic. However, before we go on to discuss the significance of such indeterminacy, it is important to consider one other aspect of Berry's account, which will further contribute to the already high levels of indeterminacy.

2.9) The Essence of a Rock

The other contributing factor to the levels of indeterminacy in Berry's account has to do with non-living nature. Both Berry and the Universal Declaration ascribe rights to all component parts of the universe regardless of whether they are alive or not. Recall that for Berry, rights stem from subjectivity, which is held by every being, whether living or dead. This, as we shall see, compounds the issue of indeterminacy, for while it is difficult to define what rights claim a non-human being might have, it is more so to define what sort of rights non-living nature might have. So can we make sense of rights for non-living nature within the framework that Berry has created?

It is important to recall that there are two routes for justifying rights that Berry countenances: subjective rights, which derive their rights claim from the subjectivity of each component member of the universe; and ecosystem and role rights, which derive their rights claim from the role that each component has to play within their broader system in relation to the good of the overall ecosystem. I shall argue that the justification of rights for non-living being under either is problematic and adds further indeterminacy to Berry's already indeterminate view.

Recall that, for Berry, rights are defined as "giving every being its due" and in order to give every being its due we must allow it to express its inner subjectivity or 'essence' within the constraints of the ecosystem ethic. This is what is defined as good for each being according to Berry's ethic. Related to this claim is Berry's belief that not every being is due the same, or has the same kind of rights, for each being is different according to the principle of differentiation. Taking these considerations into account, Berry's sixth precept states that:

6. Rivers have river rights. Birds have bird rights. Insects have insect rights. Difference in rights is qualitative, not quantitative. The rights of an insect would be of no value to a tree or a fish

This is just as well, as Berry grants rights to as broad a spectrum of 'beings' as is possible, for, according to his precepts, "each component of the universe is capable of having rights" (2002, OE). Thus we can supposedly grant rights to anything from worms, to rocks, to plants, to elephants, to each and every component of the universe. Bearing in mind that we have already shown that all such 'beings' are affected by the problems of indeterminacy identified earlier, how would one go about making sense of a non-living object such as a rock, or a clump of dirt, expressing its inner subjectivity and what associated

specific right would it have? This might seem like a non-sensical question, but I wish to probe this further to see if sense can be made of it.

As Garry De Weese (2011) points out in relation to Natural Law Ethics, it is relatively easy (barring consideration of the problems with essences we have already encountered) to determine what it means for a plant or an animal to flourish, for we “can read off of the nature of that plant [or animal] the conditions that would allow it to flourish. And depriving that plant [or animal] of the conditions of flourishing, pretty much condemns it to [a far from flourishing] existence” (2011, AE).²⁸ Similarly, it might be relatively easy to point out what it means to give animals and plants their ‘due’ under a natural law ethics perspective, which relies on a more definite conception of essences. For instance, an oak tree requires particular conditions for it to grow strong and tall with green leaves in the spring, and acorns developing in the summer. Similarly with an animal, for instance a cheetah, we could perhaps say that it is due the environment where it will be able to hunt successfully, procreate, and so on, and thus express its ‘essence’. In the case of these organic components of the universe, we can say that through the process of living they are aiming at a particular goal or *telos*, for example, the acorn becomes the tree. With a stone, however, there is no clear discernible goal or *telos* that it strives towards, so how would one go about claiming that it expresses its essence?

We could claim that the rock is ever so slowly moving towards some higher form of rock-hood in a manner unperceivable on human time scales, but this, I contest, would be more wishful thinking romanticism than an empirically-based inference, or philosophically rigorous claim. Perhaps we could claim that the rock has already achieved its essence (or in Berry’s terms, its expression of its inner subjectivity) by becoming what it is, and that thus we shouldn’t disturb it, but this would ignore the fact that rocks are constantly changing through processes of erosion, geological forces, and so on. Most other, if not all other, non-living objects undergo changes, for in the words of Buddha, “everything changes, nothing remains the same.”²⁹

As that route leads to a dead end, perhaps we could claim that rocks and other non-living beings have a particular chemical or physical composition, which is the expression of its inner subjectivity, with which we should not tamper, but this would once again ignore the fact that chemical or physical composition is not an indefinitely stable phenomenon. Indeed, the only way I could countenance an appeal to some ideal chemical or physical composition of non-living objects would be through appeal to

²⁸ The quote is from an audio recording and thus no page number can be given. Also, although Gary De Weese’s passage refers to natural law ethics, given Berry’s similarities, the point is pertinent for Berry’s view as well.

²⁹ This is commonly attributed to Buddha, but I could not track down a credible source that indicated so.

values external to the object, such as use to life or aesthetic appeal, not to any intrinsic expression of inner subjectivity.

Thus despite my best efforts, I simply cannot imagine, never mind countenance, a legitimate way in which a rock or any other object could be said to express its inner subjectivity. So unless a convincing case to the contrary can be made, the only option left for Berry to make sense of rights for non-living beings is through appeal to their role within their broader biosystem, Earth Community or universe.

So can Berry salvage rights for non-living entities through appeal to the broader systems of which they are a part? I think not, for such rights justifications will be susceptible to the same problem of indeterminate 'essences' identified earlier. That is, in order to justify role rights – an object's rights as defined by its role within a broader system – we would need to appeal to either Berry's ecosystem ethic or broader Gaian ethic, both of which, as was argued earlier, are indeterminate. Trying to decipher a rock or other non-living being's role within its broader system seems to add another layer of indeterminacy to the problem, for how would we go about defining its role within an ecosystem? If its role is simply to contribute to life, then why grant it particular rights in the first place? As Joseph Raz (1986) argues, there is a right only if some interest of an entity is sufficient to ground a duty to care for and promote an entity's interest in a significant way. Interests, which are needed to ground rights according to Raz, are decidedly absent in the case of a rock. Thus we might be tempted to concur with Joel Feinberg who states that it is absurd to state that rocks can have rights "because rocks belong to a category of entities of whom rights cannot be meaningfully predicated" (1974, 60).³⁰

Therefore the rights of a rock, a clump of dirt, a table or any other non-living being under either conception, whether it be role rights or subjective individual rights, seems more indeterminate and hard to define than the rights of living objects. The supposed inherent rights of non-living nature thus bring more problems to Berry's conception of rights than their living counterparts.

³⁰ In fact, it will be argued in Chapter 4 that rights cannot meaningfully be ascribed to rocks and non-living nature. It is worth considering, however, that Berry - in contradiction to his statement that "every component of the Earth community has three rights: the right to be, the right to habitat and the right to fulfil its role in the ever-renewing processes of the Earth community" - in his later work states that "In the non living world rights are role specific" (Berry 2006, 111). But by granting rights to the non-living world only according to the role that they play in broader systems, the rights accorded to them are instrumental and thus no longer inherent. Therefore Berry's conception of non-living rights do not fit within the conception of rights as inherent as enshrined in the Universal Declaration and by Berry himself. This too will be explored further in Chapter 4.

2.10) Determinate Indeterminacy

Recall that Immanuel Kant once accused Aristotle's ethic as being insufficiently action-guiding (McAleer 2005). If Kant was unsatisfied by the indeterminacy involved in Aristotle's natural law ethic, which is decidedly more determinate than Berry's, I doubt he would be willing to accept the amount involved in Berry's ethic. I don't think we should either, for the issue of indeterminacy seems thus to come in at every level of Berry's ethic, is more problematic with regards to non-living objects, and increases as we go up the contextual hierarchy defined in contextualism. In response to the charge, however, it is worth recounting a poem that deals with the indeterminacy of nature and in doing so segue into a discussion on the significance of indeterminacy in such an ethical framework:

*Why is nature so hard to teach?
That though there is no fixed line between wrong and right,
There are roughly zones whose laws must be obeyed.*

Robert Frost – A Further Range (in Johnson 2011, 137)

An important message that can be drawn from Frost's poem is that indeterminacy is an inevitable factor of living in this world, as clear-cut lines between right and wrong exist more in the musings of philosophers than in the ethical reality with which we are faced. Nonetheless, despite this indeterminacy there exists a distinction between right and wrong and, morally speaking, we must seek as much as possible to stay on the right side of the somewhat blurry ethical line. Indeed, often in ethics, precision and determinacy is sought to the detriment of accuracy. As Lawrence Johnson points out, "a moral answer that draws precise lines and gives us definite answers may thereby give us easy or convenient answers with perhaps a comforting sense of knowledge just where we are. Yet it may not give us the morally best answers" (2011, 152). In light of the balance between accuracy and precision that must be sought in ethics, the question that needs to be asked is how much indeterminacy or imprecision is too much?

I would contend that the amount of indeterminacy inherent in Berry's account is too much, as it does not provide us with a clear guide to action, never mind one that is slightly imprecise. Having examined Berry's framework, I am not certain what sort of action it recommends, and not because of obstinacy, I contest, but simply because it is difficult to understand how the creative expression of subjectivity, as we have explored it, would be a guide to ethical action or the development of a rights

framework. I understand that Berry asks us to be more reverent and respectful of the entire universe, but I am not sure what sort of actions this would translate into under his framework, especially when it comes to non-living objects. I am not for a moment suggesting that Berry's ethical framework should light up a path throughout our lives that guides every action. Indeed I grant that the universe may indeed be a "numinous mystery" (Berry 1988, 221); our Universal Declaration, however, surely should not be, if it is to guide both our law and our ethics. Thus, in conclusion to this chapter, I argue that Berry's framework, as an underlying justification for a universal declaration of rights, is neither strong nor clear enough.

Chapter 3- A NEW KINGDOM OF ENDS

“There were certain questions about the foundations of morals that advances in science all threaten to make more complicated.”
- Leon Kass

“If we are to go forward, we must go back and rediscover those precious values – that all reality hinges on moral foundations”
– Martin Luther King, Jr

“True philosophy must start from the most immediate and comprehensive fact of consciousness, and this may be formulated as follows: ‘I am life, which wills to live, and I exist in the middle of life which wills to live.’”
- Albert Schweitzer (1923, 253)

Having established what sort of justification is necessary to underpin the Universal Declaration in the first chapter, and then having unpicked the problems with the current justification in the second, three remaining pieces remain before completing our analysis of the Universal Declaration. The first lies in trying to discover a more solid justification for the Universal Declaration. The second is to analyse how the current problematic justification underlying the Universal Declaration may have affected the rights it enshrines. I shall argue that there are numerous problems which the rights inherit from their problematic foundation. The third piece of the puzzle, which brings together the work of this entire project, is to see how a more solid justification might then fix the problematic rights. By completing all three pieces I aim to provide an amended Universal Declaration that is strengthened because it is founded on firmer foundations, and because the rights that it enshrines are consistent, not only internally, but also externally with our understanding of how nature functions *and* with an environmental ethic that reflects that understanding as well as the value of nature. This chapter will provide the first remaining piece by establishing a more robust justification for the Universal Declaration in order to provide the groundwork that is needed for the following chapter, which fills in the latter two remaining pieces.

3.1) Building a New Foundation

Berry's moral foundation for the Rights of Nature has turned out to be an unclear and indeterminate guide upon which to build the Universal Declaration, but there are nonetheless certain elements of Berry's ethic which can inform a stronger foundation for the Universal Declaration. However, as I shall argue in the next chapter, talk of rights for non-living beings as well as role and ecosystem rights needs to be abandoned, or, if we using such terms, it needs to be in a very different and more nuanced fashion, which may only serve to unnecessarily complicate and possibly weaken the Universal Declaration's conception of rights. Furthermore, Berry's notion of subjectivity is too indeterminate and needs to be supplemented with something more concrete, which can act as a clearer guide to action. It is this work of finding a better foundation for the Universal Declaration that I shall do in this chapter.

I shall argue throughout this chapter that all living nature, as opposed to non-living nature, should be seen as a kingdom of ends. What is meant by calling living nature a kingdom of ends, is that morally-speaking each living being should be treated as an end in itself, and not as a mere means to an end. This particular moral dictum, what I shall call Life's Imperative, is a biocentric point of view, as opposed to Berry's ecocentric view. The difference is that biocentrism holds the value of life as its principle moral value, whereas ecocentrism focuses more generally on the value of nature including living and non-living nature. Life's Imperative is also opposed to more limited moral theories, such as theories which hold reason, sentience, or consciousness as the characteristic which defines whether something holds moral worth. According to Life's Imperative, such theories are unjustifiably narrow. Furthermore, I will show that Life's Imperative can provide us with a more substantive idea of the good of individual beings than does Berry's notion. This idea of the good will also form the basis of my justification for an amended version of the Universal Declaration, which will be explored in the next chapter.

In order to be able to confidently use my biocentric categorical imperative, much work needs to be done in order to justify such a moral position. This work, I shall argue, can be done by examining what Pamela Lyon calls "the attributive norms adherent to life" and how they might lead us to reconsider who is included in the kingdom of ends (2011, 139). Thus, in order to put forward an argument for a biocentric kingdom of ends, let us first explore what it means to speak of the attributive norms of life, and how they play a role in defining an environmental ethic suitable for the Universal Declaration.

3.2) Life's Norms

In *Extracting Norms from Nature: A Biogenic Approach to Ethics* (2011) Pamela Lyon explores the idea of life's attributive norms. An attributive norm is not by itself a moral norm. In other words, what is meant by an attributive norm is not that it is a norm with particular moral force or that it describes a particular moral good, or at least more would be required to argue that these norms are linked to a moral good. Rather, an attributive norm is simply something that is customarily observed as an attribute of a particular being; it is something that is characteristic of something, in this case, of all living beings, unless they are in some way defective. Thus the attributive norms of life are simply characteristics that all living beings, except those with so-called defects, as a matter of fact possess.

According to Lyon's account there are three main attributive norms that are associated with, or characteristic of, life. The first relates to the fact that all living organisms generally strive to persist. When Lyon describes the first norm, she argues that although many living organisms do not consciously desire the resources necessary to survive, nonetheless, whether it be through biological mechanism, conscious willing, or instinct, each living organism does in fact strive to persist or to live:

All [living] organisms maintain themselves far from thermodynamic equilibrium - [in other words, they maintain a positive balance of energy in order to maintain themselves] – by importing 'order' from their surroundings in the form of matter and energy, chemically transforming it to do work, and exporting 'disorder' in the form of waste products of various sorts... [Furthermore] what marks the difference between living systems and other kinds of self-organising physical systems that can maintain themselves far from thermodynamic equilibrium – tornadoes and chemical baths, for example – is that (so far) only living systems are capable of acting to circumvent the consequences of resource depletion, by seeking resources elsewhere or by changing their own structure to survive stringent conditions... An organism will do everything it can to persist, unless it is defective in some way (2011, 141).

This attributive norm of life provides a distinction that separates living organisms from non-living ones and it is also the starting point towards the redefinition of the kingdom of ends. It is an empirical norm in so far as it is a characteristic that is usually associated with every living being. In other words, every living being *generally* strives to persist by importing matter and energy from their surroundings in order to maintain the levels required to continue their life. However, it is important to note, as Lyon does, that

the norm is not exceptionless. Living organisms may defect from the norm for numerous reasons, such as:

- (a) to reproduce – for instance, the giant octopus, in possibly one of the greatest maternal acts, never leaves her eggs’ side in order to ensure that they hatch, and, (perhaps inadvertently) in the process kills herself through exhaustion and starvation in her attempts to ensure the birth of her young;
- (b) among some social animals in cases of altruism, for example, self-sacrifice in war;
- (c) in the case of old age, death or illness where the mechanism of persistence inherent in life begins to fail; and,
- (d) in the case of a few select creatures such as ourselves who can transcend the norm of persistence in acts of suicide and self-neglect.¹

Thus, in this case, the attributive norm is simply that all living beings, except those with ‘defects’, as a matter of fact, strive to persist. That is what living organisms *normally* do, and what I shall refer to as the ‘norm of persistence’: a norm, for now, free of ethical or moral significance and rather merely an empirical observation.

The norm of persistence is not the only attributive norm of life. There are two others, and both will be needed in our configuration of the kingdom of ends. The second norm, which I shall refer to as the ‘norm of parameterisation’, is that “*every organism exists within a relatively narrow range of values along many different parameters*” (Lyon 2011, 142).² For example, heat and acidity are two such variables, within which humans have particular liveable parameters, as do all living organisms. All living organisms, without exception, have particular parameters within which they can exist and outside of which they would perish.

Finally, the third attributive norm, which I shall refer to as the ‘norm of informed behaviour’, is that “*all organisms have one or more mechanisms for assessing value (advantage/harm), namely, how the organism is faring in the immediate circumstance relative to some biological norm*” (Lyon 2011, 143).³ The biological norm at play in this attributive norm may, for example, relate to the norms of parameterisation and persistence. Such mechanisms for assessing value relative to biological norms have been displayed even in the most primitive of life forms. As Lyon points out, even single-celled

¹ Points C and D are my own, as Lyon only points out A and B.

² Emphasis in original text.

³ Emphasis in original text.

bacteria have been filmed “testing and moving on several times before selecting what it perceives as a ‘good’ spot to settle down” (2011, 143). This is not to say that bacteria are consciously doing so, but rather, through biological mechanisms they are able to assess value, as represented by harm/advantage, and respond accordingly – this, again, is not necessarily in a moral sense but is relative to particular biological norms. The significance of bacteria having displayed such behaviour is that they are the fundamental building blocks of the evolutionary tree and serve as evolutionary precursors of such an ability, which is displayed throughout the living world in a myriad of different and often more complex forms (See Appendix III’s Tree of Life for a history of living organisms each of which has displayed this mechanism in some form or other).⁴

John Dewey points out that such mechanisms “exist not [necessarily] for the sake of furnishing pleasure, but as activities needed to maintain life – the life of the individual and [in the case of reproduction and altruism] the species” (Dewey 1908). Thus the norm of informed behaviour can be intricately linked to the norms of parameterisation and persistence. Likewise, Lyon describes the mechanism active in the norm of informed behaviour as an organism responding to different states of affairs “according to an internal projection of value relative to its own persistence” based on its history and needs (2011, 143). Thus the norm of informed behaviour often incorporates the norms of persistence and parameterisation in that the mechanism inherent in the norm of informed behaviour uses information obtained from the world around it in order to ensure (except in the case of ‘defects’) that an organism persists, which entails staying within the parameters necessary for persistence. Thus we have the three interconnected attributive norms of living organisms, persistence, parameterisation and informed behaviour. Of course the norm of informed behaviour can operate relative to other biological norms apart from that of persistence and parameterisation; nonetheless for all living organisms the three norms are closely linked with regards to the biological norm of persistence.

3.3) Establishing Life’s Morally Normative Force

Just elucidating the norms characteristic of life, as I have done above, is not sufficient to establish that the norms have morally normative force. But how then do we move from this empirical description of

⁴ This point relies on the implicit assumption that life evolved (in some way or other) along the lines that the evolutionary tree in Appendix III suggests.

If an organism did not actually have some sort of adherence to the norm of informed behaviour it is unlikely to figure in Appendix III as it will most likely not have survived long enough to feature in any significant way in evolutionary history.

life to a more normative one, upon which we can establish the Rights of Nature? Traditionally our imaginative empathy, which delineates the boundaries of our moral concern, has picked up on and been limited to certain characteristics we perceive in other beings, which are similar to our own characteristics. Whether it is rationality as in the case of Kant⁵, sentience in the case of Utilitarians, such as Jeremy Bentham (1988) and Peter Singer (1975), or the ability to be a conscious centre of experience as Thomas Regan argued (1983), most moral boundaries are based on whether a being has a particular characteristic, which we always share, which supposedly makes them worthy of moral consideration. This is unlikely to be coincidental, if one accepts that imaginative empathy plays a large role in our intuitive sympathies and, because of its evolutionary role in protecting ourselves and our kin, is based in characteristics similar to our own. The question that we need to ask, however, is whether such moral boundaries are justified. Can we come up with a non-question begging reason why sentience, rationality or conscious awareness, are the proper demarcations of whether a being has 'moral considerableness', rather than the fact that they are simply a living being?

Recall, also, that the sort of 'moral considerableness' that we seek for the Universal Declaration is not any type of moral considerability, but is rather a form of intrinsic 'moral considerableness', which is based on an inherent property of a being, as opposed to something extrinsic to it. This is because the rights to be established in the Universal Declaration are inherent rights. Recall furthermore from the first chapter that a form of intrinsic worth or value is required in order to justify an ascription of inherent rights. Thus, the question we need to answer is whether we can come up with a non-question begging reason why sentience, rationality or conscious awareness, as opposed to simply life, demarcates whether a being has intrinsic moral worth or value. Thus, in order to answer this question, let us examine each of the characteristics that are generally thought to merit humanity's status as a rights-holding being, starting with reason. In doing so we will uncover the importance that Life's Imperative and associated attributive norms play in the realm of rights and intrinsic value.

3.4) Re-Evaluating Reason

The most renowned attempt to establish reason as worthy of special moral recognition is that provided by Immanuel Kant's Categorical Imperative. Indeed many central themes and aspects of Kant's moral theory, or derivations thereof, are continually used as the moral basis of human rights (Fagan 2005).

⁵ Kant's view is what Allen Wood refers to as a *logocentric* view, "by which [he] means that it is based on the idea that rational nature, and it alone, has absolute and unconditional value" (Wood 1998, 1).

One formulation of Kant's Categorical Imperative states that we should act in such a way that we treat humanity whether in ourselves or others, never as a mere means to an end, but always at the same time as an end in itself. The similarities between Life's Imperative and Kant's Categorical Imperative are not coincidental as we shall see. Kant's Categorical Imperative, however, is limited to humans because, according to Kant, it is only we who have a particular form of rationality, informed by free will and reason, which merits treating us as ends in ourselves. Indeed, as Johnson (2011) points out, it is this 'Humanity Formula', as it has been called, that has been attractive to many philosophers. It is this limitation, however, that my account seeks to challenge. I will argue that if we reconsider Kant's theory in light of the attributive norms of life, and a revised understanding of reason and the will, then his account requires an extension of the kingdom of ends to include all living beings. In other words, those who qualify as an end in themselves are not only human beings, but all living beings. Although I do not have the space to fully elucidate Kant's account and disprove it in its entirety, I shall argue that if we accept my account of reason and its moral status, we shall find that the possession of reason is not justification enough to grant rights to one being but not another.⁶ In order to see how this is so we need to understand how it is that Kant comes to establish his Categorical Imperative.

For Kant, the decisive factor in determining moral worth, which qualifies an individual as counting as an end in itself, is the presence of self-governing reason or autonomy. This is what is referred to as "the law of the autonomous will" (Johnson 2011, OE). It is our possession of a will and reason which qualifies us as ends in ourselves according to Kant. But what is it about law of the autonomous will, which makes reason and the will such qualifying factors? In the *Metaphysics of Morals* (2005/1785) Kant elaborates just what it is, which warrants putting them on such a moral pedestal.

For Kant, reason is in a way separate from the rest of the natural world because it has a unique purpose for existence, a peculiar *raison d'être*, which distinguishes it from other aspects of the world. According to Kant all parts of the "natural constitution" of beings, apart from reason, are constituted purposively for the furtherance of life. This observation is compatible with the attributive norms of life, except for the role of reason. Kant claims that unlike the natural constitution of all other beings, reason is a very inefficient mechanism for the achievement of the furtherance of our lives – a furtherance which is partly constituted by increasing our welfare and happiness. Indeed Kant holds that reason would be a

⁶ For a discussion of other aspects of Kant's moral theory see Christine Korsgaard's 'A Kantian Case for Animal Rights' (2012). Take note, however, that Korsgaard claims that her argument applies to animals, but if we accept Life's Attributive Norms and her conclusions that we should grant rights to "every creature for whom life in this world can be good or bad", then her argument actually supports Life's Imperative rather than applying solely to animals.

“very bad arrangement” to achieve such ends, and that a far “more accurate” method of doing so would be achieved by having instinct guide our actions, as opposed to reason (2005, 580). Kant believes this is supported by the fact that generally the more a person adheres to reason, the less happy they will be. He goes as far as to state that those guided by reason will eventually go on to envy those “closer to the guidance of mere natural instinct and [who] do not allow their reason much influence on their behaviour” (2005, 580). It is from this observation, of the ineptness of reason in delivering welfare and happiness, that Kant draws the conclusion that reason must then be instilled in us for some reason other than that of furthering our own welfare and happiness, which constitute “the satisfaction of our lives” (2005, 581). In Kant’s own words:

We must admit, instead, that judgments [of reason] have as their covert basis the idea of another and far worthier purpose of one’s existence, to which therefore, and not to happiness, reason is properly destined, and to which, as supreme condition, the private purpose of the human being must for the most part defer... Since reason [is given] to us as a practical faculty, that is, as one that is to influence the *will*; then where nature has everywhere else gone to work in purposively distributing its capacities, the true vocation of reason must be to produce a will that is good, not perhaps *as a means* to other purposes, but *good in itself*, for which reason was absolutely necessary. This will need not, because of this, be the sole and complete good, but it must still be the highest good and the condition of every other, even of all demands for happiness (2005, 581).

Thus we see that Kant’s account creates a form of dualism, with the purpose of reason being separate and superior to that of all other of life’s mechanisms. Especially important is Kant’s claim that reason’s purpose – to create a will that is good – will be the condition for all other goods, because he sees the good of reason, as the highest good, and its attainment to be the supreme condition to aspire towards. What is meant by calling reason’s purpose ‘the condition of other goods’ is that it defines what it means for them to be good; their goodness is only so in relation to that of reason. As Kant himself put it, “beings, the existence of which rests not on our will but on nature, if they are beings without reason, have only relative worth, as means and are thus called things” (Kant 1998, 4:428). Thus, if Kant’s account is sound we can argue that humans, and all other possessors of reason, could warrant having rights because of their possession of this supreme good whereas other beings do not. But is his account sound?

In order to aid us in answering this question, we can extract the logic of the argument that he puts forward for his moralistic dualism as follows:

1. Everything in nature has a particular end to which it is suited and towards which it strives.
2. Reason, unlike all other mechanisms, such as natural instinct, is not properly geared to the furtherance of life.
3. Therefore, reason must have another purpose.
4. Reason is given to us as a practical faculty, by which to guide the will.
5. Therefore the true vocation of reason must be to produce a will that is good.
6. The good will is thus something that is good in itself, and not good merely as a means to other purposes.
7. The end of reason is superior, in fact “supreme”, in relation to other ends such as our happiness. It is thus the highest good and the “condition” of every other, “even that of all demands for happiness” (2005, 581).

In Kant’s argument it is not entirely clear how it is that he moves from premise 4 to 5, or from 5 to 6 or from there to premise 7. However, it is not the links between these premises that I want to contest. Rather, I will begin by contesting premise 2, which states that reason’s function is unlike other mechanisms or other parts of the natural constitution of beings, which are “constituted purposively for life”. I shall argue that if reason has a purpose, the evidence does not suggest that its purpose is merely to produce a will that is good in itself; rather reason’s purpose is more closely linked to furthering life’s ends than Kant cares to admit. This as we shall see will cause problems for Kant’s belief in the supreme moral status of reason.

3.5) The Real Purpose of Reason

In order to understand the claim that I am making with relation to the operation of reason in the human mind, we need to turn to the origin and development of reason, and how it came to exist as it does now. Drawing on the best evidence available from evolutionary psychology, we can see that human reason is something that emerged through a gradual process of complexification and evolution from numerous more simple and primitive forms of reason, as well as from proto-reasoning mechanisms which may have contained some of the elements which, when combined, allow for human reasoning. For example,

as cognitive neuroscientist Merlin Donald claims, “human brains are basically primate in design, but in addition have [particular] representational characteristics that give human consciousness a special character” (1995, 1087). These representational characteristics are what allow human beings to develop more complex thoughts and skills as illustrated by our advanced reasoning capabilities. Human brains are thus like primate brains, but have developed more complex representational characteristics that allow us to reason at more abstract levels.

Donald (1991) argues that these special capacities have their seat in evolutionary changes which occurred within the prefrontal cortex of the human brain. These special capacities, which allow for human reasoning, include enhanced attentional, metacognitive, and retrieval capacities. In other perhaps oversimplified words, the aspects that allow for human reasoning to occur in the advanced state that it does now are increased and more focused attention spans, better abstract thinking and improved memory. According to Donald, these increased capacities developed primarily in order to allow us to deal with the increasing social complexity around us. Other competing theories hold that such a development occurred primarily in relation to the cognitive demands that more specialised tool-making or spatial mapping of the environment required of us. Regardless of what was the primary driver behind the emergence of human reason, what is clear is that evolutionary psychology points to the fact that our reason and rationality, along with our other complex cognitive capacities, emerged in response to a need to cope with increasing complexities in the world around us. Reason thus came about as an evolutionarily advantageous mechanism to deal with an increasingly complex engagement with the world. Even if it is not perfect in doing so, as Kant points out, surely this does not entail it has an exclusive purpose to produce a will that is good. Quite contrary to Kant’s claim that it does, it is hard to imagine what a perfect evolutionary mechanism would be like anyway, and it is perhaps unreasonable to think that reason should adhere to whatever high standards Kant seems to think it should adhere to in order to be fit to the purpose of furthering our lives.

If we accept such an evolutionary account we can see that reason is like many evolutionary mechanisms before it, a mechanism that evolved in order to allow its possessor to successfully deal with the world around it – success being related to life’s attributive norms, in that such mechanisms allow us to gauge what is advantageous or harmful to us, and respond accordingly. More succinctly, such mechanisms adhere to the norm of informed behaviour. As instinct was not sufficient to deal with the complexities entailed by human existence, reason allowed us to navigate our way through a complex and changing world, in a way which instinct would not allow us to do. This evolutionary approach, I would argue, is also more suitably based in a thoroughly empirical outlook than an account of reason

that posits it as arriving on the scene either miraculously or à la *deus ex machina*⁷. Furthermore if we recall our commitment to naturalism outlined in Chapter Two, such an account is the best naturalistic account available to us. Reason is thus, according to arguably the best scientific account of its development, an advanced form of the norm of informed behaviour, which we use to engage with the world around us. This account seems to be clearly at odds with Kant's conception of the function he posits for reason in human beings, and, if it is true, it seems to knock reason off its moral pedestal, as premise two of Kant's argument no longer holds.⁸

3.6) Sentience, Consciousness and Question Begging

If reason does not provide us with non-question begging reasons for granting intrinsic value to human beings and not to non-human beings, are there any other characteristics that we can turn to, which would do so? Recall that our imaginative empathy has generally picked up on and been limited to certain characteristics we perceive in other beings, which are similar to our own characteristics. In Kant's case it was rationality of a very human sort. There are, however, other less anthropocentric theories, which we need to countenance.⁹ The first is that sentience is the characteristic that defines intrinsic moral considerableness, as Peter Singer argues (1975). The second argues that the ability to be a conscious centre of experience, to be a 'subject-of-a-life', of which we are consciously aware and which matters to us, is what defines whether something is intrinsically morally considerable, as Thomas Regan argues (1983). Regan's view, or Reganism, is similar to Kant's but states that if you are a conscious 'subject-of-a-life', and if what happens to that life matters to you, then regardless of whether you have rationality, you should be treated as an end in yourself. Both Reganism and Utilitarianism broaden the scope of moral concern quite considerably, but the question that we need to ask in relation to them is whether there are any non-question begging reasons to accept even these moral boundaries as opposed to one that includes all of life.

⁷ What is meant by saying that something arrived 'à la *deus ex machina*' is that it did not develop as a result of some already existing precursor, or from existing material within a system, but somehow arrived within a particular system via some external input.

⁸ According to some proponents of reason as holder of supreme moral value, it is our possession of freewill that separates us morally from all other creatures. It is this aspect of reason, according to such proponents, that gives us particular value. Although I do not have space to go into such a claim in this thesis, for a discussion on such a topic please see the following link: <http://bit.ly/LgzxXU>

⁹ Natural Law Ethics is, of course, another main stream of thought on this matter, but as we have shown in the previous chapter, which explored Natural Law Ethics and Berry's conception of it, even if we accept Natural Law Ethics, despite its flaws, all living beings also have *teloi* and thus because each has their own *teloi* each can be said to have a good of their own. Along similar lines the rest of this chapter shows why life has intrinsic moral considerableness.

If we reconsider the attributive norms of life, and our evolutionary account of the development of human thought, does it not suggest that sentience, rationality and consciousness, like speed, photosynthesis, sonar-vision and so on, merely came about as another mechanism to ensure adherence to the attributive norms of life? Sentience, rationality and consciousness are all information gathering mechanisms, which contribute to the norm of informed behaviour, allowing us to exist within the parameters necessary for existence, to pursue our ends, and to persist in a complex world. (Of course many mechanisms do more than this, so their significance need not be exhausted by such a function.) Nonetheless, there seems to be no non-question begging reason why it is that we should hold any of these mechanisms, being as they are, just other kinds of evolutionary mechanisms, as the criterion for whether another being should be ascribed intrinsic moral value or worth. This is not to say that human or other forms of self-conscious awareness and sentience, such as an elephant, ape or dog's, are not important. On the contrary, such self-awareness lends further complexities and layers to our existence, as examining accounts of human (and elephant¹⁰) rights will clearly illustrate.¹¹ Thus there are certainly other considerations that need to be taken into consideration when considering our well-being. That, however, does not equate to the idea that only our particular form of supposedly autonomous thinking, sentience, or our status as conscious centres of life merits our oft proclaimed status as the sole beings which should be treated as ends in ourselves.

Given then that there is no reason to grant moral worth to humans and not to other living beings under my conception, it seems some serious rethinking of the Humanity Formula is required. Indeed the evidence seems to suggest that we need to break down the dichotomy between humanity and living nature in both our moral and intellectual worlds, and in doing so we will be able to see that the proper 'kingdom of ends', in other words those who are intrinsically worthy of moral consideration, is larger than it has been perceived to be in the past by figures such as Kant, Singer and Reagan. The picture we are left with is one I would call a biocentric kingdom of ends, whereby each living being employs various different mechanisms in order to promote its own ends and existence, mechanisms which each being has inherited through the marvellous process of evolutionary adaptation. Indeed, our world is filled with a myriad of different living beings, each of which is attempting to pursue its own ends, each having developed various mechanisms to help them adhere to the norms of parameterisation, informed behaviour and persistence and the complexities of this world. Some developed speed, others developed camouflage, others developed reason. Some developed poison,

¹⁰ Cf. http://circuswatchwa.org/amboseli_elephant_research.htm

¹¹ Cf. Amartya Sen (2005)

others developed group behaviour, and others even took to the skies. Some merely maintained certain simple mechanical processes, while others developed incredibly complex mechanisms to ensure their survival. All of them, however, developed these mechanisms in response to evolutionary pressures, which, in evolutionarily successful cases, made such adaptation beneficial to their survival.

Although evolution's successes varied considerably throughout time and ever changing environments, that is the nature of evolution, it is a constant process of trial and error. Similarly humans' limited reasoning capabilities do not always succeed in ensuring success. This does not, however, lead to the moral conclusions that Kant thinks it does. Rather, the brute fact is that each living being exists and, as the attributive norms of life show, each is pursuing its own ends, and in this sense, each being can be considered to be an end in itself. Both human and non-human beings are driven to attain particular ends. All living beings are informed by the norms of persistence, parameterisation and informed behaviour. Considering this picture, to take rationality, sentience, reason or consciousness as being morally superior to other evolutionary mechanisms one would be favouring one evolutionary mechanism over another. Do we really have any non-question begging, or non-self-serving reasons to do so? I think that we do not.

3.7) Elusive Intrinsic Value and Life's Reductio

Thus far I have argued that there is no non-question begging reason to ascribe intrinsic value to human beings and not to non-human beings. This, however, is quite different from actually showing that non-human beings have value in and of themselves. The strength of my argument, however, can be shown by adapting a challenge put forward by Coker and Richards (1992). Coker and Richards challenge the claim that intrinsic value or worth is too difficult to ascribe to non-human beings, because, it is argued, there are no non-question begging reasons to do so. They do so with a philosophical move called *tu quoque*¹². They claim that if there is a problem with ascribing intrinsic value to non-human beings, then similarly there will be a problem with ascribing intrinsic value to human beings, for there would be no non-question begging arguments why there would be problems in the case of non-human beings and not in the case of human beings. How we can adapt this particular challenge is to reverse it. What I mean by this is that we can argue that if we assume that human beings have intrinsic value in such a way as to warrant them having inherent rights, then we have no non-question begging reasons upon

¹² *Tu quoque* is basically the argumentative strategy of saying that one's opponent is guilty of the very same weakness that he is accusing others of having.

which to establish that non-human beings do not similarly have such value. The strength of this argument relies on the assumption that humans possess intrinsic value, which warrants them having rights-holding status. Thus, although I have not directly demonstrated that all living beings have intrinsic value nor that human beings do, what I have shown is that we cannot claim that they do not, without also ceding that humans too do not have intrinsic value. This is because we have no non-question begging reasons for accepting rights-grounding intrinsic value in the case of one but not the other. If we accept my argument so far, then the choices available to us are: either we abandon the idea of rights grounding intrinsic value even in reference to human beings, or we accept that all living beings, like human beings, have rights-grounding intrinsic value. The first choice is unpalatable to me, and that is where the strength of argument lies. This argument, which is a *reductio ad absurdum*, is what I shall call Life's Reductio.

While life's attributive norms might be considered as arguments for the intrinsic value of both human and non-human living beings, I have not argued directly for that. Thus much of the strength of my argument lies with establishing Life's Intrinsic Value through Life's Reductio. The reason why I believe it is the strongest route is because I am hamstrung by the limits of philosophy and argumentation, or so I contest. The particular limitation that prevents me from doing more is that I believe philosophy will never be able to successfully cross the famous 'is-ought problem', or as it is otherwise known, Hume's Law (Hume 2000). In other words, philosophy and human logic, I contest, will never be able to successfully argue from an empirical fact about the world to a moral fact without there being some moral assumption either taken for granted along the way, claimed without proper justification, or established in a non-question begging way. As all I have at my disposal is the empirical facts about life's attributive norms and my own intuitions, I cannot from there, according to the above logic, get to a moral fact about those norms, without smuggling in a moral claim for which, at base, I will not be able to provide justification. Indeed even Kant believed that human beings do not have the direct rational insight into the nature of things to allow us to tell whether things are intrinsically valuable.

However, in spite of our inability to cross the is-ought divide, we can provide an additional argument to support Life's Reductio. Kant believed that because of our inability to gain direct insight into whether something has intrinsic value, or to cross the is-ought divide, all we have to go on, to build our system of values, is that some things are certainly good or bad for us as humans (Korsgaard 2012). However, as we have shown through the attributive norms of life things are not only good or bad for us as human beings, but are also so for all living beings. Thus, all that we have to go on to build our system

of values is that some things are certainly good or bad for living beings. Following from this starting point I would like put forward the following argument, along with Life's Reductio, for Life's Imperative:¹³

1. All beings that strive to persist, for which things can be good and bad, *should* be treated not only as mere means but as ends in themselves.
2. As is evidenced through the attributive norms of life, every living being generally strives to persist in accordance with the norms of parameterisation and informed behaviour.
3. Therefore, we should not act in a way such that we treat living beings as a mere means to an end, rather we should always at the same time treat them as an end in themselves.

There may be no non-question begging reasons to accept premise one; however, as I have argued, that, unfortunately, is the nature of morality, for we exist in a world of facts, from which it may be impossible to draw an 'ought'. As Life's Reductio has shown, however, biocentrism seems to be about as fundamental and fair a starting point for morality as we can get.¹⁴ If we draw a line at other points such as sentience, or rationality, we are merely drawing arbitrary moral lines, whereas by using Life's Imperative, we are not arbitrarily favouring one evolutionary mechanism over another, or one being's good over another.¹⁵

¹³ In order to support an appeal to life's moral worth we could also appeal to moral intuition. The weakness of doing so is that intuitions can compete and conflict. Thus we would perhaps need to establish the strength of an argument based on intuition through appeal to the intuition's prevalence. This is an argument from democracy, of sorts, which we can construct by appealing to the Earth Charter. The Earth Charter, which enshrines a principle for the care and respect for life, was the outcome of a decade-long, worldwide, cross-cultural dialogue on common goals and shared values, which involved the most "inclusive and participatory process ever associated with the creation of an international declaration", and has been formally recognised by over 4800 organisations (Mackey & Engel 2011, 318). Thus if we wanted to try and establish life's importance through intuition we could turn to the Earth Charter, which confirms the shared intuition that life deserves to be respected and cared for.

¹⁴ To cut off a potential objection, as Christine Korsgaard points out, just because autonomous rational beings can only make such a moral presupposition, it does not follow that the presupposition is only about autonomous rational beings (2012, 17).

¹⁵ James Sterba (2001) believes he can overcome the circularity involved in biocentrism, and puts forward the following argument to do so (I quote and paraphrase):

- 1) The requirements of morality are reasonable to impose on human beings.
- 2) [Principles which require us to be biocentric can be reasonably constructed].
- 3) [Therefore, principles constructed from biocentrism, which are reasonable to impose on human beings] are requirements of morality (2001, 47).

If Life's Imperative still does not sit well with the reader, it may be worth considering a point put forward by Albert Schweitzer: "It was considered stupid to think that coloured men were really human and must be treated humanely. This stupidity has become a truth. Today it is thought an exaggeration to state that a reasonable ethic demands constant consideration for all living things down to the lowliest manifestations of life" (in Nash 1989, 199). While I am not arguing that racism and speciesism are exactly equivalent, Schweitzer's point is important, and there are certainly similarities. We must be careful not to allow our knee-jerk intuitions to determine our response to our ethical demands. Rather, before discounting life as the basis of morality we need to think long and hard about the assumptions and biases at operation within our ethical thought, which allow us to privilege one form of life over another. It may not be clear to us all now that life warrants ethical concern, and similarly it may not have been clear to racists that others across the racial divide warranted ethical concern. In the case of both it takes a critical examination of one's moral systems and thought in order to potentially overcome such limited and, as I have argued, unjustifiably biased moral boundaries.¹⁶

3.8) Life: The Beginning and End of a Circle

If Life's Reduction was successful, then we have no non-question begging reasons to ascribe rights-grounding intrinsic value to human beings and not to non-human beings. However, an objection that might be levelled against Life's Reductio, and, by extension, to Life's Imperative, is the following: if I establish that something merits inherent rights by arguing that there is no non question-begging reasons to grant inherent rights to human beings and not non-human beings, could we not equally say the same for non-living nature? In response to such an objection we must remember just what sort of value we are looking for. I am not seeking to simply establish that all living beings have value; rather we are trying to establish that living beings have intrinsic value in such a way that warrants the ascription of inherent

This argument, however, falls far short of actually being non-question begging grounds to believe in biocentrism, for it commits a fallacy. Allow me to explain: It does not follow from the fact that all A's are B's that all B's are A's. For B's and A's may not be co-extensive, and rather B's may be a subset of A's. Likewise, it does not follow from the fact that all requirements of morality are reasonable to impose on human beings, that all requirements that are reasonable to impose on human beings are moral requirements. That fallacious thinking, however, is what Sterba's argument relies on and therefore his argument fails.

¹⁶ Peter Singer has argued, in a different context, that a reasonable ethic should not ask more of us than humanly we should be inclined towards (1981). This objection, I foresee, may well be levelled at Life's Imperative. That, however, would be missing the purpose of morality. Morality is not something that should suit us, but rather it is something, as Kant rightly recognised, that is not easy, but is something we should constantly aspire to despite the difficulties inherent in it.

rights to them. Thus we can grant to the potential objector that non-living nature might have intrinsic value, but we can deny that it has so in a way that would warrant ascribing it inherent rights, as I argued in the previous chapter. In other words, non-living nature does not have rights-grounding intrinsic value.

The reason why non-living nature cannot have inherent rights is, more specifically, because it does not have interests, a *telos*, or a sense of good or bad relative to itself, which would warrant protection in the form of rights. We can possibly claim that something has intrinsic value, without necessarily stating that such an object has needs, wants and interests relative to a particular *telos*, purpose, intentionality, directed form of existence, or sense of good or bad relative to itself. Thus, as intentionality and intrinsic value are not co-extensive, I am willing to grant that non-living nature might have intrinsic value. We cannot, however, grant rights, especially not inherent ones, to entities, such as non-living nature, that do not have some form of intentionality, *telos*, purpose or sense of good or bad relative to themselves.

To grant them rights is a mistake, for similar reasons that Joel Feinberg thought granting rights to plants, rivers, mountains and forests was a mistake (1974). For Feinberg plants, rivers, mountains and forests were excluded on the basis that they did not possess sufficient 'cognitive equipment' to possess interests, needs or wants. Such entities, if we grant that they can be harmed, are of course unable to be cognisant of such a fact, and thus, according to Feinberg, they do not possess interests, needs or wants. Feinberg, however, is guilty of a fallacy of equivocation, as he equates cognition of interests, needs and wants with their existence. However, as I have attempted to show through the elucidation of the attributive norms characteristic of life, living beings have needs, interests and wants relative to the norms of persistence, parameterisation and informed behaviour. Thus despite the fact that they are not conscious of their needs, interests or wants this does not mean that they do not have them. Thus they can be said to warrant rights in order to protect their interests, wants or needs. This is not true, however, of non-living beings, as was pointed out in the previous chapter. Non-living beings cannot really be harmed and cannot be said to have "interests, needs or wants", and cannot sensibly be ascribed inherent rights even if they have some form of intrinsic value. A right is established in order to protect the needs, wants or interests of entities, and non-living nature does not have any, such as to warrant it being ascribed rights.

There is one further potential objection, which states that even if we grant that nature has interests, needs, or wants those cannot be represented in court as they cannot be adequately represented for nature cannot make claims on its own behalf. In response, one can point out that we already grant rights to other legal entities, which we deem incapable of actually and intentionally

making claims on behalf of their own interests, such as the mentally impaired, minors and corporations who have guardians or representatives protecting their interests. In a similar manner Christopher Stone (1996) suggests that we should establish guardians for nature, or, as the Bolivian Government has done, establish a Ministry for Mother Earth, which provides the planet with an ombudsman to hear and represent nature's complaints (Edwards 2011).

3.9) Conclusion

Having established Life's Imperative, how, from such a moral starting point, do we go about creating a Universal Declaration whose aim is to promote as much as possible such a kingdom of ends? Onora O'Neill (1975, 1989), John Rawls (1989, 1999) and Robert Johnson (2011) all took Kant's Categorical Imperative to be the starting point of a moral decision procedure, and likewise we can use Life's Imperative as the starting point of a decision procedure upon which to base the Universal Declaration. This decision procedure, however, must touch base with the realities of the world in which we are living, as Johnson (2011) argues, and so it is important to consider that the brute fact about the existence of life is that it depends on the death of other living beings: in order to survive, we cannot but rely on the death of others. This, however, does not translate into the maxim that it is morally permissible for us to kill indiscriminately. Rather, within the limitations of existence, Life's Imperative would dictate that as much as possible we should act in ways, that promote to the greatest extent possible 'a kingdom of ends', which includes the realisation that all living beings are ends in themselves. Such a principle would be defined (at minimum) by respecting the attributive norms adherent in life, and in the case of creatures with other complexities such as the conscious self-awareness in beings such as ourselves, elephants and primates, further considerations would have to be taken into account. Thus we reach the following action guiding principle based on Life's Imperative, which takes into consideration the realities of the world we are living in: the Principle of Life:

We must, as much as possible, promote a kingdom of ends which includes the realisation that all living beings are ends in themselves.

What it would mean to promote the ends of all living beings, would be to recognise that each living being aims to exist within the parameters necessary for existence, to pursue its own ends, and to persist, and in relation to this recognition to promote, or not to hinder, as much as possible, the aims of

each living being. This decision procedure, as we will come to see, will provide us with much clearer practical guidance than Berry's ethical framework did.

It might be objected that we have moved away from the deontological account of rights enshrined in the Universal Declaration, which sees rights as trumps, which are inviolable, preventing us from putting other considerations above them (Cf. Dworkin 1977). Such a move away from deontological rights, objectors might argue, devalues the strength of rights discourse.¹⁷ Such an objection is, to a certain extent, on the mark, for a realistic praxis would entail that we would sometimes violate the rights of other living beings. However, it is important to remember, in relation to the Principle of Life, that we, as human beings – *homo sapiens* – are part of the natural world, and our continued existence requires that we interfere with our environment because we are part of it. Recall that even Arne Naess, one of the forefathers of Deep Ecology, realised that “any realistic praxis necessitates some killing, exploitation and suppression” (1973, 95). Similarly all living beings need to carve out their niche in the great chain of life in order to survive. Thus the Principle of Life, if it respects us as ends too, cannot ask of us not to interfere in the natural world in order to survive, but it can ask of us, because we are responsive to morality, to minimise that interference as much as possible. Thus the existence of a luxury economy, for instance, which destroys the environment in order to satisfy far from basic human needs, cannot be consistent with Life's Imperative. Rather, Life's Imperative would dictate that we create societies (not just economies) that are in step, as much as possible, with the Principle of Life. A rights discourse which is based in realistic praxis must recognise that. Thus Life's Imperative, while not deontological in the strict sense that Dworkin or Kant argues for, is a form of pragmatic deontology based in the realities of existing in the world.

Furthermore, it is worth considering that even within the realm of human rights discourse a pragmatic deontological conception of rights is often at play, for rights often conflict and thus a balancing of rights is often necessary. For example, the right to free speech is often balanced against concerns of public interest, such as is evidenced by laws against hate speech, and the current debates around South Africa's Protection of State Information Bill (Cf. De Lange 2012). What these examples illustrate is that courts do balance conflicting rights claims, and already engage in a form of pragmatic deontology. Thus there is no in-principle reason why we would not be able to do the same with the sort of pragmatic deontology proposed here. Thus the objection that the notion of rights at play is moving

¹⁷ I am grateful to my supervisor Samantha Vice for this particular objection, and many others throughout this thesis.

away from a traditional concept of rights as trumps, while it does point to an important consideration, is not fatal to my rights conception, which is necessary for a realistic rights praxis.

Even Native American Indians, who saw other animals as brothers and sisters in the great chain of being, realised that their own lives necessitated killing. Recognising this, they performed rituals to honour the death of those beings who had died because of them. Perhaps such rituals, when considered in relation to Life's Imperative, can be seen to be less steeped in mysticism, animism or spiritualism, and more steeped in a profoundly moral outlook on the world. Perhaps, furthermore, it is time that those who consider themselves more civilised and advanced than indigenous cultures who uphold such beliefs, realised the false dichotomies and unjustified limits that restrict their moral beliefs. In their place I propose the Principle of Life as the supreme principle of morality. The potential benefits of adopting such a principle will help create a more magnanimous human presence on Earth. The benefits of doing so for the Universal Declaration, more specifically, will be made clear in the following chapter.

Chapter 4- TOWARDS A UNIVERSAL DECLARATION OF RIGHTS

There is something of a seamless web involved [here]: there will be resistance to giving [nature] “rights” until it can be seen and valued for itself; yet it is hard to see and value [nature] for itself until we can bring ourselves to give it rights

– Christopher Stone (1996, 456).

I don’t think I want a redwood grove to have rights. Rights are political instruments—legal tools. We hear a lot of talk about ‘extending’ rights to nature. How bloody patronizing! How patriarchal for that matter. How imperialistic. To extend or bestow or recognise rights in nature would be, in effect, to domesticate all of nature—to subsume it into the human political apparatus.

- John Livingstone (2004, 62)

In the first chapter of this thesis I argued that a non-anthropocentric justification was required for the Universal Declaration. In the second chapter, I explicated the current implicit justification underlying the Universal Declaration, as well as the problems that such a justification faced. In the third chapter I then identified what I argued was a stronger and more determinate foundation for the Universal Declaration – Life’s Imperative as I called it. In this chapter, I will explore how Life’s Imperative can resolve many of the problems that the current implicit justification explored in Chapter Two faces, and, in doing so, provide the strongest possible non-anthropocentric justification for the Universal Declaration. Furthermore, I also aim to illustrate how the problems with the current justification for the Universal Declaration affect, and are reflected in, the rights enshrined in the Declaration and how Life’s Imperative might solve the problems that emerge as a result thereof. The ultimate aim of this chapter is to create a stronger version of the Universal Declaration, built upon the firmer foundations of Life’s Imperative.

4.1) The Universal Declaration

To begin our analysis of the Universal Declaration and its rights, we need to analyse its overall structure. Doing so will allow us to become more familiar with how it relates to current rights discourse, and from there we can engage more productively with each right and see where problems arise in relation to their underlying justification and how we can resolve them. The Universal Declaration consists of five different sections, namely: the preamble, which briefly outlines the motivation and purpose of the Universal Declaration; Article 1, which outlines some assumptions upon which the Universal Declaration is based; Article 2 which outlines the rights that the Universal Declaration enshrines; Article 3, which lists the obligations that human beings are said to hold in relation to the rights enshrined in Article 2; and Article 4 which lists two so-called definitions, with which the Universal Declaration operates.

In order to tackle the analysis of the Universal Declaration the right way round, it is important to engage the question of rights before the question of obligations, so as not to put the cart before the horse. Thus, for now, Article 3's list of obligations shall be left aside. I will also safely skip the preamble, as it simply provides background to the Universal Declaration, which has been covered in other sections of this thesis.¹ The best place then, to begin the analysis, is with Article 2's list of rights.

4.2) Article II

1) Mother Earth and all beings of which she is composed have the following inherent rights:

(a) the right to life and to exist;

(b) the right to be respected;

(c) the right to regenerate its bio-capacity and to continue its vital cycles and processes free from human disruptions;

(d) the right to maintain its identity and integrity as a distinct, self-regulating and interrelated being;

(e) the right to water as a source of life;

(f) the right to clean air;

(g) the right to integral health;

¹ The preamble, while not dealt with in this chapter, is slightly modified in Appendix IV so as to reflect the critical insights gained from this thesis.

- (h) the right to be free from contamination, pollution and toxic or radioactive waste;*
- (i) the right to not have its genetic structure modified or disrupted in a manner that threatens its integrity or vital and healthy functioning;*
- (j) the right to full and prompt restoration the violation of the rights recognized in this Declaration caused by human activities;*
- 2) Each being has the right to a place and to play its role in Mother Earth for her harmonious functioning.*
- 3) Every being has the right to wellbeing and to live free from torture or cruel treatment by human beings.*

One of the first steps to gaining an understanding of Article 2's rights is to look at how they relate to the structure of the currently predominant legal rights framework. Such a framework is provided by the Hohfeldian Analytical System (Hohfeld 1919), which is a widely implemented and accepted legal rights framework that provides a description of the internal structure of rights discourse (Wenar 2010). The Hohfeldian Analytical System breaks rights into four different basic types, namely privileges, claims, powers, and immunities.² To aid our analysis, here is a brief elucidation of each. Firstly, a right is a privilege if holding it means you have no duty not to do something. For example, I have the right to walk in public places and a right to freedom of speech. I thus have no duty not to walk in the park, and am free to do so, as is the case with my ability to speak freely. Secondly, a person has a claim right if others have a duty towards them to either do something or refrain from doing something. For example, in many constitutions children have a right to basic education, and it is the government's duty to fulfil this right. One particular example comes from South Africa, where, according to the South African Schools' Act 84 of 1996, children have a claim right to education, owed to them by the government.³ Thus the South African government has a duty towards the children of South Africa. Thirdly, a person has a power, if they hold a right, which allows them to alter another person's claims, privileges or immunities. For example, a sergeant can order a lieutenant to fire upon enemy lines, and thus the sergeant has power over the lieutenant. In doing so the sergeant alters the lieutenant's privilege not to fire upon enemy lines. Finally, a person has immunity if holding such a right entails that another person lacks the power to alter that person's privileges, claims or powers. For example, diplomats have certain

² Certain rights are complex rights and may contain elements of more than one type of right.

³ A case is currently underway to fight for such a right in the Eastern Cape of South Africa where two schools and an education NGO are suing the government to provide school infrastructure citing the lack of infrastructure currently at the schools as "a breach of children's constitutional rights to a basic education" under the South African Schools' Act (Carlisle 2012, OE).

immunities when travelling, as was illustrated when South Africa's Minister of International Relations and Cooperation, Minister Maite Nkoana-Nshabane, refused to have her handbag searched at a Swedish airport citing diplomatic immunity under the Vienna Convention (Faull & Sundnes, 2011). The airport personnel thus lacked the power to alter the Minister's privileges. These, in brief, are the four types of rights under the Hohfeldian Analytical System.⁴

If one examines the purportedly inherent rights in Article 2 through the lens of the Hohfeldian Analytical System, one will see that all of the rights entailed are claim rights.⁵ Recall that a person or a legal entity has a claim to something if it is such that others have a duty to either do something or refrain from doing something to or for them. In the Hohfeldian Analytical System a duty is a correlative to a claim right, which means that if one is able to identify a claim right, then there is an assumed correlative duty towards the claimant attached to such a right. For example, if I have a right to water, there is an assumed correlative duty to provision of water, or at least to ensure that access is not obstructed in such a way as to transgress that right. Often, however, as is the case for many of the rights enshrined in the Universal Declaration of Human Rights, such claim rights and their concomitant duties are aspirational and no strict identification of a duty holder exists, and so the duty may sometimes be hypothetical rather than actual. Thus claim rights might be aspirational, in that no duty holder has been strictly identified, or they may be actual, insofar as a duty holder has been identified. Following from this understanding of claim rights we can see why all the rights enshrined in Article 2 are indeed claim rights. For example, Article 2.1A, which enshrines the right to life and to exist, imposes a duty on other beings not to violate that right, and is a claim that, according to the Universal Declaration, all earthly beings can thus make on others.⁶ Likewise all the other rights listed consist of a claim and a correlative duty to either do or refrain from doing something. I shall go through each right later on in my analysis, but for now I leave it to the reader to verify that each right is indeed a claim right, should they choose to. Thus, assuming that I have established that all of the rights enshrined in the Universal Declaration are claim rights, I now need to ask what the basis for a claim right is so that we may better understand how the Universal Declaration's rights relate to their underlying justification.

⁴ Although there can be further complexities to these four elements, (Cf. Wenar 2010) this four-tiered structure will suffice for the purposes of this analysis.

⁵ Although some of the rights are complex and may contain elements of other types of rights as well, all are predominantly claim rights.

⁶ One could raise the objection that certain natural objects such as rivers and frogs cannot actually make claims on others for lack of capability to do so. However this objection alone does not suffice, for we grant rights to other legal entities, which we deem incapable of actually and intentionally making claims on behalf of their own interests, such as minors and corporations who have guardians or representatives protecting their interests. In a similar manner Christopher Stone (1996) suggests that we should establish guardians for nature, or, as Edwards (2011) reports the Bolivian Government has done, establish a Ministry for Mother Earth, which provides the planet with an ombudsman to hear and represent nature's complaints, as voiced by whoever would deem themselves representative of nature's interests.

Furthermore, as the rights enshrined are inherent rights, we have to discover what intrinsic properties of the rights holders justify such claim rights.

4.3) Inherent Claim Rights

What is it that makes a right a claim right? Relatedly, what justification is required for one to establish a claim right? And, furthermore, what intrinsic characteristics, in the case of the Universal Declaration's rights, would suffice to justify an inherent claim right?⁷ Answering these questions is important to understanding how the rights of the Universal Declaration relate to their underlying justification. Joel Feinberg (1970) provides a conception of rights, which accords with Berry's conception of rights as giving every being its due. According to Feinberg (1970), rights based in claims are often based on what we feel is due to a particular legal person or entity by nature of: (a) certain relationships we have; and (b) in virtue of the sorts of creatures that we are. The latter type of claim right (b) is referred to as a basic or fundamental right, based as it is on the sort of creatures we are; whereas the former type of claim right (a) is what is referred to as a special right, as it arises due to particular or special relationships that we have.⁸ Thus a special right is based on extrinsic characteristics, namely relationships that we have, whereas fundamental rights are based on intrinsic properties, namely the types of creatures that we are. Therefore, inherent rights would be found only in the latter category. Much of the time, however, our claim rights are a combination of both basic and special rights. For instance the right to education is a right which we feel is due to each one of us because of the sort of creatures we are, but it is also often something that we feel is owed due to us by the state because of our relationship to the state as citizens.

Human beings, their institutions, governments, and organisations are often enmeshed in a web of relationships which provides for a number of complex special relationships. Traditional environmental rights often fit within such a complex web, because of the relationship we have to nature, and our reliance on it, due to the sorts of creatures that we are. Nature and its component beings, however, often cannot meaningfully enter into these sorts of relationships because they lack the social and cognitive abilities to do so, and so cannot have relationships in the requisite way, except through their relationship to human beings. Thus most of the time nature will not qualify in its own

⁷ Recall from Chapter 1.1 that an inherent right is based on an intrinsic property of the rights holder.

⁸ Special rights could equally be said to be giving every being its due, for if we enter into a special relationship one could argue that because of the relationship of, for example, a child needing education in relation to a state as provider thereof, education is thus due to the child, and likewise in other cases of special rights.

stead for special rights.⁹ Therefore, when trying to find the basis for the Universal Declaration's *inherent* rights it must be within the realm of basic rights, which are due in virtue of the sort of being that the alleged rights holder is. Doing so coheres with the Universal Declaration and Berry's adherence to inherent rights, which, to recall our definition from chapter one, are rights that do not derive their legitimacy from an outside source, as do special rights, but rather indicate that a being has a right by virtue of the being it is in itself.¹⁰

So, given the primacy of basic rights for the Universal Declaration, what is it about the alleged rights holder, in the Universal Declaration's case all earthly beings, that defines what is due to them? Feinberg claims that "to have a right is to have a claim against someone whose recognition as valid is called for by some set of governing rules *or* moral principles" (1970, 257). Given this dichotomy between governing rules and morality as the source of a right's validity, we could say that the Universal Declaration's rights are merely founded upon governing rules rather than in the sphere of morality. This would involve adopting a prescriptive interpretation of rights, whereby, to paraphrase Alan Gewirth (1979), rights are simply demands or claims made on other persons, which are institutionally enforced, and are not necessarily related to morally normative considerations or knowable facts about the world. However, to recall from Chapter One, although the prescriptive interpretation might hold sway, this does not nullify the need for a justification. There are two reasons for this: firstly, different persons and entities make different claims, as we have seen, and thus if we are to mediate between these interests we need a proper justification to guide us in doing so, otherwise our legal judgements become arbitrary. Furthermore, as Gewirth puts it, "ascriptions of correctness of justification are intrinsic to rights-judgments: these consist not only in certain claims or demands, but also the implicit view by the person who makes them, that the claims have sound reason in their support" (1979, 1147) As such we cannot rely merely on governing rules to uphold the rights of Universal Declaration, especially as the rights are meant to be inherent, so we must turn to moral principles to justify basic rights.¹¹

If we accept the above, the place we need to look to for the validity of a basic right and what it entails, are the moral principles that underpin those rights. Different moral principles provide different

⁹ There are possible exceptions, such as when a family adopts a domesticated animal, but for the most part nature will be excluded from the realm of special rights except through its usefulness to humans.

¹⁰ This is not to say that nature cannot have special rights in their own stead. Indeed it might be that once we begin to recognize the inherent Rights of Nature certain special rights might stem from that recognition. However, it is important to bear in mind a warning by Holmes Rolston III (1993), which states that it is nonsense to speak of nature holding duties or to suppose that rights exist between one part of nature and another. Bearing nature's limited rights capability in mind, the sorts of special rights that nature might be able to attain will be much more limited than those of human beings.

¹¹ Although some argue that a separation between law and morality exists, I contend that rights, especially basic rights, are fundamentally moral. Although special rights may be grounded merely in agreements, basic rights are claims about the sorts of creatures we are, and what in turn is due to us. If such claims are not grounded in conceptions of morality and justice, then the legitimacy of our legal institutions should be seriously questioned.

sorts of rights justifications, however. For instance, a utilitarian moral theory generally produces an *instrumental theory of rights*, whereby rights are created in order to achieve a particular end – in the case of utilitarianism, the end of the highest possible utility. Berry’s theory of subjective individual rights¹², on the other hand, is a *status theory of rights*, which is quite different from an instrumental theory in that it “recognises each individual as an *end* of his own, as an independent being” (Wenar 2010, 16). It does so through the idea of subjectivity, which tries to express the teleology that Berry sees in the world, and how that relates to each being as an end in itself. Thus Berry’s idea of rights is one of inherent, fundamental claim rights, built on the foundation of subjectivity. However, as we explored in chapter two, subjectivity is not very illuminating as to what exactly would be due to each being or what claim rights would follow from such a foundation. Furthermore, given that we have shown the insufficiency of Berry’s status-based theory in the second chapter, as well as utilitarianism, Kantianism and other non-biocentric theories in the previous chapter, the best moral foundation upon which to establish our rights claims would be Life’s Imperative. Life’s Imperative would also lead to a status-based theory of rights, as it too “recognises each individual as an *end* of his own, as an independent being” (Wenar 2010, 16). Thus, it too would establish inherent, fundamental claim rights, built on the foundation of the Principle of Life.

4.4) Critically Analysing Assumptions in Article 1

Having shown what is needed to establish a basic claim right, we now need to turn back to the Universal Declaration’s rights and its related articles, in order to compare how the two different status-based justifications of rights fare in comparison to each other, and in relation to the actual rights enshrined in the Universal Declaration – the two different justifications being Berry’s subjectivity and Life’s Imperative. By comparing the two we will further illustrate that Life’s Imperative is better suited as a status-based justification for the Universal Declaration. Before delving into the rights themselves, however, we need to understand who the rights apply to. We also need to understand the underlying justifications and assumptions behind this applicability. This requires an analysis of Articles 1 and 4, which outline the Universal Declaration’s assumptions and definitions respectively. This analysis, furthermore, needs to bring to bear the critical insights from previous chapters, for not only do we need to understand these sections, but, if we are to achieve our goal of providing a strengthened version of the Universal Declaration, we also need to provide a critical rectification of any problems in Articles 1 and 4. As we shall see, Articles 1 and 4 work with a number of problematic assumptions. This analysis will thus attempt to rectify those problems and where appropriate I will suggest alternative

¹² Elucidated in Chapter 2.5

items that should be included. I then collate those revisions in Appendix IV, which is my proposed revised Universal Declaration, what I refer to as the 'Universal Declaration of Rights' rather than the 'Universal Declaration of the Rights of Mother Earth', for reasons that will soon become clear.

1) Mother Earth is a living being.

The assumption that Mother Earth is a living being is an assumption that is loosely based on a particular interpretation of the Gaia Hypothesis. More specifically some claim that Mother Earth or Gaia has interests in the same way as living beings do because they interpret the Gaia Hypothesis as providing proof thereof. This is an interpretation that must be treated with great caution, for as was shown in Chapter 2 there are a number of issues that can arise from the Gaia Theory being improperly understood and applied. In order to come to terms with the problems with this interpretation, we need to ask, in relation to the Gaia Hypothesis, what it could mean to call Mother Earth, or Gaia, a living being? Recall that according to Gaia Hypothesis founder, James Lovelock, the Gaia Hypothesis recognises Gaia "as a complex entity involving the Earth's biosphere, atmosphere, oceans and soil; the totality constituting a feedback system of cybernetic systems which *seeks* an *optimal* physical and chemical environment for life on this planet" (1979, 18). The idea that Mother Earth is a living being, is often established by saying that Mother Earth, constituted as it is by interconnected and interdependent systems which jointly "[seek] an *optimal* physical and chemical environment for life on this planet" is a being which has interests relative to the optimal state it 'seeks' and thus adheres to the attributive norms adherent in life. Each *living* being generally has mechanisms via which to self-regulate "relative to some biological norm", according to the norm of parameterisation and informed behaviour, and so does Mother Earth, it is claimed.

However, as I argued in Chapter Two, Gaia can be more accurately described as an imagined or constructed abstraction which attempts to delineate the dynamic and emergent feedback among various different but related systems that make up the Earth in its entirety. It does not really seek an optimal state in a way that could be said to be relative to its own good in a similar way to a living being. Even if we were to take it as having interests of its own, they will be constantly evolving in relation to its dynamic nature, and thus those supposed interests will be too indeterminate to guide action. We could argue, in the case of climate change, that 350 parts per million (ppm), is the ideal amount of carbon dioxide that we need in the air, as Bill McKibben does (2010). However, as McKibben recognises, that would not necessarily be because it adheres to Gaia's interests *per se*. Rather 350 ppm is a safe number because it protects life as we know it now. It protects the stability of the life systems that currently exist, as they have evolved in relation to the relatively stable climate that we have at the moment. But to argue that 350 ppm is in the interest of Gaia is too ignore that the Earth's systems have constantly

undergone change, and that Gaia has persisted through these changes. We must be wary to tie our own interests and that of a preservationist ethic into those of Gaia. That is not to say that there are not good reasons for protecting the climate. There are many. They are, however, not aligned with protecting Gaia *per se*. Thus, considering the above points, which summarise arguments from previous chapters, it does not really make sense to claim that Gaia adheres to the attributive norms of life and thus to call it a living being. Gaia does not have a form of directed intentionality or a *telos* in a way that would allow us to do so. Gaia has many different feedback and regulation systems, but they are not regulated according to some biological norm, the protection of which is in Gaia's own interests.

Proponents of Gaia-considered-as-a-living-being could of course define life such that Gaia as described above would also be considered alive. However, such a shift of the meaning of the term 'life' would, I fear, render the term far removed from its original meaning, and, because of the moral implications that are associated with the term, devalue the moral implications that life actually has, as well as its role in rights of the Universal Declaration. Some may want to propose such an extension of the definition of life for the purposes of trying to claim that the moral implications of life are equally applicable to Gaia, but such a move is unwarranted, given the difference between an actual 'living being' and Gaia. Furthermore in doing so one would weaken the rights in the Universal Declaration, for Life's Imperative could no longer adequately serve as its foundation and would have to be replaced with something far weaker and more indeterminate, such as Berry's subjectivity, which could accommodate the inclusion of Gaia into the realm of rights. Thus I propose that Article 1.1 should be replaced with something like the following:

Mother Earth is an abstraction which attempts to delineate the dynamic and emergent feedback among various different but related systems that make up the Earth's Systems.

(2) Mother Earth is a unique, indivisible, self-regulating community of interrelated beings that sustains, contains and reproduces all beings.

Article 1.2, while seemingly harmless, is problematic in two ways. Firstly, to define Mother Earth as indivisible is false. Allow me to use an example to illustrate. Human beings have been able to travel into space, and when we do so we remove ourselves from Mother Earth. Likewise there is constantly matter moving in and out of our atmosphere. Each time this happens we would hardly state that Mother Earth ceases to exist. However, if it were true that Mother Earth is truly indivisible then by definition each time a being left our atmosphere Mother Earth would cease to exist as a complete whole. The article's wording here obviously needs work. It is true that there is a web of dependencies on Earth, but Mother Earth is made up of parts many of which, although interdependent, can be removed without the Earth's systems ceasing to operate. To claim that Mother Earth is indivisible would be to appeal to a static

notion of the Earth and its constituent parts that does not reflect the reality of how the Earth's systems work. Thus the term 'indivisible' should be removed.

The second problem has to do with the idea of Mother Earth being 'self-regulating'. One must be wary of such a term, for regulation often implies maintenance of a particular rate or condition. But Earth, as I have discussed, does not maintain itself around one particular point of stasis. It does have feedback systems, but they are dynamic, constantly evolving and throughout history have found expression and developed in numerous different ways throughout various different contexts, as is evidenced through the vast differences between the various different geologic periods, such as the Jurassic, the Triassic, the Permian and the Mesozoic Periods. Thus rather than using the potentially ambiguous and problematic term 'self-regulating', I propose the following alteration to Article 1.2 (which also leaves out 'indivisible'):

Mother Earth is a unique community of interrelated beings consisting of various different dynamic and evolving feedback systems that provide the conditions that, as a matter of fact, allow for the sustenance and reproduction of its constituent beings.

(3) Each being is defined by its relationships as an integral part of Mother Earth.

Article 1.3 is ambiguous, as it is not clear what it means to say that each being is "defined by its relationship as an integral part of Mother Earth". It could mean one of two things: a) each being is *partly* defined by its relationships as an integral part of Mother Earth; or b) each being is *solely* defined by its relationships as an integral part of Mother Earth. If it simply means the former, that we cannot define, properly describe or understand each being without reference to its relationship to its greater whole, then this seems like a fair and unproblematic point to make given this thesis' earlier deliberations around the interconnected nature of all living beings. However, if the definition is more than that and states that each being is solely defined by its relationships as an integral part of Mother Earth, then the importance of individual identity seems to be problematically dissolved, and each being is reduced to a mere nexus of various relations rather than an individual in itself. In relation to both Life's Imperative and Berry's Ethic such a reduction is morally unacceptable for it does not heed the individual's importance as an end in itself. Thus the latter possible interpretation of Article 1.3 is morally unacceptable.

There is one further problematic aspect to Article 1.3, which warrants revision. The article states that each being is an "integral part" of Mother Earth. However, if 'integral' is to be understood in line with the Oxford Dictionary definition as something that is "necessary to make a whole complete" then the ascription is problematic. Using the earlier example of space travel and matter moving in and out of our atmosphere, if it is true that each being within Mother Earth is truly integral, then by

definition each time a being left our atmosphere Mother Earth would cease to exist as a complete whole. But Mother Earth has of course continued to persist despite our excursions into space and the fact that matter is leaving our atmosphere. Similarly, the parts that make up Mother Earth are constantly changing and evolving, but Mother Earth does not cease to exist because of that. Thus to claim that each being is integral would be to exaggerate the reliance that the broader whole has on individuals. It would be more accurate to describe each being as an interrelated, integrated and dependent part of Mother Earth, and as such I propose the following revision of Article 1.3:

Each being is not only an individual but is also defined by its relationship as an interrelated, integrated and dependent part of Mother Earth.

(4) The inherent rights of Mother Earth are inalienable in that they arise from the same source as existence.

It has been established, firstly, that Mother Earth is not a living being, and, secondly, that the claim that rights arise from the same source as existence, is too indeterminate a foundation for a meaningful rights claim. As a result, this particular article is highly problematic. As I argued in Chapter 2, if rights do indeed arise from the same source as existence then we would have to ascribe rights to a range of different beings for whom a rights ascription cannot meaningfully be made. Such beings include, but are not limited to, non-living beings or entities, ecosystems and Mother Earth. Recall from the previous chapter that non-living beings do not have interests, wants or needs, which are requisite for making a meaningful rights claim. Similarly an ecosystem and Mother Earth, being imagined abstractions which attempt to delineate the dynamic and emergent feedback among various different but related constituent systems and parts, cannot be said to have interests, needs or wants relative to their own good, which would make ascribing *inherent* or any other form of rights to them meaningful. This is not to say that there is no such thing as ecosystem health, only that an ecosystem does not have directed intentionality or a *telos* that would make the ascription of rights plausible, as was argued in Chapter 1.7. Even if we ignored this and granted rights to ecosystems, we would then be faced with high levels of indeterminacy when attempting to determine the supposed interests or good of an ecosystem, as it is both dynamic and evolving. Starting from Life's Imperative, we could argue for a policy, which states that we should conserve ecosystems in a way which best promotes life. However, ascribing rights to ecosystems, as I have repeatedly argued,¹³ is unacceptable for, as in the case of trying to grant Mother Earth rights, it would seriously weaken the concept of inherent rights. Accordingly, I would recommend the following revision of Article 1.4:

The inherent rights of all living beings are inalienable in that they arise from Life's Imperative.

¹³ To revisit this argument see chapter 2.7.

(5) Mother Earth and all beings are entitled to all the inherent rights recognized in this Declaration without distinction of any kind, such as may be made between organic and inorganic beings, species, origin, use to human beings, or any other status.

Article 1.5, like the previous one, is problematic in that it ascribes *inherent* rights to beings to whom such rights cannot be usefully ascribed. To do away with all distinctions in rights discourse as this article proposes would make every single being, object or entity a rights-holder, but this would dismantle the overall coherence of the meaning of rights within the Universal Declaration. Contrary to this article, the distinction between living and non-living nature must play a role in our thinking about rights discourse for ascribing inherent rights to non-living nature is so problematic that it would only serve to severely weaken any legislative framework.

Nnimmo Bassey argues, however, that “the Rights of Mother Earth are not limited to things that we conveniently label as ‘living things’” (2011, 108). According to Nnimmo, “every element in Mother Earth... has a right and deserves to be respected” (2011, 108). The distinction, however, as I have argued, is not one of convenience, but is rather an important distinction in rights discourse and moral thought, and one to which we should pay attention because of the role that it can have in the coherence of the Universal Declaration. I am not arguing that non-living nature can be disregarded and treated as we like. Non-living nature simply does not have the sort of interests that would allow us to meaningfully ascribe rights to it. Non-living nature still merits protection of course, but its value would be derivative or dependent on its contribution to life – a contribution which could come in a myriad of forms – as well as possibly because of its intrinsic value, but not because it is a rights holder, as I argued in the previous chapter.

Furthermore, if we work from Life’s Imperative we will see that inorganic nature has an important role to play in supporting life. As Cormac Cullinan points out, physicists have confirmed that the same atoms and sub-atomic particles may be “part of the soil on Monday, a plant on Tuesday and us on Wednesday” (2011, 51). Inorganic matter thus alternates between animate and inanimate matter, as Judith Koons points out (2011). For example, if we look to the oceans which are increasingly being polluted with heavy metals and other toxins, those toxins are finding their way into the cellular structures of phytoplankton, and via phytoplankton those toxins are cycling their way through the food chain, magnifying along the way, and finding their way into larger predators and the fish we eat. These predators then contain dangerously high levels of heavy metals and other toxins, which are being passed on to those of us who are consuming them and having devastating effects on our health (Cf. Wanipee et al. 2010). One of the most pertinent recent examples is that of deformities and mutations in the wake of the Gulf Oil spill, which have illustrated the connection between living and non-living nature (Cf. Jamail, 2012). Thus if we bear examples like this in mind when determining the importance

of inanimate matter, we will see that although it may be problematic to grant rights to inanimate matter, if we simply disregard it or treat it without proper care we may very well jeopardise a decent future for living beings. Nonetheless despite the importance of non-living nature, if we realise that the distinction between living and non-living beings is not one of convenience, but rather a distinction of significance to the overall coherence of the Universal Declaration and of our moral deliberations, then in order to ensure the strength and coherence of the Universal Declaration's rights I propose the following revision of Article 1.5:

All living beings are entitled to all the inherent rights recognized in this Declaration without distinction of any kind, such as may be made between species, origin, use to human beings, sentience, or any other similarly biased status.

(6) Just as human beings have human rights, all other beings also have rights which are specific to their species or kind and appropriate for their role and function within the communities within which they exist.

Article 1.6 may at first seem like an unproblematic extension of the idea that rights are specific to each being's needs and interests, but there is a problematic aspect to it. The problem has to do with granting rights to beings according to their "role and function in the communities within which they exist". Of course we do need to remember that ecosystems are defined by relationships of interrelation and interdependency and thus individuals may be said to have particular function or roles in relation to the broader web of dependencies and relations; that is not too problematic an ascription. What is too problematic is granting rights according to those roles and functions. Remember from Chapter 2 that according to Berry's environmental ethic, every individual's role within its broader system would be to "preserve" and "enhance" "the natural cycles" of its broader ecosystem and through doing so contribute to the ecosystem's "opportunity to be [itself] and express [its] own inner qualities" (1999, 13). Furthermore each individual derives role rights in accordance with this particular ethical principle.

Recall that role rights, which are based on Berry's ethic, are problematic in three ways. Firstly, as previously argued in Chapter 2, a constituent part of an ecosystem's 'role' within an ecosystem will be incredibly difficult to determine given the dynamic and evolving nature of ecosystems. Secondly, a role right cannot be said to be an *inherent right*, for a role right is determined by relations external to the actual being to which it is ascribed. Thus the idea of role rights goes against the very grain of the Universal Declaration, which is meant to ascribe only *inherent* rights to beings. Thirdly, and relatedly, to ascribe rights according to one's role or function contravenes Life's Imperative, for in doing so we treat individuals as mere means to the end of ecosystem health rather than as ends in themselves. Berry's ethic and Article 1.6 are, however, tempered by the notion of subjective individual rights, which

provides reason for considerations of the interests of the individual, relative to the notion of subjectivity. Nonetheless role rights, by themselves, contravene both Life's Imperative, and the Universal Declaration's claim to consist of inherent rights.

By contrast, a more positive interpretation of role rights is that each being, as part of an ecosystem, has its own space or ecological niche within the ecosystem and should be given the right to it. This, however, is a problematic claim to make for the idea of an ecological niche is a slippery one given the dynamic nature of ecosystems, as I have argued repeatedly. A better way of expressing such a sentiment would be to say that each being has a right to live, which consists, in part, of its carving out space for itself within the dynamic processes of its ecosystem. Each living being requires this right in order to survive. To call such a right a role right, however, would be misleading, and a better way to put it would be state that each being has a right to carve out its own niche within the world.

Given these problems with role rights it seems that there are three routes that one could take in revising the Universal Declaration. Either we remove role rights, or we include them alongside inherent rights as an alternate conception of rights within the Declaration, or we could include the right to a niche. The second option is problematic considering the very real potential for role rights to conflict with individual rights, as an individual's interests are not always aligned with that of the broader system. How to go about resolving such conflicts would be difficult. Thus I would suggest that we take the alternate routes of either removing talk of role rights from the Universal Declaration or adopting the right to a niche instead of talking of role rights. Either of these routes would have the benefit of adhering to the Universal Declaration's claim to enshrine inherent rights and allowing for a clearer and more consistent conception of rights.

To clarify, by asking us to remove talk of role rights, I am not claiming that that we should ignore the fact that ecosystems are defined by relationships of interrelation and interdependency. Such a realisation should indeed be an important consideration in all our deliberations about protecting rights. However, that does not necessarily entail that we need the idea of role rights to do so. In fact as I shall illustrate in my discussion of the following article, removing talk of role rights will help to simplify and strengthen the Universal Declaration.

One last consideration for Article 1.6 comes in relation to proposing rights according to the sort of species to which an animal or being belongs. If we reconsider Berry's Principle of Differentiation from Chapter 2.2, which claims that even individuals within the same species might begin to differ as is indeed necessary for evolution to occur, it may be more appropriate to grant rights according to the sort of being that each individual is, thus not pigeonholing each being according to the characteristics of its species. This relates to the idea that the aforementioned categories do not necessarily pick out definite distinctions in the world, but are rather attempts to delineate fluid and overlapping groups (Cf.

McCarthy 2012). The terms are useful taxonomical constructs, but do not necessarily delineate definite categories. Thus bearing in mind the above considerations I propose the following revision of Article 1.6:

Just as human beings have human rights, which are appropriate to them and recognise their individuality, so all other living beings have rights which, while recognising similarities, also takes cognisance of the fact that they are individuals who are ends in themselves.

(7) The rights of each being are limited by the rights of other beings and any conflict between their rights must be resolved in a way that maintains the integrity, balance and health of Mother Earth.

Given my earlier disagreement with the idea of role rights it might seem odd for me to agree with Article 1.7. However, the Universal Declaration needs to recognise that even the *inherent* rights that it enshrines will conflict with each other, and we need ways to resolve those conflicts. To include role rights unnecessarily complicates the Universal Declaration and would not adhere to the idea of inherent rights, but to say that conflicts should be resolved in a way that promotes a broader good can be considered consistent with Life's Imperative and with inherent rights. Recall from the previous chapter that Life's Imperative would dictate that as much as possible we should act in ways, such that in our actions we promote, to the greatest extent possible, "a kingdom of ends", which includes all living beings as ends in themselves. Thus when a conflict occurs we should similarly resolve the conflict in ways that promote, to the greatest extent possible, a kingdom of ends, which includes all living beings as ends in themselves. Accordingly, I propose the following revision of Article 1.7:

Although every individual has individual rights, when such rights conflict, they should be resolved in such a way as to promote as much as possible the broader kingdom of ends of all living beings.

At this point it is important to countenance another potential objection to this particular article in both its revised and unrevised versions. The objection is based in a brute fact about life: in most cases life depends on the death of other living beings. In order to survive, we and so many other animals cannot but rely on, and sometimes cause, the death of others. Thus conflicts of rights will permeate the natural world as competition has defined the way that life has evolved. Given this fact we would face infinite and irresolvable conflicts between individuals within nature, as was argued in Chapter 1.7. The objection in relation to this would be that such a reality of infinite conflicts within nature would render Article 1.7 impossible to adhere to as we would be faced with a Sisyphean task in trying to resolve all possible rights conflicts. Furthermore, the limits of knowledge that we face would make resolving conflicts in a beneficial way in all cases even more difficult, for to amass enough evidence to how to make the right decision in each case would be well beyond our capabilities.

In response to such an objection, I would suggest that Article 1.7 is applied to human interactions with nature as much as possible, and is applied to nature's own interactions only when the conflicts within it represent a trend towards the substantial diminishment of the dynamic stability of their broader systems. Although this does create a (perhaps false) dichotomy between nature and human beings, it allows us to devise a realistic praxis which we can reasonably implement. It also allows us to respect natural processes while promoting *as much as possible* Life's Imperative. It might be objected that such a suggestion departs from the idea of the equality of all life, but the reason for such a suggestion is to prevent the constant interference of humans in nature in ways that would potentially be more harmful than beneficial. It is based in the pragmatic reality that humans cannot interfere in all aspects of nature without most likely causing greater harm than good, for natural processes would often uphold Life's Imperative much better than humanity in its limited knowledge possibly could. This may not always be the case, but such an approach would adhere to the Precautionary Principle where humans should avoid intervening unless they have sufficient evidence to suggest that doing so would be of greater benefit than not doing so. Thus I would suggest the inclusion of a further Article into the Universal Declaration, Article 1.8, which states that:

Article 1.7 should be applied to human beings interactions with nature as much as possible, and applied to nature's own interactions only when the conflicts within it represent either a trend towards the substantial diminishment of the dynamic stability of their broader systems or a devastating impact on the lives of others. This should be applied only when humans have sufficient evidence that their intervention would be of more benefit than their non-interference would.

4.5) Article IV

Having developed a number of proposed revisions for Article 1, let us critically consider Article 4 which lists two so-called 'definitions', what I would rather call provisos, with which the Universal Declaration operates.

(1) The term 'being' includes ecosystems, natural communities, species and all other natural entities which exist as part of Mother Earth.

If we consider this article in relation to Article 2.1 we will see that it has serious implications for the Universal Declaration. Article 2.1 states that "Mother Earth and all beings of which she is composed have the following inherent rights..." after which it goes on to list all the rights of the Universal Declaration. Thus Article 1.4 by claiming that "ecosystems, natural communities, species and all other natural entities" are included in the term 'being' effectively deems the aforementioned to be holders of all the rights in the Universal Declaration. However, as I argued in section 4.4, 'species', 'ecosystems'

and ‘natural communities’ are all invented abstractions or taxonomical constructions developed by human minds to help categorise and delineate fluid and evolving relationships between individuals and their broader systems. Thus, if we grant rights to such abstractions we will in effect substantially diminish the coherence and strength of the rights enshrined in the Universal Declaration, for such abstractions cannot be said to have interests, needs or want in a manner necessary for the ascription of inherent rights. It is important to recognise the relationships that such terms delineate, and the importance that they play, but that does not translate into the need to ascribe rights to them. We might place particular value on species, natural communities and particular ecosystems, but we must not forget that the Universal Declaration is dealing with *inherent* rights, not attempting to delineate the realm of all value. Thus I would propose that Article 4.1 be scrapped from the Universal Declaration in order to ensure the strength of the Declaration’s rights.

(2) Nothing in this Declaration restricts the recognition of other inherent rights of all beings or specified beings.

This proviso is important as it recognises that the rights in the Universal Declaration are to an extent the bare minimum of rights, and that in the case of many beings, such as ourselves and, for example, elephants, there will be the need to respect further rights which relate to their particular complexity. The article also allows for the fact that the Universal Declaration, because of its global scope, is necessarily broad, and that more specific local ordinances might require further rights that are tailored to their particular contexts. However, despite the importance of this article, it does need to be slightly revised to reflect the central role that the distinction between living and non-living beings plays, as discussed earlier in this chapter. Thus I propose the following revision:

Nothing in this Declaration restricts the recognition of other inherent rights of living beings.

4.6) Article II Revisited

Having critically examined and revised the assumptions and definitions behind the Universal Declaration, I will critically examine the rights enshrined in Article 2. Such an examination will bring to bear the critical insights we have gained throughout this thesis in order to provide as strengthened, consistent and coherent a list of rights as possible. What follows is a right by right critical examination of Article 2.

(1) Mother Earth and all beings of which she is composed have the following inherent rights

As per previous discussions on the importance of the distinction between living and non-living beings, Article 2.1 needs to be revised as follows: *All living beings have the following inherent rights.*

(a) the right to life and to exist;

Article 2.1a is unproblematic and I propose no revisions to it. However, if we use Life's Imperative as the article's moral foundation its justification is considerably stronger and clearer than it would be if Berry's ethic was at its foundation. Under Berry's ethic the appeal to the right to life would be based on the ideal of subjectivity, and so both what it would mean to have the right to exist, and why all beings have it would be unclear and indeterminate. Furthermore in certain cases, such as those of ecosystems, Mother Earth, and non-living beings, it would not be clear what it would mean to violate those rights. On the other hand, Life's Imperative provides us with a clear foundation, in that all living beings, being ends in themselves, have the right to life and to exist. Life and existence would be determined, at base, by Life's Attributive Norms, those of persistence, parameterisation and informed behaviour. Life's Imperative, informed by Life's Attributive Norms, thus provides a much clearer and stronger foundation upon which to construct the right to life and to exist, which, are fundamental rights affecting the expression of many of the rights in the Universal Declaration. Thus the strength and clarity provided by Life's Imperative and Life's Attributive Norms is of significant importance to the overall coherence of the Universal Declaration.

(b) the right to be respected;

Article 2.1b is also an unproblematic right, and thus I shall propose no revisions to it. It is worth pointing out, however, how indeterminate such a statement would be under Berry's ethic as opposed to Life's Imperative. Recall from Chapter 2 that under Berry's ethic all beings merit rights because each is a subject, because of their possession of subjectivity. What it would mean to respect each being as a subject, however, is unclear, because we could never tell whether we were interfering with cosmogenesis and thus with an object or being's subjectivity, as I argued in Chapter 2.8. Under Life's Imperative, however, we can easily identify what it would mean to respect each living being. It would entail that we treat each being not as a mere means, but as an end in itself, recognising that each generally adheres to the attributive norms of life and thus, as a living being, is an end in itself. Thus with regards to this right we can once again see the relative strengths of Life's Imperative.

(c) the right to regenerate its bio-capacity and to continue its vital cycles and processes free from human disruptions;

Article 2.1c is potentially problematic depending on how it is interpreted. If it holds that as much as possible humans must refrain from interfering with all beings' abilities to regenerate their bio-capacity and continue their vital cycles, and recognises that this will not always be possible, then it is unproblematic. If, on the other hand, it holds that under no circumstances can human beings interfere,

then it has serious problems. The latter interpretation would make sense if we conceived of humans as totally removed from nature and created fortress preserves to protect nature, but it does not apply if we consider ourselves as part of and surrounded by nature, which we quite clearly are. Indeed life carves out niches for itself in the world through disrupting it, and to say that humans cannot do so is to be guilty of an unjustifiably misanthropic claim given our situated-ness within nature. In order to survive, humans need to disrupt nature to at least some extent, and any reasonable rights doctrine, even one based on Life's Imperative, cannot ask of us to forego what is necessary to survive. Furthermore, we must be careful of saying that nature cannot be interfered with, for, due to the politically-situated nature of rights, whose interference actually counts as legitimate may become a matter of power and privilege. For example, trumped up ideals of nature were used to justify the eviction of slum-dwellers in India (Ghertner 2011).¹⁴ Thus I would recommend the removal of the "free from human disruptions" proviso in order to clear up the potentially misanthropic and politically subvert-able interpretation of Article 2.1C. Subsequently Article 2.1C, like all rights in this Declaration, would be subject to the application of Article 1.7 and 1.8, which deals with what should happen when conflicts between rights occur.

(d) the right to maintain its identity and integrity as a distinct, self-regulating and interrelated being;

Although I have no problems with article 2.1D and thus I would recommend no revisions to it, it is worth reminding the reader at this point that I am assuming that each of the rights we are dealing with is subject to the revised clauses I submitted for Article 1. It is also worth noting the presence of the term 'self-regulating', which although problematic in the case of Mother Earth is not problematic here. This is because, I contest, as evidenced by the attributive norm of informed behaviour, each *living* being generally has mechanisms to self-regulate relative to the norm of parameterisation and other biological norms, and thus to persist.

(e) the right to water as a source of life;

(f) the right to clean air;

Both of these rights are simply an application of Article 2.1A and as such I have no problems with them. It is worth mentioning, however, that the norms of parameterisation do not necessarily mean that all beings have the same parameters for existence. Rather the parameters necessary for existence differ between different beings and thus different beings may often require different types of water or air, for

¹⁴ Also see Peluso and Vandergeest (2011) for examples of how particular ideals of nature can be manipulated to serve political power.

example some require saline, others freshwater. Thus there might be different and competing interpretations as to what it means to have “clean” air or water “as a source of life”. We would also need to weigh competing interests in our conceptions of clean air and water, and adopt a pragmatic deontological approach in order to do so.

(g) the right to integral health;

(h) the right to be free from contamination, pollution and toxic or radioactive waste;

(i) the right to not have its genetic structure modified or disrupted in a manner that threatens its integrity or vital and healthy functioning;

I submit that Articles 2.1 G, H, and I are unproblematic, or rather they are unproblematic if expressed in relation to Life’s Imperative as they all are simply applications of Life’s Imperative and the concomitant right to life and to be respected. In relation to Berry’s framework, however, there would be difficulties in situating these rights relative to the idea of subjectivity.

(j) the right to full and prompt restoration the violation of the rights recognized in this Declaration caused by human activities;

Article 2.1J is problematic, as it seems to conflict with Article 1.7 and, in my revised Declaration, Article 1.8, which deal with resolving conflicts in ways that promote, as much as possible, the kingdom of ends as defined by Life’s Imperative, including those of humans. Once again we need to bear in mind that human interference and the occasional violation of the rights of other living beings is a necessary component of our existence. Of course that does not mean that we can interfere with nature in any way we see fit, rather if we are to adhere to Life’s Imperative we should act in such a way that we promote the broader kingdom of ends as much as possible. Thus we would only be justified in violating another being’s rights when it is deemed necessary. Within the options available to us for survival there are many routes that would minimise our violation of other living beings’ rights. For example, although I have to eat to survive I can choose to reduce or eliminate the mass-produced meat that I eat, and due to the environmental degradation that generally comes with the production of meat on a large scale, I can reduce my negative socio-ecological impacts.¹⁵ I can thus survive but choose a path more consistent with Life’s Imperative. Similarly there are a myriad of different ways we can reconfigure our lives so as to live more consistently with Life’s Imperative. Thus in order to reflect the reality of humanity’s inevitable impact on other living beings, and our ability to reduce that impact, I would suggest the following revision of Article 2.1J:

¹⁵ Cf. Emal & Neo 2011 or <http://www.ru.ac.za/rugreen/projects/knownyourfood/>

The rights to full and prompt restoration upon the unnecessary violation of the rights recognised in this Declaration caused by human activities, where such restoration is possible.

There is one further consideration that needs to be taken into account with regards to the above revision, for how to deem whether something is a necessary or unnecessary violation of rights will certainly not be a clear-cut process and will require contextual interpretation. We can, however, turn to the work of James Sterba (2001) for a principle to guide us here. Sterba proposes what he calls the *Principle of Disproportionality* to guide our actions such that they respect nonhuman nature:

Actions that meet nonbasic or luxury needs of humans are prohibited when they aggress against the basic needs of individual animals and plants, or of whole species or ecosystems (2001, 37).

As this principle quite neatly defines which violations would be acceptable in order to allow humans to promote their own existence under Life's Imperative, I would propose that we incorporate it into Article 2.1J as follows:

The right, where possible, to full and prompt restoration upon the violation of the rights recognised in this Declaration caused by human actions that are pursued to meet nonbasic or luxury needs.

(2) Each being has the right to a place and to play its role in Mother Earth for her harmonious functioning.

Once again in Article 2.2 we are faced with the emergence of the idea of role rights. In line with earlier arguments around Article 1.6, I will remove talk of role rights from this article to ensure the strength and coherence of the rights enshrined in the Universal Declaration. Thus, bearing in mind that, due to its limited nature, space on this Earth is often contested, and that this Article will also be subject to Articles 1.7 and 1.8 in times of competing rights, I propose the following revision of Article 2.2: *Each being has the right to a place on Mother Earth*. This revision would then simply be an extension of the right to life, for in order to survive, each living being needs to carve out its own niche within the world around it.

(3) Every being has the right to wellbeing and to live free from torture or cruel treatment by human beings.

Article 2.3 is unproblematic in my view, for it too is an application of Life's Imperative and the concomitant right to life and to be respected.

4.7) Article III

As we can see from the previous section, the revisions of Article 1 and 4 have had profound implications for the rights enshrined in Article 2. Furthermore, the use of Life's Imperative instead of Berry's Ethic makes the rights enshrined in Article 2 more determinate, clear, coherent and consistent. In order to illustrate this I would ask the reader to imagine how difficult it would be to apply each of the original rights to inanimate beings, an ecosystem, or Gaia herself using Berry's ethic. Furthermore, articles 2.1C – 3 are all applications of Articles 2.1A and B, which only find a determinate expression through Life's Imperative, not through Berry's ethic. Thus the relative strengths of Life's Imperative and the Universal Declaration I have proposed based on it – what I have called the Universal Declaration of Rights (see Appendix IV) – are quite substantial in comparison to Berry's ethic and the current Universal Declaration. Thus having analysed and revised all articles, which needed revision, I can now go on to critically examine the obligations that the Universal Declaration claims we have in relation to the rights that it enshrines. In order to do so, I offer a brief analysis of Article 3, which lists the obligations that the Universal Declaration upholds:

(1) Every human being is responsible for respecting and living in harmony with Mother Earth.

Although such an obligation may have strong rhetorical force, the idea of living harmoniously with Mother Earth is vague. Indeed, if we consider that we cannot define what would be an essential expression of Mother Earth, and relatedly what it would mean to live in harmony with her, except perhaps by appealing to a preservationist conception of Mother Earth, then I believe Article 3.1 is not a sufficiently action-guiding principle to define any meaningful obligation. Thus I would propose to replace it instead with the following more determinate obligation, which derives its authority from Life's Imperative: *Every human being is responsible for promoting Life's Imperative as much as possible.*

(2) Human beings, all States, and all public and private institutions must:

(a) act in accordance with the rights and obligations recognized in this Declaration;

(b) recognize and promote the full implementation and enforcement of the rights and obligations recognized in this Declaration;

If one takes into consideration the revisions that I have made to the Universal Declaration then Articles 3.2 (a) and (b) are unproblematic. However, if we consider these obligations in relation to the original

Universal Declaration and Berry's justification of it, I would contest that they would be impossible obligations, for the original Declaration did not take into consideration the pragmatic deontology, based on realistic praxis, that I have prescribed. For example, the original Declaration, by ascribing rights to beings to regenerate their bio-capacity and continue their vital cycles free from human disruption in 2.1(c), would be condemning humans to death, given our need to disrupt vital cycles in order to survive. Thus the strength of the revisions of a pragmatic deontology based in Life's Imperatives allows us to have obligations which are humanly possible and perhaps even enforceable.

(c) promote and participate in learning, analysis, interpretation and communication about how to live in harmony with Mother Earth in accordance with this Declaration;

(d) ensure that the pursuit of human wellbeing contributes to the wellbeing of Mother Earth, now and in the future;

(e) establish and apply effective norms and laws for the defence, protection and conservation of the rights of Mother Earth;

(f) respect, protect, conserve and where necessary, restore the integrity, of the vital ecological cycles, processes and balances of Mother Earth;

(g) guarantee that the damages caused by human violations of the inherent rights recognized in this Declaration are rectified and that those responsible are held accountable for restoring the integrity and health of Mother Earth;

(h) empower human beings and institutions to defend the rights of Mother Earth and of all beings;

(i) establish precautionary and restrictive measures to prevent human activities from causing species extinction, the destruction of ecosystems or the disruption of ecological cycles;

(j) guarantee peace and eliminate nuclear, chemical and biological weapons;

(k) promote and support practices of respect for Mother Earth and all beings, in accordance with their own cultures, traditions and customs;

(l) promote economic systems that are in harmony with Mother Earth and in accordance with the rights recognized in this Declaration.

Of the above articles 3.2 (j) is unique, thus let me deal with it first. The obligation therein is an aspiration towards which we have a long way to go. As things stand, we may be required, perhaps ironically, to use violent force in order to eventually guarantee peace, and eliminate nuclear, chemical and biological weapons, if indeed we can ever arrive at such a point. Nonetheless, despite the fact that I am not optimistic as to whether we will ever arrive at such a point, Life's Imperative would ask of us to aim for peace and the elimination of nuclear, chemical and biological weapons, for war and the use of

such weapons are designed and implemented, in most cases, to kill and not to promote life. Thus Article 3.2 (j) does not need revision, but we must be aware that it is an ideal to aspire towards, and one that may require compromise.

All the above articles, except for Article 3.2 (j), refer to either living in harmony with Mother Earth or protecting her rights, thus considering the previous revisions, with regards to both the former and the latter, I would propose that we remove such terms and replace them instead with references to respecting Life's Imperative. Thus I would propose the following revised obligations:

(c) promote and participate in learning, analysis, interpretation and communication about how to live in ways that best promote Life's Imperative in accordance with this Declaration;

(d) ensure that, as much as is possible, the pursuit of human wellbeing contributes to the wellbeing of all living beings, now and in the future;

(e) establish and apply effective norms and laws for the defence, protection and conservation of the rights enshrined in this Declaration;

(f) respect, protect, conserve and where necessary, restore the integrity, of the vital ecological cycles, processes and balances of Mother Earth so as to promote Life's Imperative;

(g) guarantee that the damages caused by unnecessary human violations of the inherent rights recognized in this Declaration are rectified and that those responsible are held accountable for restoring the integrity and health of Mother Earth;

(h) empower human beings and institutions to defend the rights of all living beings;

(i) establish precautionary and restrictive measures to prevent, as much as possible, human activities from causing species extinction, the destruction of ecosystems or the disruption of ecological cycles;

(j) guarantee peace and eliminate nuclear, chemical and biological weapons;

(k) promote and support practices of respect for all living beings, in accordance with their own cultures, traditions and customs;

(l) promote economic systems that are in accordance with the rights recognized in this Declaration.

4.8) Putting our Results to Scale

Having thus critically revised the entire Universal Declaration, the end product is a strengthened, clearer, more realistically based, fairer, less misanthropic and more consistent rights declaration, provided in Appendix IV's Universal Declaration of Rights. In order to illustrate just how beneficial the adoption of Life's Imperative and the Universal Declaration of Rights that I propose would be, we can compare them to Berry's ethic and the Universal Declaration of the Rights of Mother Earth. We can do

so using Bryan Norton's four criteria or 'scales', which he developed for evaluating the coherence and strength of worldviews. The scales that he developed are as follows, and I quote (Norton 1991, 75):

1. *The Scale of Completeness.* Do the elements of the worldview provide a basis for interpreting all facts and do they provide guidance regarding policies to cover every possible situation?
2. *The Scale of Connectedness.* To what extent are the various elements of the system derived from a small number of more basic and fundamental axioms?
3. *The Scale of Consistency.* Are the various elements of the worldview consistent with each other?
4. *The Scale of Plausibility.* Is the worldview, in its concepts, theories and values consistent with the best available facts, theories and models of contemporary science? "

On every scale Life's Imperative and the Universal Declaration of Rights is superior. With regards to the Scale of Completeness, as I have illustrated in this chapter and the previous one, Life's Imperative dictates the following decision making procedure, which provides clear guidance in almost any possible situation: as much as possible we should act in ways, such that in our actions we promote to the greatest extent possible, 'a kingdom of ends', which includes the ends of all living beings. Although limits of knowledge as to the possible effects of our actions may make this principle difficult to apply at times, this is not due to a problem with the principle itself, but is rather something that any principle would have to grapple with. Berry's ethic and the Universal Declaration of the Rights of Mother Earth on the other hand in no way provide such clear guidance. Not only is the principle of subjectivity difficult to translate into an action-guiding principle or framework, but because it applies so broadly it is difficult to determine what policy recommendations it would lead to.

In relation to the Scale of Connectedness, although under Berry's Ethic and the Universal Declaration of the Rights of Mother everything was connected to the principle that each being was a subject, a being's rights were also based on the role that they had to play within their community. Furthermore because both Berry and the Universal Declaration of the Rights of Mother Earth ascribe rights to ecosystems, natural communities, species and inanimate matter, there would have to be additional axioms to justify why such beings would merit rights, ones I do not believe are available. Thus it seems as if Berry's ethic and the Universal Declaration would have to rely on a number of axioms. Life's Imperative and the Universal Declaration of Right, on the other hand, simply has one fundamental axiom, the Principle of Life: we must, as much as possible, promote a kingdom of ends

which includes the realisation that all living beings are ends in themselves. Thus on the scale of connectedness, Life's Imperative is also stronger, for every element is connected to and derived from one fundamental axiom.

In relation to the Scale of Consistency I believe I have adequately shown through this chapter that there are numerous inconsistencies within Berry's Ethic and the Universal Declaration of the Rights of Mother Earth, such as those that arise because of granting role rights, ecosystem rights and rights to inanimate beings. Life's Imperative, on the other hand, based as it is on one fundamental axiom, allows for much clearer consistency in its application.

Finally, in relation to the Scale of Plausibility, I believe that I have shown throughout this thesis that Life's Imperative, along with the Universal Declaration of Rights are, in their concepts, theories and values, representative of a worldview that is most consistent with the best available facts, theories and modes, not only of contemporary science, but also of law and morality. Thus on all of Norton's scales, Life's Imperative and the Universal Declaration of Rights are preferable to Berry's Ethic and the Universal Declaration of the Right of Mother Earth. If we aim to develop Rights of Nature in way that is truly just and ethical, and which protects all living beings fairly, I propose the adoption of the Universal Declaration of Rights rather than the Universal Declaration of the Rights of Mother Earth.

4.9) Heeding Contradictions

As the Rights of Nature Movement grows, it would do well to pay attention to the apparent contradiction evidenced in the opening quotes of this chapter. The first, by Christopher Stone (1996), shows the importance that Rights of Nature can play in valuing and protecting nature for itself. But, as Livingstone (2004) points out, we must also be wary of the fact that rights, as much as they are legal tools, can be political ones too and their purpose can be subverted by power structures. Relatedly, we must ensure that the ideals of 'nature' at play in the Universal Declaration cannot be used unjustly to benefit those with political power, as has happened in many countries' conservation histories, which are peppered with examples of indigenous people being evicted from their land in order to construct fortress like nature reserves, which benefit a select few, under the guise of promoting colonial ideals of pristine nature. As Peet et al. point out, "conservation, purportedly an effort to create better conditions in the world, can frequently be a mechanism (or more cynically a 'cover' for) powerful players to seize control of resources and landscapes" (2011, 27). Thus, while we can use the Rights of Nature to bring nature's interest to the forefront of our legal systems, we need to ensure that they are not subverted as political tools to subsume nature under our control or subdue it to political whims. Rather we must

work to develop the Rights of Nature so that they are vehicles to ensure that Life's Imperative is respected.

In our attempts to do so, to develop rights for nature in a just and ethical manner, we would do well to borrow from Aristotle's "Doctrine of the Mean". Part of Aristotle's Doctrine of the Mean says that the virtuous action is chosen from the mean between excess and deficiency. For example, the virtue of courage involves choosing the mean between foolhardy fearlessness and cowardice (Aristotle 2000 1106b). Likewise we should choose the mean between the two ends of the spectrum of ignoring nature on one hand, and overly controlling and domesticating it on the other. Another important lesson from the Doctrine of the Mean is that the virtuous mean is something that is relative to particular contexts (Aristotle 2000, 1106b). Similarly we must bear in mind that it will not be easy to uniformly apply rights, especially if we consider the contested nature of rights and how those contestations will vary within different contexts. Thus we must ensure that the rights of the Universal Declaration are flexible enough to allow for the mean to be found across varying contexts, but not so flexible as to lose their strength. Ensuring the requisite flexibility of the Universal Declaration to allow for such context variation is thus important, as the Universal Declaration is meant to act as a global legislative framework, which takes account of the different contexts and how they relate to each other. Local ordinances, on the other hand, based as they are in particular contexts, can afford to be more rigid according to the demands of their context. Thus, although the Universal Declaration calls for universalizability of rights, local ordinances can create more specific rights, which are appropriate to their particular context.

4.10) Conclusion

At the beginning of this thesis I argued that if we are to establish Earth Jurisprudence and the Rights of Nature Movement upon a legitimate foundation, then, considering the insufficiency of anthropocentric sufficiency in protecting nature's interests, we are going to need a non-anthropocentric justification to do so. The current justification, based on Thomas Berry's work, has proven to be far from sufficient to do so, and its repercussions for the Universal Declaration of the Rights of Mother Earth have turned out to be detrimental to its strength, consistency, fairness, and grounding in realistic praxis. Thus in response to these weaknesses, I developed a moral theory, Life's Imperative, and upon the foundations of that theory I developed the Universal Declaration of Rights. As I have argued throughout this thesis, Life's Imperative and the Universal Declaration of Rights provide a moral theory and rights framework which are consistent with the best available facts and theories of contemporary science and morality.

Some proponents of the Universal Declaration of the Rights of Mother Earth may want to cling, perhaps romantically, to the original version of the Universal Declaration, because the scope of its

rights is broader. Against such a move I would argue that we should not sacrifice strength, clarity, consistency and all the other virtues that Life's Imperative and my proposed Universal Declaration of Rights have, simply to broaden the scope of rights. I make this suggestion, because by broadening the scope of rights, as the Universal Declaration of the Rights of Mother Earth does, one would effectively diminish the strength of the concept of rights and thus the strength of the Rights of Nature movement. On the other hand, the Universal Declaration of Rights, by providing a strengthened conception of rights, can potentially be a better legislative framework to further the aims of Earth Jurisprudence and the Rights of Nature Movement.

Despite the conclusions of this thesis, it may be worth keeping in mind that the most effective current vehicle through which to protect nature is probably through anthropocentric means. Nonetheless, this predominance of anthropocentrism, and the insufficiency of an anthropocentrically-driven conservation of nature, is what the work of the Universal Declaration is set to change. Christopher Stone suggests that "there is something of a seamless web involved [here]: there will be resistance to giving [nature] 'rights' until it can be seen and valued for itself; yet it is hard to see and value [nature] for itself until we can bring ourselves to give it rights" (1996, 456). This seamless web works both ways. The more we understand nature, and the more we realise we rely on nature. The more we appreciate the incredible intricacies and the way that nature works, the more we will begin to value nature both in itself and for the increasing value we will discover that it brings to our lives. This is especially so in the West where ecological deficiency disorder permeates and a disconnection from nature has emptied our lives of much of the meaning that a deep connection to the natural world can bring. Indeed it is clear that humanity is suffering a profound ecological crisis that runs deeper than a simply material crisis of limited natural resources. Rather, the crisis has to do with our sense of identity and of who we are in relation to the natural world and all of its living beings. The Rights of Nature is not only a legal tool, but can also assist us in addressing the psychological, spiritual, moral and cultural roots of our ecological crisis. However, its ability to do so depends on its own strength and coherence. "But," to quote Maude Barlow, "simply recognis[ing] the Rights of Nature on paper does not suffice. Such an approach will be laden with contradictions if governments are unwilling to challenge the dominant model of economic globalisation" (2012, 29).

Nonetheless, the Universal Declaration of Rights or something like it, as opposed to the Universal Declaration of the Rights of Mother Earth, can provide a stronger tool to guide us through this ecological crisis, and overcome the resistance to giving nature rights, and do so in a manner that properly recognises and protects the value of all living beings. Whether we will take up such a strengthened framework, or continue to push forward the problematic rights enshrined in the Universal Declaration of the Rights of Mother Earth is up to us.

Appendix

Appendix 1- Universal Declaration of the Rights of Mother Earth

Preamble

We, the peoples and nations of Earth:

- considering that we are all part of Mother Earth, an indivisible, living community of interrelated and interdependent beings with a common destiny;
- gratefully acknowledging that Mother Earth is the source of life, nourishment and learning and provides everything we need to live well;
- recognizing that the capitalist system and all forms of depredation, exploitation, abuse and contamination have caused great destruction, degradation and disruption of Mother Earth, putting life as we know it today at risk through phenomena such as climate change;
- convinced that in an interdependent living community it is not possible to recognize the rights of only human beings without causing an imbalance within Mother Earth;
- affirming that to guarantee human rights it is necessary to recognize and defend the rights of Mother Earth and all beings in her and that there are existing cultures, practices and laws that do so;
- conscious of the urgency of taking decisive, collective action to transform structures and systems that cause climate change and other threats to Mother Earth;

proclaim this Universal Declaration of the Rights of Mother Earth, and call on the General Assembly of the United Nations to adopt it, as a common standard of achievement for all peoples and all nations of the world, and to the end that every individual and institution takes responsibility for promoting through teaching, education, and consciousness raising, respect for the rights recognized in this Declaration and ensure through prompt and progressive measures and mechanisms, national and international, their universal and effective recognition and observance among all peoples and States in the world.

Article 1. Mother Earth

- (1) Mother Earth is a living being.
- (2) Mother Earth is a unique, indivisible, self-regulating community of interrelated beings that sustains, contains and reproduces all beings.
- (3) Each being is defined by its relationships as an integral part of Mother Earth.
- (4) The inherent rights of Mother Earth are inalienable in that they arise from the same source as existence.

(5) Mother Earth and all beings are entitled to all the inherent rights recognized in this Declaration without distinction of any kind, such as may be made between organic and inorganic beings, species, origin, use to human beings, or any other status.

(6) Just as human beings have human rights, all other beings also have rights which are specific to their species or kind and appropriate for their role and function within the communities within which they exist.

(7) The rights of each being are limited by the rights of other beings and any conflict between their rights must be resolved in a way that maintains the integrity, balance and health of Mother Earth.

Article 2. Inherent Rights of Mother Earth

(1) Mother Earth and all beings of which she is composed have the following inherent rights:

(a) the right to life and to exist;

(b) the right to be respected;

(c) the right to regenerate its bio-capacity and to continue its vital cycles and processes free from human disruptions;

(d) the right to maintain its identity and integrity as a distinct, self-regulating and interrelated being;

(e) the right to water as a source of life;

(f) the right to clean air;

(g) the right to integral health;

(h) the right to be free from contamination, pollution and toxic or radioactive waste;

(i) the right to not have its genetic structure modified or disrupted in a manner that threatens its integrity or vital and healthy functioning;

(j) the right to full and prompt restoration the violation of the rights recognized in this Declaration caused by human activities;

(2) Each being has the right to a place and to play its role in Mother Earth for her harmonious functioning.

(3) Every being has the right to wellbeing and to live free from torture or cruel treatment by human beings.

Article 3. Obligations of human beings to Mother Earth

(1) Every human being is responsible for respecting and living in harmony with Mother Earth.

(2) Human beings, all States, and all public and private institutions must:

(a) act in accordance with the rights and obligations recognized in this Declaration;

- (b) recognize and promote the full implementation and enforcement of the rights and obligations recognized in this Declaration;
- (c) promote and participate in learning, analysis, interpretation and communication about how to live in harmony with Mother Earth in accordance with this Declaration;
- (d) ensure that the pursuit of human wellbeing contributes to the wellbeing of Mother Earth, now and in the future;
- (e) establish and apply effective norms and laws for the defence, protection and conservation of the rights of Mother Earth;
- (f) respect, protect, conserve and where necessary, restore the integrity, of the vital ecological cycles, processes and balances of Mother Earth;
- (g) guarantee that the damages caused by human violations of the inherent rights recognized in this Declaration are rectified and that those responsible are held accountable for restoring the integrity and health of Mother Earth;
- (h) empower human beings and institutions to defend the rights of Mother Earth and of all beings;
- (i) establish precautionary and restrictive measures to prevent human activities from causing species extinction, the destruction of ecosystems or the disruption of ecological cycles;
- (j) guarantee peace and eliminate nuclear, chemical and biological weapons;
- (k) promote and support practices of respect for Mother Earth and all beings, in accordance with their own cultures, traditions and customs;
- (l) promote economic systems that are in harmony with Mother Earth and in accordance with the rights recognized in this Declaration.

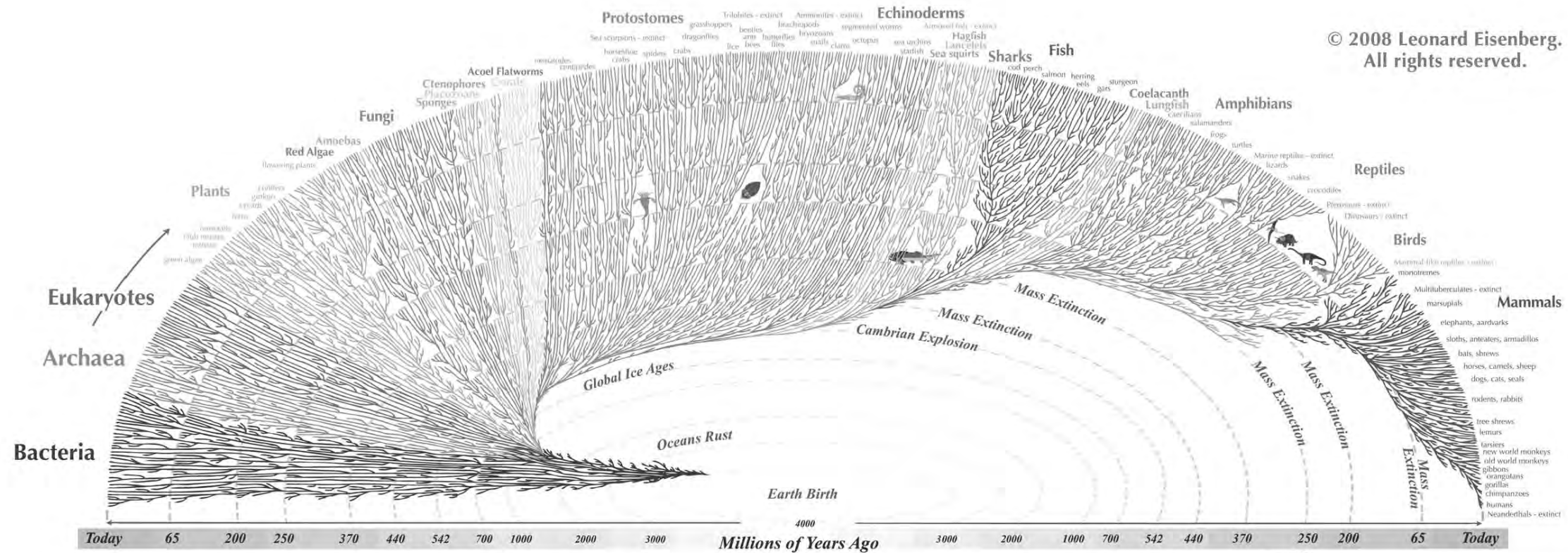
Article 4. Definitions

- (1) The term “being” includes ecosystems, natural communities, species and all other natural entities which exist as part of Mother Earth.
- (2) Nothing in this Declaration restricts the recognition of other inherent rights of all beings or specified beings.

Appendix II – Thomas Berry's 10 Precepts in *Resurgence 2002*

1. Rights originate where existence originates. That which determines existence determines rights.
2. Since it has no further context of existence in the phenomenal order, the universe is self-referent in its being and self-normative in its activities. It is also the primary referent in the being and activities of all derivative modes of being.
3. The universe is a communion of subjects, not a collection of objects. As subjects, the component members of the universe are capable of having rights.
4. The natural world on the planet Earth gets its rights from the same source that humans get their rights, from the universe that brought them into being.
5. Every component of the Earth community has three rights: the right to be, the right to habitat, and the right to fulfil its role in the ever-renewing processes of the Earth community.
6. All rights are species specific and limited. Rivers have river rights. Birds have bird rights. Insects have insect rights. Difference in rights is qualitative, not quantitative. The rights of an insect would be of no value to a tree or a fish.
7. Human rights do not cancel out the rights of other modes of being to exist in their natural state. Human property rights are not absolute. Property rights are simply a special relationship between a particular human "owner" and a particular piece of "property" so that both might fulfill their roles in the great community of existence.
8. Since species exist only in the form of individuals, rights refer to individuals and to their natural groupings of individuals into flocks, herds, packs, not simply in a general way to species.
9. These rights as presented here are based upon the intrinsic relations that the various components of Earth have to each other. The planet Earth is a single community bound together with interdependent relationships. No living being nourishes itself. Each component of the Earth community is immediately dependent on every other member of the community for the nourishment and assistance it needs for its own survival. This mutual nourishment, which includes the predator-prey relationships, is integral with the role that each component of the Earth has within the comprehensive community of existence.
10. In a special manner humans have not only a need for but a right of access to the natural world to provide not only the physical need of humans but also the wonder needed by human intelligence, the beauty needed by human imagination, and the intimacy needed by human emotions for fulfilment.

Appendix III- Tree of Evolution



All the major and many of the minor living branches of life are shown on this diagram, but only a few of those that have gone extinct are shown. Example: Dinosaurs - extinct

© 2008 Leonard Eisenberg. All rights reserved.
evogeneao.com

Appendix IV- The Universal Declaration of Rights

Preamble

We, the peoples and nations of Earth:

- considering that we are all part of Mother Earth a living community of interrelated and interdependent beings with a common destiny;
- gratefully acknowledging that Mother Earth is the source of life, nourishment and learning and provides everything we need to live well;
- recognizing that the capitalist system and all forms of depredation, exploitation, abuse and contamination have caused great destruction, degradation and disruption of Mother Earth, putting life as we know it today at risk through phenomena such as climate change;
- convinced that in an interdependent living community it is not possible to recognize the rights of only human beings without causing an imbalance within Mother Earth;
- affirming that to guarantee human rights it is necessary to recognize and defend the rights of all living beings and that there are existing cultures, practices and laws that do so;
- conscious of the urgency of taking decisive, collective action to transform structures and systems that cause climate change and other threats to Mother Earth;

proclaim this Universal Declaration Rights, and call on the General Assembly of the United Nations to adopt it, as a common standard of achievement for all peoples and all nations of the world, and to the end that every individual and institution takes responsibility for promoting through teaching, education, and consciousness raising, respect for the rights recognized in this Declaration and ensure through prompt and progressive measures and mechanisms, national and international, their universal and effective recognition and observance among all peoples and States in the world.

Article 1. Mother Earth

(1) Mother Earth is an abstraction which attempts to delineate the dynamic and emergent feedback among various different but related systems that make up the Earth.

(2) Mother Earth is a unique community of interrelated beings consisting of various different dynamic and evolving feedback systems that provide the conditions that, as a matter of fact, allow for the sustenance and reproduction of its constituent beings.

(3) Each being is not only an individual but is also defined by its relationship as an interrelated, integrated and dependent part of Mother Earth.

- (4) The inherent rights of all living beings are inalienable in that they arise from Life's Imperative.
- (5) Mother Earth and all beings are entitled to all the inherent rights recognized in this Declaration without distinction of any kind, such as may be made between organic and inorganic beings, species, origin, use to human beings, or any other status.
- (6) Just as human beings have human rights, which are appropriate to them and recognise their individuality, so all other living beings have rights which, while recognising similarities, also takes cognisance of the fact that they are individuals who are ends in themselves.
- (7) Although every individual has individual rights, when such rights conflict they should be resolved in such a way as to promote, as much as possible, the broader kingdom of ends of all living beings.
- (8) Article 1.7 should be applied to human beings interactions with nature as much as possible, and applied to nature's own interactions only when the conflicts within it represent either a trend towards the substantial diminishment of the dynamic stability of their broader systems or a devastating impact on the lives of others. This should be applied only when humans have sufficient evidence that their intervention would be of more benefit than their non-interference would.

Article 2. Inherent Rights of Mother Earth

- (1) All living beings have the following inherent rights:
 - (a) the right to life and to exist;
 - (b) the right to be respected;
 - (c) the right to regenerate their bio-capacity and to continue their vital cycles and processes;
 - (d) the right to maintain their identity and integrity as a distinct, self-regulating and interrelated being;
 - (e) the right to water as a source of life;
 - (f) the right to clean air;
 - (g) the right to integral health;
 - (h) the right to be free from contamination, pollution and toxic or radioactive waste;
 - (i) the right to not have its genetic structure modified or disrupted in a manner that threatens its integrity or vital and healthy functioning;
 - (j) the right, where possible, to fill and prompt restoration upon the violation of the rights recognised in this Declaration caused by human actions that are pursued to meet nonbasic or luxury needs.;
- (2) Each being has the right to a place on Mother Earth.
- (3) Every being has the right to wellbeing and to live free from torture or cruel treatment by human beings.

Article 3. Obligations of human beings to Mother Earth

- (1) Every human being is responsible for promoting Life's Imperative as much as possible.
- (2) Human beings, all States, and all public and private institutions must:
 - (a) act in accordance with the rights and obligations recognized in this Declaration;
 - (b) recognize and promote the full implementation and enforcement of the rights and obligations recognized in this Declaration;
 - (c) promote and participate in learning, analysis, interpretation and communication about how to live in ways that best promote Life's Imperative in accordance with this Declaration;
 - (d) ensure that, as much as is possible, the pursuit of human wellbeing contributes to the wellbeing of all living beings, now and in the future;
 - (e) establish and apply effective norms and laws for the defence, protection and conservation of the rights enshrined in this Declaration;
 - (f) respect, protect, conserve and where necessary, restore the integrity, of the vital ecological cycles, processes and balances of Mother Earth so as to promote Life's Imperative;
 - (g) guarantee that the damages caused by unnecessary human violations of the inherent rights recognized in this Declaration are rectified and that those responsible are held accountable for restoring the integrity and health of Mother Earth;
 - (h) empower human beings and institutions to defend the rights of all living beings;
 - (i) establish precautionary and restrictive measures to prevent, as much as possible, human activities from causing species extinction, the destruction of ecosystems or the disruption of ecological cycles;
 - (j) guarantee peace and eliminate nuclear, chemical and biological weapons;
 - (k) promote and support practices of respect for all living beings, in accordance with their own cultures, traditions and customs;
 - (l) promote economic systems that are in accordance with the rights recognized in this Declaration.

Reference List:

- Aristotle, 2000, *Nicomachean Ethics*. (ed.) Crisp, R. Cambridge: Cambridge University Press.
- Baker, A., 2011, "Simplicity" *The Stanford Encyclopedia of Philosophy* (Summer 2011 Edition), (Ed.) Zalta, E.N. URL = <<http://plato.stanford.edu/archives/sum2011/entries/simplicity/>>.
- Balibar, E., 1994, "What is the Politics of the Rights of Man", in *Masses, Classes and Ideas*. New York: Routledge. pp. 205-226
- Bassey, N., 2011, "It is Not Too Late for a New Path for Mother Earth" in *The Rights of Nature: The Case for a Universal Declaration of the Rights of Mother Earth*. San Francisco: Global Exchange pp. 105-111
- Benson, J., 2001, *Environmental Ethics: An Introduction with Readings*. New York: Routledge Press.
- Bentham, J., 1988, *A Fragment of Government*. (eds.) Burns, J.H., & Hart, H.L.A. Cambridge: Cambridge University Press
- Berry, T., 1988, *The Dream of the Earth*. California: Sierra Club Books
- ____ 1991, *The Ecozoic Era*. Excerpt from 11th Annual E.F. Schumacer Lectures (ed.) H. Hanum. Massachusetts: Great Barrington
- ____ 1999., *The Great Work*. New York: Bell Tower
- ____ 2002, "Rights of the Earth: Recognising the Rights of All Living Things" in *Resurgence* (214) Sep/Oct. pp 28-29.
- ____ 2003, "The Mystique of the Earth" in *Cacadeus* Vol. 59 pp 1-7
- ____ 2006a, "Interview with Caroline Webb" retrieved online from <http://www.caroline-webb.com/Movies/ThomasBerry_Feb2006_web.mov> (2011-04-26)
- ____ 2006b, *Evening Thoughts: Reflecting on Earth as Sacred Community* (ed.) M.E. Tucker. Sierra Club Books: San Francisco

- ____ 2011, "Rights of the Earth: We Need a New Legal Framework Which Recognises the Rights of All Living Beings" in *Exploring Wild Law: The Philosophy of Earth Jurisprudence* (ed.) Peter Burdon. Adelaide: Wakefield Press pp. 227-229
- Biggs, S. & Margil, M., 2011, "A New Paradigm for Nature: Turning our Values into Law" in *The Rights of Nature: The Case for a Universal Declaration of the Rights of Mother Earth*. San Francisco: Global Exchange pp. 60-67
- biosystem. (n.d.), 2011, *The American Heritage® Stedman's Medical Dictionary*. Retrieved online from: <http://dictionary.reference.com/browse/biosystem> (2011-07-27)
- Bosselman, K., 2011, "From Reductionist Environmental Law to Sustainability Law" in *Exploring Wild Law: The Philosophy of Earth Jurisprudence* (ed.) Peter Burdon. Adelaide: Wakefield Press pp. 204-213
- Brockmann, M.E., 2011, "Climate Justice is a Cause that Touches Us All" in *The Rights of Nature: The Case for a Universal Declaration of the Rights of Mother Earth*. San Francisco: Global Exchange pp. 97-99
- Bullard, N., 2011, "Are We Ready for an Act of Intellectual Humility?" in *The Rights of Nature: The Case for a Universal Declaration of the Rights of Mother Earth*. San Francisco: Global Exchange pp. 117-118
- Bumpus, A.G., & Liverman, D.M., 2011, "Carbon Colonialism? Offsets, greenhouse gas reductions, and sustainable development" in *Global Political Ecology* (eds.) Peet, R., Robbins, P., & Watts, M.J. New York: Routledge pp. 203 -223
- Burdon, P., 2010, "The Rights of Nature Reconsidered" in *Australian Humanities Review*, Vol. 49 pp. 69-89
- ____ 2011a. "The Great Jurisprudence" in *Exploring Wild Law: The Philosophy of Earth Jurisprudence* (ed.) Peter Burdon. Adelaide: Wakefield Press pp. 59-75
- ____ 2011b, "Eco-Centric Paradigm" in *Exploring Wild Law: The Philosophy of Earth Jurisprudence* (ed.) Peter Burdon. Adelaide: Wakefield Press pp. 85-96
- ____ 2011c, "Earth Rights: The Theory" in *IUCN Academy of Environmental Law E-Journal*, Vol. 1 pp 1-12
Retrieved Online from: <http://ssrn.com/abstract=1765386> (23-04-2012)

- Callicott, J.B., 1980. "Animal Liberation: A Triangular Affair" in *Environmental Ethics*, Vol. 2 pp. 311-328.
- Campbell, K., 2009 "Legal Rights" in *The Stanford Encyclopedia of Philosophy (Spring 2009 Edition)*, (ed.) Zalta, E.N. , URL = <<http://plato.stanford.edu/archives/spr2009/entries/legal-rights/>>
- Cashford, J., 2011. "Dedication to Thomas Berry" in *Exploring Wild Law: The Philosophy of Earth Jurisprudence* (ed.) Peter Burdon. Adelaide: Wakefield Press pp. 3-11
- Chapin, F.S., 2011, "The Planet is Shouting but Nobody Listens" in *Moral Ground: Ethical Action for a Planet in Peril* (eds.) Moore, K.D. & Nelson, M.P., San Antonio: Trinity University Press pp. 75-78
- Coker, A. & Richards, C., 1992, *Valuing the Environment*. London: Belvan Press.
- Cullinan, C., 2002 *Wild Law*. California: New World Library
- ____ 2008 "If Nature Had Rights" in *Orion Magazine*. Jan/Feb Issue Retrieved Online from: <<http://www.orionmagazine.org/index.php/articles/article/500>> (2011-04-27)
- ____ 2011a *Wild Law* (2nd Ed.) Vermont: Chelsea Green Publishing
- ____ 2011b "A History of Wild Law" in *Exploring Wild Law: The Philosophy of Earth Jurisprudence* (ed.) Peter Burdon. Adelaide: Wakefield Press pp. 13-23
- ____ 2011c "The Legal Case for the Universal Declaration of the Rights of Mother Earth" in *The Rights of Nature: The Case for a Universal Declaration of the Rights of Mother Earth*. San Francisco: Global Exchange pp. 88-96
- Dalton, A.M., 1999, *A Theology for the Earth: The Contributions of Thomas Berry and Bernard Lonergan*. Ottawa: University of Ottawa Press
- Damtie, E., 2011, "Anthropocentric and Ecocentric Version of the Ethiopian Legal Regime" in *Exploring Wild Law: The Philosophy of Earth Jurisprudence* (ed.) Peter Burdon. Adelaide: Wakefield Press pp. 159-172
- Dawkins, R., 2006, *The God Delusion*. London: Bantam Press

- De Lange, D., 2012, "ANC Mulls Secrecy Bill Changes" in *IOL News*. Retrieved online from:
<http://www.iol.co.za/news/special-features/anc-mulls-secrecy-bill-changes-1.1294315>
 (26/05/2012)
- De Weese, G., 2011, "Foundations: Metaethics" in *Environmental Ethics [Audio]*. Biola University: iTunes University
- Dewey, J., 1908, "Happiness and Conduct: The Good and Desire" in *John Dewey: The Middle Works, 1899-1924* (ed.) J.A. Boyston. Carbondale: Southern Illinois Press. pp.241-260
- _____, 1923, "Valuing, Liking, and Thought" in *Journal of Philosophy*. Vol. 20 pp. 617-22
- Dictionary.com, 2011 "ecosphere," in *Dictionary.com Unabridged*. Source location: Random House,
 Retrieved Online from: <<http://dictionary.reference.com/browse/ecosphere>> (03-01-2012)
- Donald, M., 1991, *Origins of the Modern Mind: Three Stages in the Evolution of Culture and Cognition*. Harvard: Harvard University Press
- _____, 1995, "The Neurobiology of Human Consciousness: An Evolutionary Approach" in *Neuropsychologia*. Vol.33 (9) pp. 1087-1102
- Dworkin, R., 1977, *Taking Rights Seriously*. Cambridge: Harvard University Press
- Edwards, S. "UN Resolution Looks to Give 'Mother Earth' Same Rights as Humans" retrieved online from the *National Post*:
<http://www.nationalpost.com/news/world/resolution+looks+give+Mother+Earth+same+rights+humans/4597992/story.html> (25-04-2011)
- Ehrenfeld, D., 1978. *The Arrogance of Humanism*. New York: Galaxy Books
- Engel, J.R., & Mackey, B., 2011, "The Earth Charter, Covenants, and Earth Jurisprudence" in *Exploring Wild Law: The Philosophy of Earth Jurisprudence* (ed.) Peter Burdon. Adelaide: Wakefield Press pp.313-323

- Emel, J., & Neo, H., 2011 "Killing for Profit: Global Livestock Industries and their Socio-Ecological Implications" in *Global Political Ecology* (eds.) Peet, R., Robbins, P., & Watts, M.J. New York: Routledge pp.67-84
- Fagan, A., 2005, "Human Rights" in *Internet Encyclopedia of Philosophy*. Retrieved online from: <http://www.iep.utm.edu/hum-rts/> (09/06/2012).
- Falcon, Andrea, "Aristotle on Causality", *The Stanford Encyclopedia of Philosophy (Spring 2011 Edition)*, (ed.) Zalta, E.N., URL = <http://plato.stanford.edu/archives/spr2011/entries/aristotle-causality/>.
- Feinberg, J., 1970, "The Nature and Value of Rights" in *The Journal of Value Inquiry*. Vol. 4 (4) pp. 243-260
- _____, 1974, "The Rights of Animals and Future Generations" in *Philosophy and Environmental Crisis* (ed.) Blackstone, W.T. Athens: University of Georgia Press. pp. 43 – 68
- _____, 1980, *Rights, Justice and the Bounds of Liberty*. New Jersey: Princeton
- Filgueira, B., & Mason, I., 2011, "Wild Law: Is There Any Evidence of Earth Jurisprudence in Existing Law?" in *Exploring Wild Law: The Philosophy of Earth Jurisprudence* (ed.) Peter Burdon. Adelaide: Wakefield Press pp. 192-203
- Foot, P., 2001, *Natural Goodness*. Oxford: Clarendon Press
- gaia hypothesis. (n.d.), 2011, *Collins English Dictionary - Complete & Unabridged 10th Edition*. Retrieved online from: [http://dictionary.reference.com/browse/gaia hypothesis](http://dictionary.reference.com/browse/gaia+hypothesis) (06-08-2011)
- Galeano, E., 2011, "We Must Stop Playing Deaf to Nature" in *The Rights of Nature: The Case for a Universal Declaration of the Rights of Mother Earth*. San Francisco: Global Exchange pp. 68-70
- Gardiner, S., 2011, *A Perfect Moral Storm: The Ethical Tragedy of Climate Change*. New York: Oxford University Press
- Gewirth, A., 1978, "The Basis and Content of Human Rights" in *Georgia Law Review*. Vol. 13. pp. 1143 – 1170.

- Ghertner, D.A., 2011, "Green Evictions: Environmental Discourses of a 'slum-free' Delhi" in *Global Political Ecology* (eds.) Peet, R., Robbins, P., & Watts, M.J. New York: Routledge pp. 145-165
- Global Alliance for the Rights of Nature, 2011, *Newsbrief*. (July 2011) sent via email.
- Goldsmith, E., 1998, *The Way: An Ecological Worldview*. Athens: University of Georgia Press
- Goodpaster, K., 1978, "On Being Morally Considerable" in *Journal of Philosophy*, Vol. 75 (6) pp. 308-325
- Graham, N., 2011, "Owning the Earth" in in *Exploring Wild Law: The Philosophy of Earth Jurisprudence* (ed.) Peter Burdon. Adelaide: Wakefield Press pp.259-269
- Greene, H.F., 2011, "Cosmology and Earth Jurisprudence" in *Exploring Wild Law: The Philosophy of Earth Jurisprudence* (ed.) Peter Burdon. Adelaide: Wakefield Press pp. 126-136
- Greene, N., 2011, "The First Successful Case of the Rights of Nature" on *Global Alliance of Nature* Website., retrieved 2012-01-25 from: <<http://therightsofnature.org/first-ron-case-ecuador/>>
- Greene, N. & Twist, B., 2011, "Global Alliance Makes the Case for a Universal Declaration of the Rights of Mother Earth" in *The Rights of Nature: The Case for a Universal Declaration of the Rights of Mother Earth*. San Francisco: Global Exchange pp. 112-114
- Herring, R.J., 2001, "Authority and Scale in Political Ecology: Some Cautions on Localism" in *Biological Diversity: Balancing Interests Through Adaptive Collaborative Management* (eds.) Buck, E.L. et al. Florida: CRC Press pp. 187-204
- Hohfeld, W., 1919, *Fundamental Legal Conceptions*, (ed.) W. Cook. New Haven: Yale University Press
- Hosken, L., 2011, "Reflections on an Inter-cultural journey into Earth Jurisprudence" in *Exploring Wild Law: The Philosophy of Earth Jurisprudence* (ed.) Peter Burdon. Adelaide: Wakefield Press pp. 24-34
- Hostettler, N., 2000, "Did Wittgenstein really understand Roy Bhaskar" in *Journal of Critical Realism*. Alethia Vol 3 (1) pp. 22-28
- Hume, D., 2000, *A Treatise of Human Nature*. (ed.) Norton, M.J. Oxford: Oxford University Press
- Hurka, T., 1998, "Two Kinds of Organic Unity" in *The Journal of Ethics* Vol. 2 pp. 299-320

Huxley, A., 1959, *Brave New World Revisited*, London: Random House

Intergovernmental Panel on Climate Change, 2007, *Climate Change 2007: Synthesis Report*. ed.

Abdelkader Allali et al. Retrieved Online from: <http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4_syr.pdf> (10/10/2011)

Jamail, D., 2012, "Gulf seafood deformities alarm scientists" in *Aljazeera Online*. Retrieved online from: <<http://www.aljazeera.com/indepth/features/2012/04/201241682318260912.html>> (24-04-2012)

Johnson, E.L., 2011, "Elusive Lines and Environmental Rules" in *Exploring Wild Law: The Philosophy of Earth Jurisprudence* (ed.) Peter Burdon. Adelaide: Wakefield Press pp. 146-157

Johnson, R., 2010, "Kant's Moral Philosophy" in *The Stanford Encyclopedia of Philosophy (Summer 2010 Edition)*, (ed.) Zalta, E.N. URL = <<http://plato.stanford.edu/archives/sum2010/entries/kant-moral/>>

Kant, I., [1785] 1993, *Grounding for the Metaphysics of Morals*. (3rd Ed) translated by James W. Ellington. Cambridge: Hackett Publishing Company

Kant, I., 1998, *Groundwork for the Metaphysics of Morals*. Translated and edited by Mary Gregor. New York: Cambridge University Press

Kant, I., 2005, "Groundwork for the Metaphysics of Moral" in *Reason and Responsibility* (eds.) Joel Feinberg & Russ Shafer-Landua. Belmont: Thomson-Wadworth. pp. 579-594

Kaye, S.M., 2008, *Medieval Philosophy: A Beginner's Guide*. Oxford: Oneworld.

Keim, B., 2011, "Nature to Get Legal Rights in Bolivia" in *Wired Science*, retrieved online from: <<http://www.wired.com/wiredscience/2011/04/legal-rights-nature-bolivia/>> (17/03/2012)

Kellert, S.R., 2011, "For the Love and Beauty of Nature" in *Moral Ground: Ethical Action for a Planet in Peril* (eds.) Moore, K.D. & Nelson, M.P., San Antonio: Trinity University Press pp. 373-378

Koons, J., 2011, "Key Principles to Transform Law for the Health of the Planet" in *Exploring Wild Law: The Philosophy of Earth Jurisprudence* (ed.) Peter Burdon. Adelaide: Wakefield Press pp. 45-58

Korsgaard, C.M., 1983, "Two Distinctions in Goodness" in *Philosophical Review* Vol. 92 (2) pp. 169-195

_____, 2012, "A Kantian Case for Animal Rights" in *Phil Papers* (Date of Publication Unknown)

Retrieved Online from:

<<http://philpapers.org/s/a%20kantian%20case%20for%20animal%20rights>> (06/09/2012)

Krech, S., 2011, "Ornithophilia" in *Moral Ground: Ethical Action for a Planet in Peril* (eds.) Moore, K.D. &

Nelson, M.P., San Antonio: Trinity University Press pp. 108-114

Lenferna, G.A., 2010, *Intelligent Design: Finding its Rightful Place in Public Education*. Conference Paper

Retrieval Online From: <[http://rhodes-](http://rhodes-za.academia.edu/AlexLenferna/Papers/289289/Intelligent_Design_Finding_its_Rightful_Place_in_Public_Education)

[za.academia.edu/AlexLenferna/Papers/289289/Intelligent_Design_Finding_its_Rightful_Place_in_Public_Education](http://rhodes-za.academia.edu/AlexLenferna/Papers/289289/Intelligent_Design_Finding_its_Rightful_Place_in_Public_Education)>

Leopold, A. 1939, "A Biotic View of Land" in *Journal of Forestry* (37) pp.727-730

_____ 1966, *A Sand County Almanac: with Essays on Conservation from Round River*. New York:

Ballantine Books

Lewis, C.I., 1947, *An Analysis of Knowledge and Valuation*. La Salle Ill: Open Court Publishing Company

Livingstone, J., 2004, *Listening to the Land: Conversation About Nature, Culture and Eros*. (ed.) Jansen, D.

Vermont: Chelsea

Lovelock, J.E., 1979, *Gaia: A New Look at Life on Earth*. Oxford: Oxford University Press

_____ 2009, *The Vanishing Face of Gaia*. New York: Basic Books

Lovelock, J.E., & Watson, A.J., 1983, "Biological homeostasis of the global environment: the parable of

Daisyworld" in *Tellus B*. Vol. 35 (4) pp. 286 - 289

Lyon, P., 2011, "Extracting Norms from Nature: A Biogenic Approach to Nature" in *Exploring Wild Law:*

The Philosophy of Earth Jurisprudence (ed.) Peter Burdon. Adelaide: Wakefield Press pp. 137-145

The Macquarie Dictionary: Revised Edition, 1985, Macquarie Library: London

- Margil, M., 2011, "Stories from the Environmental Frontier" in in *Exploring Wild Law: The Philosophy of Earth Jurisprudence* (ed.) Peter Burdon. Adelaide: Wakefield Press pp.249-257
- Marks, S., 2010, "Comment on a paper by Joseph Raz, 'Human Rights in the New World Order'" in *International State Crime Initiative: Working Paper Series*. (eds.) Green, P., & Ward, T. Retrieved online from: <http://www.statecrime.org/WorkingPapers/2_2010_Marks.pdf> (23/04/2012)
- Martin, J., 2010, "At the Intersection of Behavioural Economics and Philosophy: Mutually Informed Disciplines" in the *South African Journal of Philosophy*. Vol. 29 (2) pp. 95-103
- Mason, I., 2011, "One in All: Principles and Characteristics of Earth Jurisprudence" in *Exploring Wild Law: The Philosophy of Earth Jurisprudence* (ed.) Peter Burdon. Adelaide: Wakefield Press pp. 35-44
- McAleer, S., 2005, "Kant and Aristotle on the Difficulty of Moral Knowledge: Lessons from the *Doctrine of Virtue*" in *Studies in the History of Ethics*. Retrieved online from: <http://www.historyofethics.org/062005/062005McAleer.shtml> (23/04/2012)
- McCarthy, E. M., 2012, "Species: Resolving the Problem" in *Unpublished Manuscript*. Retrieved online: <http://www.macroevolution.net/species-classification.html#.T8DtStWP-Sr> (26/05/2012)
- McInerny, R., 2004, *Aquinas*. Cambridge: Polity Press
- McKibben, B., 2010, *Eearth: Making Life on a Tough New Planet*. New York: Times Books
- Mill, J.S., 1861, "Utilitarianism" in J. Robson (ed.) 1969, *The Collected Works of John Stuart Mill*, Vol 10, Toronto: Toronto University Press
- Munson, M. 2010, *Legal Expression of Indigenous People's World View: An Analysis of the Proposed Universal Declaration on the Rights of Mother Earth*. Retrieved online from: <<http://www.earthjurisprudence.org/documents/Munson%20Policy%20Matters%20Article%20pg%2066-74.pdf>> (17/02/2011)
- Naess, A., 1973, "The Shallow and the Deep Ecology Movement: A Summary" in *Inquiry* Vol. 16 (1) pp. 95-100

Nagel, T., 1979, *Mortal Questions*. Cambridge: Cambridge University Press

Nash, R.F., 1989, *The Rights of Nature: A History of Environmental Ethics*. University of Wisconsin Press: Wisconsin.

_____. 2011, "Island Civilisation: A Vision for Human Occupancy of Earth in the Fourth Millenium" in *Exploring Wild Law: The Philosophy of Earth Jurisprudence* (ed.) Peter Burdon. Adelaide: Wakefield Press pp. 339-47

Nickel, J., 2010. "Human Rights" in *The Stanford Encyclopedia of Philosophy (Fall 2010 Edition)*, (ed.) Zalta, E.N., URL = <<http://plato.stanford.edu/archives/fall2010/entries/rights-human/>>

Nixon, R., 2011, *Slow Violence and the Environmentalism of the Poor*. Cambridge: Harvard University Press

Norton, B., 1989, "The Cultural Approach to Conservation Biology" in *Environmental Ethics: An Introduction with Readings*. (ed.) Benson, J. Routledge: London, pp. 143-152

_____. 1991, *Toward Unity Among Environmentalists*. Oxford University Press: New York

_____. 1992, "Sustainability, Human Welfare, and Ecosystem Health" in *Environmental Values*. Vol. 1 pp.97-111

_____. 1992, "Scale and Biodiversity Policy: A Hierarchical Approach" in *Ambio*. Vol. 21 (3) pp. 244-249

_____. 1997, "Convergence and Contextualism: Some Clarifications and a Reply to Steverson" in *Environmental Ethics* (19) 1 pp. 87-100

Nussbaum, M., 1997, "Capabilities and Human Rights" in *Fordham Law Review*. Vol. 66 (2) pp. 273 – 300

O'Connor, T., & Wong, H.Y., 2009, "Emergent Properties" in *The Stanford Encyclopedia of Philosophy (Spring 2009 Edition)*, (ed.) Zalta, E.N., URL = <<http://plato.stanford.edu/archives/spr2009/entries/properties-emergent/>>

O'Keefe, J., 2011, *Major Rivers of the World*. A Swedish International Development Agency International Teaching Partnership Lecture: Rhodes University (05/10/2011)

- Peet, R., Robbins, P., & Watts, M.J., 2011, *Global Political Ecology*. New York: Routledge
- Peluso, N.L., & Vandergeest, P., 2011, "Taking the Jungle out of the Forest: Counter-Insurgency and the Making of National Natures" in *Global Political Ecology* (eds.) Peet, R., Robbins, P., & Watts, M.J. New York: Routledge pp. 254-284
- People's Conference on Climate Change and Mother Earth Rights, 2010, *Declaration of the Rights of Mother Earth*. Retrieved online from: <<http://motherearthrights.org/2010/04/27/world-peoples-conference-on-climate-change-and-the-rights-of-mother-earth>> (09-11-2010)
- Pile, B., 2011, "Environmentalism was an Ugly Experiment" in *Spiked Review of Books*. Retrieved Online from: <http://www.spiked-online.com/index.php/site/reviewofbooks_preview/10914> (25/07/2011)
- Pope, S.J., 2012, *Informal Discussion*. Rhodes University, Philosophy Department on 18/03/2012
- Popper, K. R., 1992, "Against Big Words" in *In Search of a Better World: Lectures and Essays from Thirty Years* (ed.) K.R. Popper. London: Routledge pp. 82-95
- Price, B., 2011, "Local Work" in *Rights of Nature Activist Strategy Summit Summary* (ed.) Global Exchange. Retrieved online from: <<http://globaljusticeecology.org/files/SUMMARY%20RON%20Summit%20SF%202011.pdf>> (20/09/2011)
- Quammen, D., 2011, "Imagining Darwin's Ethics" in *Moral Ground: Ethical Action for a Planet in Peril* (eds.) Moore, K.D. & Nelson, M.P. San Antonio: Trinity University Press pp. 119-122
- rationality. (n.d.), 2012, *Collins English Dictionary - Complete & Unabridged 10th Edition*. Retrieved Online from: <<http://dictionary.reference.com/browse/rationality>> (04-02-2012)
- Rawls, J., 1999, *A Theory of Justice*. Oxford: Oxford University Press
- Raz, J., 1986, *The Morality of Freedom*. Oxford: Oxford of University Press
- _____, 2009, "Human Rights in the New World Order" in *Columbia Public Law & Legal Theory Working Papers*. Retrieved Online from: <http://lsr.nellco.org/columbia_pllt/9175> (08-06-2011)

Regan, T., 1983, *The Case for Animal Rights*. Berkeley: University of California Press

reason. (n.d.), 2012, *Collins English Dictionary - Complete & Unabridged 10th Edition*. Retrieved Online from: <<http://dictionary.reference.com/browse/reason>> (04-02-2012)

Rivers, L., 2011, "Nature in Court: Conflict Resolution in the Ecozoic Age" in *Exploring Wild Law: The Philosophy of Earth Jurisprudence* (ed.) Peter Burdon. Adelaide: Wakefield Press pp.214-225

Rolston, H., 1993, "Rights and Responsibilities on the Home Planet" in *Yale Journal of International Law*. (18) pp. 425-439

Sagoff, M., 1984, "Animal Liberation and Environmental Ethics: Bad Marriage, Quick Divorce" in *Osgood Hall Law Journal* Vol. 22 p 297-307

_____, 1988, *The Economy of the Earth*. New York: Cambridge University Press

Sen, A., 2000, "Consequential Evaluation and Practical Reason" *Journal of Philosophy* (97) pp. 477 - 502

_____ 2005. "Human Rights and Capabilities" in *Journal of Human Development* Vol. 6 No. 2 pp. 151-166

Soanes, C., & Stevenson, A., (eds.) 2004, *Concise Oxford English Dictionary 11th Edition*. Oxford: Oxford University Press

Serres, M., 1995. *The Natural Contract*. Ann Arbor: University of Michigan Press

Schweitzer, A., 1923, *Civilization and Ethics*. London: A&C

Shiva, V., 2005, *Earth Democracy: Justice Sustainability, and Peace*. Cambridge: South End Press

Singer, P., 1975, *Animal Liberation*. New York: Avon Books

_____ 1981, *The Expanding Circle: Ethics and Sociobiology*. Oxford: Clarendon Press

Sterba, J. P., 2001, *Three Challenges to Ethics: Environmentalism, Feminism, and Multiculturalism*. Oxford: Oxford University Press

Steverson, B.K., 1995. "Contextualism and Norton's Convergence Hypothesis" in *Environmental Ethics*. Vol 17 (2) pp. 135-150

Stone, C.D., 1972, "Should Trees have Standing?: Toward Legal Rights for Natural Objects" in *Southern California Law Review* Vol. 45, pp. 450-501

Stone, C.D., 1996, *Should Trees Have Standing and Other Essays on Law, Morals and the Environment*. New York: Oceana Publications

Stutzen, G., 2002, "Nature's Rights" in *Resurgence Magazine*. no. 210 January-February. pp. 24-6

Swimme, B., 1990. *Canticle to the Cosmos (DVD)*. Tides Centre

Swimme, B., & Berry, T., 1992, *The Universe Story*. New York: Harper Collins

Tavares, P. 2011, *Common Rights*. Retrieved Online from: <<http://www.mara-stream.org/think-tank/paulo-tavares-common-rights/>> (09-11-2011).

Taylor, B., 2011, "Earth Religion and Radical Religious Reformation" in *Moral Ground: Ethical Action for a Planet in Peril* (eds.) Moore, K.D. & Nelson, M.P. San Antonio: Trinity University Press pp. 379-386

Thiong'o, N., 2011, "Earth Jurisprudence in the African Context" in *Exploring Wild Law: The Philosophy of Earth Jurisprudence* (ed.) Peter Burdon. Adelaide: Wakefield Press pp. 173-181

Universal Declaration of the Rights of Mother Earth, 2010, Retrieved from *Climate and Capitalism*.

Retrieved online from: <<http://climateandcapitalism.com/2010/04/27/universal-declaration-of-the-rights-of-mother-earth/>> (20/04/2012)

Wainipee, W., et al. "The effect of crude oil on arsenate adsorption on goethite" in *Water Research* (44) 9 pp. 5673-5683

Watson, R.A., 1983, "A Critique of Anti-Anthropocentric Biocentrism," in *Environmental Ethics* Vol. 5 (Fall) pp. 245-56.

Wenar, L., "Rights", *The Stanford Encyclopedia of Philosophy (Fall 2010 Edition)*, (ed.) Zalta, E.N. URL = <http://plato.stanford.edu/archives/fall2010/entries/rights/>

Wenz, P., 2001, *Environmental Ethics Today*. Oxford University Press: New York

Westra, L., 2011, "Governance for Integrity? A Distant but Necessary Goal" in *Exploring Wild Law: The Philosophy of Earth Jurisprudence* (ed.) Peter Burdon. Adelaide: Wakefield Press pp.324-335

Whitaker, R. H., 1970, *Communities and Ecosystems*. Macmillan Press: New York

White, L., 1978, "The Future of Compassion" in *The Ecumenical Review* Vol. 30 (April) pp. 106-108

Wilson, E.O., 1984, *Biophilia.*, Cambridge: Harvard University Press

Wilson, E.O. 1994, *The Diversity of Life*. Cambridge: Harvard University Press

Wise, S.M., 2002, "Rattling the Cage Defended" in *Boston College Law Review*. Vol. 43 (3) pp. 623-696

Wood, A. W., 1998, "Kant on Duties Regarding Nonrational Nature" in *Proceedings of the Aristotelian Society Supplement*. Vol. 72. pp. 1 - 30

World Commission on the Ethics of Scientific Knowledge and Technology, 2005, *The Precautionary Principle*. Paris: United Nations Educational, Scientific and Cultural Organisation

Zimmerman, M.J., 2010, "Intrinsic vs. Extrinsic Value" in *The Stanford Encyclopedia of Philosophy (Winter 2010 Edition)* (ed.) Zalta, E.N. Retrieved Online: <http://plato.stanford.edu/archives/win2010/entries/value-intrinsic-extrinsic/> (17/06/2012)

INDEX: