

The Case for Biotic Rights

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I. INTRODUCTION

Few subjects have generated more moral confusion, and sometimes nonsense, than that of the "rights of nature." Confusion exists in the claims of proponents and opponents, in theological and philosophical ethics, and in the arguments of animal rights advocates and unrepentant anthropocentrists. Significant contributions to the rights debate have, of course, come from all points on the spectrum. However, misconceptions and absurdities have prejudiced the debate. Each contributor to the debate has probably contributed his fair share to the confusion. Even so, the question of the rights of nature cannot be summarily dismissed as the morally irrelevant ponderings of persons beyond the fringe of intellectual respectability. This typical dismissal is a cheap caricature and an *ad hominem*, not a rational refutation. In fact, something profound is happening in this effort at ethical extension. The rights of nature is the most interesting issue on the frontiers of ethics because it points to the fundamental importance of redefining responsible human relationships with the rest of nature, of which we humans are parts and products.¹ Fortunately, the rights of nature has become a respectable subject for debate in some philosophical, environmental and, most recently, theological circles.²

The moral issues in this debate are mind-numbing in their complexity. At present, the main questions seem to be the following. Are moral concepts of

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1. A full exposition and documentation of the position expressed in this paper can be found in JAMES A. NASH, *LOVING NATURE: ECOLOGICAL INTEGRITY AND CHRISTIAN RESPONSIBILITY*, 162-91 (1991). The author is grateful to Abingdon Press for permission to use revised portions of that book in this paper.

2. For a history of this debate, see RODERICK NASH, *THE RIGHTS OF NATURE: A HISTORY OF ENVIRONMENTAL ETHICS* (1989).

justice, in addition to concepts of benevolence, applicable to human interactions with nonhuman lifeforms or ecosystems? If so, who or what has rights that humanity must honor, and what are these rights? Can whales or dolphins have moral standing under the rubric of rights? What about voles, spotted owls, snail darters, frogs, beetles, redwoods, lilies of the field, bacteria, rocks and rills, or mountains and rivers? Can abiotic elements have rights? Where does one draw the line on rights, if at all? Is the line properly drawn at rationality, sentience, consciousness, or conation? Do only individual lives have rights or can species also have rights? Does it make ethical sense to talk about a holistic ethic of the rights of nature *per se*? Do all species and their members have equal moral standing or significance (the position of biotic egalitarianism) or is some graded valuation necessary? What do biotic rights imply for human ecological responsibilities? What limits must be imposed on human rights? Assuming that biotic rights cannot be absolute, what are the moral conditions for overriding those rights? Is a biotic rights perspective practical or hopelessly impractical? In view of the tragic condition of the biosphere, in which ecological predation and exploitation are necessary conditions of existence, and in which humans must kill and use other life forms and destroy their habitats in order to satisfy our basic needs and exercise our peculiar powers of cultural creativity, how can we balance the intrinsic and instrumental values of nonhuman life? What should be included in a bill of biotic rights?

Obviously, this paper cannot hope to answer any of these questions adequately in the brief space available. Instead, the purpose of this paper is to offer a rudimentary interpretation and defense of the concept of *prima facie* biotic rights, with the hope of reducing the prevailing confusion. Biotic rights are not synonymous with the rights of nature. The latter is a generic metaphor that covers human responsibilities for the whole of the biophysical world. It is defensible as a rhetorical convenience but probably not as an ethical concept. Biotic rights, in turn, are only a part of what is signified by this metaphor. They are, however, a key and ethically defensible part.

Although a biotic rights ethic is a vital part of a comprehensive ecological ethic, a biotic rights ethic is insufficient by itself. A fully adequate ecological ethic must respect both life forms (individuals and species) and collective connections (the common good of ecosystems and the ecosphere, which provide the essential conditions for the realization of the rights of all species and their members, including humans). The ecological ethic must reject both the totalitarian and often misanthropic implications of ethical interpretations which value only ecological wholes.³ It must also reject a nonecological

3. On environmental fascism, see TOM REGAN, *THE CASE FOR ANIMAL RIGHTS* 361-63 (1983). However, Regan seems to support a nonecological atomism at times.

atomism which respects only individuals or species in isolation from the ecological common good. The individualistic and holistic poles — a so-called rights ethic and a land ethic⁴ — are not alternative systems, but complementary parts of one ecological ethic. They must be held in tandem, even though this paper will deal with only one side of that tandem.

Many people view the concept of biotic rights as bizarre. However, biotic rights are not so alien to human behavior as some assume. As Joel Feinberg suggests, we humans functionally recognize the rights of other creatures every time we treat them caringly and avoid treating them cruelly for their own sakes.⁵ A student who thought biotic rights was an odd idea was asked if she would strangle a baby robin in the nest, assuming she was not exceptionally hungry. She emphatically replied, "No, of course not!" When asked why, she replied, "Because it has a right to be let alone," and added, as an enlightened afterthought, "Oops!" This vignette might prove only that rights-language is habitual in Western cultures, but it also might illustrate that most people recognize to some degree the moral claims on humans that inhere in humanity's relations with nonhuman life.

II. THE NECESSITY OF THE CONCEPT OF RIGHTS

Contemporary rights talk is garbled in moral controversy. No aspect of even human rights is sacrosanct or settled. The very concept of rights is rejected by many utilitarians and some teleologists. For instance, the virtue-oriented Alasdair MacIntyre dismisses human rights as a fiction, equivalent to "belief in witches and unicorns."⁶ Questions abound and conceptualizations are extremely difficult. To make matters worse, some critics of rights are still responding to seventeenth and eighteenth century individualistic and libertarian conceptions of rights, which many contemporary advocates of human rights have long since discredited and abandoned.⁷ Nevertheless, the category of rights seems to be an invaluable ethical category, in the absence of which inadequate substitutes or functional equivalents are usually created. Rights are

4. See ALDO LEOPOLD, *A SAND COUNTY ALMANAC* 217-41 (1966). For an excellent contemporary exposition of the land ethic, see J. BAIRD CALLICOTT, *IN DEFENSE OF THE LAND ETHIC* 223-66 (1989).

5. JOEL FEINBERG, *RIGHTS, JUSTICE AND THE BOUNDS OF LIBERTY* 166 (1980). Feinberg recognizes biotic rights for individual animals (certainly for mammals, though he is unclear about other species), but not for plants or whole species. The latter allegedly lack the interests on which rights can be meaningfully predicated. He grounds these rights in conation, but he seems to change the meaning of conation from the inclusion to the exclusion of unconscious interests or goods as his argument proceeds. In fact, he seems to conclude that sentience is the key criterion. See *id.* at 159-206. This paper argues, instead, that all organisms, conscious or unconscious, are conative and thus have the interests on which rights and responsibilities can be grounded.

6. ALASDAIR MACINTYRE, *AFTER VIRTUE* 65-67 (1981).

7. For a valuable contemporary interpretation of rights and the rights debate, see MICHAEL FREEDEN, *RIGHTS* (1991).

not only applicable to human relationships, but when appropriately revised, they can be extended to human relationships with the rest of the biota. Thus, from a perspective that recognizes and demands respect for the intrinsic value of all organisms, this paper will affirm biotic rights.

This affirmation assumes that distributive justice — not only benevolence — is an essential means of ordering relationships and defining responsibilities in both social and ecological contexts. Under the mandate of giving every being its fair share in the distribution of goods, justice is generally and properly associated with moral rights. Rights are essential instruments or standards of justice. Rights are a way of conceptualizing the basic demands of distributive justice and of giving substance to its abstract and formal principles about who should get what and why. Rights are specifications of the content of what is due and what is to be distributed in both social and ecological contexts. Justice, then, is rendering to all their rights out of respect for their intrinsic value as ends and goods in themselves.

III. EXTENDING RIGHTS TO OTHERKIND

It seems quite arbitrary to restrict justice and rights exclusively to interhuman relationships and to tolerate a situation in which interested parties are deprived of essential values in the distributive process on the basis of morally irrelevant factors — such as their not being human. If justice is excluded in human relationships with otherkind, it is mystifying why benevolence or any other virtuous behavior should be included. Nature, apart from human responses, knows neither justice nor benevolence. Nothing relevant hinders the formulation of standards of justice that apply to human interactions with nonhuman organisms. Such a formulation is necessary particularly because nonhumans are regularly abused by humans acting as profligate predators.

As an instrument or norm of distributive justice in an ecological context, *biotic rights can be defined as morally justified claims or demands on behalf of nonhuman organisms, either individuals or aggregates (populations and species), against all moral agents for the vital interests or imperative conditions of well-being for nonhumankind.*⁸ Though this complex definition

8. This definition clearly reflects, while it appropriately extends and revises, some contemporary interpretations and discussions of human rights. *See, e.g.*, RONALD DWORKIN, *TAKING RIGHTS SERIOUSLY* (1977); FEINBERG, *supra* note 5; FREEDEN, *supra* note 7; ALAN GEWIRTH, *HUMAN RIGHTS: ESSAYS ON JUSTIFICATION AND APPLICATIONS* (1982); DAVID HOLLENBACH, *JUSTICE, PEACE, AND HUMAN RIGHTS: AMERICAN CATHOLIC SOCIAL ETHICS IN A PLURALISTIC WORLD* (1988); HUMAN RIGHTS: NOMOS XXIII (J. Roland Pennock & John W. Chapman eds., 1981), especially the essays by Susan Moller Okin, *Liberty and Welfare: Some Issues in Human Rights Theory*, at 230-56, and J. Roland Pennock, *Rights, Natural Rights, and Human Rights — A General View*, at 1-28; JAMES W. NICKEL, *MAKING SENSE OF HUMAN RIGHTS* (1987); *THEORIES OF RIGHTS* (Jerry Waldron ed., 1984), especially the essays by Gregory Vlastos, *Justice and Equality*, at 41-76, and Jerry Waldron, *Introduction*, at 1-20.

could be exegeted at length, only five important implications need to be noted here. First, rights-demands need not be made by the aggrieved parties. That would impose an arbitrary and irrelevant requirement, and one contrary to standard legal procedures in many societies. Rights-demands can be made on behalf of nonhumankind, just as human rights claims can be processed on behalf of infants and mentally dysfunctional adults. Because nonhumans do not have the rational and moral capacities to represent themselves, they can be represented by moral counsel, like an environmental defense organization.

Second, biotic rights are held only against humans, not otherkind, because only humans are moral agents capable of practicing justice and injustice. Biotic rights define human, and only human, ecological responsibilities. Flora and fauna do not have rights and responsibilities in relation to one another; they have rights only in relation to the one creature who has the moral potential to choose between being the profligate predator and the altruistic predator.

Third, biotic rights apply to both species and individual members of species. The common tendency among rights-advocates to endorse one or the other is incoherent, for the two are interdependent. It is not enough to say that only individuals have rights, because individuals exist as temporary incarnations of a species and carriers of its genetic past and future. Equally, it is not enough to say that only species have rights, because no species exists without individuals to represent and reproduce the genetic lineage.⁹ Thus, individual rights and species' rights seem to be two sides of the same coin, constitutive of one another. It is impossible to respect one without respecting the other.¹⁰ Though a species as an aggregate or a genetic code is not conative in itself,

9. Cf. HOLMES ROLSTON, III, *ENVIRONMENTAL ETHICS* 135-36, 144-56 (1988).

10. The tendency to separate the rights of individuals and species may be partly the residue of traditional understandings of human rights. Human rights often have been reserved exclusively for individuals, on the typical assumption that only individuals have the interests, goods, goals, needs, wants, and values on which rights can be grounded. This view, characteristic of the atomistic individualism of classical contractualists and laissez-faire philosophers, is a manifestation of the nominalistic fallacy that only individuals have a real existence. It remains influential, as in Feinberg's opposition to species' rights, FEINBERG, *supra* note 5, at 171-73, and has contributed to a variety of truncated interpretations of rights. This restriction, however, is arbitrary and surrealistic. No creature lives as an isolated entity; each exists as an internally relational being, dependent on the genetic, ecological and, in the case of humans, cultural heritage that determines their nature and shapes their possibilities. Adequate interpretations of human rights will not be structured on the basis of anthropological myths about isolated individuals inherited from the Enlightenment, in which respect for others' rights is essentially a reasonable extension of one's own self-interest. Rather, they will be structured on the relational nature of human beings — genetically, ecologically, and socially — in which the connective tissues of rights and responsibilities are built into our being and are the essential conditions of our well-being. This is our true original position. Aggregates and even genetic lines may have rights on these assumptions. See FREEDEN, *supra* note 7, at 8, 57, 68-80 (on social structures and communities as providers and bearers of rights). A similar rationale is applicable to the extension of biotic rights to populations and species.

that fact does not contradict a theory of biotic rights grounded on conation. A species is both the aggregation of conation in individuals and the carrier of conation for all future generations.

Fourth, biotic rights imply neither equal rights with humans nor the same rights as humans. Justice is not the equivalent of equality. Differential treatment is warranted when morally relevant differences exist. Claims to the contrary are unjust because they ignore the morally relevant differences in value-creating and value-experiencing capacities between humans and all other species. Therefore, we should not take people seriously who propose voting rights for monkeys — let alone fair housing rights for parasites in the human gut. Moreover, biotic rights do not diminish or trivialize the fundamental importance of human rights. They can coexist rationally.

Fifth, biotic rights are *moral* rights, not necessarily legal rights or culturally recognized rights. They can be justified apart from cultural recognition and legal implementation. In fact, they are often contrary to legal or conventional rights. Yet, insofar as they are justifiable and feasible, they should be recognized by law and custom. Even though biotic rights often depend on unenforceable, individual moral sensitivity and cannot be embodied in law, a significant degree of legalization is still possible, as several recent laws to protect habitats and species illustrate. A major challenge to the legal guild is to translate these moral norms into legal standards to the maximum possible degree.

All life is sacred or intrinsically valuable and worthy of being treated as the subject of human justice. Indeed, the recognition of intrinsic value in nonhuman creatures implies the recognition of their legitimate claims for appropriate treatment from the human community and, therefore, for some level of rights and human responsibilities. The underlying concern of biotic rights is human responsibility to the rest of nature, and the stress on rights provides an objective moral basis for this responsibility. Under the rubric of justice, rights and responsibilities are not commensurate but they are correlative: strict duties to other beings exist because the others have just claims. We can define our duties only in reference to what we owe others.

On this point, and only this point, this paper disagrees significantly with the work of Holmes Rolston, III. In the most impressive achievement in the field, *Environmental Ethics*, Rolston stresses human duties to otherkind, as does this paper; however, Rolston rejects the concept of biotic rights except as applied to higher sentient animals (although he occasionally cannot resist the rhetoric of rights in a broader context).¹¹ The reason for this divergence

11. ROLSTON, *supra* note 9, at 47-62, 151, 191, 225.

seems to be that Rolston generally, though apparently not consistently, discusses the duties of benevolence whereas this paper discusses the duties of justice.¹² The two are significantly different, even though both are indispensable for a comprehensive ecological ethic.

The duties of benevolence arise solely from the demands internal to the individual — his or her good will, virtuous character, conscience, or even superego. The cause or initiative for moral action arises strictly from the provider of a benefit — from his or her generosity or compassion, for example — and not from any claim of the potential beneficiary. Rights have no relevance in this context. Consequently, benevolence, though always commendable, is never commandable.

By contrast, the duties of justice arise not from the internal demands of individuals but rather from the external demands on moral agents and their communities by or on behalf of aggrieved parties. In justice, the reason or initiative for moral action is not in the character of the supplier but in the claim or condition of the recipient. The duties of justice are by definition dues. They are mandatory, not discretionary like the duties of benevolence. Individuals and states can demand and, when practical and prudent, command the fulfillment of these duties. In justice, duties arise from rights. *Rights are the moral stimulus to which duties are the moral response.* Highlighting the duties of benevolence over those of justice results in the loss of something fundamental: the initiatory force of rights. An approach relying solely on benevolence denies the essential meaning of justice by depriving nonhuman claimants of their moral power, the demanding of their due. That in itself is an injustice. Benevolence is an essential supplement to justice but never a substitute for justice. Benevolence counts morally only after the demands of justice have been satisfied, only when rights have been duly recognized and respected.

Some have suggested that even though moral rights reasonably apply to nonhuman animals and plants, practical and strategic reasons, such as the potential for confusion with human rights, argue against using biotic rights talk.¹³ However, using biotic rights language will diminish confusion in the long run. This approach avoids the incoherence of moral dualism or

12. If the intrinsic value of nonhuman life is a claim on humans and therefore an imposition of duties, as Rolston suggests, then these duties seem to be ones of justice, not benevolence. In fact, the specific contents of this claim on humans, which Rolston expresses as human duties, are similar to what I mean by rights.

13. PAUL W. TAYLOR, *RESPECT FOR NATURE: A THEORY OF ENVIRONMENTAL ETHICS* 219, 224-26, 254 (1986).

pluralism.¹⁴ It affirms one continuous ethic for normative evaluations of both social and ecological relationships (with, of course, appropriate adjustments for relevant contextual differences). It emphasizes justice's unity, comprehensiveness, and indivisibility.

IV. IS THERE A BOUNDARY TO RIGHTS?

The recognition of biotic rights raises troublesome problems, some of which would be considerably reduced by fixing some boundaries. But where should the boundary be drawn for inclusion or exclusion from the realm of rights? Who or what is in or out? The usual boundary-setting criteria include rationality, sentience, and self-consciousness. However, none of these criteria seems satisfactory. They appear to be sufficient but not necessary conditions for the recognition of rights.¹⁵ These and other criteria seem arbitrary and anthropocentric in that they project human characteristics and values onto the rest of nature and then give or deny moral status on this basis.

Perhaps it is not necessary to recognize a boundary. Yet, drawing a line seems valuable if rights talk is to make any practical sense. Non-living elements — like rocks and gases, mountains and waterways — have no apparent interests or drives on which rights can be reasonably grounded. Perhaps the line exists at the juncture, insofar as it is identifiable, where life is distinguishable from non-life. However, even excluding elements from rights-coverage grants no license for abuse. All lifeforms depend on the abiotic elements in the biosphere. Nonliving elements must be treated with care because they provide the resources and habitations used by all creatures. In the biosphere, even rocks and gases teem with microorganisms, and organic life interpenetrates the waters and soils of the Earth. Moreover, even the holistic interactions of biotic and abiotic components in ecosystems and the ecosphere have value as "systemic values"¹⁶ on which all lifeforms are totally dependent. Because abiotic elements have instrumental rather than intrinsic values, and cannot, therefore, have rights, one cannot talk literally about the "rights of nature." Nevertheless, the term remains a valuable composite metaphor pointing to human ecological responsibilities for the totality of interdependent life and non-life.

14. For an important argument against the "metaphysical musical chairs" of moral pluralism, especially as advocated by CHRISTOPHER D. STONE, *EARTH AND OTHER ETHICS: THE CASE FOR MORAL PLURALISM* (1987), see J. Baird Callicott, *The Case Against Moral Pluralism*, 12 ENVTL. ETHICS, 99-124 (1990).

15. Compare Regan's "subject of a life" in REGAN, *supra* note 3.

16. ROLSTON, *supra* note 9, at 187-91.

Perhaps the line exists at a high level of species complexity — perhaps grizzlies and dolphins have rights but beetles, tulips, and microbes do not. Again, however, environmental care is mandated even if the line is drawn here. All complex organisms and ecosystems would be dysfunctional apart from the instrumental benefits of simple organisms — such as mutualistic bacteria in the human digestive tract or marine plankton as the foundation of food pyramids topped by large omnivores, including humans.

The criterion of conation — a striving to be and to do, characterized by drives or aims, urges or goals, purposes or impulses, whether conscious or unconscious — provides a workable rights boundary. At this point, organisms have vital interests — needs, goods, and welfares — in their biological roles for their own sakes. This characteristic is not evident in inanimate objects or animate components of an organism, such as detached limbs or cells. Animals and plants are more than Cartesian machines. They are systemic, interactive, adaptive, reproductive, evolving, and vital forces that struggle to fulfill their reasons for being. The diversity of conative individuals and species of animals and plants, from rudimentary microorganisms to complex creatures, is good for systemic wholes, like ecosystems. They may be good instrumentally for one another and for human interests, whether for scientific, aesthetic, psychological, spiritual, recreational, or economic reasons. Yet, whether they are good or bad for others' interests, they are good for themselves. They are ends in themselves. All moral agents who honor intrinsic value ought to respect this conative character. Recognition of our biological kinship and ecological interdependence with all other creatures enhances this respect for conation. This valuational perspective is essentially what Albert Schweitzer meant by "reverence for life."¹⁷

The idea of biotic egalitarianism, associated with "deep ecologists"¹⁸ and even with Schweitzer,¹⁹ places all species — or, in restricted forms, all members of a species, such as all mammals — on the same moral plane. The formal theory disallows moral distinctions and preferences among species.

This paper strongly rejects biotic egalitarianism, arguing, in contrast, for a graded model of rights. The value-creating and value-experiencing capacities of humans are morally relevant differences between humans and all other species which justify preferential treatment for humans in conflict situations. Extending these criteria to all other species balances the moral significance of

17. ALBERT SCHWEITZER, *CIVILIZATION AND ETHICS*, 247-58 (John Nash trans., 1923).

18. *E.g.*, BILL DEVAL & GEORGE SESSIONS, *DEEP ECOLOGY: LIVING AS IF NATURE MATTERED* 67, 70-76 (1985); *see also* TAYLOR, *supra* note 13, at 260.

19. ALBERT SCHWEITZER, *OUT OF MY LIFE AND THOUGHT: AN AUTOBIOGRAPHY* 158-60 (C.T. Campion trans., 1953).

the biotic rights of each species in proportion to the value-experiencing and value-creating capacities of their members, and places the corresponding responsibilities of moral agents in proportion to this significance. Though all creatures have rights, these rights are minimal in moral significance in the case of microorganisms, but rise in moral significance as a species' value-creating and value-experiencing capacities increase.²⁰ Other things being equal, therefore, sentient creatures have stronger claims to rights than nonsentient ones in conflict situations. These graded rankings are not alternatives to or contradictions of ecological interdependence, as is commonly suggested. Rather, they occur in the context of and with respect to this interdependence.

This ranking or grading of rights is often pejoratively called speciesism²¹ or hierarchicalism. Yet, the criteria — value-experiencing and value-creating capacities — seem reasonable and relevant. Moreover, graded rankings seem indispensable — even inevitable — in making ethical decisions in conflict situations. All of us, including those who denounce speciesism, act routinely on hierarchical assumptions in our daily lives. We swat flies that invade our food and even eat living things lower on the food chain.

Nevertheless, many people reject a comprehensive position on biotic rights grounded in conation as being morally impractical, even if the rights are graded. This point has some validity, but it is certainly not fatal to biotic rights if we make an appropriate moral distinction. Although many organisms — such as mammals or even many insects — can be respected as individuals, many others simply cannot. For example, it is totally impractical to respect as individuals the millions of microorganisms that reside in every clod of humus and every bucket of lake water. Nonetheless, even in this context, we can respect nonhuman individual rights in the aggregate by restrained usage. We can respect the conation of other creatures by protecting the Earth from profligate consumption, destruction, and pollution. An individualistic strain in ecological ethics causes major complications, but it does not appear impractical to minimize harm even to microorganisms if we follow the moral maxim: use sparingly, caringly, and reverently. Indeed, if frugal use is the only practical way to respect the rights of simple organisms, we do not need

20. For a distinction between "moral consideration" and "moral significance," see ROBIN ATTFIELD, *THE ETHICS OF ENVIRONMENTAL CONCERN* 140, 155-56 (1983). On gradations, see CHARLES BIRCH & JOHN B. COBB, JR., *THE LIBERATION OF LIFE: FROM THE CELL TO THE COMMUNITY* 152-172, 205 (1981); and JAY B. MCDANIEL, *OF GOD AND PELICANS: A THEOLOGY OF REVERENCE FOR LIFE* 69, 75-84 (1989).

21. However, according to Peter Singer, who coined the term, my perspective is not speciesism, because relevant differences justify unequal treatment. See PETER SINGER, *ANIMAL LIBERATION: A NEW ETHICS FOR OUR TREATMENT OF ANIMALS* 2-3, 6-8, 20-22, 251 (1975).

to worry in practice about the precise boundary line for nonhuman rights. Frugality is a prime ecological virtue, even though many now consider it an economically subversive virtue in a society which celebrates excessive consumption.

V. A BILL OF BIOTIC RIGHTS

Thus far, this paper has discussed some complications surrounding the issue of recognizing biotic rights. This section will address the following question: What are the *prima facie* rights of wild otherkind? Arguments for or against biotic rights make only limited sense apart from specific formulations. Indeed, some arguments for and against the concept may be formulation-dependent, and may fail once confronted with a specific formulation. This discussion will focus strictly on wild nature, on the rights of non-human life in their natural environments. The human use and abuse of domesticated and other culturally controlled organisms raise special moral problems that go beyond ecological ethics. The following proposed bill of biotic rights enumerates some of the just claims of nonhuman species and their members against the human community:

(1) *The right to participate in the natural competition for existence.*

This claim is not a formal right to life. That alleged right could lead to moral absurdities, such as preventing predators from feeding on their prey. Instead, this right allows otherkind to work out their own interactions and adaptations without unwarranted human protections and interventions. It includes the right to be free in natural settings, without unjustified domestication or captivity. It implies the acceptance of nature's wild, chaotic order, without moralistic diatribes against brutal carnivores or taming initiatives to organize ecosystems into kinder and gentler orders. The moral role of humans is not to protect otherkind from their natural foes, but rather to defend them from injustices, of which humans are the only perpetrators.²²

(2) *The right to healthy and whole habitats.*

Habitats are the structures of existence in which species and their members can realize good for their kind and perform their ecosystemic functions for the ecological common good. The preservation of healthy habitats is generally the most effective means of promoting the good of otherkind, because habitats

22. Cf. Dale Jamison, *Rights, Justice, and Duties to Provide Assistance: A Critique of Regan's Theory of Rights*, 100 *ETHICS* 349 (1990).

supply the essential conditions for the realization of all rights, human and nonhuman. We cannot respect the rights of individuals and species without protecting their ecosystems. A rights view must think holistically and relationally. Indeed, ecosystemic responsibility is, in effect, respect for the rights of all creatures in ecosystemic interactions, as integrated wholes. At this point, a rights ethic most clearly intersects with a land ethic.²³

(3) *The right to reproduce their own kind without chemical, radioactive, or bioengineered distortions.*

Genetic reproduction is the *sine qua non* of species' preservation, and should be protected from the human community. The defense of biodiversity includes, for example, public regulation of biotechnology and the prevention of ozone depletion.

(4) *The right to fulfill their evolutionary potential with freedom from human-induced extinctions.*

Extinctions occur naturally in the evolutionary process, but human-induced extinctions are an injustice. Extinctions are serious because they not only end regenerative potential, but also preclude new evolutionary emergences.

(5) *The right to freedom from human cruelty, flagrant abuse, or frivolous use.*

This right suggests formal moral protection from blood-sports and wasteful consumption. It implies the ecological virtue of frugality. This right recognizes that kindness and gentleness to otherkind are not only matters of benevolence but also of justice.

(6) *The right to the restoration, through managerial interventions, of a semblance of the natural conditions disrupted by human abuse.*²⁴

Under optimum conditions of wildness, it is best to adopt a *laissez faire* strategy, to let nature take its course without the dubious benefit of human managers. However, previous human disruptions often prevent optimum conditions from prevailing. Interventions enable a return to the closest possible approximation of original natural interactions. These interventions include cleaning polluted rivers and bays, regulating some water cycles, using

23. Perhaps the ecological common good can be conceived as the total constellation of all creatures' biotic rights, blended and balanced, as John Finnis has suggested for human rights and the social common good. JOHN FINNIS, *NATURAL LAW AND NATURAL RIGHTS* 154-56, 214-18 (1980). This paper does not develop such a thesis, although it could provide a valuable link between biocentric and ecocentric perspectives.

24. See TAYLOR, *supra* note 13, at 191, 292, 304-06.

controlled fires to restore certain ecosystems, and establishing captive breeding programs.

(7) *The right to a fair share of the goods necessary for the sustainability of one's species.*

Distributive justice requires this right. A fair share, of course, is a very vague criterion, but it is one that the human community must struggle to define in order to stifle human imperialism over the rest of nature — evident particularly in human overpopulation and overdevelopment. The moral goal should not be the preservation of remnant populations of threatened species, but rather the coexistence of humans with viable populations of humanly unthreatened species until the end of their evolutionary time.

These rights certainly can be revised and each could be explicated at length. The outline here, however, establishes a sufficient understanding of biotic rights. The most important consideration is that biotic rights define human responsibilities to the rest of nature. These rights are justified claims on humans for the basic conditions necessary for the well-being of otherkind. They specify the content of human ecological responsibility.

VI. BALANCING COMPETING RIGHTS

Moral rights, even human rights, are not absolute and inviolable unless they are stated either so generally that they are almost useless for practical application, or so precisely that qualifiers or exceptions are built into the definition. Instead, moral rights are *prima facie* rights, which we have strong reasons for honoring. Only stronger reasons — just causes or "justified exceptions"²⁵ — will prevent us from honoring these rights. With this understanding, humans may override the rights of nonhuman individuals and aggregates when they conflict with other higher priority moral rights. However, overriding a species' rights is rarely justified and then only for compelling moral reasons, such as providing essential medical protection for human health against pathogens for whom humans are prey or host. The rebuttable character of biotic rights is critically important because we humans, as predatorial consumers in the biosphere, could not survive and exercise our creative potential if nonhuman rights were absolute. In fact, the very concept of biotic rights is absurd unless conceived as rebuttable. As participants in the natural struggle for survival, humans also have biotic rights to secure our

25. See Gregory Vlastos, *Justice and Equality*, in THEORIES OF RIGHTS, *supra* note 8, at 47-48. Vlastos discusses *prima facie* rights there as well.

well-being by destroying other forms of life and their habitats. However, the rights of otherkind can be overridden only for clear moral reasons and only under the principle of proportionality. Because of the hierarchy of rights, the degree of justification required to override nonhuman rights increases from trivial for microorganisms to very significant for complex mammals.

Just causes for overriding the rights of otherkind include: (1) satisfaction of basic human needs, such as food, clothing, shelter, and medicine; (2) the realization of valuable human benefits such as means of transportation, but always within the bounds of frugality and sustainability; (3) self-defense against nonhumans, such as crop-destroying insects, harmful bacteria, urban rats, and marauding mosquitoes; (4) the control of the population of prolific species — especially ecological aliens, such as hares imported into Australia — to prevent them from exceeding the carrying capacities of their environments; and (5) the special protection of endangered species against their natural predators. Even when a just cause exists, however, other moral constraints are essential to minimize harm to nonhumankind. For instance, the principle of proportionality allows the infliction of harm to other creatures and their habitats only when necessary (as the last resort or in the absence of substitutes) and only to the extent necessary (so as to inflict minimal harm). Furthermore, this principle allows the infliction of harm only if the social and ecological values realized outweigh the inevitable values lost resulting from destructive means.

Interpreting biotic rights as *prima facie* in character is necessary but precarious. It is possible to follow the letter of this approach, but not the spirit, so as to rationalize an ecologically mournful consequence, such as destroying the habitat of a species for an ignoble economic gain. That is why the spirit of ecological justice is what finally counts. That spirit not only treats the conative interests of otherkind seriously and sensitively, but also, in complex cases, places a weighty burden of proof on those who would override biotic rights.

VII. CONCLUSION

The concern for biotic rights is not an academic exercise. It is a matter of moral urgency at a time when the reductions of nonhuman populations and the extinctions of species are proceeding at an appalling pace. Natural sources for human needs and wants, which we euphemistically call renewable natural resources, are also an astonishing diversity of life forms struggling for sustenance and space in complex interdependency. This dual status of other species — both as instrumental values for humanity and intrinsic values for

themselves — confronts us with a host of rarely recognized moral dilemmas. The moral significance of otherkind cannot be reduced to instruments, resources, or objects for human needs and wants. The whole of nature cannot be defined by human purposes and be subject to human improvements. Nature has its own integrity that defies human arrogance and demands human respect and protection. In the final analysis, the integrity of nature is also the integrity of the human species as part and product of nature.

The concept of biotic rights is a forceful reminder that even though human existence and civilization obviously depend on killing and using other creatures and destroying their habitats, we are bound by moral limits. Biotic rights place limits on the exercise of human rights. Indeed, one of the major emerging responsibilities of legal and ethical scholars will be to help us refine and restrict our concepts of human rights in light of the bounds defined by biotic rights. The moral preferability of the concept of biotic rights over competing concepts, such as benevolence, is that a rights perspective finds the initiating source of human moral responsibilities to the rest of nature not only in human kindness or generosity, but also in the just dues and demands imposed on us by the vital interests of otherkind.

