

# chapter eleven

## THE ENVIRONMENT

### *ETHICS AND ECOLOGY*

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Much has been said about the right to a decent or livable environment. In his 22 January 1970 state of the union address, President Nixon stated: "The great question of the seventies is, shall we surrender to our surroundings, or shall we make our peace with Nature and begin to make the reparations for the damage we have done to our air, our land, and our water? . . . Clean air, clean water, open spaces—these would once again be the birthright of every American; if we act now, they can be." It seems, though, that the use of the term *right* by President Nixon, under the rubric of a "birthright" to a decent environment, is not a strict sense of the term. That is, he does not use this term to indicate that one has or should have either a legal right or a moral right to a decent environment. Rather he is pointing to the fact that in the past our environmental resources have been so abundant that all Americans did in fact inherit a livable environment, and it would be *desirable* that this state of affairs again be the case. Pollution and the exploitation of our environment is precluding this kind of inheritance.

Few would challenge the desirability of such a state of affairs or of such a "birthright." What we want to ask is whether the right to a decent environment can or ought to be considered a right in a stricter sense, either in a legal or moral sense. In contrast to a merely desirable state of affairs, a right entails a correlative duty or obligation on the part of someone or some group to accord one a certain mode of treatment or to act in a certain way.<sup>1</sup> Desirable states of affairs do not entail such correlative duties or obligations.

#### THE RIGHT TO A LIVABLE ENVIRONMENT AS A HUMAN RIGHT

Let us first ask whether the right to a livable environment can properly be considered to be a human right. For the purposes of this paper, however, I want to avoid raising the more general question of whether there are any human rights at all. Some phi-

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losophers do deny that any human rights exist.<sup>2</sup> In two recent papers I have argued that human rights do exist (even though such rights may properly be overridden on occasion by other morally relevant reasons) and that they are universal and inalienable (although the actual exercise of such rights on a given occasion is alienable).<sup>3</sup> My argument for the existence of universal human rights rests, in the final analysis, on a theory of what it means to be human, which specifies the capacities for rationality and freedom as essential, and on the fact that there are no relevant grounds for excluding any human from the opportunity to develop and fulfill his capacities (rationality and freedom) as a human.

If the right to a livable environment were seen as a basic and inalienable human right, this could be a valuable tool (both inside and outside of legalistic frameworks) for solving some of our environmental problems, both on a national and on an international basis. Are there any philosophical and conceptual difficulties in treating this right as an inalienable human right? Traditionally we have not looked upon the right to a decent environment as a human right or as an inalienable right. Rather, inalienable human or natural rights have been conceived in somewhat different terms; equality, liberty, happiness, life, and property. However, might it not be possible to view the right to a livable environment as being entailed by, or as constitutive of, these basic human or natural rights recognized in our political tradition? If human rights, in other words, are those rights which each human possesses in virtue of the fact that he is human and in virtue of the fact that those rights are essential in permitting him to live a human life (that is, in permitting him to fulfill his capacities as a rational and free being), then might not the right to a decent environment be properly categorized as such a human right? Might it not be conceived as a right which has emerged as a result of changing environmental conditions and the impact of those conditions on the very possibility of human life and on the possibility of the realization of other rights such as liberty and equality? Let us explore how this might be the case.

Given man's great and increasing ability to manipulate the environment, and the devastating effect this is having, it is plain that new social institutions and new regulative agencies and procedures must be initiated on both national and international levels to make sure that the manipulation is in the public interest. It will be necessary, in other words, to restrict or stop some practices and the freedom to engage in those practices. Some look upon such additional state planning, whether national or international, as unnecessary further intrusion on man's freedom. Freedom is, of course, one of our basic values, and few would deny that excessive state control of human action is to be avoided. But such restrictions on individual freedom now appear to be necessary in the interest of overall human welfare and the rights and freedoms of *all* men. Even John Locke with his stress on freedom as an inalienable right recognized that this right must be construed so that it is consistent with the equal right to freedom of others. The whole point of the state is to restrict unlicensed freedom and to provide the conditions for equality of rights for all. Thus it seems to be perfectly consistent with Locke's view and, in general, with the views of the founding fathers of this country to restrict certain rights or freedoms when it can be shown that such restriction is necessary to insure the equal rights of others. If this is so, it has very important implications for the rights to freedom and to property. These rights, perhaps properly

seen as inalienable (though this is a controversial philosophical question), are not properly seen as unlimited or unrestricted. When values which we hold dear conflict (for example, individual or group freedom and the freedom of all, individual or group rights and the rights of all, and individual or group welfare and the welfare of the general public) something has to give; some priority must be established. In the case of the abuse and waste of environmental resources, less individual freedom and fewer individual rights for the sake of greater public welfare and equality of rights seem justified. What in the past had been properly regarded as freedoms and rights (given what seemed to be unlimited natural resources and no serious pollution problems) can no longer be so construed, at least not without additional restrictions. We must recognize both the need for such restrictions and the fact that none of our rights can be realized without a livable environment. Both public welfare and equality of rights now require that natural resources not be used simply according to the whim and caprice of individuals or simply for personal profit. This is not to say that all property rights must be denied and that the state must own all productive property, as the Marxist argues. It is to insist that those rights be qualified or restricted in the light of new ecological data and in the interest of the freedom, rights, and welfare of all.

The answer then to the question, Is the right to a livable environment a human right? is yes. Each person has this right *qua* being human and because a livable environment is essential for one to fulfill his human capacities. And given the danger to our environment today and hence the danger to the very possibility of human existence, access to a livable environment must be conceived as a right which imposes upon everyone a correlative moral obligation to respect.

### THE RIGHT TO A LIVABLE ENVIRONMENT AS A LEGAL RIGHT

If the right to a decent environment is to be treated as a legal right, then obviously what is required is some sort of legal framework which gives this right a legal status. Such legal frameworks have been proposed. Sen. Gaylord Nelson, originator of Earth Day, proposed a Constitutional Amendment guaranteeing every American an inalienable right to a decent environment.<sup>4</sup> Others want to formulate an entire "environmental bill of rights" to assist in solving our pollution problems. Such a bill of rights or a constitutional revision would provide a legal framework for the enforcement of certain policies bearing on environmental issues. It would also involve the concept of "legal responsibility" for acts which violate those rights. Such legal responsibility is beginning to be enforced in the United States.

Others propose that the right to a decent environment also be a cardinal tenet of international law. Pollution is not merely a national problem but an international one. The population of the entire world is affected by it, and a body of international law, which includes the right to a decent environment and the accompanying policies to save and preserve our environmental resources, would be an even more effective tool than such a framework at the national level. Of course, one does not have to be reminded of the problems involved in establishing international law and in eliciting obedience to it. Conflicts between nations are still settled more by force than by law

or persuasion. The record of the United Nations attests to this fact. In the case of international conflict over environmental interests and the use of the environment, the possibility of international legal resolution, at least at this stage of history, is somewhat remote; for the body of enforceable international law on this topic is meager indeed. This is not to deny that this is the direction in which we should (and must) move.

A good case can be made for the view that not all moral or human rights should be legal rights and that not all moral rules should be legal rules. It may be argued that any society which covers the whole spectrum of man's activities with legally enforceable rules minimizes his freedom and approaches totalitarianism. There is this danger. But just as we argued that certain traditional rights and freedoms are properly restricted in order to insure the equal rights and welfare of all, so also it can plausibly be argued that the human right to a livable environment should become a legal one in order to assure that it is properly respected. Given the magnitude of the present dangers to the environment and to the welfare of all humans, and the ingrained habits and rules, or lack of rules, which permit continued waste, pollution, and destruction of our environmental resources, the legalized status of the right to a livable environment seems both desirable and necessary.

It is essential that government step in to prevent the potentially dire consequences of industrial pollution and the waste of environmental resources. Such government regulations need not mean the death of the free enterprise system. The right to private property can be made compatible with the right to a livable environment, for if uniform antipollution laws were applied to all industries, then both competition and private ownership could surely continue. But they would continue within a quite different set of rules and attitudes toward the environment. This extension of government would not be equivalent to totalitarianism. In fact it is necessary to insure equality of rights and freedom, which is essential to a democracy.

## ECOLOGY AND ECONOMIC RIGHTS

We suggested above that it is necessary to qualify or restrict economic or property rights in the light of new ecological data and in the interest of the freedom, rights, and welfare of all. In part, this suggested restriction is predicated on the assumption that we cannot expect private business to provide solutions to the multiple pollution problems for which they themselves are responsible. Some companies have taken measures to limit the polluting effect of their operations, and this is an important move. But we are deluding ourselves if we think that private business can function as its own pollution police. This is so for several reasons: the primary objective of private business is economic profit. Stockholders do not ask of a company, "Have you polluted the environment and lowered the quality of the environment for the general public and for future generations?" Rather they ask, "How high is the annual dividend and how much higher is it than the year before?" One can hardly expect organizations whose basic norm is economic profit to be concerned in any great depth with the long-range effects of their operations upon society and future generations or concerned



with the hidden cost of their operations in terms of environmental quality to society as a whole. Second, within a free enterprise system companies compete to produce what the public wants at the lowest possible cost. Such competition would preclude the spending of adequate funds to prevent environmental pollution, since this would add tremendously to the cost of the product—unless all other companies would also conform to such antipollution policies. But in a free enterprise economy such policies are not likely to be self-imposed by businessmen. Third, the basic response of the free enterprise system to our economic problems is that we must have greater economic growth or an increase in gross national product. But such growth many ecologists look upon with great alarm, for it can have devastating long-range effects upon our environment. Many of the products of uncontrolled growth are based on artificial needs and actually detract from, rather than contribute to, the quality of our lives. A stationary economy, some economists and ecologists suggest, may well be best for the quality of man's environment and of his life in the long run. Higher GNP does not automatically result in an increase in social well-being, and it should not be used as a measuring rod for assessing economic welfare. This becomes clear when one realizes that the GNP

aggregates the dollar value of all goods and services produced—the cigarettes as well as the medical treatment of lung cancer, the petroleum from offshore wells as well as the detergents required to clean up after oil spills, the electrical energy produced and the medical and cleaning bills resulting from the air-pollution fuel used for generating the electricity. The GNP allows no deduction for negative production, such as lives lost from unsafe cars or environmental destruction perpetrated by telephone, electric and gas utilities, lumber companies, and speculative builders.<sup>5</sup>

To many persons, of course, this kind of talk is not only blasphemy but subversive. This is especially true when it is extended in the direction of additional controls over corporate capitalism. (Some ecologists and economists go further and challenge whether corporate capitalism can accommodate a stationary state and still retain its major features.<sup>6</sup>) The fact of the matter is that the ecological attitude forces one to reconsider a host of values which have been held dear in the past, and it forces one to reconsider the appropriateness of the social and economic systems which embodied and implemented those values. Given the crisis of our environment, there must be certain fundamental changes in attitudes toward nature, man's use of nature, and man himself. Such changes in attitudes undoubtedly will have far-reaching implications for the institutions of private property and private enterprise and the values embodied in these institutions. Given the crisis we can no longer look upon water and air as free commodities to be exploited at will. Nor can the private ownership of land be seen as a lease to use that land in any way which conforms merely to the personal desires of the owner. In other words, the environmental crisis is forcing us to challenge what had in the past been taken to be certain basic rights of man or at least to restrict those rights. And it is forcing us to challenge institutions which embodied those rights.

## ETHICS AND TECHNOLOGY

I have been discussing the relationship of ecology to ethics and to a theory of rights. Up to this point I have not specifically discussed the relation of technology to ethics, although it is plain that technology and its development is responsible for most of our pollution problems. This topic deserves separate treatment, but I do want to briefly relate it to the thesis of this work.

It is well known that new technology sometimes complicates our ethical lives and our ethical decisions. Whether the invention is the wheel or a contraceptive pill, new technology always opens up new possibilities for human relationships and for society, for good and ill. The pill, for example, is revolutionizing sexual morality, for its use can preclude many of the bad consequences normally attendant upon premarital intercourse. *Some* of the strongest arguments against premarital sex have been shot down by this bit of technology (though certainly not all of them). The fact that the use of the pill can prevent unwanted pregnancy does not make premarital sexual intercourse morally right, nor does it make it wrong. The pill is morally neutral, but its existence does change in part the moral base of the decision to engage in premarital sex. In the same way, technology at least in principle can be neutral—neither necessarily good nor bad in its impact on other aspects of the environment. Unfortunately, much of it is bad—very bad. But technology can be meshed with an ecological attitude to the benefit of man and his environment.

I am not suggesting that the answer to technology which has bad environmental effects is necessarily more technology. We tend too readily to assume that new technological developments will always solve man's problems. But this is simply not the case. One technological innovation often seems to breed a half-dozen additional ones which themselves create more environmental problems. We certainly do not solve pollution problems, for example, by changing from power plants fueled by coal to power plants fueled by nuclear energy, if radioactive waste from the latter is worse than pollution from the former. Perhaps part of the answer to pollution problems is less technology. There is surely no real hope of returning to nature (whatever that means) or of stopping *all* technological and scientific development, as some advocate. Even if it could be done, this would be too extreme a move. The answer is not to stop technology, but to guide it toward proper ends, and to set up standards of anti-pollution to which all technological devices must conform. Technology has been and can be used to destroy and pollute an environment, but it can also be used to save and beautify it.

## NOTES

1. This is a dogmatic assertion in this context. I am aware that some philosophers deny that rights and duties are correlative. Strictly interpreted this correlativity thesis is false, I believe. There are duties for which there are no correlative rights. But space does not permit discussion of this question here.
2. See Kai Nielsen's "Scepticism and Human Rights," *Monist*, 52, no. 4 (1968): 571-594.

3. See my "Equality and Human Rights," *Monist*, 52, no. 4 (1968): 616-639; and my "Human Rights and Human Dignity," in Laszlo and Gotesky, eds., *Human Dignity*.
4. *Newsweek*, 4 May 1970, p. 26.
5. See Melville J. Ulmer, "More Than Marxist," *New Republic*, 26 December 1970, p. 14.
6. See Murdock and Connell, "All about Ecology," *Center Magazine*, 3, no. 1 (January-February 1970): 63.