

***Human Rights, Sustainability and Standing:
A Humanist Perspective***

— Jonathan Barrett

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Abstract

This paper outlines the relationship between human rights and sustainability, and establishes the context for potential research subjects in this field. The paper is premised on the proposition that a humanist conception of human rights and sustainability is plausible and can be put into practice.

The paper begins with a conception of humanism that informs universal human rights. It provides a consideration of human rights, including their origins, generational classifications, and the functions that different social institutions may have in relation to human rights. Next, issues of anthropocentrism and standing in relation to an assertion of rights are examined. Arguments for animal rights and rights for natural objects are outlined and critiqued from a humanist perspective, with the aim of promoting a plausible conception of human and sustainability rights. The paper concludes with a non-exhaustive list of potential research topics derived from the discussion.

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Human Rights, Sustainability and Standing: A Humanist Perspective

Introduction: A humanist environmentalism

The theme of this paper is that a humanist conception of sustainability as a human right (or cluster of rights) is plausible and can be put into practice. Both the religious humanism of the Renaissance, which was informed by the proposition of natural law, and modern secular humanism assert 'human dignity and the celebration of what is finest in human thought and creativity' (Norman, 2004, p. 14). Human dignity, which only has meaning in the society of others, is the basis of human rights. Without a sustainable environment, the long-term flourishing of individuals within society will become unrealisable. The purpose of this paper is to present the basis for a humanist environmental programme, and to identify areas for future research in this field.

Following the *Report of the World Commission on Environment and Development* (Brundtland, 1987) (the 'Brundtland Report'), 'sustainability' is taken to be '[d]evelopment that meets the needs of the present generation without compromising the ability of future generations to meet their own needs'. This definition is set firmly in the context of universal human rights, and corresponds with the Aristotelian conception of distributive justice or equity. Distributive justice requires an equal allocation of benefits among equals (Dias, 1976, p. 66), and, by implication, unequal distribution among those who are unequally situated. This may be characterised as a 'geometric' equality, which ensures that distribution is made according to community members' varying merit or desert (Kamenka, 1979, p. 3). Sustainability, in this sense, is a matter of just distribution of resources among current and future generations. The planetary ecosystem and any of its specific components are not a direct concern – rather, distributive justice demands that resources should not be depleted or degraded now by people with access to them, because that would deny those who are currently underprivileged and future generations a fair share of those resources. ('Resources' used here does not simply connote the factors of industrial or agricultural production, but also includes opportunities for recreation, engagement with the ineffability of nature, and the preservation of biodiversity for human benefit.) In this scheme, the members of each generation are trustees of the natural world for the benefit of all people – those who are alive and those not yet living. As trustees, we must strive to understand the

mechanisms and interactions of the ecosphere and how our actions impact upon them. Thus the preamble to the United Nations' *World Charter for Nature* (1982) affirms that 'man must acquire the knowledge to maintain and enhance his ability to use natural resources in a manner which ensures the preservation of the species and ecosystems for the benefit of present and future generations'.

When sight is lost of the natural world context of human existence, including long-term views, as well as the principle of environmental trusteeship, the ecological consequences can be devastating.

It is, therefore, understandable that 'deep green' ecologists should promote concepts of sustainability in which humans are not central – rather, they are equal to any other living element in the ecosystem. Arne Naess (1989) caricatured the 'shallow ecology movement' as a 'fight against pollution and resource depletion. Central objective: the health and affluence of people in developed countries', and contrasted this with the 'deep ecology movement', which is characterised by 'a rejection of the man-in-environment in favour of the *relational, total-field image* and "Biospherical egalitarianism"' (p. 28, emphasis in original).

This paper argues for a humanist conception of sustainability and human rights that, on the one hand, rejects short-term and selfish behaviour in relation to the environment, but, on the other hand, seeks to refute 'deep green' thinking. Humans, as the only agency of reason and morality, are placed at the centre of concerns. As Terry Eagleton (1983) notes, in the humanist tradition meaning is something 'that we create together' (p. 183). Thus, the meaning of sustainability and how it may be achieved must be reached through rational discourse – through democratic processes within political communities and through diplomacy internationally. For Amitai Etzioni (1997) 'a "moral megalogue" is a moral dialogue projected onto a larger scale; a "moral dialogue" is the process by which we identify shared fundamental values that guide our lives' (p. 15). As human rights became a universal discourse in the years after the Second World War, so too did sustainability become a moral megalogue for the early twenty-first century and beyond.

Michel Foucault (1984) characterised Immanuel Kant's (1784) invocation 'Sapere aude! Have courage to use your own reason!' as the 'critical ontology of ourselves', which should be given effect by 'the labour of diverse inquiries' (p. 50). Similarly, we must open our eyes to the environment in ways comparable with Enlightenment philosophers, who, in throwing off the blinkers of superstition in order to enrich human life through reason, sought 'understanding of the world and of the self, moral progress, the justice of institutions and even the happiness of human beings' (Habermas, 1983, p. 9).

The Enlightenment's elevation of the autonomous individual was the most obvious path at that time to the affirmation of inviolable rights. However, as Anthony Grayling (2009) notes, while the concept of individual autonomy provided 'freedom to pursue personal goals and interests', it was always subject 'to the principle of not harming others or interfering with others' freedom' (p. 105).

Ideas of individual autonomy in the exalted Enlightenment sense have become moot (Devine & Irwin, 2005), with contemporary human rights jurisprudence stressing social interdependence over individualism (Minow, 1995). However, the concept and practice of human rights may be developed further to incorporate concerns for the environment within which individuals exist in the community of others. As Tom Regan (2001) argues:

It is not just that the concept of the isolated individual existing outside the natural order is illusory; what is worse, its acceptance has done and continues to do incalculable damage to those who seek self-understanding. As long as we carry out this quest with a fundamentally flawed preconception of our place in the large scheme of things, the more we search, the less we will understand. (p. 20)

Similarly, for the Enlightenment philosopher Paul-Henri d'Holbach nature was central to human existence:

Man is the work of Nature; he exists in nature: he is submitted to her laws: he cannot deliver himself from them; nor can he step beyond them even in thought . . . let man study this nature, let him learn her laws, contemplate her energies, observe the immutable rules by which she acts: let him apply these discoveries to his own felicity . . . (cited by Norman, 2004, pp. 11–12)

The current consideration of evidence of environmental harm caused by human actions implies that there has been a shift in mindsets, as well as behavioural changes and a different technological emphasis. As part of this, we may need to reimagine our relationship to the environment, including a re-examination of individual property expectations. Indeed, wholesale cultural changes seem necessary. M. Adil Khan (1995) observes that '[c]onsumerism and materialism are post-industrial revolution capitalist phenomena and became an intrinsic aspect of what has evolved as the European or Western culture' becoming 'the current dominant culture of the world' (p. 67). However, such a culture is neither inevitable nor immutable, and the assumption of constant economic growth that underpins the capitalist system may need to be abandoned (for a less radical economic perspective, see Stern, 2006.)

The ethical imperative that emerges is that people, who are factually and morally responsible for environmental depletion and degradation, must make the behavioural, institutional and technological changes necessary to preserve the environment for current and future generations. If we are to remain true to Enlightenment values, sustainability must be comprehensively incorporated into human rights discourse, but human exceptionalism, reason and moral agency must not be abandoned.

Sources of human rights

Individual existence is distinguished, on the one hand, by the uniqueness of the human mind, and, on the other hand, by interdependence with others. Both are facets of human dignity. In regard to the uniqueness of the mind, the human capacity to exercise free will is, in the Kantian view, 'most fundamental to the dignity and worth of human beings because it distinguishes humans from other animals and elevates them above the realm of causally determined nature' (Mulhall & Swift, 1995, p. 43). Similarly, Michael Novak (1999) argues that what makes a person is:

the capacity to reflect and choose, to be imaginative and creative, to be an originating source of action . . . Dignity inheres in them because they are destined to be free and reflect and to choose, and thus to be provident over the course of their own lives, responsible for their own actions.

With regard to interdependence, Max Horkheimer (1947) has observed that 'the individual is nothing but a biological specimen so long as he is merely the incarnation of an ego defined by the co-ordination of his functions in the service of self-preservation' (p. 93). Expressing the Thomist view, Dino Bigongiari (1953) argues that instead of animal instinct:

man was endowed with reason, by the use of which he could procure all these things for himself by the work of his hands. Now, one man alone is not able to procure them all for himself, for one man could not sufficiently provide for life unassisted. It is therefore natural that man should live in the society of many. (p. 176, footnotes omitted)

Society, with its necessary restrictions on individual will (Freud, 1991), makes the assertion of human dignity and consequent rights plausible. Thus, Johann Fichte (1970) argued, '[t]here is no status of original rights for *Man*. Man attains rights only in a community with others as indeed he only becomes a man . . . through intercourse with others' (p. 160, emphasis in original).

Furthermore, there can be no long-term flourishing of people in society without a sustainable environment. In particular, basic rights theorists justify human rights in terms of the conditions required for biological survival (Hancock, 2003, p. 15). However, as John Finnis (1980, p. 81) cautions, while anthropological and psychological studies can be an aid in answering questions, values cannot be inferred from them. Following Abraham Maslow (1954), the general needs of human beings can be plausibly identified, and the social structures and

practices that are broadly similar among all human societies may be observed, but a catalyst of some sort is necessary to convert observations of the natural state to assertions of natural law or natural rights.

In orthodox natural law doctrine, that catalyst was ensoulment of the human person by God. Thus, for Jacques Maritain (1945), the doyen of social Catholicism and a leading architect of the *Universal Declaration of Human Rights* (UDHR) (United Nations, 1948), 'the human person exists by virtue of the existence of its soul' (p. 3). However, as Richard Rorty (1999) observes, metaphysical arguments for human rights are 'vulnerable to Nietzschean suggestions that both God and human rights are superstitions – contrivances put forward by the weak to protect themselves against the strong' (p. 83). The great natural lawyer Hugo Grotius recognised that the existence of God was unnecessary for the assertion of natural law and rights (d'Entrèves, 1970, p. 51), and realised '[l]aw turns out to be ultimately grounded in the nature of things' (Lehmann, 1984, p. 163). Natural law and natural rights are implied from natural facts, but today are arrived at through discourse. As Jürgen Habermas (1996) argues:

[p]ositive law can no longer derive its legitimacy from a higher-ranking moral law but only from a procedure of presumptively rational opinion – and will-formation.

He concludes:

the only regulations and ways of acting that can claim legitimacy are those to which all who are possibly affected could assent as participants in rational discourses. (pp. 457–458)

In sum, we negotiate our 'natural' rights through discursive mechanisms such as Etzioni's moral megalogues, but the outcomes are broadly similar to natural rights assertions. Respect for human dignity is a constant factor.

Following Martha Nussbaum (1999), human dignity is respected when each person's particular 'capabilities for fully human functioning' are developed (p. 243). The Kantian ideal of the autonomous actor is, then, just one conception of human flourishing; in fact, one confined by the ontology of an eighteenth century European man. The intellectual indicia of full human flourishing for a person suffering from severe mental incapacity may be quite different from those of a philosopher, but each is no less human for the difference. Indeed, the heterogeneity of human capabilities must be accepted, if dignity is to be respected.

For Maritain (1945), 'respect and feeling for the dignity of the human person' is 'an essential characteristic of any civilization worthy of the name' (p. 2). However, it is the crises in civilisation that lead to a yearning for rules that

are considered inviolable and relate to the constant facts of human existence, and balance discrete biological existence with the necessity of society. As Michael Ignatieff (2001) observes of the origins of the UDHR, '[w]ithout the Holocaust, then, no Declaration' (p. 81). This desire for an immutable moral basis for laws, fuelled by the horrors of the twentieth century – an 'indignation over the evil that is inflicted on vulnerable others' (Burggraeve, 2005, p. 97) – has led to the universal human rights conventions. Thus, article 1 of the UDHR provides '[a]ll human beings are born free and equal in dignity and rights'. This affirmation of *absolute* equality of human dignity and respect for the dignity of the embodied human person is the founding principle of universal human rights. It is also a 'contrivance', but sometimes, as Rorty (1999) observes, 'there's nothing wrong with contrivances' (p. 83). For the contrivance of human dignity to be maintained, a humanist conception of personhood, which includes all humans but excludes all other animals, life forms, intelligent machines or juristic persons, must prevail. The notion of human exceptionalism is essential, from both deontological and consequentialist perspectives. For the former, immanent and irreducible dignity prevents humans from ever being ends to 'greater' goals. For the latter, rights can only be given legal effect within political communities – without the boundaries and centripetal forces of political communities claims for rights against others become implausible.

Human rights and human duties

Richard Cohen (2003) encapsulates Emmanuel Levinas's conception of humanism as 'the worldview founded on the belief in the irreducible dignity of humans, a belief in the efficacy and worth of human freedom and hence also human responsibility' (p. ix). Likewise for Georg Hegel, the 'imperative of right' was '[b]e a person and respect others as persons' (Pashukanis, 1978, p. 111).

The preambles to both the *International Covenant on Civil and Political Rights* (ICCPR) (United Nations, 1966a) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) (United Nations, 1966b) record that 'the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant'. Because the New Zealand Bill of Rights Act 1990 (BORA) reaffirms New Zealand's commitment to the ICCPR, it may be said that duties are implicit along with the rights explicitly affirmed. Finnis (1980) observes that a distinction between right and duty was unknown in classical Roman law, and notes that the Tswana word *tshwanelo*, translatable as 'due', functions both as the word for 'right' and 'duty', as 'it looks both ways along a juridical relationship' (p. 209). Indeed, the words 'law', with its connotations of duties, and 'right' are homonyms in many languages (Hahlo & Kahn, 1968, p. 76, fn. 1).

Human rights and human duties are, then, conjoined in a web of asymmetrical reciprocity, which includes and involves everyone. However, because each person's capabilities are different, the rights they may claim at a particular point in time and the responsibilities they take on are not directly proportionate. For example, due to their extreme vulnerability, people with severe mental incapacities may have significant rights claims, but they may be unable to take on significant responsibilities. Such asymmetry is in the nature of the web. The responsibility component of human rights is a critical concern for this paper: on the one hand, it is an important ground for asserting human centrality, given that only people can be moral agents, and, on the other hand, it contributes to the ethical basis for humanist environmentalism. Thus, if we wish to assert sustainability rights, we must assume sustainability responsibilities.

Human rights in law

Natural law is 'an amorphous concept' (Dias, 1976, p. 653). Nevertheless, the development of charters of human rights is closely linked to natural law (Finnis, 1980, p. 198; Weinreb, 1992, p. 279). Roscoe Pound's 'natural natural law' most obviously corresponds to the general conception of universal human rights – that is, 'a body of ideal precepts derived independently of the actual law in some way which is regarded as guaranteeing universal moral validity and applicability' (Pound, 1952, p. 330). Following Amartya Sen (1999), 'the claim of a universal value is that people anywhere may have reason to see it as valuable' (p. 12).

Like natural law, human rights claims ultimately spring from universally recognised ethical imperatives, the most obvious of which are derived from the basic facts of human existence. Thus, for Samuel von Pufendorf, natural, inalienable rights inure as a consequence of being born a human being (Luhmann, 2004, p. 483). Utilitarians, in contrast, tend to have little time for rights talk, with Jeremy Bentham (1987) famously dismissing the idea of natural rights for men as 'nonsense upon stilts' (p. 53). Nevertheless, utilitarians may assert rights, albeit not imprescriptible versions, that correspond with natural or universal rights, because the assertion of such rights may contribute to maximising aggregate utility.

Stephen Toope (1997, p. 180) observes that human rights are not essentially a legal concept despite their most obvious expression in structural legal terms. Amartya Sen (2004, p. 327), following Herbert Hart, describes legally enforceable rights as the 'children' of ethical claims. The ideals recorded in the UDHR were, then, primarily intended to exert a moral and political influence on states, and promote a culture of human rights (United Kingdom Parliament, 2003), not exhaustively prescribe the content of domestic laws (Brownlie, 2003, p. 535).

The UDHR, together with the basic human rights conventions – the ICCPR and the ICESCR, and their optional protocols – make up a composite international bill of human rights. New Zealand has committed itself to universal human rights and has ratified the treaties overseen by the United Nations High Commission for Human Rights, except the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (United Nations, 1990). While few countries have proved willing to commit themselves to this treaty (Hackett, 2009), this unwillingness on the part of

New Zealand is particularly relevant in the light of its proximity to low-lying territories that may be threatened by rising ocean levels caused by global warming (James, 2009; Vedantam, 2009).

Under New Zealand law, an international treaty does not create rights or duties for individuals unless its terms have been imported into domestic law. The BORA specifically affirms New Zealand's commitment to the civil and political rights set down in the ICCPR, whereas other rights are explicitly imported through a range of statutory measures, such as the Employment Relations Act 2000 in relation to freedom of association. The Human Rights Act 1993 charges the Human Rights Commission with promoting human rights in general, not only those affirmed by the BORA. The BORA is not entrenched or superior to any other Act of Parliament. It has express vertical application – that is, it applies to government acts only. However, the BORA is binding on the legislative, judicial and administrative branches of government, and as such it may act as a conduit for importing international human rights standards into government acts that fall under its purview. Other charters of rights – for example, the South African Constitution (as set out in the Constitution of the Republic of South Africa Act 1996) – are entrenched and therefore superior to any other law, and are horizontal in their application (applicable to citizen-to-citizen relations) as well as vertical.

Laws that establish human rights institutions such as the Human Rights Commission, to foster a culture and quotidian practice of human rights, may have equal importance in their practical effects when compared with justiciable charters of rights. Indeed, the Human Rights Commission may yet play a significant role in promoting sustainability rights in New Zealand. Janet McLean (2001) observes 'the focus should not be on what powers the courts have but what effect their decisions have in terms of administrative and legislative action and response' (p. 448). Human rights are, then, most effectively protected and promoted when a culture in public life exists 'in which these fundamental principles are seen as key to the design and delivery of policy, legislation and public services' (United Kingdom Parliament, 2003). For example, New Zealand public servants are required to integrate human rights considerations when developing policies and practice (Department of Justice, 2004). Ultimately, we have justiciable human rights because of the acceptance of those rights by all branches of government.

Human rights only take on practical meaning within particular political communities. Consequently, human rights laws and practices, although derived from the universal principle of equal human dignity, are not identical in every country or political subdivision. The *Vienna Declaration and Programme of Action* (United Nations, 1993) affirms 'it is the duty of States, regardless of their

political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms' (art 5). Charters of human rights seek to achieve more than a reflection of the zeitgeist – situated in the broad stream of human experience, they maintain 'an eye to the future' (*Halpern v Attorney General of Canada* (2002) 215 DLR (4th) 223, at para 42), a future illuminated by the lessons of the past. Contemplating the philosophy of Baruch Spinoza, Bertrand Russell (1961) observed '[t]he wise man, so far as human finitude allows, endeavours to see the world as God sees it, *sub specie aeternitatis*, under the aspect of eternity' (p. 556). This is the ideal that human rights charters and jurisprudence should aspire to. And no conception of the longest term can ignore the environment in which mankind exists.

At this point, it is worth noting the position of sustainability in international law because, unlike treaties, customary international law is incorporated into domestic law without the need of enabling legislation.

In *Gabčíkovo-Nagymaros Project* ((Hungary / Slovakia), Judgment: ICJ Reports 1997, 7), the International Court of Justice recognised the concept of sustainable development in international law, saying (at para [140]):

[t]hroughout the ages, mankind has, for economic and other reasons, constantly interfered with nature. In the past, this was often done without consideration of the effects upon the environment. Owing to new scientific insights and to a growing awareness of the risks for mankind – for present and future generations – of pursuit of such interventions at an unconsidered and unabated pace, new norms and standards have been developed, set forth in a great number of instruments during the last two decades. Such new norms have to be taken into consideration, and such new standards given proper weight, not only when States contemplate new activities but also when continuing with activities begun in the past. This need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development.

Phillipe Sands (2003, p. 252) goes further, and argues that a duty on states to develop their natural resources in a sustainable manner has emerged as a *principle* of international law. However, Laura Horn (2007, p. 70) notes that the concept of sustainable development remains unclear in international law. Nevertheless, she identifies certain points of expert consensus. First, the needs of present and future generations must be taken into account. Second, renewable and non-renewable environmental resources must be conserved and not exhausted. Third, access to and use of natural resources must take equitable account of the needs of all peoples. Finally, issues of environmental and sustainable development must be treated in an integrated manner.

Generations of human rights

In accordance with the taxonomy of Karel Vasak (1977), human rights may be categorised in generational terms, with civil and political rights constituting the first generation of rights. These rights are essentially negative in nature and correspond with the tenets of classical liberalism (Berlin, 1984), which view the state's basic function as providing the external and internal security that allows autonomous individuals to flourish in ways determined by themselves. Political and civil rights typically involve the formalities of justice – for example, requiring one branch of government (judiciary) to order another branch of government (executive) to desist from actions that are harmful to a particular individual's rights. Western conceptions of fundamental rights 'have traditionally included only civil and political rights, most notably the freedoms of expression, association, assembly and religion' (Toohey, 1997, p. 170). This is reflected in the BORA's explicit affirmation of civil and political, but not other, rights. As noted, however, the Human Rights Act 1993 promotes all rights, with the Act's long title recording its purpose as being 'to provide better protection of human rights in New Zealand in general accordance with United Nations Covenants or Conventions on Human Rights' – not only civil and political rights.

Second-generation rights relate to economic, cultural and social expectations. Unlike first-generation rights, social, economic and cultural rights are primarily positive inasmuch as they tend to require collective action, particularly to ensure that the vulnerable benefit. For Zygmunt Bauman (2009), such rights 'certify the veracity of mutual trust and of trust in the shared network that endorses and validates collective solidarity. "Belonging" translates as trust in the benefits of human solidarity, and in the institutions that arise from solidarity' (p. 149). Because these rights inevitably require positive action on the part of government, they have generally been considered non-justiciable and therefore of a lesser status than civil and political rights. As Mariette Brennan (2009) observes, '[s]ince the human rights were split into two treaties, socio-economic rights have languished behind' (p. 84). However, in response to the neo-liberal ascendancy since the mid-1980s, often at a grassroots level, there has been an increased interest in, and awareness and assertion of, second generation rights (Ravlich, 2008). There is also a negative aspect to economic, social or cultural rights, since government may seek to extinguish them. This is a particular concern for indigenous peoples, whose cultures are vulnerable to extinction as a consequence of domination by Western culture.

Third-generation rights, which relate to the environment, are less easily categorised. To a great extent, the essential feature of negative rights (refraining from action) is relevant, but it is only through collective action on a worldwide scale that the goals of environmental rights might be achieved. Many countries have included some constitutional guarantee of a healthy environment, but, because such guarantees are often vague, they are difficult to enforce directly (Hancock, 2003, p. 80). Specific legislation, which does not have entrenched status, may be necessary before rights are justiciable in practice. However, the South African Constitution, which may be considered a 'state-of-the-art' bill of rights, provides that '[e]veryone has the right . . . to have the environment protected, for the benefit of present and future generations' (s 24). This has proved to be an effective guarantee.

Categorising rights in generational terms may be useful to the extent that it illustrates the development of a rights culture, but may otherwise be unhelpful. Ronald Dworkin (1978) describes rights as 'political trumps held by individuals' (p. ix), but, while this aphorism may capture the essence of negative rights, it presents an unduly isolated conception of all human rights, which are often dynamic, multiple and overlapping. Andrew Vincent (1992) observes that Victorian social liberals, such as Green, Hobson and Hobhouse, recognised that 'liberty was not just leaving people alone, but was actually identified with the fuller life of genuine citizenship. Citizens should possess the economic, cultural, political and social means to partake worthwhile lives' (p. 30).

The *Vienna Declaration and Programme of Action* (United Nations, 1993) recognises all rights as interdependent. Thus Mary Robinson (2000), previously United Nations High Commissioner for Human Rights, observes that 'human rights are indivisible; the Universal Declaration does not distinguish between human rights: civil, cultural, economic, political and social . . . all human rights must be enjoyed by all people in the world without distinction' (p. vii). Government, particularly its judicial branch, must balance and, if necessary, prioritise, conflicting rights. Environmental rights constitute another body of rights that must be integrated with previously asserted rights. The task may not be easy, but it is necessary.

Human rights and institutional competence

In the context of democracy, courts are weakened by their unelected nature. Even in countries such as Germany and South Africa, where a basic law is superior to any other law, supreme courts, which are charged with interpreting constitutionally guaranteed rights, are acutely aware of their unelected status. Thus Markus Ogorek (2005, pp. 979–980) explains how the German Federal Constitutional Court (the *Bundesverfassungsgericht*) exercises judicial self-restraint to avoid politicisation of its decisions, going as far as to declare the legislature the primary interpreter of the Basic Law (*Grundgesetz*). Similarly, the South African Constitutional Court has emphasised that it has a judicial, not a political, mandate, with a fundamental role of assessing the constitutionality of a law, not its political wisdom (Botha, 2004, p. 250). This deference to the elected legislature makes bold judicial action in relation to sustainability rights less likely, but not impossible.

Since South Africa's constitution includes socio-economic and environmental rights, as well as civil and political rights, the role of its Constitutional Court in actively ensuring such rights is necessarily a controversial one. Despite recognising its institutional unsuitability for practically actuating positive rights, the Court has shown itself prepared to make decisions that impact on the executive's allocation of scarce resources. (See, for example, *Government of the Republic of South Africa v Grootboom* 2001 (1) SA 46 (CC) and *Minister of Health v Treatment Action Campaign* 2002 (5) SA 721 (CC).) The Court's development of a socio-economic rights jurisprudence – an area of rights traditionally considered non-justiciable – indicates ways for enforcing sustainability rights. Indeed, the South African Constitutional Court has also directly upheld environmental rights without the need for specific intermediary legislation. While *locus standi* (right to appear before a court) was an issue in the early years of the Constitution (Glazewski, 1996), it appears that courts have accepted that a civic environmental organisation can bring an action under the environment guarantee without having to prove standing (Murombo, n.d.). (Standing is discussed below.)

Following Foucault on governmentality, Colin Gordon (1991, p. 20) argues that we live today not so much in a *Rechtstaat* (constitutional state) or disciplinary society as in a society of security. In such a security state, the 'legitimacy' of a branch of government is derived from its ability to actively perform the functions of governmentality – that is, the achievement of prosperity, or, in a different paradigm, sustainable development. Similarly, Dora Kostakopoulou (2002) posits that, in the security society, 'authority would depend on the

quality of political projects, the effective performance of key functions and on the actions of welfare providing administration' (p. 150). Because courts cannot provide these outcomes, in this scheme they lack legitimacy and, indeed, authority. Courts may preserve or redistribute a person's existing stores of wealth, but they cannot create prosperity or a sustainable environment. In sum, the judicial system lacks 'political creativity' (Laws, 1995, p. 93) and '[r]elying too much on courts may ultimately undermine rather than affirm human rights' (McLean, 2001, p. 448).

Because they are founded on the principle of respect for the equal inherent dignity of everyone, human rights constitutions, such as those of Canada, Germany and South Africa, tend to manifest significant prospectivity, considering what a person might become if his or her equal human dignity is respected and fostered. Thus, Mattias Kumm (2006) notes that the duty imposed by the German Basic Law on all state power to protect human dignity has led to a rich jurisprudence on various entitlements, including social and economic rights, which do not enjoy express, constitutional guarantee. In contrast, Sir Stephen Sedley (1995), a leading proponent of common law rights, is unable to decide whether a right to shelter is a human right – perhaps because he understands that the common law could not give effect to such an expectation.

For common law courts, retrospection and conservatism are inherent both in the informing doctrine of *stare decisis* (abiding by precedent set by hierarchically superior courts) and cautious statutory interpretation. (However, because the common law is not reliant on a legislature for change, it can undergo rapid and significant development.) Courts are only required to resolve disputes that have actually occurred, brought before them by directly affected persons, and presented in a particular way. These courts are not expected to anticipate future contingencies or consider issues not in dispute. Although judges may express themselves *obiter* (beyond the issue in hand) or extra-judicially, with an eye to future disputes, as Sir John Laws (1995) observes, the role of common law judges 'is reactive; they cannot initiate; all they can do is to apply the principles to what is brought before them by others' (p. 93).

When judges do turn to the common law to find fundamental rights, the results can be alarming. Sedley (1995) considered two Australian decisions in which the courts discovered common law rights, and observed of *Australian Capital Television Pty Ltd v Commonwealth of Australia* (1992) 177 CLR 106:

The Australian decision certainly makes it harder to defend the fitness of the courts to undertake constitutional adjudication on human rights issues, for the High Court of Australia has taken to be self-evident and universal views which many would regard as partial and highly contentious in a democracy. (pp. 393–394)

It has been argued in this paper that new enlightened thinking requires the environment to be brought within the scope of ethical and human rights concerns, but courts tend to codify and institutionalise existing public morality, rather than change or develop that morality.

The judiciary is functionally well equipped to engage with negative civil and political rights. Ultimately backed by armed force, courts can plausibly order a person to desist from doing something, such as torturing a prisoner. To a lesser extent, courts are able to order a person to do something, such as bring a prisoner before the court for examination or trial. Juridical science and practice therefore tend to dominate thinking on civil and political rights, the infraction of which is generally a discrete, actor-specific event. Broadly speaking, civil and political disputes tend to involve clear adversaries, often the government and a citizen. Common law courts, which are based on a model of adversarial conflict, are ideally set to host such disputes, and therefore to claim these issues as essentially legal. This doctrinal dominance in relation to civil and political rights may have the effect of giving the law a 'head start' in other rights discourses. However, the basic curial function is evaluative. In broad terms, when measurement needs to be conducted, either external expertise must be brought in to augment the law (for example on monopoly and competition issues), or the decision falls outside judicial remit, as with most financial reporting rules and disputes.

Quantitative sciences play a minor role in relation to negative rights. Although economics has recently made a significant contribution to legal theory (see Posner, 1992), it is difficult to arrive at a plausible exchange value for rights such as freedom of expression. Indeed, the economist Arthur Okun characterised the United States' Bill of Rights as 'a series of definitions of things which could not be exchanged' (cited by Mulgan, 1997, p. 64).

Courts also play a crucial role in relation to second- and third-generation rights – for example, an injunction may order a polluter to desist. However, injunctions are discretionary remedies, based on very old law derived from the courts of equity. As such, they raise issues of uncertainty in terms of legal standing and outcome. Further, the judiciary is ill-equipped to take action against potential, as opposed to actual, harm, making it difficult to stop damage before it has occurred. Finally, courts employ rudimentary conceptions of causation – in broad terms, that which a reasonable person might have foreseen at the time of the (eventually) harmful action. Without an identifiable and culpable legal actor, and a specific victim of quantifiable and foreseeable harm, grounds for legal action do not exist. Statutory limitations on legal action may also apply, which further dilute the power of courts to protect the interests of future generations. When the causes of, say, a polluted river are cumulative,

multiple and long-lived, with no easily identifiable individual culprit or victim, the adversarial system may be too blunt a tool to be effective in promoting sustainable outcomes. (It is moot point whether the inquisitorial curial system of civilian jurisdictions might be more effective.)

Disciplines that employ quantitative science, such as statistics, actuarial science and management accounting, may play a much greater role in distributive decisions about social, economic or environmental rights than those relating to first generation rights. For example, in *Soobramoney v Minister of Health* (Kwazulu-Natal) 1998 (1) SA 765 (CC) the extent of a person's right to health care was informed by management accounting information. Human rights are an aspect of distributive justice. Where the things to be distributed are quantifiable – as natural resources are to a significant extent – quantitative disciplines must play a crucial role in contributing to fair and rational distributions. Without the fullest information, fair and rational distributive decisions about rights and the environment cannot be made.

Quantitative sciences may contribute to better decision making, but may also hinder it. Accounting, for example, establishes what should be measured, how it is measured and evaluated, and how the findings are communicated to various constituencies for information. Accounting may, therefore, increase the quantity and quality of information available to decision makers, but because accountants 'are subjective "constructors of reality": presenting and representing the situations in limited and one-sided ways' (Morgan 1988, p. 477), accounting practice may also hinder decision making that encapsulates environmental values. Such values present challenges to legal hegemony in rights discourse, and call for proper consideration and investigation. The position of the judiciary in society and its role in protecting rights have developed over many centuries, and remain dynamic and subject to comprehensive critique. The social role of statistics or accounting is subject to far less scrutiny. Indeed, the extent to which quantitative science may contribute to human and environmental rights is generally unknown.

The problem of property

A tension is commonly presumed to exist between individual rights, especially property rights, and environmental concerns. Thus Klaus Bosselmann (2008) observes that '[p]roperty rights, in particular, have not been conducive to achieving ecological sustainability' (p. 112). However, property rights are commonly overstated. (After Charles Reich's (1964) identification of 'new property', the term 'property' may be used to refer to rights or even personal attributes. In this paper, the word is mainly used in the narrow sense of a thing owned, notably land.) Charters of rights tend to neither guarantee a certain level of property holdings, nor to prohibit existing property holdings from being extinguished – provided due process is followed. The BORA does not include a property guarantee (notwithstanding attempts to introduce one by private member's bill in 2005). The Magna Carta (1297), which is commonly thought to guarantee extant property holdings under the common law, provides that '[n]o Freeman shall be . . . disseised of his Freehold . . . but by lawful Judgment of his Peers, or by the Law of the Land' (s 29). Similarly, the UDHR (art 17) provides that '[e]veryone has the right to own property', but adds '[n]o one shall be arbitrarily deprived of his property'. In other words, municipal law must not prevent certain groups or individuals from owning property, but any existing property right may be extinguished, provided such action is in accordance with the rule of law. This principle was demonstrated in *Westco Lagan Ltd v Attorney-General* [2001] 1 NZLR 40 when the government extinguished a logging company's licence to cut timber on conservation land without compensation. The High Court could neither question the extinguishment of the indisputable property right nor order reparation, because the executive action was in accordance with duly enacted laws. Eminent domain cases in the United States also indicate the contingent nature of property holdings. For example, in *Kelo v City of New London* 125 S Ct 2655 (2005) a local authority legally confiscated individuals' residences so that a mall could be built that would increase the local tax base.

Discussion of property rights conflicting with environmental concerns tends to be predicated on visions of John Locke's applied labour theory of property, which links exploitation of land with proprietorship (Locke, 1990, p. 129). However, while influential as political theory, the Lockean natural rights conception of property has not generally been translated into law. The dominant legal conception of ownership, as seen in Roman law, Blackstone's commentaries on the common law, and, indeed, tikanga Māori, is occupation – an untheorised, utilitarian 'use it or lose it' doctrine. Property theory or law is

not so much the key issue here. Rather, it is the power – including power over land – that certain individuals and corporations possess and the law protects (Hancock, 2003).

When individualised rights are set against the common good, property may be seen as essentially ‘bad’. Thus Jean-Jacques Rousseau (1973) cautioned: ‘[b]eware of listening to this impostor [the first man to claim property rights]; you are undone if you once forget that the fruits of the earth belong to us all, and the earth itself to nobody’ (p. 84). However, property rights should not be overstated. Similarly, caution should be exercised before demonising property in environmental discourse.

First, for Hegel, ‘individuals have a right to possess some minimum amount of property in order to express their freedom by enforcing their will on external objects’ (Murphy & Nagel, 2005, p. 45). Without access to some forms of property a person cannot realise their capacity for full human flourishing.

Second, when ownership is seen in terms of trusteeship, the environmental benefits may be significant. Without a well-defined legal right or a sentiment of connection to land, people may not consider that they owe any duties of conservation. In his influential article ‘The Tragedy of the Commons’, Garret Hardin (1968) presented a model for explaining how multiple, self-interested individuals might ultimately deplete a shared limited resource, despite such an eventuality being contrary to everyone’s long-term interest. Hardin’s argument is ideologically charged and methodologically flawed (Buck, 1985), but nevertheless it is plausible that, without an identifiable owner, the quality of land may deteriorate under certain circumstances.

Third, as Nomi Stolzenberg (2002) observes, for indigenous communities ‘[p]roperty constitutes the access to the material resources and territorial control that is essential to any real community’ (p. 180). In the New Zealand context, Richard Hill (2009) observes that cultural connections between ancestors and land have traditionally informed conceptions of Māori autonomy ‘based upon an intimate nexus with customary land in tribal rohe’ (p. 181). Property in this sense has a crucial importance for indigenous peoples in preserving their environments, not uncommonly against the predations of extractive corporations. Positive environmental effects may arise from freehold being granted to indigenous peoples where they currently enjoy nebulous usufructuary rights (Hepburn, 2005). For example, where they have ancestral and spiritual connections to particular tracts of land, they may be unwilling to trade off short-term economic gains for environmentally harmful extraction of minerals. Conversely, the possibility also exists of localisation of concerns, and failure to appreciate national and global considerations.

Unlike, say, freedom from torture, property rights are never absolute – they exist to the extent that the law of a particular time and place permit. To reiterate, the proper rights in relation to property expectations are non-exclusion from the property regime and due process in the event of confiscation or extinguishment of current holdings. Liam Murphy and Thomas Nagel (2001) go too far in dismissing property as a myth. Nevertheless, the ethical and legal foundations for property rights are easily overstated. The problem of property is arguably less a matter of legal rights and more an issue of well-established expectations derived from the way property is commonly imagined. The appropriate question, and one that has important implications for sustainability, is: how much property does a person need to live a dignified life in her particular political community?

Rights and standing: Challenges to anthropocentrism

Locus standi is a sufficient interest to sustain legal proceedings or 'standing to maintain an action' (Spiller, 2001, p. 175). To show standing, litigants must prove they are suffering or will suffer injury, loss or some other non-trivial infraction of their rights. This requirement is problematic when sustainability rights are pursued, because an individual may be unable to show a sufficiently close connection to a manifestation of environmental degradation so as to claim standing. Environmental harm may affect the biosphere in which everyone lives, rather than discrete and identifiable victim-plaintiffs. One may be outraged by the pollution of a particular river, but the fact that one has fished that river for many years may not provide standing. (Of course, while private law is highly individualised, the state and its subdivisions or agencies may take action if an environmental crime has been committed.)

Constitutional environmental guarantees, where they exist, may be too vague to permit individual standing. Furthermore, common law jurisdictions have traditionally resisted claims by environmental groups, such as the Sierra Club in California, that they should have standing to take legal action to prevent environmental harm, such as the felling of old-growth forest.

Christopher Stone (1974) sought to fill this gap, which is essentially procedural rather than philosophical, by arguing that natural objects themselves should have standing. So, for example, a river might sue in its own right a firm that polluted it. The genius of Stone's argument is that it sidesteps the standing issues of traditional, victim-based actions. While the proposition that a non-human should be considered a legal actor might, at first face, seem implausible, juristic persons, such as companies, normally have full legal powers, and a long tradition exists of prosecuting animals and objects (see Finkelstein, 1981). In practice, an organisation or group would act on behalf of the thing – for example, Fish and Game New Zealand or a local iwi for a particular river.

In its effect, Stone's proposition is no different from the recommendation this paper makes for the proliferation of the principle of trusteeship – that is, for all of us to consider ourselves trustees of the environment, and specifically for certain persons to be empowered to give legal effect to trusteeship in respect of particular natural objects or systems. Such trustees would act for the benefit of all humans – alive and not yet born. In contrast, for Stone the attorney would act on behalf of the tree itself as a rights-bearing legal actor. However, between

editions of *Should Trees Have Standing?* (1974; 1996), Stone moved from a bare assertion of rights for natural objects to a concept of 'legal considerateness' whereby natural objects would not have rights like humans, but would be taken into account by the law. This approaches the humanist view – because rights are derived from unique human dignity, it is nonsensical to talk of rights except for humans.

Anthropocentrism

Luke Strongman (2008) defines 'anthropocentrism' as 'the condition of being humankind-centric, emphasising the need to protect the interests of humans and thus assessing the importance of other ecological entities in terms of their usefulness to humankind' (p. 1). (Such a 'usefulness' approach to nature is certainly in line with Lockean and traditional Marxist theory, but humanists may view the 'usefulness' of nature in terms other than those of extraction and production. Indeed, the utility of national parks and wilderness reserves lies greatly in the denial of their use for agricultural, extractive or industrial purposes.¹) Deep ecologists propose a shift away from anthropocentrism because of the environmental harm such a philosophy is thought to cause. 'Deep ecology is predicated upon an entirely different value system and epistemology from mainstream political and economic theory and can therefore be said to constitute a different form of rationality' (Hancock, 2003, p. 4). Thus Bosselmann (2008) argues:

[m]erely advocating environmental rights would not alter the anthropocentric concept of human rights. If, for example, property rights continue to be perceived in isolation and separation from ecological limitation, they will reinforce anthropocentrism and encourage exploitative behaviour. We need to consider, therefore, a human rights theory based on non-anthropocentric ethics. (p. 112)

The principal challenge to exclusively human rights arises from the proposal for animal rights. Indeed, arguments for and against animal rights present a useful precursor to a discussion of non-anthropocentric environmentalism.

Animal rights?

The issue of animal rights is commonly framed in terms of the distinction between indirect (Kantian) and direct (Benthamite) arguments. In the Kantian view, human rights derive from immanent dignity, characterised by autonomy – because autonomy is uniquely human, rights cannot be extended to animals. Thus Kant (2006) argued:

[s]o far as animals are concerned, we have no direct duties. Animals are not self-conscious and are there merely as a means to an end. That end is man . . . Our duties towards animals are merely indirect duties towards humanity. Animal nature has analogies to human nature, and by doing our duties to animals in respect of manifestations which correspond to manifestations of human nature, we indirectly do our duty towards humanity. (p. 564)

In this view, animals are instruments for human ends, and humane treatment of animals is motivated accordingly – for example, '[t]ender feelings towards dumb animals [may] develop humane feelings towards mankind' (Kant, 2006, p. 565).

The instrumental argument, as presented here, is clearly flawed. Children might learn about the suffering of other people by inflicting pain on animals. In such cases, we might encourage animal cruelty to promote understanding of the wrongfulness of inflicting pain on humans. It might otherwise be argued that one should not inflict pain on animals because such cruelty might distress other humans, but taking such a circuitous route to prevent animal cruelty is unnecessary.

For Robert Nozick (1975), '[a]nimals count for something' in our considerations: 'Some higher animals, at least, ought to be given some weight in people's deliberations about what to do. It is difficult to *prove* this. (It is also difficult to prove that people count for something!)' (pp. 35–36, emphasis in original). Robert Norman (2004, p. 112) argues that simply because we are human we have obligations to other animals. While humanism does not limit its concerns to humans, the concern for animals 'has a dimension which is properly *different* from our concern for other humans' (Norman, 2004, p. 113, emphasis in original). Indeed, humans generally refrain from inflicting pain on animals – and teach children not to do so, if any such education is necessary – because it is *humane* to behave in this manner. From a deontological perspective, we should not ill-treat animals because it detracts from our humanness to do so. To ensure humane treatment of animals, it is unnecessary to construct direct duties to animals or to confer rights on them.

Humanist arguments for humane treatment of animals can be extended, *mutatis mutandis*, to natural objects. First, we owe duties to other humans in terms of the environment. For example, denying future generations the opportunity to experience the wonder of the natural world is to unfairly limit their capacity for full human flourishing. Second, just as it demeans our personhood to commit animal cruelty, so it detracts from our humanness to wantonly destroy the environment that sustains human life.

Peter Singer, a doctrinaire utilitarian who has been seminal to the animal liberation movement, asserts rights for animals as a strategic gambit to achieve the least pain for the greatest number of sentient creatures (Singer, 1976). As Bentham (2006) proposed, '[t]he pertinent moral question is not, Can they reason? nor, Can they talk? But, Can they suffer?' (p. 567, emphasis in original). Certainly we can imagine something of ourselves in the faces of great apes, and, among others, the primatologist Frans de Waal (1996) goes so far as to claim 'morality' of a human kind among apes. Nevertheless, while we must include animals within the ambit of ethical concerns, the proper *rights* question is: are they human?

For utilitarians, rights are simply a means of achieving the greatest utility. If greatest utility – including all sentient creatures within the utility calculus – can be achieved without declaring animal rights, then this route is preferable. The Animal Welfare Act 1999 achieves radical protection of great apes in New Zealand, without declaring animal rights. It does this by imposing extensive restrictions and duties on humans. Similarly, without recognising animal rights, the German Constitutional Court has taken animal welfare into account in assessing the extent of human rights claims, and the European Commission has proposed a ban on the use of great apes in scientific experiments throughout Europe (Rook, 2009). This is certainly the correct approach from a humanist perspective, as it avoids the dilution of human rights and yet assures humane treatment of animals.

At the heart of animal rights arguments is the proposition that we know what maximises an animal's 'utility'. However, since animals lack the ability to talk and reason, and gauge the future, we must anthropomorphise – that is, project the human on to the non-human. Of course, when the animal in question is a large mammal, it is reasonable to assume that its 'utility' will be increased if it is properly fed, free from ill-treatment and not unduly confined. Nevertheless, despite our imaginative capacity, we can no more engage with our world on a non-anthropocentric basis than a dog can engage with it on a non-cynocentric basis. The physiological manifestations of hunger for a person and a dog may be similar, but the psychological aspects of hunger for a person, which may include understanding of social injustice and historical dispossession, the

possibilities of illness and death resulting from food deprivation, make the two experiences incomparable. Likewise, torture is not solely about physical pain. For a human, it is about the denial of humanity, the absence of justice, the mutual ability of torturer and tortured to empathise with one another, and so forth. We can be sure that ill-treatment of animals does not give rise to psychologically similar effects.

Animal rights activists most effectively focus on the plight of animals that immediately bring to mind vulnerable human babies – for example, fur seals. Likewise, research has shown that people are unwilling to destroy a machine if it is given an appearance that resembles a human face (Soskis, 2005). In the American Bar Association moot on rights for complex machines a similar tactic was used, and the plaintiff machine was depicted represented by a ‘hologram’ – in fact a young actress (Rothblatt, 2006). Lacking a face, any chemically measurable ‘distress’ a plant might manifest cannot be anthropomorphised in the way of an animal’s pain/no-pain.

When the putative subject of a right is, say, a tree, speculation on ‘utility’ is simply implausible. (In utilitarian discourse it can be argued that a sustainable environment maximises the utility of all sentient creatures, but natural objects themselves cannot plausibly be brought into the utility calculus.) What is really at stake is one group of humans, such as the Sierra Club, claiming a better perspective for humanity with regard to the tree than, say, a logging company. From a humanist perspective, granting trees rights is plain nonsense,² but the goal of preserving old-growth trees for future generations is eminently worthwhile and one that will commonly trump short-term economic gains.

Ecocentric rights?

Removing man from the centrality of the world, as Naess would, and declaring equality of all living things would necessarily require a nonsensical degree of anthropomorphism. Indeed, it is the difference between the natural world in which we exist – its capacity for the unknown and the ineffable – that makes it crucial in the humanist view to preserve that world and thereby ourselves.

Anti-anthropocentric arguments tend to conflate human centrality with the worst of human behaviour and may lead to a misanthropic fatalism that sees humanity as a virus on the ecosphere that nature will expunge. In contrast,

the development of universal human rights since the Second World War gives grounds for optimism regarding restraint, collective wisdom, cooperation and ingenuity.

An assumption of inevitable progression in rights development is commonly expressed in support of non-human rights. Roderick Nash (1989, p. 7), for example, illustrates an expanding circle of rights – English barons, American colonists, slaves, women, blacks, and (potentially) animals and nature. At first face, this is a powerful argument, particularly when it is noted that women's claims for rights were parodied by analogies to (then unthinkable) animal rights. John Stuart Mill (1974) observed:

each time there is a movement to confer rights upon 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 that time. (p. 149, cited by Rook, 2009)

Arguments for the inevitable widening of the net of rights miss the point, and, as Mill's observation implies, confuse the idea of universal rights with the historical barriers of patriarchy or other forms of social hegemony that prevented affirmation of those rights for all humans. It is to confuse the politics of a particular time and place with the ethical foundations of human rights that are not subject to political contingency. By analogy, it is to confuse the teaching of Christ with the practice of the Inquisition. In the social web of mutuality and reciprocity, animals and trees cannot be included, simply because they are not human. This is an eternal fact and not a matter of transitory political hegemony. The basic proposition of human rights has not essentially changed from the time of Aristotle, but power and dominance are dynamic and shifting.

In addition to its dubious Whiggishness, the proposition of ever-expanding rights is, in essence, an exercise in projecting human concerns and characteristics on to animals and natural objects. But, as Ludwig Wittgenstein (1994) famously observed, '[i]f a lion could talk, we could not understand him' (p. 213). There is, then, an unbridgeable ontological gap between species (Searle, 2005), and it is not 'speciesism', as Singer (2004) argues, to deny animals rights – rather, it is anthropomorphism to claim they should have rights. Nevertheless, a rejection of the notion of animal rights does not detract from our responsibilities as moral agents to treat animals in ways similar to how animal rights proponents would treat them. This imperative applies similarly to the environment.

Mary Warren (1992) argues that human-style rights are insufficient to maintain sustainability and '[o]nly by *combining* the environmentalist and animal rights perspectives can we take account of the full range of moral considerations

which ought to guide our interactions with the nonhuman world' (p. 206, emphasis in original). For Naess (1989), '[t]he rights of all the forms of life is a universal right which cannot be quantified. No single species of living being has more of this particular right to live and unfold than any other species' (p. 166). Jan Hancock (2003) observes that 'the linking of environmental to human rights demands strengthens the nature of both of the claims made. Environmental human rights claims are preserved as a useful means to achieve the social and environmental goals' sought by interest groups (p. 62). In other words, if those goals could be achieved more effectively through other means, there would be no need to assert rights. In contrast, from a deontological perspective, human rights are not useful instruments – they are the inevitable consequence of immanent human dignity.

Even if the principle of anthropocentrism was abandoned, as Horn (2007, p. 73) observes, the ecocentric ethic leads to considerable, perhaps insurmountable, normative problems – for example, determining which natural objects deserve human moral regard, what means are used to safeguard rights, and resolution of internal environmental conflicts, such as when only one of two species can survive, which one should be protected. Who should take precedence – man or mosquito?

Instead of rights for non-humans, the better focus lies with human responsibilities and duties. Only moral agents have duties; only human beings are moral agents. Nash (1989) argues:

[h]uman beings are the moral agents who have the responsibility to articulate and defend the *rights* of the other occupants of the planet. Such a conception of rights means that humans have duties or obligations towards nature. Environmental ethics involved people extending ethics to the environment by the exercise of restraint. (p. 10, emphasis added)

Humanist environmentalists certainly agree about human responsibilities and share this goal of restraint and conservation, but, for the humanist, the assertion of rights for non-humans is wrongheaded. Likewise, the humanist environmentalist must agree when Bosselmann (2008) says:

[t]he ecological approach to human rights acknowledges the interdependence of rights and duties. Human beings need to use natural resources but they also completely depend on the natural environment. This makes self-restraint essential, not only in practical terms, but also in normative terms. (p. 143)

However, when he adds '[e]ntitlement to natural resources and a healthy environment, usefully expressed as rights, can no longer be perceived in purely anthropocentric terms' (p. 143), the humanist must disagree. It is enlightening for human beings to seek to understand as fully as possible and

act in accordance with the ecological context in which they live. However, while our approaches to sustainability and human rights are anthropocentric by necessity, this does not imply selfishness, fettering of the imagination or short-termism. (See Strongman, 2008, p. 33 on 'critical anthropocentrism', which is, it is submitted, tantamount to humanist environmentalism.) Indeed, if we reasonably anticipate the expectations of others, particularly future generations – and rationality requires us to consider the fullest evidence – our approach to the environment must be conservative in the extreme. As Norman (2004) observes:

[w]e do not want to live in a world where there is no pure air to breathe, no clean water to drink or bathe in, where fields and woods are destroyed in order to build yet more motorways and airport runways, where agricultural land is overused and becomes infertile, where pesticides which protect agricultural crops also kill butterflies and skylarks. We want to prevent these things from happening, because they will all lower the quality of our lives, will deprive us and our successors of the enjoyment of beauty, and in the long term threaten human needs for food and good health. All these are overwhelmingly good reasons for humanist environmentalism, to be set alongside our sense of awe at the otherness of the natural world. (p. 113)

Trusteeship and beyond

Being grounded in Western humanism, this paper does not presume to represent the Māori worldview. Nevertheless, it is noted that the concept of kaitiakitanga is central to engagement with the environment for tangata whenua. Māori Marsden (2003) defined kaitiakitanga as ‘conservation customs and traditions, including its purpose and means through rāhui [ritual restriction]’ and noted that kaitiakitanga and rangatiratanga (governance) ‘are intimately linked’ (p. 71). While Cleve Barlow (1991) observes that some kaitiaki ‘come in the form of fish; they are guardians of the oceans and rivers’ (p. 35), an observation likely to be understood as a metaphor by Westerners, kaitiakitanga broadly corresponds with a humanist environmentalist concept of trusteeship which is well established in New Zealand practices and institutions.

For 20 years a battle over the future of the iconic Manapouri and Te Anau lakes was fought between those who wished to harness the lakes for an ambitious hydroelectric scheme and those who wished to preserve the natural state. One of the first actions of the incoming Third Labour Government in 1972 was to quash the Manapouri scheme and to invite the Save Manapouri Committee to nominate five people to be guardians of Lakes Manapouri and Te Anau (Hayward, 1981, p. 104). Innovatively, then, the government appointed committed environmentalists to ‘recommend operational limits that would preserve the health of the lakes and the rivers that flow into and out of them’ (Warne, 2009, p. 76). Kennedy Warne observes that the Resource Management Act 1991, ‘which enshrines environmental values in the policy-making process, is a legislative descendant of the Manapouri decision’ (p. 77). Section 7 of that Act is of particular relevance currently, as it requires anyone exercising a function or powers under the Act ‘in relation to managing the use, development, and protection of natural and physical resources’ to have particular regard to ‘kaitiakitanga – the ethic of stewardship’. Furthermore, the Environment Act 1986 established the office of the Parliamentary Commissioner for the Environment, who, ‘[w]ith the objective of maintaining and improving the quality of the environment’, is empowered ‘to review from time to time the system of agencies and processes established by the Government to manage the allocation, use, and preservation of natural and physical resources’ (s 16(1)(a)). The Commissioner, who, like the Ombudsman and Auditor-General, reports to Parliament and not to the government of the day, is an independent overseer of government environmental policy and practices (Parliamentary Commissioner for the Environment, n.d.), and may be seen as a trustee-in-general for the

environment. (It is too early to know what role the Environmental Protection Agency, established by the Resource Management Act (Simplifying and Streamlining) Amendment Act 2009, will play.)

Despite beneficial laws and institutions already being in place, more needs to be done. An all-embracing network of trusteeship needs to be developed, whereby local people (as many already do) take responsibility for the natural objects in their immediate environment. Statutory approval should be given to organisations, analogous to the Society for the Protection of Cruelty to Animals under the Animal Welfare Act 1999, to promote environmental ends and to have undisputed standing to prosecute and initiate civil proceedings, such as obtaining injunctions.

Finally, the constitutional aspects of sustainability must be noted. Since the arrival of European whalers and sealers, Aotearoa has been a locus of exploitation and extraction that has generally threatened the sustainability of its environment. For much of its existence New Zealand has played the role of agricultural hinterland for metropolitan Britain (Belich, 2009), and more recently other markets. It is arguable that the attitudes and institutions of such a subordinate territory are anachronous and incompatible with an independent nation in the twenty-first century. For Giorgio Agamben (1998), declarations of rights and republican independence are 'the place in which the passage from divinely authorized royal sovereignty to national sovereignty is accomplished' (p. 28). Jane Kelsey (1996) notes the prospects in New Zealand for 'fundamental constitutional reform' that is culturally and environmental respectful and brings about 'a sense of a culture and identity which makes sense of one's life and place in the world' (p. 159). Until a radical and formal break is made from colonial exploitation and fealty, it seems that the country will remain in a state of infancy and environmental peril.

Potential research subjects

The arguments and anticipated counterarguments raised in this paper have only been sketched – each requires far greater analysis and interrogation. The purpose has been to establish the principles of a humanist environmentalism in respect of which further research may be conducted. Issues for further research include the following:

Humanist environmentalism

- Defending a humanist conception of sustainability against deep green arguments.

Sources of human rights

- Linking natural facts to human rights and sustainability.
- Relating dignity to sustainability.

Human rights and human duties

- Development of a Levinasian conception of human responsibilities in relation to the environment.

Human rights in law

- New Zealand's geographical proximity and ties to low-lying island nations, and environmental refugees.
- Sustainability and New Zealand's constitutional arrangements.

Generations of human rights

- Tensions between individual, community and environmental rights.
- Practical implications of interdependence of rights.

Human rights and institutional competence

- Defects of the common law system:
 - judicial approaches to standing; use of class actions and *amici curiae*
 - possibility of alternative forums, such as inquisitorial bodies.
- The role of juridical science in evaluating and making mostly qualitative decisions compared with the traditionally subordinate role of disciplines that have a significant quantitative component, such as economics, statistics, actuarial science and accountancy, in contributing to distributive justice.

The problem of property

- Reimagining individual property expectations to support sustainability: comparison of Lockean, Rousseauvean and Hegelian conceptions of property.
- Positive aspects of property rights in relation to sustainability.

Rights and standing

- Defending unique human standing against anti-anthropocentric claims.
- Promoting environmental goals through humanism.

Trusteeship and beyond

- Incorporate Māori and pākehā worldviews and aspirations in a constitutional document.
- Republicanism and environmentalism.
- Effects of urbanisation on indigenous peoples' connection with particular tracts of land and hence environmental trusteeship.
- Issues of standing, especially in relation to 'corporate' bodies such as iwi and non-governmental organisations.

Notes

1. The author is grateful to Luke Strongman for the suggestion that these different forms of utility may be usefully distinguished – perhaps in binomials of reconstruction/ deconstruction, passivity/ aggression, exploitation/ preservation, and so forth.
2. The Swiss Federal Constitution guarantees ‘three forms of protection for plants: the protection of biodiversity, species protection, and the duty to take the dignity of living beings into consideration when handling plants. The constitutional term “living beings” encompasses animals, plants and other organisms’ (Willemsen, 2008, p. 3). At the time of writing, the author has not been able to confirm whether these are direct rights or protections arising from the imposition of human duties.

References

- Agamben, G. (1998). *Homo sacer: Sovereign power and bare life* (D. Heller-Roazen, Trans.). Stanford, CA: Stanford University Press.
- Barlow, C. (1991). *Tikanga whakaaro*. Melbourne, Australia: Oxford University Press.
- Bauman, Z. (2009). The absence of society. In D. Utting (Ed.), *Contemporary social evils* (pp. 147–157). Bristol, England: Policy Press for Joseph Rowntree Foundation.
- Belich, J. (2009). *Replenishing the earth: The settler revolution and the rise of the Anglo-world, 1783-1939*. Oxford, England: Oxford University Press.
- Bentham, J. (1987). Anarchical fallacies. In J. Waldron (Ed.), *'Nonsense upon stilts': Bentham, Burke and Marx on the rights of man* (pp. 46–76). London, England: Methuen.
- Bentham, J. (2006). A utilitarian view. In H. Kuhse & P. Singer (Eds.), *Bioethics: An anthology* (pp. 566–567). Oxford, England: Blackwell.
- Berlin, I. (1984). Two concepts of liberty. In M. Sandel (Ed.), *Liberalism and its critics* (pp. 15–36). Oxford, England: Basil Blackwell.
- Bigongiari, D. (Ed.). (1953). *The political ideas of St. Thomas Aquinas*. New York, NY: Hafner Press.
- Bosselmann, K. (2008). *The principle of sustainability: Transforming law and governance*. Aldershot, England: Ashgate.
- Botha, H. (2004). Freedom and constraint in constitutional adjudication. *South African Journal on Human Rights*, 20, 249–283.
- Brennan, M. (2009). To adjudicate and enforce socio-economic rights: South Africa proves that domestic courts are a viable option. *Queensland University of Technology Law and Justice Journal*, 9(1), 64–84.
- Brownlie, I. (2003). *Principles of public international law* (6th ed.). Oxford, England: Oxford University Press.
- Brundtland, G. (Chair). (1987). *Report of the World Commission on Environment and Development: Our common future* (the 'Brundtland Report'). Retrieved July 25, 2009, from <http://www.un-documents.net/wced-ocf.htm>

- Buck, S. (1985). No tragedy on the commons. *Environmental Ethics*, 7, 49–61.
- Burggraefe, R. (2005). The good and its shadow: The view of Levinas on human rights as the surpassing of political rationality. *Human Rights Review*, 6(2), 80–101.
- Cohen, R. (2003). Introduction. In E. Levinas. *Humanism of the other* (pp. i–xiv) (N. Poller, Trans.). Urbana, IL: University of Illinois Press.
- d'Entrèves, A. (1970). *Natural law: An introduction to legal philosophy*. London, England: Hutchinson.
- Department of Justice. (2004). *The guidelines on the New Zealand Bill of Rights Act 1990: Guide to the rights and freedoms in the Bill of Rights Act for the public sector*. Retrieved November 13, 2009, from <http://www.justice.govt.nz/publications/global-publications/t/the-guidelines-on-the-new-zealand-bill-of-rights-act-1990-a-guide-to-the-rights-and-freedoms-in-the-bill-of-rights-act-for-the-public-sector>
- Devine, N., & Irwin, R. (2005). Autonomy, agency and education: He tangata, he tangata, he tangata. *Educational Philosophy and Theory*, 37(3), 317–331.
- de Waal, F. (1996). *Good natured: The origins of right and wrong in humans and other animals*. Cambridge, MA: Harvard University Press.
- Dias, R. (1976). *Jurisprudence* (4th ed.). London, England: Sweet & Maxwell.
- Dworkin, R. (1978). *Taking rights seriously*. Cambridge, MA: Harvard University Press.
- Eagleton, T. (1983). *Literary theory: An introduction*. Minneapolis, MN: University of Minnesota Press.
- Etzioni, A. (1997). Introduction. In A. Etzioni & D. Carney (Eds.), *Repentance: A comparative perspective* (pp. 1–20). Lanham, MD: Rowman & Littlefield Publishers.
- Fichte, J. (1796). (A. Kroeger, Trans. 1970). *The science of rights*. London, England: Routledge & Kegan Paul.
- Finkelstein, J. (1981). *The ox that gored*. Philadelphia, PA: American Philosophical Society.
- Finnis, J. (1980). *Natural law and natural rights*. Oxford, England: Clarendon.

- Foucault, M. (1984). What is enlightenment? (C. Porter, Trans.). In P. Rabinow (Ed.), *The Foucault reader* (pp. 32–50). London, England: Penguin Books.
- Freud, S. (1991). *Civilization, society and religion* (J. Strachey, Trans.). London, England: Penguin.
- Glazewski, J. (1996). Environmental rights and the new South African constitution. In A. Boyle & M. Anderson (Eds.), *Human rights approaches to environmental protection* (pp. 177–197). Oxford, England: Oxford University Press.
- Gordon, C. (1991). Governmental rationality: An introduction. In G. Burchell, C. Gordon, & P. Miller (Eds.), *The Foucault effect: Studies in governmentality: With two lectures and an interview with Michel Foucault* (pp. 1–51). Chicago, IL: University of Chicago Press.
- Grayling, A. (2009). Social evils and social good. In D. Utting (Ed.), *Contemporary social evils* (pp. 103–113). Bristol, England: Policy Press for Joseph Rowntree Foundation.
- Habermas, J. (1983). Modernity – an incomplete project. (S. Ben-Habib, Trans.). In H. Foster (Ed.), *The anti-aesthetic: Essays on postmodern culture* (pp. 3–15). New York, NY: The New Press.
- Habermas, J. (1996). *Between facts and norms: Contributions to a discourse theory of law and democracy* (W. Rehg, Trans.). Cambridge, MA: MIT Press.
- Hacket, K. (2009). Instruments in the protection of migrant workers' rights – the New Zealand case. *New Zealand Sociology*, 24(1), 1–15.
- Hahlo, H., & Kahn, E. (1968). *The South African legal system and its background*. Cape Town, South Africa: Juta & Co.
- Hancock, J. (2003). *Environmental human rights: Power, ethics and law*. Aldershot, England: Ashgate.
- Hardin, G. (1968). The tragedy of the commons. *Science*, 162(3859), 1243–1248.
- Hayward, M. (1981). *Diary of the Kirk years*. Cape Catley, New Zealand: Reed.
- Hepburn, S. (2005). Disinterested trust: Legitimation of the doctrine of tenure post-Mabo. *Melbourne University Law Review*, 29, 1–38.
- Hill, R. (2009). *Maori and the state: Crown-Maori relations in New Zealand/Aotearoa, 1950-2000*. Wellington, New Zealand: Victoria University Press.

- Horkheimer, M. (1947). *Eclipse of reason*. London, England: Continuum.
- Horn, L. (2007). Globalisation, sustainable development and the common concern of humankind. *Macquarie Law Journal*, 7, 53–80.
- Ignatieff, M. (2001). Human rights as idolatry. In A. Gutman (Ed.), *Human rights as politics and idolatry* (pp. 53–98). New Haven, NJ: Princeton University Press.
- James, C. (2009, November 9). The other costs of climate change. *Dominion Post*, p. B5.
- Kamenka, E. (1979). What is justice? In E. Kamenka & A. Erh-Soon Tay (Eds.), *Justice* (pp. 1–24). London, England: Edward Arnold.
- Kant, I. (1784). *What is Enlightenment?* Retrieved November 1, 2009, from <http://www.sapere-aude.at/What%20is%20Enlightenment.pdf>
- Kant, I. (2006). Duties towards animals. In H. Kuhse & P. Singer (Eds.), *Bioethics: An anthology* (pp. 564–565). Oxford, England: Blackwell.
- Kelsey, J. (1996). Globalisation and the demise of the colonial state: Options for decolonisation in Aoteroa/New Zealand. In L. Trainor (Ed.), *Republicanism in New Zealand* (pp. 132–159). Palmerston North, New Zealand: Dunmore Press.
- Khan, M. (1995). Sustainable development: The key concepts, issues and implications. *Sustainable Development*, 3, 63–69.
- Kostakopoulou, D. (2002). Floating sovereignty: Pathology or a necessary means of state evolution? *Oxford Journal of Legal Studies*, 22(1), 135–156.
- Kumm, M. (2006). Who is afraid of the total constitution? Constitutional rights as principles and the constitutionalization of private law. *German Law Journal*, 7(4), 341–370.
- Laws, J. (1995). Law and democracy. *Public Law*, 72–93.
- Lehmann, A. (1984). *The European heritage: An outline of Western culture*. London, England: Guild Publishing.
- Locke, J. (1990). *Two treatises of government*. London, England: Dent.
- Luhmann, N. (2004). *Law as a social system* (K. Ziegert, Trans.). Oxford, England: Oxford University Press.

- Maritain, J. (1945). *The rights of man and natural law* (D. Anson, Trans.). London, England: G. Bles.
- Marsden, M. (2003). Kaitiakitanga: A definitive introduction to the holistic world view of the Māori. In T. Royal (Ed.), *The woven universe: Selected writings of Rev. Māori Marsden* (pp. 54–72). Otaki, New Zealand: Estate of Rev. Māori Marsden.
- Maslow, A. (1954). *Motivation and personality*. New York, NY: Harper.
- McLean, J. (2001). Legislative invalidation, human rights protection and s 4 of the new Bill of Rights Act. *New Zealand Law Review*, 4, 421–448.
- Mill, J. (1974). On liberty. In M. Warnock (Ed.), *Utilitarianism, on liberty, essay on Bentham, together with selected writings of Jeremy Bentham and John Austin* (pp. 126–250). New York, NY: Meridian.
- Minow, M. (1995). Applying rights rhetoric to economic and social claims. *Economic and Social Rights and the Right to Health*. Harvard Law School Human Rights Program, Cambridge, MA: Harvard University Press.
- Morgan, G. (1988). Accounting as reality constructions: Towards a new epistemology for accounting practice. *Accounting Organizations and Society*, 13(5), 477–485.
- Mulgan, G. (1997). *Connexity: How to live in a connected world*. London, England: Chatto & Windus.
- Mulhall, S., & Swift, A. (1995). *Liberals and communitarians*. Oxford, England: Blackwell.
- Murombo, T. (n.d.). The constitutional conundrum of locus standi: Comparative analysis of the rules of standing in public interest environmental litigation in the USA and South Africa. International Association of Law Schools. Retrieved December 7, 2009, from [http://www.ialsnet.org/meetings/constit/papers/MurumboTumai\(South%20Africa\).pdf](http://www.ialsnet.org/meetings/constit/papers/MurumboTumai(South%20Africa).pdf)
- Murphy, L., & Nagel, T. (2005). *The myth of ownership: Taxes and justice*. Oxford, England: Oxford University Press.
- Naess, A. (1989). *Ecology, community and lifestyle: Outline of an ecosophy* (D. Rothenberg, Trans.). Cambridge, England: Cambridge University Press.
- Nash, R. (1989). *The rights of nature: A history of environmental ethics*. Madison, WI: University of Wisconsin Press.

- Norman, R. (2004). *On humanism*. London, England: Routledge.
- Novak, M. (1999). Human dignity, human rights. *First Things*, 97, 39–42. Retrieved February 3, 2010, from <http://www.firstthings.com/article/2007/01/human-dignity-human-rights-43>
- Nozick, R. (1975). *Anarchy, state, and utopia*. Oxford, England: Blackwell.
- Nussbaum, M. (1999). Women and equality: The capabilities approach. *International Labour Review*, 138, 227–245.
- Ogorek, M. (2005). The doctrine of parliamentary sovereignty in comparative perspective. *German Law Journal*, 6(6), 967–980.
- Parliamentary Commissioner for the Environment. (n.d.). *About us*. Retrieved November 1, 2009, from http://www.pce.parliament.nz/about_us
- Pashukanis, E. (1978). *Law and Marxism: A general theory, towards a critique of the fundamental juridical concept* (B. Einhorn, Trans.). London, England: Pluto Press.
- Posner, R. (1992). *Economic analysis of law* (4th ed.). Boston, MA: Little, Brown.
- Pound, R. (1952). Natural natural law and positive natural law. *Law Quarterly Review*, 68, 330.
- Ravlich, A. (2008). *Freedom from our social prisons: The rise of economic, social, and cultural rights*. Lanham, MD: Lexington Books.
- Regan, T. (2001). *Defending animal rights*. Urbana, IL: University of Illinois Press.
- Reich, C. (1964). The new property. *Yale Law Journal*, 73(5), 733–787.
- Robinson, M. (2000). Foreword. In M. Wilson & P. Hunt (Eds.), *Culture, rights, and cultural rights: Perspectives from the South Pacific* (pp. vii–viii). Wellington, New Zealand: Huia.
- Rook, D. (2009). Should great apes have ‘human rights’? *Web Journal of Current Legal Issues*, 1. Retrieved July 25, 2009, from <http://webjcli.ncl.ac.uk/2009/issue1/rook1.html>
- Rorty, R. (1999). *Philosophy and social hope*. London, England: Penguin.
- Rothblatt, M. (2006). BINA48 vs. Exabit Corp (Fla. MD 2005): Defendant’s brief. *Journal of Personal Cyberconsciousness*, 1(3). Retrieved December 18, 2009, from http://www.terasemjournals.org/PC0103/bina48_02a.html

- Rousseau, J-J. (1973). *The social contract and discourses*. (Rev. ed.) (G. Cole, Trans.). London, England: Dent.
- Russell, B. (1961). *History of Western philosophy and its connection with political and social circumstances from the earliest times to the present* (2nd ed.). London, England: Routledge.
- Sands, P. (2003). *Principles of international environmental law* (2nd ed.). Cambridge, England: Cambridge University Press.
- Searle, J. (2005). *Mind: A brief introduction*. New York, NY: Oxford University Press.
- Sedley, S. (1995). Human rights: A twenty-first century agenda. *Public Law*, 386–400.
- Sen, A. (1999). Democracy as a universal value. *Journal of Democracy*, 10(3), 3–17.
- Sen, A. (2004). Elements of a theory of human rights. *Philosophy and Public Affairs*, 32(4), 315–356.
- Singer, P. (1976). *Animal liberation*. London, England: Cape.
- Singer, P. (2004). Taking humanism beyond speciesism. *Free Inquiry*, 24(6), 19–21.
- Soskis, B. (2005). Man and the machines. *Legal Affairs*. Retrieved December 14, 2009, from http://www.legalaffairs.org/issues/January-February-2005/feature_sokis_janfeb05.msp
- Spiller, P. (2001). *Butterworths New Zealand law dictionary: A fifth edition of Hinde & Hinde's law dictionary*. Wellington, New Zealand: Butterworths.
- Stern, N. (2006). *Stern review report on the economics of climate change*. London, England: Treasury. Retrieved April 3, 2009, from http://www.hm-treasury.gov.uk/stern_review_report.htm
- Stolzenberg, N. (2002). The culture of property. In R. Schweder, M. Minow., & H. Markus (Eds.), *Engaging with cultural differences: The multicultural challenge in liberal democracies* (pp. 177–193). New York, NY: Sage Foundation.
- Stone, C. (1974). *Should trees have standing? Toward legal rights for natural objects*. Los Altos, CA: William Kaufmann.
- Stone, C. (1996). *Should trees have standing? And other essays on law, morals, and the environment*. Dobbs Ferry, NY: Oceana.

- Strongman, L. (2008). *The anthropomorphic bias: How human thinking is prone to be self-referential* (Working Paper 4-07). Lower Hutt, New Zealand: The Open Polytechnic of New Zealand.
- Toope, S. (1997). Cultural diversity and human rights. *McGill Law Journal*, 42, 169.
- United Kingdom Parliament. (2003). *Joint committee on human rights sixth report*. Retrieved December 7, 2009, from <http://www.publications.parliament.uk/pa/jt200203/jtselect/jtrights/67/6702.htm>
- United Nations. (1948). *The Universal Declaration of Human Rights*. Retrieved February 4, 2010, from <http://www.un.org/en/documents/udhr/>
- United Nations. (1966a). *International Covenant on Civil and Political Rights*. Retrieved February 4, 2010, from <http://www2.ohchr.org/english/law/ccpr.htm>
- United Nations. (1966b). *International Covenant on Economic, Social and Cultural Rights*. Retrieved February 4, 2010, from http://www.unesco.org/education/information/nfsunesco/pdf/SOCIAL_E.PDF
- United Nations. (1982). *World Charter for Nature*. Retrieved February 4, 2010, from <http://www.un.org/documents/ga/res/37/a37r007.htm>
- United Nations. (1990). *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*. Retrieved February 4, 2010, from <http://www2.ohchr.org/english/law/cmw.htm>
- United Nations. (1993). *Vienna Declaration and Programme of Action*. Retrieved February 4, 2010, from [http://www.unhcr.ch/huridocda/huridoca.nsf/\(symbol\)/A.CONF.157.23.En?OpenDocument](http://www.unhcr.ch/huridocda/huridoca.nsf/(symbol)/A.CONF.157.23.En?OpenDocument)
- Vasak, K. (1977). Human rights: A thirty-year struggle: The sustained efforts to give force of law to the Universal Declaration of Human Rights. *UNESCO Courier*, 30(11).
- Vedantam, S. (2009, February 25). Ecomigrants take flight for a green haven. *Dominion Post*, p. B5.
- Vincent, A. (1992). *Modern political ideologies*. Oxford, England: Blackwell.
- Warne, K. (2009, November–December). Manapouri. *New Zealand Geographic* 100, 62–77.

- Warren, M. (1992). The rights of the nonhuman world. In E. Hargrove (Ed.), *The animal rights, environmental ethics debate: The environmental perspective* (pp. 185–210). Albany, NY: State University of New York Press.
- Weinreb, L. (1992). Natural law and rights. In R. George (Ed.), *Natural law theory: Contemporary essays* (pp. 278–308). Oxford, England: Clarendon Press.
- Willemsen, A. (Ed.). (2008). *The dignity of living beings with regard to plants*. Berne, Switzerland: Federal Ethics Committee on Non-Human Biotechnology ECNH. Retrieved December 21, 2009, from <http://www.ekah.admin.ch/fileadmin/ekah-dateien/dokumentation/publikationen/e-Broschure-Wurde-Pflanze-2008.pdf>
- Wittgenstein, L. (1994). The inner and the outer. In A. Kenny (Ed.), *The Wittgenstein reader* (pp. 209–224). Blackwell, England: Oxford.