

## ARTICLE

# Our Place in the World: A New Relationship for Environmental Ethics and Law

by Jedediah Purdy

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Toward the end of *A Theory of Justice*, John Rawls turns briefly to the topic of “right conduct in regard to animals and the rest of nature.”<sup>1</sup> His remarks address important moral questions that fall, Rawls says, outside the scope of justice, that is, questions that cannot find their answer in reflection on how a society of equals can respect the freedom and moral standing of each member.<sup>2</sup> The question of nature is about something else. Rawls asserts that “[a] correct conception of our relations to animals and to nature” would depend on “metaphysics,” which he defines as “a theory of the natural order and our place in it.”<sup>3</sup>

In the decades following the 1971 publication of *Theory of Justice*, ethics parted ways from more concrete fields such as politics and law. Environmental philosophers asked questions that Rawls envisioned: what kind of value the natural world presents and how humans should approach it. At the same time, official decisionmaking pivoted increasingly on cost-benefit calculations, which try to avoid metaphysicians’ vast and ultimate questions. Normative work in environmental law and policy followed, revolving around the use and limits of cost-benefit analysis (CBA).

### I. A New Relationship Between Law and Ethics

The lesson of these changes is not that environmental law has been without an ethical stance. CBA is not just a practical tool of policy but also a version of an ethical theory,

welfarism.<sup>4</sup> The question is not how environmental law and policy got free of ethics, but how they got so heavily invested in one mode of ethics, to the exclusion of the rest.

Environmental law needs ethics because it is blind without values. Law is action oriented, made to guide decisions, and decision is impossible without a key to better and worse.<sup>5</sup> Decision requires orienting value, whether it is established at the personal, legislative, or administrative level. CBA, the most would-be neutral of procedures, works only on the basis of prior judgments about what counts as good and bad.<sup>6</sup> A relatively mechanical, seemingly neutral decision procedure is possible as an administrative technique only because it takes its normative substance from decisions made at other levels.

#### A. A New Place for Law

Law can and should contribute to the development of environmental values. It can do so in conjunction with an ethics that begins from experience and perception.

Law creates a *geography of experience*. It shapes landscapes on which certain kinds of identity, perception, and encounters with the non-human world are possible. This point provides a way to get hold of the history of U.S. law-

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1. JOHN RAWLS, A THEORY OF JUSTICE 512 (1971).

2. See *id.*

3. *Id.*

4. Welfarism takes well-being as the consequence that is relevant for ethical assessment. In the version that CBA represents, consequences are assessed by the total social wealth produced under alternative policies, measured by various techniques for attaching prices to valued and disvalued outcomes.

5. See CHARLES TAYLOR, SOURCES OF THE SELF: THE MAKING OF THE MODERN IDENTITY 25-52 (1989) (suggesting that moral decisionmaking is guided by frameworks that distinguish between alternatives).

6. See DOUGLAS KYRISAR, REGULATING FROM NOWHERE: ENVIRONMENTAL LAW AND THE SEARCH FOR OBJECTIVITY 6-67 (2010) (discussing CBA as a specific and debatable formulation and application of welfarist theory); Alyson Flournoy, *Building an Environmental Ethic From the Ground Up*, 37 U.C. DAVIS L. REV. 53, 57-62 (2003) (explaining that environmental law contains implicit ethical commitments which require interpretation and excavation); Jedediah Purdy, *The Politics of Nature: Climate Change, Environmental Law, and Democracy*, 119 YALE L.J. 1122, 1180-90 (2010) (showing how the substantive debates over the goals of antipollution statutes set the terms for later application of CBA); Lee Talbot, *Does Public Policy Reflect Environmental Ethics? If So, How Does It Happen?*, 37 U.C. DAVIS L. REV. 269, 279-80 (2004) (concluding that ethical commitments pervade the policymaking process, although they are often not explicit).

making around nature. For the first one hundred years, U.S. law worked relentlessly to make Americans into economically productive settlers of the continent.<sup>7</sup> The Homestead Acts<sup>8</sup> and other land-disposal statutes,<sup>9</sup> beginning with the General Land Ordinance of 1785,<sup>10</sup> aimed to make citizens into forest clearers and farmers, forests and grasslands into fields.<sup>11</sup>

The second great moral vocabulary of nature in American life, the Romantic one, was also rooted in a mode of experience and perception and dependent on law to make that experience real. From this perspective, nature's most extreme and dramatic places inspire epiphany: flashes of insight into the order of things and one's place in it.<sup>12</sup>

From the 1920s forward, Romantic recreationists built a movement dedicated to preserving "wilderness." Wilderness advocates both made wilderness something to prize and gave it a precise definition: land in which a solitary individual could encounter nature as it would have developed without human exploitation or development.<sup>13</sup> Such solitude, they insisted, prompted reflection on one's own smallness and lack of power before a vast and ancient natural world.<sup>14</sup>

The 1964 Wilderness Act,<sup>15</sup> which followed eight years of focused advocacy, gave the concept of wilderness legal operation. In developing a language to defend wilderness, advocates found words for their own experience and in turn made that experience available to others. These encounters, in turn, produced new rounds of advocacy and reform.<sup>16</sup>

Environmental law, then, contributes most to the development of environmental ethics by shaping experience far outside the courtroom: it is encounters with nature that provide much of the material for shifts in perception and imagination.

## B. Ways of Understanding Change in Environmental Ethics

The history of environmental politics and law reveals certain patterns. Environmental values have taken shape around clusters of ethical issues that they share with other, nonenvironmental questions. Environmental values have especially engaged five themes in ethical experience.

### 1. Hippocrates' Restraint: On Not Harming Another

Reluctance to harm another is a basic moral experience and easy to identify in nearly any moral theory. While evident in duty-based deontological theories, the commitment to averting others' suffering is also a root of utilitarianism. This approach to ethics makes sense only if one accepts the starting point that every person matters equally in a moral sense.

The same logic is at work in what one might call the "personalizing" of natural phenomena other than animals. Trees, rivers and mountains, species, and ecosystems have all achieved some status as entities that (some) people recoil from harming.<sup>17</sup>

### 2. Who We Are Together: The Ethics of Solidarity

Environmental ethics has also tapped what I would call *solidarity*: the sense of obligation connected with group membership, including the willingness to make sacrifices to benefit other members and vigilance against betrayal of the group from within.

The rise of conservation politics at the turn of the last century was closely tied to a particular version of patriotism. Theodore Roosevelt and other Progressives recast American civic identity as requiring a strong and extensive state. Natural resources exemplified why regulation was necessary: without it, private greed would waste the national patrimony.<sup>18</sup> Hence, public administration of parks, forests, and other natural resources formed a paradigm for progressive regulation.<sup>19</sup>

7. See generally PAUL W. GATES, *HISTORY OF PUBLIC LAND LAW DEVELOPMENT* (1968) (providing a comprehensive history of the role of law in the westward development of the United States).
8. Stock-Raising Homestead Act, ch. 9, 39 Stat. 862 (1916) (codified as amended at 43 U.S.C. §§299, 301 (2006)); Enlarged Homestead Act of 1909, ch. 160, 35 Stat. 639 (repealed by Federal Land Policy and Management Act of 1976, Pub. L. No. 94-579, 90 Stat. 2743 (codified as amended at 43 U.S.C. §§1701-1782 (2006 & Supp. IV 2011))); Homestead Act of 1862, ch. 75, 12 Stat. 392 (repealed by Federal Land Policy and Management Act of 1976, 90 Stat. 2743).
9. Arid Land Act, ch. 1069, 25 Stat. 526 (1888) (codified as amended at 43 U.S.C. §662 (2006)); Timber and Stone Act, ch. 151, 20 Stat. 89 (1878) (repealed by Act of Aug. 1, 1955, ch. 448, 69 Stat. 434).
10. The General Land Ordinance of 1785, reprinted in 28 JOURNALS OF THE CONTINENTAL CONGRESS 1774-1789, at 375 (John C. Fitzpatrick ed., 1933).
11. See generally WILLARD HURST, *LAW AND THE CONDITIONS OF FREEDOM IN THE NINETEENTH-CENTURY UNITED STATES* (1956) (arguing that the federal design of settlement carried out a policy of unleashing human energy and initiative).
12. See JOHN MUIR, *My First Summer in the Sierra*, in *MY FIRST SUMMER IN THE SIERRA AND SELECTED ESSAYS* 1, 78 ("South Dome . . . seems full of thought, clothed with living light, no sense of dead stone about it, all spiritualized, neither heavy looking nor light, steadfast in serene strength like a god."); *id.* ("From form to form, beauty to beauty, ever changing, never resting, [raindrops] all are speeding on with love's enthusiasm, singing with the stars the eternal song of creation.").
13. See Purdy, *supra* note 6, at 1160-73 (setting out the political, legal, and conceptual development of wilderness in the twentieth century).
14. See *id.* at 1168 ("[Nature] awes us because it is always more complex, older, and stranger than we can understand.").
15. Wilderness Act, Pub. L. No. 88-577, 78 Stat. 890 (1964) (codified as amended at 16 U.S.C. §§1131-1136 (2006)).
16. See Purdy, *supra* note 6, at 1160-73 (describing the interaction of advocacy, argument, and experience in the wilderness-preservation movement).

17. See, e.g., Wilderness Act, 16 U.S.C. §§1131-1136 (2006); Endangered Species Act, 16 U.S.C. §§1531-1544 (2006 & Supp. IV 2011).
18. See GIFFORD PINCHOT, *THE FIGHT FOR CONSERVATION* 48-49 (1910) (Discussing the role of conservation in allocating "the greatest good to the greatest number for the longest time" and "proclaim[ing] the right and duty of the people to act for the benefit of the people").
19. See Jedediah Purdy, *American Natures: The Shape of Conflict in Environmental Law*, 36 HARV. ENVTL. L. REV. 169, 189-99 (describing the paradigmatic place of natural-resource conservation within the larger reform agenda of Progressives of the late nineteenth and early twentieth centuries).

Public recreational areas, especially, parks, also became symbols of national identity. Parks advocates invited Americans to identify with emblems on the landscape that marked the continent as belonging to the nation.<sup>20</sup>

### 3. Being Who One Is: Personal Ethics

Environmental value has been closely involved with two ideas that are central to modern personal identity: *dignity* and *authenticity*.<sup>21</sup>

Dignity encompasses qualities that command the respect of others and the sense of oneself as commanding that respect.<sup>22</sup> It was a centerpiece of the U.S. settler identity: the pioneer, a free man who freely labored on free land, was an admirable figure in a republican community of equals.<sup>23</sup> Using land and other resources productively became a touchstone of American dignity.

Authenticity is being oneself, not someone else's image or a congeries of borrowed habits and styles.<sup>24</sup> It remains the heart of Romantic environmental imagination: the wilderness has long promised clarity about who one is, a liberation from the unreflective attitudes and habits of the lowlands.<sup>25</sup>

### 4. Aesthetic Response and Ethics

Aesthetic response involves qualities in objects, landscapes, and natural systems, and also the qualities of mind and emotion that these call forth. The three most influential aesthetic experiences are *beauty*, *sublimity*, and *uncanniness*.

Beauty, connected with "gratitude and a sense of peace,"<sup>26</sup> is associated with landscapes and other natural objects that display regularity, gradual transitions, soft lines, and evidence of the mildness and fertility of a terrain that could support human life richly in answer to a modicum of work.<sup>27</sup>

Sublimity involves not being at home, but instead being thrown into a world of alien character and overwhelming dimensions, a world potentially hostile, but, more basi-

cally, indifferent and—past a point—incomprehensible.<sup>28</sup> It is associated with vast and dangerous landscapes such as high mountains and crevasses, and with cataracts and the ocean.

Uncanniness refers to the bewildering experience of uncertainty about whether something is alive or conscious, another intelligence looking back at the watching person. One might experience it with an animal, or in a shadow at the edge of a forest at nightfall.

### 5. Acting, Being, and Seeing: Virtue Ethics

The central concern of virtue ethics is the character of individuals.<sup>29</sup> Virtues are qualities of character that tend to produce actions of a certain kind.<sup>30</sup> The actions that a virtue supports constitute *practices*, forms of ongoing, usually shared, activity that contain ways of assessing one's participation.<sup>31</sup> Practices, in turn, help to make up forms of life and shared understandings of what constitutes a good existence.

Virtuous conduct is not motivated by an ambition to *be* virtuous, but by the perception that courage, reflectiveness, or another quality of conduct fits the situation.<sup>32</sup> The motivation is to respond appropriately to the circumstances in which one finds oneself.

## II. An Environmental Law of Ethical Change: Three Applications and the Case for Ethical Change, Revisited

This dynamic history of environmental values did not end in the 1970s. At least three areas of contemporary environmental law display openness to changing values. These areas find people unsure of what to make of key encounters with the natural world, and experimenting in the face of that uncertainty. These experiments might produce a change in ethical vocabulary. They also present an opportunity to reflect on how law can foster, or inhibit, this ethical development.

20. See *id.* at 205-06 (noting the absorption of civic and Romantic language into parks advocacy).

21. For an extremely valuable discussion of these ideas and their place in modern moral culture, see CHARLES TAYLOR, *The Politics of Recognition*, in PHILOSOPHICAL ARGUMENTS 225, 225-33 (1995).

22. See *id.* at 226-27 (tracing the roots of "due recognition").

23. See ERIC FONER, *FREE SOIL, FREE LABOR, FREE MEN: THE IDEOLOGY OF THE REPUBLICAN PARTY BEFORE THE CIVIL WAR* 11 (1970) ("[T]he concept of 'free labor' lay at the heart of the Republican ideology . . ."); GORDON S. WOOD, *EMPIRE OF LIBERTY: A HISTORY OF THE EARLY REPUBLIC, 1789-1815*, 358-62 (2009) (discussing the civic ideology of free soil and free labor).

24. See TAYLOR, *supra* note 21, at 228-29 (discussing the origin and development of the ideal of authenticity).

25. See Purdy, *supra* note 19, at 203-05 (discussing the cultural and psychological appeal of the Romantic attitude to nature, prominently including authenticity).

26. *Id.*

27. See EDMUND BURKE, *A PHILOSOPHICAL ENQUIRY INTO THE ORIGIN OF OUR IDEAS OF THE SUBLIME AND BEAUTIFUL* 112-18 (James T. Boulton ed., Univ. of Notre Dame Press 1968) (1759) (describing what makes things beautiful); IMMANUEL KANT, *THE CRITIQUE OF JUDGMENT* 42-89 (James Creed Meredith trans., Oxford Univ. Press 1989) (1790) (describing the inputs and processes that determine beauty).

28. See BURKE, *supra* note 27, at 39-70 ("When danger or pain press too nearly, they are incapable of giving any delight, and are simply terrible; but at certain distances, and with certain modifications, they may be, and they are delightful . . ."); KANT, *supra* note 27, at 114 ("Sublimity, therefore, does not reside in any of the things of nature, but only in our own mind, in so far as we may become conscious of our superiority over nature within, and thus also over nature without us (as exerting influence upon us).").

29. See BERNARD WILLIAMS, *Acting as the Virtuous Person Acts*, in *THE SENSE OF THE PAST* 189, 189-95 (Myles Burnyeat ed., 2006) (stating that "[a] (fully) [virtuous] act is what a [virtuous] person would do, but only if it is done as the [virtuous] person does such a thing" and describing the manner in which a virtuous person does the act).

30. See *id.* at 193 ("We say that the agent did the generous (e.g.) thing because it was the generous thing to do . . .").

31. See ALASDAIR MACINTYRE, *AFTER VIRTUE* 187-91 (2d ed. 1984) (setting out the definition and working of practices).

32. See WILLIAMS, *supra* note 29, at 189-97 (making this point and observing some of its difficulties for a theory of "moral realism," a theory that is not an issue in this discussion, which does not engage meta-ethical questions).

## A. Food, Agriculture, and the Value of Work

The food movement views some physical work, including cooking, gathering food, and raising livestock, as an affirmative source of satisfaction.<sup>33</sup> Knowledge of the ecological, chemical, and other processes that make the work a successful engagement with the natural world generates that satisfaction. In this view, work done with informed appreciation is qualitatively better than work that is less informed, even if the latter may be more efficient if measured, for instance, by calories produced per unit of input.<sup>34</sup>

The food movement also values work that preserves, even enhances, natural processes, rather than exhaust them.<sup>35</sup> The movement embraces integrated agriculture that returns crop and animal waste to the soil to preserve the cycle of fertility. It also laments *industrial* farming that makes animal waste a water pollutant while, at the same time, drawing soil fertility from separately manufactured chemical fertilizers and, in some cases, literally mined to replace the fertility lost through discarded animal waste.<sup>36</sup>

This image of food presents something different from the standard case for reforming farm policy, which concentrates on the polluting side effects of fertilizers, pesticides, and fossil fuels.<sup>37</sup> The ideal that I have described makes knowledgeable, sustainable work in natural processes a freestanding value, a reason to pursue a food economy that fosters such work.

On this view, agricultural policy is cultural policy, like establishing national parks. Parks policy is an investment in a relation to nature. It generates thinking about humanity's place in the world. Similarly, agricultural policy that supports small-scale, participatory food raising would be an investment in developing environmental ethics.

## B. Animals and the Ethics of Encounters Across Species

The debate over the treatment of animals is deep and important.<sup>38</sup> Arguments against factory farming and meat eating imply that many Americans are engaged in a massive violation of basic morality.<sup>39</sup> There are two prominent approaches to this issue. The first view is broadly abolitionist, contending that there is no moral defense for most of the present human use of animals, and that we should stop

taking their flesh, hides, and lives.<sup>40</sup> The second approach is *reformist*: it seeks to renovate human relations with animals while preserving domestication and meat-eating.<sup>41</sup>

Both reformism and abolitionism confidently ascribe specific moral significance to animals. Each side has concluded judgment on a question that has not been concluded in the larger ethical, political, and legal argument.<sup>42</sup>

The continuing dispute reflects the difficulty of interpreting animal experience, which we cannot know except through speculation. Law might make this problem more palpable and so perhaps more generative.

The public argument around factory farming is inhibited by concealment of the practice itself, an enforced invisibility that collaborates with the human tendency to avoid what is unpleasant. The concealment rests on the property right of exclusion—the power to keep others out of the place one owns.

The most straightforward way to foster reflection on how we use animals would be to create a “right to know” the sources of one's food. This could mean a right of public access, under controlled conditions, to industrial food operations.<sup>43</sup> Depending on considerations of safety and convenience, physical access could be supplemented or replaced outright by video technology. Labeling requirements for meat could include a web address where buyers could look inside the facilities where the animal was raised and slaughtered.

For smaller-scale and neo-traditional operations, providing public access might be a condition of participating in support policies, or it might just be required outright. Outside the industrial setting, such observations would test by experience whether the right kind of farming can produce an ethically attractive relation between people and animals.<sup>44</sup>

## C. Climate Change, Rationality, and Vision

Climate change is hard to address effectively when viewed through standard accounts of how rationally self-interested people make decisions and the problems they encounter when trying to solve problems together.<sup>45</sup> Because climate change is a complex global problem with a very long clock, the benefits of doing anything to stop it are uncertain and, if they materialize, will often help only people far away and far in the future.<sup>46</sup> The costs of addressing it, by contrast,

33. See *id.* at 138–40 (seeing labor to produce food as a positive good).

34. See *id.* at 87, 138 (“In gardening, for instance, one works with the body to feed the body. The work, if it is knowledgeable, makes for excellent food.”).

35. See *id.* at 85–86 (discussing the value of agriculture that returns its sources of energy and fertility to the soil that first produced them).

36. Cf. *id.* at 136–37 (stating that industrial agriculture “transforms fertility into pollution”).

37. See JASON CLAY, *WORLD AGRICULTURE AND THE ENVIRONMENT: A COMMODITY-BY-COMMODITY GUIDE TO IMPACTS AND PRACTICES* 45–62 (2004) (quantifying the environmental effects of present agricultural practices).

38. See PETER SINGER, *ANIMAL LIBERATION* 1–24 (1975) (setting out the argument for equality of moral concern for animals based on suffering).

39. See *id.* at 94–158 (detailing farming practices as a massive violation of morality).

40. See GARY L. FRANCIONE & ROBERT GARNER, *THE ANIMAL RIGHTS DEBATE: ABOLITION OR REGULATION?* 1–102 (2010) (setting out the case for abolition of human exploitation of nonhuman animals).

41. See *id.* at 103–74 (setting out the case for reform rather than abolition of human-animal exploitation).

42. See generally JONATHAN SAFRAN FOER, *EATING ANIMALS* 123–43 (2009) (exploring the continuing cultural irresolution on the topic of eating animals).

43. See MICHAEL POLLAN, *THE OMNIVORE'S DILEMMA* 332–33 (2006) (suggesting, somewhat fancifully, that the walls of slaughterhouses be replaced with glass).

44. See *id.* at 333 (noting the desirability of public knowledge of slaughtering practices).

45. See generally RICHARD TUCK, *FREE RIDING* (2008).

46. See STEPHEN M. GARDINER, *A PERFECT MORAL STORM: UNDERSTANDING THE ETHICAL TRAGEDY OF CLIMATE CHANGE* 24–48 (2011).



tend to come quickly, be fairly concrete, and affect the person trying to solve the problem.

Familiar ethical frameworks run aground on climate change, and making progress on the issue might imply changing our ethical vocabulary.

What kinds of specifically environmental values are involved in climate change? Does climate change confound these? If so, can we reformulate these values, or develop new ones, in a way that would help make sense of the problem?

Basic perceptions of wrong are connected with palpable A → B transactions.<sup>47</sup> Perceptions of harm weaken as the effect of one's action becomes less direct and corporeal. Little wonder, then, if climate change proceeds without stirring much sense that anyone is doing any harm. Greenhouse-gas emissions by billions of individuals produce a globally dispersed, systemic change that intensifies certain atmospheric processes in a complex global phenomenon, all against a naturally unstable baseline.<sup>48</sup>

Because of this complexity, ethical appeals that have worked to organize our sense of other complex environmental problems may be less effective here. A classic environmental problem—"pollution"—introduces a harmful, alien agent to an otherwise healthy system, sickening animals and people and weakening the underlying system.<sup>49</sup> This simple narrative captures most of the public discussion around antipollution statutes: human effluents were seen as violating the order of a clean world, making it unhealthful and unsafe.<sup>50</sup>

Climate change is different. The major greenhouse gases, notably carbon, are already pervasive in the atmosphere, and their processing is part of global cycles integral to life.<sup>51</sup> Moreover, they do not, by themselves, harm individuals by exposure in concentrations remotely resembling their present atmospheric levels.

Is there a way of finding motivation in the same ecological complexity that confounds familiar moral appeals? One possible path would start from the traditional aesthetic register of beauty and turn that familiar pleasure into a more complex appreciation of the interdependence of living and nonliving systems. That our whole way of life tends to unsettle the global climate system, and that this general point is also true of a myriad of individual acts, from driving to burning coal, are incontrovertible points. If we learned to feel them in the way we have learned to feel the harm of pollution or extinction, we would have become different people.

This standard also avoids the need for fixed baselines, such as the condition of undisturbed "natural" systems. This ethical approach does not rely on any thought of a "world without us" from which to measure our effect. It assumes an inhabited world already shaped by our use.

Approaching the ethics of climate change in these terms is a cultural and imaginative challenge: to find a way to prize the beauty, integrity, and stability of global and largely invisible processes.

How might law contribute to this possible cultural development? Reform efforts may make essential cultural contributions even if they seem futile when we ask simply whether they will likely succeed as lawmaking or regulatory strategies. For instance, municipal efforts to address greenhouse-gas emissions and community-level attempts to define a personal ethics of low-carbon living, although palpably ineffective in one way—they will not directly contribute much to reducing global emissions—may nonetheless turn out to be effective in somewhat the way Sierra Club excursions were: as new ways of experiencing climate change as mattering, and in new shared vocabularies for expressing and elaborating its importance.<sup>52</sup>

### III. Convergent Reasons for Law to Support Ethical Innovation

There are, though, at least three kinds of reason to think that law should support ethical change, which correspond to three prominent approaches to environmental ethics generally.

The first argument starts from the liberal-humanist approach that marked much of the legal and philosophical discussion of ethical change in the early 1970s. Moral perception is an essential aspect of freedom, in which we at once experience ourselves as responding to genuine values and choose those values by accepting their claim on us.<sup>53</sup> Developing moral perception cultivates a special blend of human capacities in which we are responsible

47. See Jonathan Haidt & Selin Kesebir, *Morality*, in 2 HANDBOOK OF SOCIAL PSYCHOLOGY 797, 822 (Susan T. Fiske, Daniel T. Gilbert, & Gardner Lindzey eds., 5th ed. 2010).

48. See David Archer & Stefan Rahmstorf, *The Climate Crisis: An Introductory Guide to Climate Change 16-38* (2010) (setting out the basic science of the problem).

49. This description smacks of a "foundation" of environmental ethics that Professor Jonathan Haidt calls "purity/sanctity," a motive that encompasses "[c]oncerns about physical and spiritual contagion, including virtues of chastity, wholesomeness, and control of desires." Haidt & Kesebir, *supra* note 47, at 822. See MARY DOUGLAS, *PURITY AND DANGER*, at x-xi (Routledge 2002) (1966) (discussing the idea of "pollution" in the religious and ritual sense: the taboo, the untouchable, the urgent barrier between the sacred and the profane); see also John Copeland Nagle, *The Idea of Pollution*, 43 U.C. DAVIS L. REV. 1, 28 (2009) (arguing for a broad idea of pollution that participates in the purity/sanctity divide). Nonetheless, the concept of harm seems more useful to me here.

50. See *id.* at 7 ("The rapidity of change and the speed with which new situations are created follow the impetuous and heedless pace of man rather than the deliberate pace of nature."); see also Essay, *The Age of Effluence*, TIME, May 10, 1968, at 52 ("[M]any scholars of the biosphere are now seriously concerned that human pollution may trigger some ecological disaster.").

51. See TED NORDHAUS & MICHAEL SHELLINGER, *BREAK THROUGH: FROM THE DEATH OF ENVIRONMENTALISM TO THE POLITICS OF POSSIBILITY* 111-13 (2007) (arguing that the "pollution paradigm" is inappropriate for dealing with the issue of global climate change). But see Carl Pope, *There Is Something Different About Global Warming*, GRIST (Jan. 14, 2005), <http://grist.org/politics/pope-reprint> (arguing that the pollution paradigm largely holds for greenhouse gases).

52. Purdy, *supra* note 6, at 1198-99; see also Sarah Krakoff, *Planetarian Identity Formation and the Relocalization of Environmental Law*, 64 FLA. L. REV. 87, 107 (2012) (arguing that community-level activism can still "provide a blueprint for individual and community action, even in a world where state coordination and enforcement either never fully materialize, or do and nonetheless fail to achieve their stated goals").

53. See Laurence H. Tribe, *Ways Not to Think About Plastic Trees: New Foundations for Environmental Law*, 83 YALE L.J. 1315 (1974).

and creative, free enough to remake the world and fixed enough to keep our footing. So seen, environmental ethics is centrally an expression of something *about us*, a set of powers we can put to appropriate use. In this view, the development of environmental ethics is something like an intrinsic goods, an exercise of essential human powers, which law should facilitate.

In a second perspective, environmental ethics is not about us: it is the attempt to see and honor accurately the value present in the natural world. The point of environmental ethics is not what it enables us to do, but what it puts us in touch with or shows us. Here, too, by promoting ethical development, law can help us nearer to the right characterization of value.

The third approach regards ethical perception as instrumental to functional ends, rather than as essentially about the perception of value. Ethical responses enable humans to solve collective-action problems, “suppress selfishness” and achieve widespread cooperation.

From a social-functional perspective, it would seem that our moral psychology has enabled us to produce a form of social cooperation that generates collective-action problems larger than any of those that the same psychology has previously helped to overcome, and which that psychology, at present, cannot prevent. One way reformation might

happen is through the development of ethical perceptions that can motivate a different set of personal and political responses to climate change. Laws that facilitate ethical development would represent a self-aware effort to create conditions in which the functional account of ethics would describe a success rather than a devastating paradox.

#### **IV. Conclusion**

The values that orient a political community are the products of that community’s struggles and efforts at persuasion and discernment. The history of environmental law and politics and a structured sense of the vocabulary of ethical change can guide us in this terrain. Environmental law will inevitably shape the experiences and inflect the interpretations that will give these issues their shape in the next generation of what John Rawls would have called our metaphysics—a common yet contested view of the world, which we cannot do without but should not expect ever to resolve into just one form. Shaping the law to play this role actively would mean embracing both our creative ethical capacity and our sense of responsibility to make sense of and do justice, in every sense of that word, to the natural world.