

# Environmental Ethics and Environmental Law: A Virtuous Circle

Zoe Makoul\*

*This Note poses the question of whether—and how—lawmaking can create a platform for promoting an environmental ethic. There is a body of scholarship about how values or virtue ethics impact lawmaking, but this Note also explores the opposite—how lawmaking impacts the values or virtue ethics of the public. Environmental ethicists disagree about the very origins of environmental ethics. Some thinkers believe that environmental ethics stem from “core values” that are inherent to human nature. Others posit a set of “green virtues” that can be learned. But there is agreement that education through exposure to the natural world is fundamental to ethical development. Ideally, people develop green virtues that guide their everyday actions but, to encourage a true love of the natural world, their core values must be awakened; this is done locally, via connections to wild spaces. Through the creation of national parks and through public land-granting, law creates a platform that can contribute to the formation of environmental consciousness, from materializing the “wilderness” ideal to demonstrating the value of “otherness.” The relationship between environmental law and environmental ethics creates a virtuous circle—in both senses of the word—as virtue drives enriched environmental law as much as environmental law has the capacity to create green virtues. The virtuous circle concept risks the implied instrumentalization of virtues, robbing them of intrinsic realization by using them as policy tools. However, this is a false dichotomy; environmental law is a tool that can be used by a democracy to change itself by creating a different set of experiences to make concrete the values that we hold in abstraction or as aspiration. This Note draws on Aristotle’s virtue ethics to posit that lawmaking can create a holistic platform for people to learn how to practice an environmental ethic, which in turn promotes the passage of new regulatory and protective environmental laws.*

I. Introduction .....	69
II. Environmental Ethics Can Shape Environmental Law .....	74

---

\* J.D. candidate, Columbia Law School, class of 2022.

A. Collective Action.....	76
B. Collective Responsibility .....	80
III. Environmental Laws Can Shape Environmental Ethics.....	83
A. Wilderness Fosters Self-Discovery.....	84
B. Environmental Law Creates Wilderness .....	87
1. Public Lands .....	87
2. National Parks .....	89
C. Justice and Access.....	90
1. Biophilia in Practice .....	93
IV. The Virtuous Circle .....	94
A. Paradox and Solution .....	95
1. Aristotle’s Virtue Ethics.....	96
2. Application and Realization .....	97
V. Conclusion.....	99

## I. INTRODUCTION

An environmental ethic is, at its most distilled, a conception of the ethical relationship between the humans and the natural world.<sup>1</sup> While that definition is simple, it is also broad, sparking an abundance of theories, explanations, and opinions of environmental ethics. Since the nineteenth century, modern philosophers have consciously used the natural world—what exists in nature without human construction—to further explore humanity, theology, civilization, justice, and the modern condition. Transcendentalists like Henry David Thoreau wondered where humans fit into the complex divinity of nature;<sup>2</sup> conservationists like John Muir reverently admired the “natural, wild, and free” and rejected the anthropocentric, or instrumentalist, view of nature.<sup>3</sup> In the late twentieth century, environmental ethics emerged as a standalone discipline, catalyzed by the perception that humanity faced an environmental crisis. In 1962, Rachel Carson’s *Silent Spring* warned of impending catastrophe, linking DDT accumulation within the food chain to serious public

---

1. Alasdair Cochrane, *Environmental Ethics*, INTERNET ENCYCLOPEDIA OF PHILOSOPHY, <https://iep.utm.edu/envi-eth/> [<https://perma.cc/D6KL-XV23>] (last visited Jan 6, 2021).

2. HENRY DAVID THOREAU, *WALDEN; OR, LIFE IN THE WOODS* (Jeffrey S. Cramer ed., 2006 ed. 1854).

3. Aldo Leopold wrote, of Muir’s attempt to purchase land from his brother-in-law in order to preserve its natural beauty, that “1865 still stands in Wisconsin history as the birth year of mercy for all things natural, wild, and free.” ALDO LEOPOLD, *A SAND COUNTY ALMANAC AND SKETCHES HERE AND THERE* 16 (1949).

health issues and environmental degradation.<sup>4</sup> In 1967, Lynn White criticized orthodox Judeo-Christian thinking as the root of environmental overexploitation, as the Bible fundamentally relays God's bestowal of human dominion over every other living being.<sup>5</sup> Both concrete and theoretical writings, such as those of Carson and White, respectively, led to a call for a "basic change of values," essentially demanding the development of environmental ethics as a new philosophic discipline.<sup>6</sup>

This new discipline quickly branched into several schools of thought. The blossoming ideas of environmental ethics were often built upon the foundation of other ethics, with similar goals in mind and different opinions on how to reach them—or even the same opinions but for different reasons. Nineteenth and twentieth century environmental ethicists tended to use dichotomies to define the tenets of their theories, simplifying the world into dualities. Thus, their philosophies are often distinguished by what they are not. Muir defined respecting nature in contrast to consumerism: "These temple destroyers, devotees of ravaging commercialism, seem to have a perfect contempt for Nature, and, instead of lifting their eyes to the God of the mountains, lift them to the Almighty Dollar."<sup>7</sup> Thoreau distinguished environmentalism from relentless work: "Why should we live with such hurry and waste of life? We are determined to be starved before we are hungry. Men say that a stitch in time saves nine, and so they take a thousand stitches today to save nine to-morrow. As for *work*, we haven't any of consequence."<sup>8</sup> William O. Douglas set environmentalism against impotence: "The Glacier Peak area, if left roadless and intact, will offer perpetual physical and spiritual therapy. For its rugged nature—its steep canyons, forbidding glacier, and knife-edged ridges—will be a magnet to those who have daring and fortitude."<sup>9</sup> Robert Bullard separated care for the natural world from disadvantage: "Although concern about the environment cut across racial and class lines, environmental activism has been most pronounced among individuals who have above-average education,

---

4. RACHEL CARSON, *SILENT SPRING* (Houghton Mifflin 40th Anniversary ed. 2002) (1962).

5. Lynn White, *The Historical Roots of Our Ecologic Crisis*, 155 *SCIENCE* 1203, 1205 (1967), <https://inters.org/files/white1967.pdf> [<https://perma.cc/VXU2-B56H>].

6. DONELLA H. MEADOWS ET AL., *THE LIMITS TO GROWTH: A REPORT FOR THE CLUB OF ROME'S PROJECT ON THE PREDICAMENT OF MANKIND* 195 (1972), <http://www.donellameadows.org/wp-content/userfiles/Limits-to-Growth-digital-scan-version.pdf> [<https://perma.cc/8GMH-PNJM>].

7. JOHN MUIR, *THE YOSEMITE* 255-57, 260-62 (1912).

8. THOREAU, *supra* note 2, at 21.

9. WILLIAM O. DOUGLAS, *MY WILDERNESS: THE PACIFIC WEST* 148-49 (1960).

greater access to economic resources, and a greater sense of personal efficacy.”<sup>10</sup> And Dale Jamieson defined environmentalism as a foil for self-interest: “We often treat nature as ‘mere means,’ as if it did not have any value or existence independent of its role as a resource for us. As a society we seem to treat the Earth and its fundamental systems as if they were toys that can be treated carelessly, as if their functions could easily be replaced by a minor exercise of human ingenuity.”<sup>11</sup>

Alternately, several other thinkers have defined “environmentalism” or “environmental responsibility” positively. Aldo Leopold, widely considered the “father of wildlife conservation,” proposed the “land ethic”—a community instinct for ecological conservation. “In short,” Leopold writes, “a land ethic changes the role of *Homo sapiens* from conqueror of the land-community to plain member and citizen of it. It implies respect for his fellow-members, and also respect for the community as such.”<sup>12</sup> Cultivating a better understanding of natural ecological systems and our proper role in them would be mutually beneficial for both humans and the environment. Because Leopold’s most substantial and fundamental goal was to outline a land ethic, much of what he says would necessarily require enormous shifts in the legal world, especially today. Societies across the earth already have laws to protect the first ethics, or the relation between individuals, and the second ethics, or the relationship between the individual and the society.<sup>13</sup> But “there is as yet no ethic dealing with man’s relation to land and to the animals and plants which grow upon it . . . [although] the extension of ethics to this third element in human environment is . . . an evolutionary possibility and an ecological necessity.”<sup>14</sup> Leopold’s land ethic would have two major effects on environmental issues and how the law addresses them: (1) the land would be given legal rights,<sup>15</sup> and (2) a system of stricter incentives and penalties would be applied to agriculture and industry.

---

10. ROBERT D. BULLARD, *DUMPING IN DIXIE: RACE, CLASS, AND ENVIRONMENTAL QUALITY* 1 (1990).

11. DALE JAMIESON, *REASON IN A DARK TIME: WHY THE STRUGGLE AGAINST CLIMATE CHANGE FAILED—AND WHAT IT MEANS FOR OUR FUTURE* 188-89 (2014).

12. LEOPOLD, *supra* note 3, at 204.

13. *Id.* at 202.

14. *Id.* at 203.

15. This note will not delve into environmental standing, although giving the natural world a “voice” in court is an important aspect of environmental ethics. The focus here will be on environmental lawmaking, not the judiciary.

Holmes Rolston III and J. Baird Callicott also offer constructive definitions of environmental ethics. Rolston's is an understanding of value as mind-independent, objective, and existent at the level of humans, animals, organisms, species, and ecosystems.<sup>16</sup> Callicott's is an expansion of Leopold's land ethic read through a Humean lens—Leopold's land ethic being summarized by the maxim “[a] thing is right when it tends to preserve the integrity, stability, and beauty of the biotic community. It is wrong when it tends otherwise.”<sup>17</sup> Callicott posits that Leopold's land ethic is an extension of Hume's idea of natural sentiment<sup>18</sup> to entities beyond humanity, as the idea of “society” can include whole ecosystems.<sup>19</sup> However, neither Rolston nor Callicott specifically prescribe a set of *virtues* to live by.<sup>20</sup>

In a global attempt to identify such virtues, environmental thinkers began to suggest unique environmental ethics, each with a distinct vocabulary. “Ethics,” “morals,” “values,” and “virtues” are related, but distinguishable terms.<sup>21</sup> However, for the sake of simplicity, this note will borrow from John Rawls' notion of a “comprehensive doctrine.” Rawls suggests that moral philosophy offers a comprehensive doctrine that “includes conceptions of what is of value in human life, and ideals of personal character . . . associational relationships, and much else that is to confirm our conduct, and the limit to our life as a whole.”<sup>22</sup> A conception is comprehensive when it covers all

---

16. HOLMES ROLSTON III, *A NEW ENVIRONMENTAL ETHICS: THE NEXT MILLENNIUM FOR LIFE ON EARTH* (2011).

17. LEOPOLD, *supra* note 3, at 223-24.

18. “Natural sentiment is a concept expressing the view that morality is based on a sentiment, or feeling, that is the result of our natural makeup.” *Natural Sentiment*, OXFORD REFERENCE, <https://www.oxfordreference.com/view/10.1093/oi/authority.20110803100225429> (last visited Oct 18, 2021).

19. J. Baird Callicott & Center for Environmental Philosophy, The University of North Texas, *Hume's Is/Ought Dichotomy and the Relation of Ecology to Leopold's Land Ethic*, 4 ENV'T ETHICS 163 (1982).

20. Callicott does, however, credit modern virtue ethicist Alasdair MacIntyre with his compendious interpretation of Hume's Is/Ought dichotomy, as well as with generally bringing virtue ethics into environmentalism. J. BAIRD CALLICOTT, *THINKING LIKE A PLANET: THE LAND ETHIC AND THE EARTH ETHIC* 74, 251 (2013) (citing ALASDAIR C. MACINTYRE, *AFTER VIRTUE: A STUDY IN MORAL THEORY* (1981)).

21. An ethic, for instance, being defined as Dale Jamieson suggests, following the footsteps of Bernard Williams: “Ethics concerns the generic question of how we should live and goes back to at least Homer and the ancient Greek dramatists. It is relatively universal and resilient, though flexible and revisable in its content.” JAMIESON, *supra* note 11, at 185. An ethic lacks the external-facing inner deontic order of “morality” and instead allows for individual variation, though both ethics and morality are collective constructions.

22. JOHN RAWLS, *POLITICAL LIBERALISM* 13 (Expanded ed. 2005).

recognized “values and virtues” within a precisely articulated system.<sup>23</sup> Thus, a comprehensive doctrine engages in the construction of moral ideals.<sup>24</sup> For the purposes of this note, the aforementioned theories can be considered comprehensive doctrines under the label of an “environmental ethic.” Accordingly, terms such as “core values” or “green ethics,” because they guide all human action, can be read as functionally equivalent. This will allow comparison without sacrificing the authors’ original language.

Although many scholars have attempted to define an environmental ethic, few have explained what truly makes people *care* about the environment—what creates an ecologically-minded and dedicated human being. Accordingly, Part I of this note discusses the impacts environmental ethics do have, have had, and could have on environmental law. In theory, law tends to reflect the will of the people, especially in a democracy. If the “will of the people” can be regarded as “public morality,” then the environmentally-minded have an opportunity to influence environmental law. A true environmental ethic must address this opportunity as a comprehensive doctrine of green virtues and core values. An environmental ethic provides a solution to issues of collective action and collective responsibility which otherwise hinder environmental law. Fundamentally, unity in environmental law is realized by the devotion of the individual to something other than self-interest. Green virtues, as non-calculative generators of action, can offer such an alternative to self-interest.<sup>25</sup>

Part II posits that, while green virtues are relevant to environmental law concerns, the law likewise cultivates such green virtues. Environmental law frequently creates a platform for environmental discovery, including issues of justice, access, and shared experience. In promoting and maintaining nature and the natural world, environmental law breaks down the barrier between human and the

---

23. For example, “utilitarianism” as a comprehensive doctrine applies the principle of utility to every subject ranging from individual conduct to the law of an entire people. *Id.*

24. Anthropocentrism, animal liberation/rights theory, biocentrism, and ecocentrism also belong to the category of comprehensive doctrines. “To inquire into and explore these comprehensive doctrines should fall to modern environmental ethics. While it seems that the prolonged debates over the intrinsic value of nature, the moral standing of animals, and the foundation and scope of moral duties among these comprehensive doctrines are not directly connected with specific environmental policies, these debates nevertheless expand the ethical space in which people might think about environmental issues, offer the necessary cultural foundations for the formation of a new consensus, and cultivate the moral motivation for action.” Tongjin Yang, *Is There an Identity Crisis in Environmental Ethics?*, 12 FRONTIERS OF PHIL. IN CHINA 195, 203 (2017).

25. See *infra* Part I(A) and accompanying notes.

“other.” This section discusses concepts of “wilderness,” both as unfettered access to grand places and as mundane interactions with the natural world. Part II also covers the granting of public lands, including national parks, as a legal tool that promotes connection to the natural world.

Part III addresses the virtuous circle between environmental ethics and environmental law. Environmental law requires virtues and can help create the virtues that it needs; environmental law is a tool that a people can use to create experiences that drive ethical development. The virtuous circle is a chain of events in which the creation or cultivation of one entity leads to the creation or cultivation of another which promotes the first entity, essentially creating a continuous process of improvement. This is consistent with Aristotle’s theory of virtue ethics, which holds that virtue can only be developed from habituation. Virtuous action is often manifested in the practice or “active exercise” of the virtues. Thus, moral virtue forms by habit. To realize the potential of virtues, one must continually practice virtuous action. This cycle, or feedback loop, may raise the rational concern that virtues cannot be considered virtues if they are constructed by law or used as a policy tool. Part III addresses this worry and ends with some environmentally-focused examples of virtue ethics in practice, specifically citing ecofeminist theory.

## II. ENVIRONMENTAL ETHICS CAN SHAPE ENVIRONMENTAL LAW

Democracy, as government “of the people, by the people, for the people,” theoretically reflects the public’s changing social and moral sensibilities.<sup>26</sup> Regardless of the *method* by which public morality permeates Congressional lawmaking, intuition suggests that it does.<sup>27</sup> The past century is illustrative, as public campaigns for women’s suffrage, civil rights, and same-sex marriage have encouraged the passage of constitutional amendments that echo the value of equality.<sup>28</sup> It seems apparent that public morality affects the law. A

---

26. Abraham Lincoln, *The Gettysburg Address* (Nov. 19, 1863).

27. Elected officials can be motivated to act for several hypothetical reasons, ranging from a sense of civic duty, to the “stewardship” model embodied by President Theodore Roosevelt, to pure self-interest. David Mayhew, for one, posits that legislative behavior is driven primarily by the single-minded pursuit of reelection. DAVID R. MAYHEW, *CONGRESS: THE ELECTORAL CONNECTION* (2nd ed. 2004). Faithfully representing the morals and values of one’s constituency therefore promotes self-interest in the form of public approval and subsequent reelection.

28. Marcia Lynn Whicker et al., *The Constitution Under Pressure: The Amendment Process*, 15 J. POL. SCI. 60 (1987).

shared environmental ethic, then, is conducive to passing environmental laws.

In the realm of environmental ethics, “public morality” is effectively the perceived value or moral status of the environment. Consequentially, ethicists have sought to understand why and how people confer value onto the natural world. The “Green Virtue” theory, proposed by Dale Jamieson, relies on the development of new and different virtues as the vehicle for legal change. Jamieson advocates for teachable green virtues that guide behavior. As part of his progressive consequentialism, and in an effort to escape having to calculate the best outcome at the moment of decision, Jamieson prescribes a focus on virtues. He defines “virtue” as a “non-calculative generator of action,”<sup>29</sup> which “helps to regulate and coordinate behavior, express and contribute to the constitution of community through space and time, and helps to create empathy, sympathy, and solidarity among moral agents.”<sup>30</sup> Green virtues, for Jamieson, are responses to three factors: preservation, rehabilitation, and creation. Preservation, or the reflection of existing values, is exemplified by the virtue of humility. Rehabilitation, or drawing on existing virtues and adding new content, is represented by temperance, a green virtue that emphasizes the importance of reducing consumption. Creation, or the generation of new values, is exemplified by the virtue of mindfulness, *i.e.*, the capacity to take on the moral weight of every consequence of every action.<sup>31</sup> Green virtues are relatively inflexible in the sense of right and wrong, as one must always try to exemplify them in oneself and elicit them in others.

Jamieson’s prescribed environmental ethic illustrates the relevance of green virtues to environmental law. As a comprehensive doctrine, the green virtue theory would align people’s identities, experiences, and beliefs with the goals of environmental law—compliance, collective action, and collective responsibility. For example, because global environmental degradation is arguably the world’s biggest collective action problem (and because its consequences are stratified and indirect),<sup>32</sup> Jamieson suggests that the most effective strategy in

---

29. Dale Jamieson, *When Utilitarians Should Be Virtue Theorists*, 19 *UTILITAS* 160, 172 (2007).

30. *Id.* at 181-82.

31. *Id.*

32. Although there are exceptions, “The climate change issue can be seen at its core as centering on rich people appropriating more than their share of a global public good and, as a result, harming poor people by causally contributing to extreme climatic events such as droughts, hurricanes, and heat waves, which in turn can ramify, causing disease outbreaks, economic dislocations, and political instability.” DALE JAMIESON, *supra* note 11, at 147. Indeed,



addressing the issue involves actions directed towards personal minimization of contributions to climate change and actions causing others to minimize their contributions.<sup>33</sup> Using that mindset, this note operates under the belief that an environmental ethic arises from the combination of collective action and collective responsibility.

#### A. Collective Action

The basis of an environmental ethic is shared experience and belief. Because green virtues are both internalized and projected, they can offer a solution to the constant collective action problems that plague environmental lawmaking. Collective action problems occur when a group of individuals—familial, social, national, international, etc.—fails to achieve the most efficient outcome, opting instead to ensure personal gain by acting in self-interest.<sup>34</sup> One type of collective action problem, the “tragedy of the commons,” exemplifies the conflict between individual and collective rationality, wherein individual users of a shared resource harm all users by depleting or spoiling the shared resource through their collective action.<sup>35</sup> Most common-pool assets that have been subject to exploitation, such as oil or natural gas, are natural resources. Without property laws or statutory regulation, natural resources might belong to every human being, especially according to the Judeo-Christian tradition:

“God created man in his own image, in the image of God created he him; male and female created he them. And God blessed them, and God said unto them, Be fruitful, and multiply, and replenish the earth, and subdue it: and have dominion over fish of the sea, and over fowl of the air, and over every living thing that moveth upon the earth.”<sup>36</sup>

Notably, as Hardin puts forth, the morality of an act is a function of the state of the system at the time it is performed.<sup>37</sup> In the Judeo-Christian tradition, it would have been impossible for Adam and Eve

---

“Eighty percent of global carbon emissions come from only 10 countries.” *Id.* at 146. Jamieson illustrates the indirectness of action through his Jack-and-Jill example: Jack is obviously at fault if he steals Jill’s bicycle, but the situation is much murkier if Jack and a large number of unacquainted people set in motion a chain of events that prevents a large number of future people who will live in another part of the world from ever having bicycles. *Id.* at 149.

33. Jamieson, *supra* note 29, at 166.

34. Lars Udéhn, *Twenty-Five Years with “The Logic of Collective Action”*, 36 ACTA SOCIOLOGICA 239, 243 (1993).

35. Garrett Hardin, *The Tragedy of the Commons*, 162 SCI. 1243, 1243 (1968).

36. *Genesis* 1:27–28.

37. Hardin, *supra* note 35, at 1245.

to exhaust the world's natural resources.<sup>38</sup> Why, then, bother to protect them? In many ways, taking from Earth without moderation did not, when the world was "smaller," implicate environmental ethics. One could bestow the greatest value to life on Earth, and still behave in a manner that we, today, would deem wasteful. For example, a plainsman in 1810 could kill an American bison, pack up what he could carry, and leave the carcass to the vultures and coyotes. In 1910, when the population of American bison fell to less than 500 and restoration efforts began, the same action would be appalling.<sup>39</sup> Dominion without hesitation continued through centuries of colonialism. During the American period of Manifest Destiny,<sup>40</sup> natural resources seemed inexhaustible. Even if a lake ran dry or a meadow was overgrazed, frontiersmen could theoretically move to another untouched tract of land and begin again. Although the actual experience of pioneers was not nearly so idyllic, the perception of wide-open space, free for the taking, permeated the American consciousness.<sup>41</sup> Arguably, Manifest Destiny reflects a vestigial environmental ethic.<sup>42</sup> Even so, the application of an environmental ethic must adjust to its circumstance, and the law must subsequently adapt to the new application.

---

38. This contrasts with non-Judeo-Christian traditions, which tend to have a different sort of environmental ethics. These ethics will not be fully detailed in this note, as lawmaking is rarely connected to these in-group values. Native American spirituality or Buddhist thought, for example, tend to deem the natural world more intrinsically valuable than Judeo-Christianity, but these ethics are not broadly understood, either because they have been silenced, or because the nature of the tradition itself precludes political participation.

39. Hardin, *supra* note 35, at 1245.

40. "Manifest Destiny" refers to America's perceived "moral mission" to expand westward, predominately in the 1840s.

41. Entitlement to natural resources, perhaps without the understanding of exhaustibility, and certainly without a concept of modernly-defined pollution, shaped the Western industrial revolution. This raises the difficult social and ethical question of whether currently developing countries should be vilified for using cheap technology to buffer industry, or whether they should be expected to follow the same environmental standards as developed countries, which could make development financially inaccessible. See, e.g., Josh Dzieza, *Inside India's Race to Cool 1.3 Billion People in a Warming World*, THE VERGE (Sep. 14, 2017, 9:05 AM), <https://www.theverge.com/2017/9/14/16290934/india-air-conditioner-cooler-design-climate-change-cept-symphony> [<https://perma.cc/QLT9-CMHT>] (describing the inefficient air conditioning units across India as both a necessity and a global danger).

42. Manifest Destiny, though linked with environmental romanticism, was also a result of impatience, anxiety, and bellicosity combined with racism, economic greed, and the perception that a vast, republican empire would solve America's growing social ills. THOMAS R. HIETALA, *MANIFEST DESIGN: ANXIOUS AGGRANDIZEMENT IN LATE JACKSONIAN AMERICA* 51 (1994). Euro-American "discovery" of the western frontier caused the displacement and erasure of Native American land use, and the annexation of Texas during the Mexican-American war (1846-1848) was a blatantly violent method of westward expansion.

National parks,<sup>43</sup> for example, are reminiscent of the frontier West and open to all people without exception. But, like all land, the parks *themselves* are limited resources and the values that visitors seek in the parks—pristine wilderness, communion with the natural world—are steadily eroded by their own actions.<sup>44</sup> Traffic congestion, human excrement, and garbage mar the sanctity so many seek, both directly and indirectly.<sup>45</sup> The addition of cafeterias, wi-fi towers, railings, and parking lots obstruct the majesty of untouched natural spaces and hinder escapism.<sup>46</sup> There are some solutions to this problem: national parks could be privatized, or the right to enter could be allocated by a standard or lottery.<sup>47</sup> But do they solve the collective action problem or—if there is a difference—are these solutions just mutual coercion?

The trouble of the collective action problem, in relation to environmental lawmaking, is especially notable in the realm of climate change. “Invisible” menaces require extensive and nuanced solutions, but fit in less with traditional views on morality. “Commonsense morality,” as Jamieson terms it, is not responsive to some important aspects of anthropogenic climate change. People can recognize that global warming is bad, but breaching climate protocols, for example, does not consistently compel outrage because people do not feel insulted, or angry, or disgraced.<sup>48</sup> Garrett Hardin proposes that an extension in morality can solve problems of collective action where technical solutions cannot—a technical solution being “one that requires a change only in the techniques of the natural sciences, demanding little or nothing in the way of change in human values or ideas of morality.”<sup>49</sup> One could then propose that, to effect meaningful change in the environmental arena, beliefs must drive behavior.

---

43. National parks are discussed further in Part II(B)(2).

44. Hardin, *supra* note 35.

45. Charlotte Simmonds et al., *Crisis in Our National Parks: How Tourists are Loving Nature to Death*, THE GUARDIAN (Nov. 20, 2018), <https://www.theguardian.com/environment/2018/nov/20/national-parks-america-overcrowding-crisis-tourism-visitation-solutions> [<https://perma.cc/2F25-847H>].

46. *Id.*

47. Hardin, *supra* note 35. Ironically, Muir Woods—named for one of the earliest and most passionate proponents of national parks—became one of the first parks to limit the number of visitors in 2018.

48. In some ways, the frailty of commonsense morality can be stretched to the absurd: “The fact is that if climate change were caused by gay sex, or by the practice of eating kittens, millions of protesters would be massing in the streets.” Daniel Gilbert, *If Only Gay Sex Caused Global Warming*, LOS ANGELES TIMES (July 2, 2006, 12:00 AM), <https://www.latimes.com/archives/la-xpm-2006-jul-02-op-gilbert2-story.html> [<https://perma.cc/S8GR-RT5R>].

49. Hardin, *supra* note 35 at 1243.

Jamieson does this, postulating that an ethics for the Anthropocene would rely on nourishing and cultivating character traits, dispositions, and emotions—in other words, green virtues.<sup>50</sup> On a facial level, virtues are “mechanisms that provide motivation to act in our various roles from consumers to citizens in order to reduce GHG emissions and to a great extent ameliorate their effects regardless of the behavior of others.”<sup>51</sup> In a deeper sense, they also “give us the resiliency to live meaningful lives even when our actions are not reciprocated.”<sup>52</sup> Per both Hardin and Jamieson, when faced with global environmental problems such as climate change, we should limit our negative contributions regardless of the behavior of others. We are more likely to succeed in doing this by developing and inculcating the right virtues than by improving our calculative abilities.<sup>53</sup>

The seeds of Hardin’s proposed fundamental extension in human morality are evident in early environmental lawmaking. As values changed, so did the law. The public has consistently driven environmental lawmaking. Carson’s *Silent Spring* is often regarded as marking the origin of modern environmental activism, but its publication in 1962 built on concerns that Americans were already developing—Carson compared pesticides to radiation, which galvanized the anti-nuclear movement of the 1950s.<sup>54</sup> After World War II, even those remote from the explosions felt the impact of nuclear weapons. People who survived the blast still experienced slow, painful deaths due to radiation, and their children suffered from birth defects and elevated rates of cancer.<sup>55</sup> Hiroshima and Nagasaki demonstrated humankind’s power to cause mass destruction on an enormous geographical and temporal scale.<sup>56</sup> Closer to home, while countries tested nuclear weapons, it became clear that invisible forces could cause great damage to people even thousands of miles away, as nuclear residue was found in the bones of newborn babies far removed from the explosion sites.<sup>57</sup> The American people began to recognize the value of a clean and safe environment.

---

50. JAMIESON, *supra* note 11, at 187 (describing the history of Carson’s *Silent Spring* and its impact on American environmental consciousness).

51. *Id.*

52. *Id.*

53. *Id.*

54. CARSON, *supra* note 4 at 16-17.

55. *Id.* at 17.

56. *Id.*

57. *Id.*

With this new understanding that the natural world has value—an understanding driven by fear and the stark realization that everyone could feel the impact of climate change and pollution—Americans were primed for collective action. But for green virtues to truly alter the law, humans needed to understand their individual and collective responsibilities in the new environmental ethic. In other words, green virtues encompass far more than valuing the environment as a resource.<sup>58</sup>

### B. Collective Responsibility

An environmental ethic that can change environmental law requires both collective action and collective responsibility. Commonsense morality includes a simple ethical principle which is almost universally accepted: if it is in our power to prevent something bad from happening, without sacrificing anything morally significant, we ought, morally, to do it.<sup>59</sup> This principle builds on the basic instinct that, among those we have as individuals, are some duties regarding how we act in a collective.<sup>60</sup> Commonsense morality therefore underlies collective responsibility, and the combination of collective action and collective responsibility can lead to positive changes in environmental law.

While collective action problems can be addressed by the group realization that the environment is important, it is collective responsibility, spurred by green virtues, that is the impetus for legal change. One year after Carson's *Silent Spring* evoked the horror of a manmade dystopia,<sup>61</sup> Americans, attempting to overcome a collective action problem, recognized a collective responsibility to protect the environment. In 1963, the Conservation Foundation, an organization closely linked to the New York Zoological Society, assembled a

---

58. "Virtue, including environmental virtue, is conducive to right action. In addition to disposing a person to perform right actions, environmental virtue ethics can help to identify which actions are right. As discussed above, many of our environmental challenges are longitudinal collective action problems. When faced with such challenges, an ethic is needed that emphasizes sustained commitment, the development of communities of agents, and the importance of doing one's part even when others fail to do theirs. The constancy and centrality of a person's character in orienting her life, in addition to her episodic actions, is thus conducive to an effective environmental ethic." Ronald L. Sandler, *Environmental Virtue Ethics*, in INTERNATIONAL ENCYCLOPEDIA OF ETHICS (2013).

59. Peter Singer, *Famine, Affluence, and Morality*, 1 PHIL. & PUB. AFF. 229, 231 (1972).

60. JAMIESON, *supra* note 11, at 172-73.

61. "A grim specter has crept upon us almost unnoticed, and this imagined tragedy may easily become a stark reality we all shall know." CARSON, *supra* note 4, at 3.

conference of scholars—ecologists, chemists, and physicists—to discuss the problem of rising carbon dioxide in the atmosphere.<sup>62</sup> Although the Conservation Foundation was backed by politicians, it was the scientific discussion, conducted by non-governmental professional scientists, that had long-standing public influence.<sup>63</sup> The Conservation Foundation's report warned of humankind's increasing ability to change the environment. Even without the foresight to understand all the consequences of human activity, the scientists affirmed the prediction that there will be more problems, "without being specific about it."<sup>64</sup> Only months after the report's release, Congressional hearings about pollution began.<sup>65</sup> In 1965, an American president publicly spoke for the first time about climate change. In a "Special Message to the Congress on Conservation and Restoration of Natural Beauty," President Johnson said, "[t]his generation has altered the composition of the atmosphere on a global scale through radioactive materials and a steady increase in carbon dioxide from the burning of fossil fuels."<sup>66</sup> Soon after, the United States celebrated the first Earth Day. The Clean Air Act was passed, as was the National Environmental Policy Act (NEPA). Nixon also established both the U.S. Environmental Protection Agency (EPA) and the White House Council on Environmental Quality (CEQ).

The notion of collective responsibility is almost always considered moral, rather than causal.<sup>67</sup> In other words, it does not locate the source of moral responsibility in the free will of individual moral agents.<sup>68</sup> While "collective responsibility" can be interpreted many ways,<sup>69</sup> here, it will be used as an intellectual construct wherein collective *intention* is less important than a general sense of

---

62. CONSERVATION FOUNDATION, *IMPLICATIONS OF RISING CARBON DIOXIDE CONTENT OF THE ATMOSPHERE* 1 (1963).

63. JAMIESON, *supra* note 11.

64. CONSERVATION FOUNDATION, *supra* note 62, at 26.

65. Eliza Griswold, *How 'Silent Spring' Ignited the Environmental Movement*, N.Y. TIMES (Sept. 22, 2012), <https://www.nytimes.com/2012/09/23/magazine/how-silent-spring-ignited-the-environmental-movement.html> [<https://perma.cc/NPQ9-DZUF>].

66. JAMIESON, *supra* note 11, at 20.

67. Marion Smiley, *Collective Responsibility*, in STAN. ENCYCLOPEDIA OF PHIL. (Edward N. Zalta ed., Summer ed. 2017).

68. *Id.*

69. See, e.g., H.D. Lewis, *Collective Responsibility*, 24 PHIL. 3, 3-6, 15 (1948) ("No one is morally guilty except in relation to some conduct which he himself considered to be wrong. . . . Collective responsibility is . . . barbarous"); Larry May & Stacey Hoffman, *Introduction to COLLECTIVE RESPONSIBILITY: FIVE DECADES OF DEBATE IN THEORETICAL AND APPLIED ETHICS* 5 (Larry May & Stacey Hoffman eds., 1991).

responsibility. When collective responsibility is the impetus for collective action, people can change environmental law. Today, the world faces a global challenge that will test whether discrete human groups, with widely varying perspectives, can “accept responsibility to maintain a non-declining set of opportunities based on possible uses of the environment.”<sup>70</sup> We can link our preservation of options for the future to notions of equity if we agree that “the future ought not to face, as a result of our actions today, a seriously reduced range of options and choices, as they try to adapt to the environment that they face.”<sup>71</sup>

Self-interest poses major challenges to cultivating collective responsibility in regards to environmental issues. From a democratic angle, “the people” is defined as an ensemble of individuals so united to one another that their multiplicity, variety, and liberty may comply spontaneously with the conditions of unity—and their unity may guarantee their individuality and liberty.<sup>72</sup> The people, therefore, is an entity that is “both one and many” and is a “diverse multiplicity of citizens.”<sup>73</sup> Fundamentally, then, the people realize unity by devoting themselves to something other than self-interest. The extension of collective responsibility to issues like climate change is not intuitive. There is no specific enemy, the goal (what does two degrees *mean*?) is ill-defined, and the means are many.<sup>74</sup> Unlike other extraordinary circumstances when collective responsibility has expanded beyond an immediate in-group, such as during war, the circumstances of life in a warming world are effectively normal. On an even deeper level, the possibility that collective responsibility requires both collective action and a “collective mind” challenges the notion of collective responsibility itself.<sup>75</sup> Even when a group organizes around a singular belief, that belief has no mind but for its insertion into the mind of an individual.<sup>76</sup>

Arguably, however, green virtues provide an alternative to individual self-interest. This is key, as environmental lawmaking tends to suffer from “free riders.” When members of a group all benefit from collective action, some may shirk collective

---

70. Bryan G. Norton, *Conservation Biology and Environmental Values*, in PROTECTING BIOLOGICAL DIVERSITY 71, 97 (Catherine Potvin, Margaret Kraenzel, & Gilles Seutin eds., 2001).

71. *Id.*

72. Emile Boutroux, *Morality and Democracy*, 214 N. AM. REV. 166, 174 (1921).

73. *Id.*

74. *Id.*

75. David Sosa, *What is it Like to Be a Group?*, 26 SOC. PHIL. & POL'Y 212, 215 (2007).

76. *Id.*

responsibility and refuse to contribute to the cost of that benefit. Thus, the free rider problem poses that the efficient production of important collective goods by free agents is jeopardized by the incentive each agent has to avoid paying for it.<sup>77</sup> A classic example: if each car owner pays a small amount to decrease emissions, everyone benefits from the reduction of air pollutants. If everyone appreciates the benefit, car owners will ostensibly continue to pay to reduce emissions. However, an individual's personal pollution does not "matter enough" for anyone, including the polluter themselves, to notice. That person may prefer to receive the benefit of clean air without paying to refit their car.<sup>78</sup> In the general environmental context, the problem can be summed up as such: "If the supply of the good is inadequate, one's own action of paying will not make it adequate; if the supply is adequate, one can receive it without paying."<sup>79</sup>

Green virtues help a people sidestep the free rider problem. They regulate behavior and promote community through space and time, thus encouraging productive collective action.<sup>80</sup> Green virtues also create empathy, solidarity, and sympathy among moral agents.<sup>81</sup> An environmental ethic, in obligating virtuous action, can overcome self-interest.<sup>82</sup> In sum, green virtues, with their underlying sense of duty to the environment, can lead to lawmaking by providing a solution to the problems that limit people from advocating for the same thing, thus nurturing a collective responsibility for environmental protection.

### III. ENVIRONMENTAL LAWS CAN SHAPE ENVIRONMENTAL ETHICS

While green virtues can mold environmental law, the law likewise creates and cultivates such green virtues. In many ways, environmental law contributes to the development of ethics by shaping experience outside the courtroom. Law "unavoidably does an enormous amount to produce the encounters with the natural world that people have, delimit the uses they can make of it, and define the

---

77. Russell Hardin & Garrett Cullity, *The Free Rider Problem*, in THE STAN. ENCYCLOPEDIA OF PHIL. (Edward N. Zalta ed., Winter 2020 ed. 2020).

78. *Id.*

79. *Id.*

80. JAMIESON, *supra* note 29.

81. *Id.*

82. *See infra* Part III(A)(2).



ideas of human-nature interaction that they can live out.”<sup>83</sup> Government action can contribute to the green virtue of “creation,” eliciting a moral response to a set of rules or regulations. Recall that green virtues, for Jamieson, fall into three categories: preservation, rehabilitation, and creation, where an example of creation is the instillation of “mindfulness,” which can be defined as a vessel for taking on the moral weight of every consequence of every action.<sup>84</sup> If, by spending time in the wilderness and discovering aspects of themselves outside of human culture, humans can better understand their place in the world, environmental law can instill green virtues by promoting mindfulness through access to wilderness.<sup>85</sup> Public lands and national parks, for example, make concrete this wilderness ideal, recognizing the value of the larger living world. More broadly, environmental law creates a platform for evaluating the justice of access to green spaces and for expanding environmental ethics and their constituent values to other settings and activities.

#### A. Wilderness Fosters Self-Discovery

Howard Zahniser, in the Wilderness Act of 1964, defined wilderness as, “in contrast with those areas where man and his own works dominate the landscape[,]... an area where the earth and its community of life untrammelled by man, where man himself is a visitor who does not remain.”<sup>86</sup> Zahniser’s words reflect American attitudes towards wilderness at the time, but each culture and era has ushered in a new conception of wilderness, from the satanic wasteland to which Adam and Eve were banished, to the nostalgic perfection of pristine land, to the weeds and creatures that adorn the streets of cities. As mentioned, Lynn White famously criticized Judeo-Christianity for the prevailing idea of man’s dominion over nature, blaming Genesis for the medieval European exploitation of nature which has carried on through several technological revolutions to create today’s ecological crisis.<sup>87</sup> Still, what weaves many conceptions

---

83. Jedediah Purdy, *Our Place in the World: A New Relationship for Environmental Ethics and Law*, 62 DUKE L.J. 857, 886 (2013).

84. See Part I.

85. Paul Messersmith-Glavin, *Between Social Ecology and Deep Ecology: Gary Snyder’s Ecological Philosophy*, THE ANARCHIST LIBRARY (2011), <https://theanarchistlibrary.org/library/paul-messersmith-glavin-between-social-ecology-and-deep-ecology-gary-snyder-s-ecological-philos>.

86. Wilderness Act of 1964 § 2, 16 U.S.C. § 1131.

87. ROLSTON, *supra* note 16, at 14.

of wilderness together is its role as a sacred place in the eyes of the human.

The conception that most clearly contrasts with “sacred wilderness” is the technocratic, utilitarian view of wilderness as a means of production and prosperity. Proponents of “utilitarian wilderness” can have conservation (*i.e.*, the careful protection of natural resources in order to prolong their usefulness), and accordingly can be aligned with some “sacred wilderness” thinkers in the desire for the establishment of protected wilderness areas. Indeed, conservationist Gifford Pinchot worked with Theodore Roosevelt to build the national forest system on the grounds of commercial potential. In his eyes, wilderness is “. . . ours to use and conserve for ourselves and our descendants, or to destroy.”<sup>88</sup> Still, while the idea of “sacred wilderness” is only one among several conceptions of wilderness, it is a powerful notion adopted by many environmental philosophers.

Indeed, several thinkers throughout American history have viewed wilderness as a sacred place for self-discovery. Transcendentalists like Thoreau believed that in wilderness is the preservation of the world—that by communing with nature, one can recover part of an alienated self: “I went to the woods because I wished to live deliberately.”<sup>89</sup> To Thoreau, loving nature is loving life.<sup>90</sup> Furthermore, nature serves to enlighten humanity with humble simplicity, tranquility, and beauty.<sup>91</sup> Muir had a similar conception of nature as a tool for self-discovery. To Muir, nature is not humble, as Thoreau suggests, but humbling.<sup>92</sup> Muir took Thoreau’s poetic descriptions of Walden Pond and built upon them, pushing transcendentalism further. Perhaps, Muir suggests, nature does not subsist “to make us well,” as it can have other reasons for existence too: “. . . Nature’s object in making animals and plants might possibly

---

88. Gifford Pinchot, *Prosperity*, in *AMERICAN EARTH: ENVIRONMENTAL WRITING SINCE THOREAU* 173, 174 (Bill McKibben ed., 2008).

89. THOREAU, *supra* note 2, at 19.

90. *Id.*

91. Thoreau is often criticized for sentimentalizing nature, but as Rebecca Solnit points out, an idealistic view of nature is not incompatible with a realistic outlook on the general status quo. Thoreau can be read as a political thinker who believed that “every step towards connection and communion is a step toward paradise,” be it between people or with nature. Rebecca Solnit, *The Thoreau Problem: When the Route to Paradise Threads Through Prison*, *ORION MAGAZINE*, <https://orionmagazine.org/article/the-thoreau-problem> [<https://perma.cc/2ML5-E98U>] (last visited Oct. 25, 2021).

92. JOHN MUIR, *MY FIRST SUMMER IN THE SIERRA* (1911).

be first of all the happiness of each one of them.”<sup>93</sup> These earlier environmental philosophers had a poetic bent, describing their wilderness with verbose grandeur—a reflection of their fascination with nature and dedication to its study.

By the twentieth century, environmental philosophers had less wilderness with which to reckon. Utilitarianism and capitalism ruled, so thinkers were compelled to define wilderness as a quickly dwindling sacred place which all deserve to experience. Rachel Carson and Robert D. Bullard both continued the legacy of Thoreau and Muir’s “sacred wilderness,” but they focused less on personal self-reflection and more on the right that wilderness and humanity have to live harmoniously. Carson fought hard for the regulation of DDT, asserting all along that wilderness has intrinsic value.<sup>94</sup> She dedicated her philosophical efforts to ensuring the safety of all species on earth, expressing regret at the divergence of humanity and wilderness. Bullard argued for environmental justice and a more equitable approach to bearing the costs of environmental degradation. While less obviously a “sacred wilderness” advocate, Bullard encouraged tough environmental regulations and increased awareness of environmental issues across a broader cross-section of the populace in order to preserve the sanctity of the natural world, believing it unjust for some to live without access to wilderness. To both Carson and Bullard, “sacred wilderness” is what remains of the grand place described by Thoreau and Muir—and it must be protected enough for all to experience their own transcendental moments in wilderness.

Though their relationship has heretofore been described as one conception of wilderness amended to form another, there is still a dichotomy between the “sacred wilderness” of self-discovery and the “sacred wilderness” produced by political activism. Self-discovery implies a certain amount of solitude and freedom. But in order to bring wilderness to national attention, some solitude and freedom is necessarily lost. It is not easy to reconcile the two in a singular compatible philosophy, but environmental philosophers have succeeded in bridging that gap somewhat by asking the right questions. Why wilderness? What makes wilderness sacred in the first place? What constitutes a sacred place, and what constitutes a wild place?

---

93. JOHN MUIR, A THOUSAND-MILE WALK TO THE GULF 138-39 (1916).

94. “[W]ho has the *right* to decide . . . that the supreme value is . . . a sterile world . . . he has made it during a time of inattention by millions to whom beauty and the ordered world of nature still have a meaning that is deep and imperative.” CARSON, *supra* note 4, at 127.

## B. Environmental Law Creates Wilderness

That nature is integral to American culture is evidenced by the existence and popularity of protected public lands. But it is also instilled in everyday experience.<sup>95</sup> Most American students have heard accounts of Lewis and Clark, Daniel Boone, David Thoreau, and other historical figures associated with wilderness. Love of natural areas is expressed within American literature by Mark Twain and Jack London and is apparent in nature programs on public broadcasting. Federal environmental legislation such as the Wilderness Act of 1964 and the Endangered Species Act reveal how intimately affinity for the environment is tied to American culture. Simultaneously, American citizens have their own ideals concerning management of public lands, based on the emotional ties they develop while hiking woodland trails, enjoying the flowers, trees, wildlife, and views.<sup>96</sup> In many ways, the perceived separation of civilization from nature is just that—a perception, and nothing more.<sup>97</sup>

### 1. Public Lands

Public lands provide opportunities for people to connect with and enjoy the “great outdoors” without infringing on private property. Broadly, public lands are open to the public and managed by the government.<sup>98</sup> As such, the Bureau of Land Management (BLM), consistent with the Federal Land Policy and Management Act (FLPMA), serves to promote environmentally responsible development and conservation through shared stewardship.<sup>99</sup> The BLM administers more than 27 million acres of National Conservation Lands, which are special places that individuals may explore and enjoy on their own.<sup>100</sup> Opportunities for solitude exist in the open spaces of public lands, which also provide crucial habitat for

---

95. Gordon Steinhoff, *Why We Should Protect Natural Areas*, 5 ARIZ. J. ENV'T L. & POL'Y 365, 383 (2015).

96. Ira Spring, *If We Lock People Out, Who Will Fight to Save Wilderness?*, 7 INT'L. J. WILDERNESS, no. 1, Apr. 2001, at 17.

97. Jamelah Earle, *Gary Snyder and Environmental Activism*, LITERARY KICKS (2003), <https://litkicks.com/garysnyderenvironment/> [<https://perma.cc/AZ59-YBKJ>].

98. CONSERVATION ALL., *Public Lands 101: The Designations* (2017), <https://vimeo.com/241091578>.

99. About: How We Manage, BUREAU OF LAND MGMT., <https://www.blm.gov/about/how-we-manage> [<https://perma.cc/TS3W-8DZC>] (last visited Oct. 22, 2021).

100. OUTDOOR ALL., *Public Lands and Protected Areas*, <https://outdooralliance.maps.arcgis.com/apps/webappviewer/index.html?id=dde110b9a97847b68e761899896dfe49> [<https://perma.cc/FY2Z-GWSM>] (last visited Oct. 21, 2021).

threatened and endangered plants and animals. Irreplaceable cultural, historical, and paleontological resources that link the history of America to indigenous peoples are both preserved and enjoyed on these public lands. Americans enjoy the country's open spaces as refuges from fast-paced urban living—the BLM recorded 61 million recreation visits in 2013.<sup>101</sup> Such recreation includes hiking, biking, picnicking, camping, birding, fishing, hunting, recreational shooting, and off-highway vehicle use.

Today there are four major federal agencies that manage about 610 million acres of public land held by the United States government: The Bureau of Land Management (BLM), holding 248 million acres or 10.5 percent of all land in the country; the U.S. Forest Service (USFS), holding 193 million acres or 8.5 percent of the country; the U.S. Fish and Wildlife Service (USFWS), holding 89 million acres or 3.9 percent of the country; and the National Park Service (NPS), holding 84 million acres or 3.7 percent of the country.<sup>102</sup> While public lands are not just federal—state, local, and city parks are also public land—federal public lands are ostensibly held in trust for all Americans. The goal is to manage the land for the long-term health of *both* the land and citizens.<sup>103</sup>

An illustration of federal investment in public land happened in 1906, when enthusiastic conservationist President Theodore Roosevelt signed the Antiquities Act, giving presidents the power to create national monuments on public lands. The purpose of the Act was to preserve areas of natural or historic interest, and it applied largely to prehistoric Native American ruins and artifacts.<sup>104</sup> For example, Roosevelt used the Act to declare Devil's Tower in Wyoming the first national monument.<sup>105</sup> 100 years later, in 2008, over ninety

---

101. PUB. LANDS FOUND., AMERICA'S PUBLIC LANDS: ORIGIN, HISTORY, FUTURE (2014), [https://publicland.org/wp-content/uploads/2016/08/150359\\_Public\\_Lands\\_Document\\_web.pdf](https://publicland.org/wp-content/uploads/2016/08/150359_Public_Lands_Document_web.pdf) [<https://perma.cc/LLZ6-FYKW>].

102. *Public Lands: What Are They?*, OUTDOOR INDUS. ASS'N., <https://outdoorindustry.org/industry-issues-fight> [<https://perma.cc/9J9F-TCSX>] (last visited Oct. 22, 2021).

103. CONSERVATION ALL., *supra* note 98.

104. 16 U.S.C. §§ 431-433.

105. Roosevelt was not the first president to set aside public land for cultural preservation; “[I]n 1892, President Benjamin Harrison preserved one square mile in the Arizona Territory surrounding the Casa Grande Ruins—an archaeological site once inhabited by the ancient Sonoran Desert people.” *National Park Service*, HIST. (Aug. 21, 2018), <https://www.history.com/topics/us-government/national-park-service> [<https://perma.cc/E4XQ-YUM6>].

percent of Americans said protection of air and water quality were “very” to “extremely” important values of federal land.<sup>106</sup> They also deemed green virtues important: specifically, protection of wildlife habitat, knowledge that future generations will have wilderness to visit and bequest value, protection of rare and endangered species, and preservation of unique wild plants and animals.<sup>107</sup>

## 2. National Parks

One type of public land, the national park, has a special draw for those wishing to commune with nature. The law protects national parks for future generations while simultaneously allowing use by current generations, cementing them as important natural, historical, and cultural resources. The sheer number of visitors to a national park demonstrates that anyone has the capacity to understand their draw as some inherent “missing piece.” In *Our National Parks*, Muir writes that “[t]housands of tired, nerve-shaken, over-civilized people are beginning to find out that going to the mountains is going home; that wildness is a necessity; and that mountain parks and reservations are useful not only as fountains of timber and irrigating rivers, but as fountains of life.”<sup>108</sup> Muir founded the Sierra Club as a preservationist club for nature lovers and a tool for the education of society.<sup>109</sup> In leading groups of people on trips to the mountains, Muir could show them firsthand the beauty and transcendence he found in nature. His love affair with the outdoors was reliant on the time he could spend alone in nature, whether he was in the mountains of the Sierra or the grass and swamplands of the American south.<sup>110</sup> Crucially, Muir brought the wonders of wild places to those who had never seen them.

As much as any individual American might, the federal government<sup>111</sup> also began to develop a sense of national pride in wilderness areas, especially in the West. This pride stemmed as much from the awesomeness of the national scenery as it did from commercial interest and Manifest Destiny. President Abraham Lincoln created the 1864 Yosemite Grant Act to protect land in the

---

106. H. KEN CORDELL ET AL., INTERNET RSCH. INFO. SERIES, HOW DO AMERICANS VIEW WILDERNESS—PART I (2008), [https://wild.org/wp-content/uploads/2010/01/How-Americans-View-Wilderness\\_Cordell.pdf](https://wild.org/wp-content/uploads/2010/01/How-Americans-View-Wilderness_Cordell.pdf) [<https://perma.cc/U3Z4-QRY4>].

107. *Id.*; see also Steinhoff, *supra* note 95, at 380.

108. JOHN MUIR, *OUR NATIONAL PARKS* 3 (Sierra ed. 1916).

109. *About the Sierra Club*, SIERRA CLUB, <https://www.sierraclub.org/about-sierra-club> [<https://perma.cc/Z4KY-7CG5>].

110. MUIR, *supra* note 92.

111. Here, I am considering the federal government as a singular lawmaking body.

Yosemite Valley, setting a precedent for the creation of the national parks.<sup>112</sup> The federal government had never before set land aside specifically for preservation and public use, but the development was popular. The trend continued, and in 1872, Congress enacted the Yellowstone National Park Protection Act.<sup>113</sup> The bill's creators envisioned a "pleasuring ground" for the enjoyment of all Americans.<sup>114</sup> President Ulysses S. Grant signed the bill into law, making Yellowstone the first national park in America and the world.<sup>115</sup> The Act set aside 1,221,773 acres of public land, breaking with the established policy of transferring public lands in the West to private ownership.<sup>116</sup> More national parks followed, including Mackinack National Park, Sequoia National Park, and Kings Canyon.<sup>117</sup> And contemporary environmentalists considered unfettered access to wild spaces, such as national parks, the ideal incubator of environmental ethics.<sup>118</sup>

### C. Justice and Access

If morality can be instilled through communion with the natural world, environmental law must ensure equal access to nature, as denial of moral development would lead only to judgment and classism. But how can someone understand themselves as part of the natural world when they rarely see it?<sup>119</sup> Many Americans do not have

---

112. *National Park Service*, HIST., *supra* note 105.

113. Yellowstone National Park Act, ch. 24, 17 Stat. 32 (1872) (codified at 16 U.S.C. §§ 21-22).

114. *National Park Service*, HIST., *supra* note 105. Unfortunately, this "pleasuring ground" did not include all Americans, as Native Americans were effectively excluded from park land. *Id.* Moreover, in the late 1700s, the U.S. government claimed millions of acres of land from the Native Americans—land which was then deemed "public," under the thumb of the federal government. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. This romantic conception of environmental ethics was not without cost. Environmentalists and writers of the time conceived of people and nature as very separate, perhaps even fundamentally incompatible. Muir, for example, felt that preservation of nature and indigenous human occupation could not coexist. Isaac Kantor, *Ethnic Cleansing and America's Creation of National Parks*, 28 PUB. LAND & RES. L. REV. 41 (2007). Muir's writings show how far removed Native Americans had become from their landscapes for early twentieth century preservationists. *Id.* at 46. When he visited what would become Glacier Bay National Park, Muir saw his native guides as ignorant and superstitious, and he contrasted the glaciers and mountains as "majestic," and "baptized by sunbeams." *Id.* Muir believed humans should connect with nature spiritually, through observation. *Id.*

119. William Cronon, *The Trouble with Wilderness; or, Getting Back to the Wrong Nature*, in UNCOMMON GROUND: RETHINKING THE HUMAN PLACE IN NATURE 69, 69 (William Cronon ed., 1996).

access to green space at all, much less the pristine wilderness in which so many environmental ethicists have found inspiration and awe.<sup>120</sup> Is wilderness limited to untouched national parks?

To some, wilderness is expansive. John Burroughs<sup>121</sup> believed people “probably all have, in varying degrees, one or other of these ways of enjoying Nature.”<sup>122</sup>

The ways of enjoying nature are quite diverse. Although each human has the same capacity for love of nature, it is often expressed in very different ways. Nature is an inexhaustible storehouse of that which moves the heart, appeals to the mind, and fires the imagination,—health to the body, a stimulus to the intellect, and joy to the soul. To the scientist, nature is a storehouse of facts, laws, processes; to the artist she is a storehouse of pictures; to the poet she is a storehouse of images, fancies, a source of inspiration; to the moralist she is a storehouse of precepts and parables; to all she may be a source of knowledge and joy.<sup>123</sup>

All ways of enjoying nature, Burroughs posits, come from love. Love sharpens the eye and drives humankind’s variety of interests, width of sympathy, and susceptibility to heartache. It is the core value that leads to generosity towards the natural world. Thoreau retreated into nature to *rediscover* in himself environmental values. He did not believe that he needed to learn anything new; rather, in his extensive recollection of the sweet huckleberry fields he knew as a child, he sketches a world in which children know more than adults and are thus more attuned to the natural world.<sup>124</sup> “Children who play life,”

---

120. Access to green space has long been governed by racial and socio-economic disparities. For example, park-making led to the gentrification of formerly blighted areas of the industrial city, displacing socio-economically vulnerable residents, many of whom were working poor and people of color. JASON ANTONY BRYNE, *THE ROLE OF RACE IN CONFIGURING PARK USE: A POLITICAL ECOLOGY PERSPECTIVE* (2007).

Interestingly, a 1994 Departmental Regulation from the U.S. Department of Agriculture (provided in accordance with Executive Order 12898) pledges to “incorporate environmental justice considerations into USDA programs and to address environmental justice across mission areas.” U.S. DEP’T AGRIC., DEP’T REGUL. NO. 5600-2, *ENVIRONMENTAL JUSTICE* (1997), <https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/Environ-Cultural/dr5600-002.pdf> [<https://perma.cc/65NX-ZJZ9>].

121. Burroughs was a popular author at the turn of the century. His focus on observation and perspicuous writing style launched the modern nature essay. Though Burroughs often wrote about the pastoral and idyllic, he was not a sentimentalist, and admired both Whitman and Darwin. Editor’s introduction to John Burroughs, in *AMERICAN EARTH: ENVIRONMENTAL WRITING SINCE THOREAU* 145 (Bill McKibben ed., 2008).

122. John Burroughs, *The Art of Seeing Things* (1908), in *American Earth: Environmental Writing Since Thoreau* 146, 147 (Bill McKibben ed., 2008).

123. *Id.* at 147.

124. Henry David Thoreau, *Huckleberries*, in *AMERICAN EARTH: ENVIRONMENTAL WRITING SINCE THOREAU* 26, 27 (Bill McKibben ed., 2008).



Thoreau says, “discern its true law and relations more clearly than men, who fail to live it worthily, but who think that they are wiser by experience . . . .”<sup>125</sup> If all humans can recognize the value of the natural world, all humans should be exposed to it.

Cronon expands the idea of wilderness as well, asking: What if the tree in the garden is, in reality, “no less other, no less worthy of our wonder and respect, than the tree in an ancient forest that has never known an ax or a saw”—even though the tree in the forest reflects a more intricate web of ecological relationships?<sup>126</sup> The tree in the garden could “easily have sprung from the same seed as the tree in the forest, and we can claim only its location and perhaps its form as our own.”<sup>127</sup> Both trees stand apart from humankind—and both trees share a common world.

On the other hand, the tree in the wilderness has the power to teach us to recognize the wildness we did not see in the tree we planted in our own backyard. In national parks and other public lands, Americans find themselves surrounded by plants and animals and physical landscapes whose blatant “otherness” compels attention. Wilderness is not a human creation, it has little or no need of continued human existence, and it recalls a creation far greater than humanity. In the wilderness, a tree seems to have its own reasons for being. But the same is less true in, say, the gardens people plant and tend to: there it is easy to forget the otherness of the tree. One could almost measure wilderness by the extent to which the recognition of its otherness requires a conscious act of discovery. The romantic legacy of Muir or Thoreau suggests that wilderness is more a state of mind than a fact of nature, and “the state of mind that today most defines wilderness is wonder.”<sup>128</sup>

There is a full continuum of a natural landscape that is also cultural, in which the city, the suburb, the pastoral, and the wild each has its proper place. The wild can be found anywhere: in the fields of Massachusetts, in the cracks of a Manhattan sidewalk, and even in the cells of the human body. Jane Jacobs is one example of a philosopher who, in examining the constituent pieces of “nature,” can conceptualize wilderness as carrying the full weight of Thoreau and Muir’s divine wilderness alongside Carson and Bullard’s quickly

---

125. HENRY DAVID THOREAU, *WALDEN; OR, LIFE IN THE WOODS* 37 (Jeffrey S. Cramer ed., 2006 ed. 1854).

126. CRONON, *supra* note 119, at 88.

127. *Id.*

128. *Id.*

diminishing resource that must be defended alongside humanity.<sup>129</sup> By claiming all nature as sacred, even in an urban environment, Jacobs creates a world in which wilderness is not dwindling so much as evolving.<sup>130</sup> Sacredness is not unavailable when pristine forests and mountains are unavailable, it is just harder to recognize. “It is no accident,” Jacobs says, “that we Americans, probably the world’s champion sentimentalizers about nature, are at one and the same time probably the world’s most voracious and disrespectful destroyers of wild and rural countryside”<sup>131</sup>

### 1. Biophilia in Practice

The innate affinity of living systems has long been a subject of social and biological interest.<sup>132</sup> E.O. Wilson popularized the concept in his 1984 publication of *Biophilia*, calling attention to the attraction humans have towards the natural world.<sup>133</sup> “Biophilia” describes “the connections that human beings subconsciously seek with the rest of life.”<sup>134</sup> Recent research likewise suggests that time spent in the natural world can strengthen the relationship between humans and nature.<sup>135</sup> Recognizing the power of biophilia, conservationists have pushed people to establish bonds with other living beings in an effort to advance environmental protections. For example, the World Wildlife Fund’s “adopt an animal” program creates a symbolic bond between human and the wild. Although the “adoption” takes place between two distinct parties, donations are directed to field programs to support general science, research, and animal study.<sup>136</sup>

Even when the biophilic bond is indirectly introduced, environmental protection efforts perform better. In Singapore, from 1975 to 2014, stringent land-use standards increased the area of parks and green spaces from 870 hectares to 9,707 hectares, and the

---

129. See *The Death and Life of Great American Cities*, in AMERICAN EARTH: ENVIRONMENTAL WRITING SINCE THOREAU 359, 359 (Bill McKibben ed., 2008).

130. Jacobs is a champion of urban planning, maintaining that “[t]he cities of human beings are as natural, being a product of one form of nature, as are the colonies of prairie dogs or the beds of oysters.” *Id.*

131. *Id.* at 361.

132. EDWARD O. WILSON, *BIOPHILIA: THE HUMAN BOND WITH OTHER SPECIES* (1984).

133. *Id.*

134. *Id.*

135. James R. Miller, *Biodiversity Conservation and the Extinction of Experience*, 20 TRENDS IN ECOLOGY & EVOLUTION 430-34 (2005).

136. *Protecting Wildlife for a Healthy Planet*, WORLD WILDLIFE FUND, <https://www.worldwildlife.org/species> [<https://perma.cc/KTF8-G3RY>] (last visited Oct. 30, 2021).

number of parks grew from 13 to 330.<sup>137</sup> This led to great pride in the flora of the “Garden City.”<sup>138</sup> Now, data on air quality in Singapore indicates that all criteria pollutants satisfy both EPA and World Health Organization air quality standards and guidelines, respectively.<sup>139</sup>

#### IV. THE VIRTUOUS CIRCLE

A virtuous circle thus forms between environmental ethics and environmental virtues.<sup>140</sup> As evidenced in Parts I and II, environmental ethics can shape environmental law just as much as environmental law can shape environmental ethics. Essentially, environmental law requires virtues, and it can help create the virtues that it needs. For example, environmental ethics can instigate lawmaking that addresses land degradation. In turn, the subsequent laws setting land aside for public use can bring the natural world closer to the people, providing them the opportunity to develop their own environmental ethics.

As Jedediah Purdy asserts, law “can and should” contribute to the development of environmental ethics.<sup>141</sup> In supporting the development of environmental ethics that begin in experience and perception, environmental law can cultivate a “humbler style of ethics” with a productive relationship to environmental law.<sup>142</sup> In general, changes in experience and perception have been “central to the development of American environmental values, including the values that have motivated political and legal action.”<sup>143</sup> At the same time, “the most important role of law in the development of environmental values may well be in shaping experience itself.”<sup>144</sup>

---

137. Erik Velasco & Matthias Roth, *Review of Singapore's Air Quality and Greenhouse Gas Emissions: Current Situation and Opportunities*, 62 J. OF THE AIR & WASTE MGMT. ASS'N 625-41 (2012).

138. *Id.*

139. *Id.* at 625.

140. A virtuous circle is generally defined as a chain of events in which one desirable occurrence leads to another which further promotes the first occurrence and so on resulting in a continuous process of improvement. *Virtuous Circle*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/virtuous%20circle> [https://perma.cc/7FN6-22JN] (last visited Oct. 30, 2021).

141. Jedediah Purdy, *Our Place in the World: A New Relationship for Environmental Ethics and Law*, 62 DUKE L. J. 857, 886 (2013).

142. *Id.*

143. *Id.*

144. *Id.*

The virtuous circle is fueled by the encounters with the natural world produced by law.<sup>145</sup>

#### A. Paradox and Solution

A logical concern accompanies this idea of the virtuous circle between ethics and environmental law: namely, whether it instrumentalizes environmental values, virtues, or morals, robbing them of their intrinsic importance by making them into policy tools. The bases of most environmental ethics—at least those discussed in this Note—lie in the recognition of the natural world as inherently valuable. Although some thinkers admire nature for its impact on the human psyche, those who believe nature would be precious even if humans could never witness it might be averse to calculating the value of the environment to further a political agenda.

However, the dichotomy between the intrinsic value of environmental ethics and the use of them in lawmaking and policy is a false one. Rather, environmental law is a way that a democratic people can change itself by creating a different set of experiences that make concrete the values that we hold in abstract or aspiration. Virtue ethics reconcile the instinctive quality of environmental ethics with the construction of environmental law.

Environmental law and environmental ethics form a virtuous circle wherein neither stop on the cycle detracts from the other. People develop green virtues that guide their actions every day. But to get them to love nature, their core values must be awakened.<sup>146</sup> Humans are born with the knowledge of the wild—when children have been reared in contact with natural environments they tend to have an intuitive understanding of ecology.<sup>147</sup> This understanding can be taught: “[o]n the doors to Nature but don’t push him through . . . provide opportunities to explore the outdoors and its surrogates in zoo and museum exhibits.”<sup>148</sup> Each person is presumably primed to accept green virtues, so environmental consciousness must be built at every level: urban, rural, and wild; local and global. Rachel Carson is a good example of a thinker who tied together all elements of environmental virtue in one work. *Silent Spring* evokes the intuitive

---

145. “Law quite unavoidably does an enormous amount to produce the encounters with the natural world that people can have, delimit the uses they can make of it, and define the ideals of human-nature interaction that they can live out.” *Id.*

146. EDWARD O. WILSON, *THE CREATION: AN APPEAL TO SAVE LIFE ON EARTH* 142 (2006).

147. *Id.*

148. *Id.*

love for nature,<sup>149</sup> points out local problems,<sup>150</sup> turns to global problems,<sup>151</sup> and offers advice on virtuous living.<sup>152</sup>

### 1. Aristotle's Virtue Ethics

Environmental law is a tool for change, and it can be utilized in the ethical arena.<sup>153</sup> As this note has demonstrated, many philosophers agree that environmental ethics are most effectively bred alongside communion with the natural world, regardless of how "wild" it is. But why is this? Let Aristotle's virtue ethics elucidate: "[t]he virtues are implanted in us neither by nature or contrary to nature: we are by nature equipped with the ability to receive them, and habit brings this ability to completion and fulfillment."<sup>154</sup>

Accordingly, virtue can only be developed from habituation.<sup>155</sup> "In a word," Aristotle states, "[c]haracteristics develop from corresponding activities."<sup>156</sup> Aristotle makes a lengthy case for habituation as the method for gaining virtue, because virtuous action is often manifested in the practice or "active exercise" of the virtues.<sup>157</sup> According to Aristotle, moral virtue is formed by habit, as nature does not endow people with nor deny people virtues; but in order to realize the potential of the virtues, one must continually practice virtuous action.<sup>158</sup> Virtues are dispositions that are neither present at birth nor novel in natural development. Rather, they require active involvement for their coming into being and their completion—we are born only with the ability to form them "through habit."<sup>159</sup> Simply put, for a person to develop a virtue, (1) they must know what they are doing, (2) they must choose to act the way they do, (3) they must

---

149. CARSON, *supra* note 4, at 113-14.

150. Carson emphasizes the dangers of DDT in multiple locations across the United States, from California to eastern Texas. *Id.* at 125-26.

151. "From all over the world come echoes of the peril that faces birds in our modern world. The reports differ in detail, but always represent the theme of death to wildlife in the wake of pesticides." *Id.* at 122.

152. Carson asks her readers to wake up and pay attention, for the decision to disrespect nature "is that of the authoritarian temporarily entrusted with power; he has made it during a moment of inattention by millions to whom beauty and the ordered world of nature still have a meaning that is deep and imperative." *Id.* at 123.

153. ARISTOTLE, *NICOMACHEAN ETHICS* (Martin Ostwald ed., 1999).

154. *Id.* l. 1103a19.

155. *Id.* ll. 1103a24-25.

156. *Id.* l. 1103b20.

157. *Id.* l. 1104a29.

158. *Id.* ll. 1103a16-24.

159. *Id.* ll. 1103a23-6.

choose it for its own sake, and (4) the act must spring from a firm and unchangeable character.<sup>160</sup> For virtuous actions to be truly virtuous, then, a person must be aware of the appropriateness of their outcomes to the given situations, *and* they must themselves be in a certain condition when they perform those actions.<sup>161</sup>

Practically, the cultivation of biophilia calls for the establishment of more natural places, places of “mystery and adventure where children can roam, explore, and imagine.”<sup>162</sup> This would require more urban parks, more greenways, more farms, more river trails, and wiser land use everywhere. Environmental law can accomplish those things.<sup>163</sup> As discussed extensively in Part II, public lands can provide places to connect to nature. Connecting to nature helps people develop their environmental ethic. And their environmental ethic drives environmental law. Environmental law can help people perceive and respect the very nature that is often overlooked.

## 2. Application and Realization

What do environmentally-focused virtue ethics look like in practice? One theory, exemplified by ecofeminism, is based in the idea that we achieve responsible environmental consciousness by honoring the deeply visceral human values that are an integral part of general human nature. In general, ecofeminists recognize the connection between the oppression of women and the degradation of nature. Patriarchal domination and exploitation impact both women and nature.<sup>164</sup> As modern ecofeminists put it:

Ecofeminism is about connectedness and wholeness of theory and practice. It asserts the special strength and integrity of every living thing . . . . [W]e are a woman-identified movement and we believe we have a special work to do in these imperiled times. We see the devastation of the earth and her beings by the corporate warriors and the threat of nuclear annihilation by the military warriors, as feminist concerns. It is the same masculinist mentality which would deny us our

---

160. See generally *id.* ll. 1103a14-1109b30.

161. “For example, when someone makes a substantial donation to a hospital we can say that she has done a stereotypically generous action; however, to know whether her action had the kind of goodness required to be generously done, we need to inquire whether the agent knew what she was doing, whether she was doing it for its own sake, and if she had sufficient consistency and firmness in her behavior.” Marta Jimenez, *Aristotle on Becoming Virtuous by Doing Virtuous Actions*, 61 *PHRONESIS* 3, 3-32 (2016).

162. STEPHEN R. KELLERT & EDWARD O. WILSON, *THE BIOPHILIA HYPOTHESIS* 432 (1993).

163. *Id.*

164. ROLSTON, *supra* note 16, at 15.

right to our own bodies and our own sexuality, and which depends on multiple systems of dominance and state power to have its way.<sup>165</sup>

Further, one ecofeminist leader, Wangaru Maathai, realized that her style of ecofeminism was not only about planting trees or giving women confidence, or even expanding democratic space in which ordinary citizens could make decisions on their own behalf.<sup>166</sup> Rather, she began to appreciate that there was something that inspired and sustained ecofeminists, which she labeled as “core values:” (1) love for the environment, (2) gratitude and respect for Earth’s resources, (3) self-empowerment and self-betterment, and (4) the spirit of service and volunteerism.<sup>167</sup> In loving the environment, one is spurred to take positive action in support of the earth. This could take the form of planting and nurturing trees, protecting animals and their habitats, conserving soil, and tangibly appreciating the earth and the immediate environment.<sup>168</sup> In respecting natural resources, one values all that the earth gives and refuses to waste any of it. In focusing on empowerment, one does not wait for someone else to ameliorate a situation; rather, it “encompasses the understanding that the power to change is within you.”<sup>169</sup> And in the spirit of service, one prioritizes achieving the common good for close friends and strangers in faraway places. Maathai includes nonhuman beings in service to “others,” as all beings share life and the planet. These values, when combined in one person, create a motivated individual with a passion for environmental protection and responsibility. To Maathai, healing the wounds that have been inflicted on the planet requires a wide adoption of the core values—a recommitment to human nature.<sup>170</sup>

Vandana Shiva,<sup>171</sup> another influential ecofeminist, is a proponent of “waking up” to the potential of the planet and of human capability.<sup>172</sup> For Shiva, like for Maathai, “waking up” is not a matter of forging new values, but of exploiting the power in the values humankind already holds. Shiva, similarly to Maathai, extends the idea of intrinsic core

---

165. MARIA MIES & VANDANA SHIVA, *ECOFEMINISM* 14 (1993).

166. WANGARI MAATHAI, *REPLENISHING THE EARTH* 15 (2010).

167. *Id.*

168. *Id.*

169. *Id.*

170. *See generally* VANDANA SHIVA, *THE VANDANA SHIVA READER* (2014).

171. Shiva founded Research Foundation for Science, Technology and Ecology (RFSTE) in 1982, Navdanya in 1991, and Diverse Women for Diversity in 2001. She is dedicated to articulating the problems caused by corporate domination and fostering the development of realistic solutions.

172. SHIVA, *supra* note 170, at 232.

values to ideas of colonialism, business, and agriculture. The contrast between indigenous and colonial practices reflects the same idea of a core value system—"[a]dvisors and experts came from America to shift India's agricultural research and agricultural policy from an indigenous and ecological model to an exogenous and high-input one."<sup>173</sup> Maathai notes that "scientists are beginning to recognize that these traditional cultures and their lifestyles were responsible for the conservation of rich biodiversity in their environments. Therefore, many people . . . are finding it both self-evident and worthwhile to revisit the beliefs of native peoples to try to learn what they can from them."<sup>174</sup> Per this conception, the return to an already-known set of values is present both in the individual and in a society.

Alice Walker provides a simpler example of applying Aristotelian virtues to environmental ethics.<sup>175</sup> One day, many miles from the city, Walker dozed against a tree and felt a spiritual connection with her core value of respect for nature. But Walker also understood that "[t]he Earth holds us responsible for our crimes against it," and "promised" the trees to devote her thoughts to mindfully interacting with the natural world.<sup>176</sup> Recognizing and reflecting on her personal values taught Walker how to be a more considerate member of the Earth. Hopefully, one day, humankind will commune with local environment and develop a strong set of green virtues to better guide daily action. This is the key to a respectful relationship between humans and the rest of the natural world.

## V. CONCLUSION

The relationship between environmental law and environmental ethics goes two ways. Values or virtue ethics impact lawmaking, and lawmaking impacts the values or virtue ethics of the public. Ideally, people develop green virtues that guide their everyday actions. But to encourage a true love of the natural world, their core values must be awakened through communion with the natural world. One way law can catalyze the virtuous circle of environmental ethics is via tools like the Antiquities Act, which gives the President power to designate protected areas and prohibits irresponsible excavation on federal and

---

173. *Id.* at 22.

174. MAATHAI, *supra* note 166, at 21.

175. ALICE WALKER, *Everything is a Human Being*, in *LIVING BY THE WORD: SELECTED WRITINGS*, 1973 - 1987, at 139 (1989).

176. *Id.* at 150.



Native American land.<sup>177</sup> As the most flexible of the national land-use statutes, the Antiquities Act has reach beyond the classically spectacular or majestic landscapes.<sup>178</sup> Through administrative action, the Antiquities Act can be stretched, redefined, and ultimately applied to other sites—polluted areas, defunct mines, over-logged forests, etc.—to cultivate the kind of aesthetic-ethical experience that fosters connection between humans and nature.<sup>179</sup> In revisiting the idea of “wilderness,” in challenging the assumptions of nature as the “other,” and in ensuring access to green space, the law can offer people a sense of the everyday presence and inherent value of the natural world. Resulting environmental ethics, based on the curation of such biophilic experiences, can inspire state and local land-use planners, private trusts, and lawmakers to pursue similar land uses, encouraging the virtuous circle.

This Note has posited that law has the power to create a platform that can form environmental consciousness and that the relationship between environmental law and environmental ethics creates a virtuous circle. While this feedback loop risks the instrumentalization of virtues, environmental law could be a successful tool of democratic change by creating new experiences to make concrete the values that we hold in abstraction. Lawmaking can create a holistic platform for environmental education, which in turn promotes the passage of new regulatory and protective environmental laws.

---

177. 16 U.S.C. §§ 431-33. *See also supra* Part II(B)(1).

178. Christine A. Klein, *Preserving Monumental Landscapes under the Antiquities Act*, 87 CORNELL L. REV. 1333 (2002).

179. The Antiquities Act has already been through one major restructuring, when the Archaeological Resources Protection Act was passed in 1979. The initial purpose of the Antiquities Act was to protect American antiquities, prehistoric and historic. RONALD F. LEE, ANTIQUITIES ACT OF 1906, AT 86 (1970).

Although the Antiquities Act proved to be a means of overseeing and coordinating educational and scientific archeological investigations on federal and Indian lands, it did not effectively prevent or deter deliberate, criminal looting of archeological sites on those lands. Problematic for many years, this situation became critical in the 1970s when several attempts by federal land managing agencies and prosecutors in the southwest to convict looters using the Antiquities Act resulted in disastrous court decisions. In two cases judges ruled that the terms of the act were unconstitutionally vague and therefore unenforceable [*United States v. Diaz*, 499 F.2d 113 (9th Cir. 1974), *United States v. Smyer*, 596 F.2d 939 (10th Cir. 1979)]. This situation led to a concerted effort by archeologists and preservationists, their allies in the law enforcement community and several essential supporters in Congress to strengthen the legal protection of archeological resources. The eventual outcome was a new statute, the Archaeological Resources Protection Act of 1979, rather than an amendment of the Antiquities Act. ARCHAEOLOGICAL METHOD AND THEORY: AN ENCYCLOPEDIA 35 (Lina Ellis ed., 2000).