

Human rights and environmental sustainability
in the context of globalisation

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Abstract

This thesis undertakes a sustained engagement with theoretical debates within and between the fields of human rights and environmental sustainability, which, it is argued here, inevitably come together in the context of globalisation. At issue in this thesis are questions about the nature of and rationale for human rights, the necessary and sufficient conditions of environmental sustainability, the impact of globalisation on human rights and environmental sustainability, and the interaction between them. The aim of the thesis is to interrogate a variety of arguments about human rights and environmental sustainability in order to assess their coherence and consistency, and to evaluate competing perspectives. The central questions animating this inquiry are, to what extent can environmental threats to human security be conceptualised as a human rights issue, and do human rights provide an adequate and appropriate framework in terms of which to respond to the environmental impacts of globalisation?

The thesis begins by examining the impact of globalisation on human rights and environmental sustainability. There follows, in chapter 3, a detailed analysis of possible justifications of support for universal human rights, looking at philosophical foundations, the idea that there might be an overlapping consensus on human rights, and the idea of human rights as a sentimental education. Chapter 4 focuses on criticisms that have been levelled at the contemporary human rights regime and evaluates a proposed alternative, Thomas Pogge's idea of an institutional model of human rights. Thereafter the focus of the thesis shifts to environmental sustainability. Firstly, chapter 5 investigates definitions of environmental sustainability and proposes an evaluative framework for assessing different models of economic organisation. Secondly, chapter 6 looks at the political changes that might be appropriate to an environmentally sustainable society by examining green (re-)interpretations of the concepts of citizenship, democracy, and justice. In chapter 7 the two fields of inquiry are reintegrated, firstly by addressing the question of whether rights or sustainability can or should be prioritised at the expense of the other, and secondly by considering the plausibility and merit of the idea of claiming that there are environmental human rights.

The conclusion advanced in the thesis is that human rights do not provide a sufficient framework in terms of which to respond to the environmental impacts of

globalisation, however, a renewed understanding of human rights, informed by a sense of the social and ecological embeddedness of human life, may be a fruitful feature of an environmentally sustainable society. Moreover, it is argued here that human rights and environmental sustainability share some illuminating features, in that support for each is most coherently justified in terms of a sentimental concern for the fate of others, though informed by a sense of the social and ecological embeddedness of human life. This informed sentimentalism is ultimately held to be a stronger motivation to act in defence of human rights or environmental sustainability than rational self-interest in the context of globalisation.

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Declaration

No portion of the work referred to in this thesis has been submitted in support of an application for another degree or qualification of this or any other university or institute of learning. No sources other than those acknowledged in the bibliography have been used.

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Abbreviations

FOEI	Friends of the Earth International
FDI	Foreign Direct Investment
GATT	General Agreement on Trade and Tariffs
GRD	Global Resources Dividend
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IPCC	International Panel on Climate Change
IMF	International Monetary Fund
MEA	Multilateral Environmental Agreement
MNC	Multinational Company
MNE	Multinational Enterprise
NEF	New Economic Foundation
NGO	Non-government Organisation
OECD	Organisation for Economic Cooperation and Development
TRIPS	(Agreement on) Trade-Related Aspects of Intellectual Property Rights
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCED	United Nations Conference on Environment and Development
UNEP	United Nations Environment Programme
USA	United States of America
WCED	World Commission on Environment and Development
WSSD	World Summit on Sustainable Development
WTO	World Trade Organisation

Chapter 1: Introduction

It is now widely accepted within policy circles and academic discourse that the environment cannot long sustain the stresses currently placed upon it by the volume and character of human activity, specifically the production of wastes and consumption of natural resources. There is also widespread recognition that, despite more than fifty years of campaigning, legislating, and official affirmation, human rights remain systematically underfulfilled in many parts of the world. Human rights theorists and green political theorists alike have argued that globalisation exacerbates, and indeed causes, serious problems in the fields of human rights and the environment. However, few scholars in any field have paid detailed attention to the interaction between human rights and environmental sustainability in the context of globalisation. The focus of those who have has mostly been on empirical analyses, studying, for example, the extent to which economic globalisation prompts changes in industrial and agricultural priorities that simultaneously undermine human rights and environmental sustainability in a particular geographical area, or on the overlap between legal issues in human rights and environmental protection (see, for example, Agyeman et al 2003; Anderson and Boyle (eds) 1996; Bosselmann 2001; Johnston 1995; Lowi and Shaw (eds) 2000; Picolotti and Tailant (eds) 2003; Zarsky (ed) 2002). In contrast, the aim of this thesis is to undertake a sustained engagement with theoretical debates within and between the fields of human rights and environmental politics, which, I argue, inevitably come together in the context of globalisation.

The thesis has its genesis in a paradox, or what might be called a ‘trilemma’: it is reasonable to suppose that individuals are more likely to care about the environment if their human rights are secure, because, for most people, environmental issues are long-term rather than immediate problems, whereas human rights often refer to our immediate security. People rationally seek to secure their well-being in the short-term before they worry about long-term concerns. Therefore, it might be suggested that a useful step in working towards environmental sustainability would be to secure human rights for all. But human rights are widely perceived to be embedded in a liberal democratic framework that is itself frequently held to be inimical to, or at least problematic for, the project of realising environmental sustainability. Globalisation further complicates matters in that the globalisation of political norms, such as democracy and human rights, has been accompanied by, and some argue has

been dependent upon, the advancement of economic globalisation, which, to date, has had an adverse impact on the global environment. If this is the case, then, as globalisation increasingly undermines global ecological integrity, environmental issues will come to be an element of the immediate concerns relating to human security, rather than an issue that can be deferred. Indeed, this is already the case for a substantial number of the global poor who live on land that is polluted, desalinated, or on flood plains. For such people, environmental problems are already a threat to human security.

At issue in this thesis, then, are questions about the nature of and rationale for human rights, the necessary and sufficient conditions of environmental sustainability, and the impact of globalisation. A further important focus of the thesis is the plausibility of the idea of environmental human rights. Environmental human rights have been proposed both by green theorists and human rights theorists in the past decade, but neither group of scholars has produced a persuasive synthesis of human rights theory and environmental theory. Instead, the tendency among green theorists has been to take human rights as they are and add environmental rights to the existing portfolio (see, for example, Eckersley 1996; Hancock 2003; Hayward 2005a), whilst human rights theorists proposing environmental rights have typically been those seeking to reconceptualise existing human rights without devoting detailed attention to what environmental sustainability would entail (see, for example, Langlois 2001; Stammers 1999).

1.1 Why human rights, environmental sustainability and globalisation?

Throughout the thesis, I take the core issue of environmental politics to be the question of how to achieve environmental sustainability. There are many other questions within environmental politics that legitimately command the attention of green theorists – for example, what constitutes a just relationship between human and non-human nature? Do non-human beings have rights? What would be a just distribution of environmental goods and harms? Do states have rights to interfere in the domestic affairs of neighbours if shared environmental resources are threatened? Can future generations have rights? Some of these questions I touch upon in chapters 5, 6, and 7. But I take environmental sustainability, rather than, say, environmental justice or environmental ethics, to be the central issue, because questions about a just distribution of clean water, or the ethical treatment of whales, cannot be resolved over

the long-term unless the question of how to live sustainably is addressed. Finding a sustainable way (or ways) to live is a precondition for all other pursuits, including protecting human rights.

Given that one of the aims of the thesis is to investigate the tensions between environmental sustainability and human rights, it is appropriate to focus narrowly on environmental sustainability, rather than more expansive notions of sustainable development, which might reasonably be understood to incorporate a commitment to human rights. The focus here is on the mutual compatibility between human rights and environmental sustainability as normative values. Therefore, it is essential to the clarity of the project to identify key features of environmental sustainability independently of any conceptual interconnection with human rights as a starting point for analysis.

The choice of examining the interaction between human rights and environmental sustainability, rather than, say, democracy and environmental sustainability, or justice and environmental sustainability, is motivated by the fact that human rights encapsulate a notion of human well-being that is claimed to be universal, and because of the prevalence of human rights language in contemporary moral and political discourse, though, in chapter 6 I look at some of the different ways in which green theorists have interpreted the concepts of citizenship, democracy, and justice. Human rights represent a minimum conception of what is required for a life befitting a human being. Insofar as sacrifices are often called for in order to achieve environmental sustainability, within the framework of currently dominant norms, those sacrifices must not, in principle, impinge upon human rights, if an environmentally sustainable life is to be a life befitting a human. If that is not possible, then two choices present themselves: either the goal of sustainability or our understanding of human rights is in need of re-evaluation. In the course of the thesis, I argue that neither environmental sustainability nor human rights have fixed, universally agreed upon definitions. One aim of the thesis is therefore to explicate some of the various conceptions of each. The point to note here is that human rights are a valid and relevant starting point for discussion because they represent a more comprehensive notion of the minimum conditions for a fully human life, which is claimed to be universal, than the alternatives, such as democracy and justice. Rights to democracy and justice are parts of our human rights, they are thus facets of what any human should have, but they are not the whole package. This is not to say, however,

that the notion of human rights is necessarily valid or even coherent, as I will discuss in chapter 3. It is, nevertheless, a point of entry into the debate.

Processes of globalisation, particularly economic globalisation, are taken here to frame the dynamic between human rights and environmental sustainability because I argue, in chapter 2, that economic globalisation has contributed to, and sometimes caused, environmental problems that have human rights consequences. The latter stage in this causal chain – environmental problems having human rights consequences – is fairly self-evident: if, for instance, global warming causes sea levels to rise, people living on low-lying land are likely to become environmental refugees. Environmental refugees typically face a number of human rights-related problems, regarding both socio-economic rights and political and civil rights. The former part of the causal chain – economic globalisation causing environmental problems – is an argument that continues to generate controversy, and will be explored in some detail in chapters 2 and 5. Globalisation is not, however, exclusively economic. Almost every state government in the world has made some degree of commitment to the norm of human rights. The globalisation of norms is therefore a further part of the picture. Indeed, it is argued that environmental sustainability, or more often the idea of ‘sustainable development’, is also coming to be a globally accepted norm. As will be discussed in chapter 5, much depends upon the ways in which sustainability is interpreted, that is, what, precisely, is being sustained.

At this point, a further caveat should be noted. Economic globalisation is argued here to be at present set on an environmentally unsustainable trajectory, and for that reason raises problems for human rights. However, that is not to say that it is the only model of economic organisation that is problematic. Indeed, environmental conditions in many former Soviet countries suggest that Soviet-style planned economies were also environmentally unsustainable. The selection of globalisation as a relevant field of study is a reflection of the dominance of the global economy.

1.2 Structure of the thesis

The aim of this thesis is to interrogate a variety of arguments about human rights and environmental sustainability, in order to assess their coherence and consistency, and to evaluate competing perspectives. The lack of consensus within each field means that no position argued for here would satisfy all advocates of

human rights, nor all proponents of environmental sustainability. Given the variety of positions and approaches within each of the fields that this project brings together, the approach taken here in drawing out debates within and between them is necessarily somewhat eclectic, a consequence of engaging with the multiplicity of positions within the literature. Though sympathetic to the green agenda, I recognise that green thought comes in many hues, and do, on occasions, where pertinent, make some distinctions, but the focus of this thesis is not an engagement with or assessment of green argumentation per se, but, broadly construed, of its bearing on the relations between human rights and environmental sustainability in the context of globalisation. As the thesis unfolds it will become apparent that I judge some facets of green thought to be more telling than that of others, but, for the most part, that judgment is incidental to my assessment of their contribution to the questions raised by my analysis.

The discussion is organised as follows: chapter 2 investigates the dynamic between economic globalisation, human rights, and the environment. I begin the chapter by looking at the ways in which human security is affected by environmental issues, then the dynamic between globalisation and human rights. Thereafter, I argue the case for the claim that economic globalisation has a destructive impact on the environment, and finally I suggest that current strategies of global environmental governance are inadequate to the task of limiting and redressing the ecological harm caused by economic globalisation. The question is therefore raised as to whether environmental threats to human security should be considered a human rights issue, and whether human rights provides an appropriate framework for dealing with the challenge of environmental harms associated with globalisation.

The next task of the thesis is therefore to evaluate that framework; specifically, whether human rights can constitute a universal norm. In chapter 3 I explore what is meant by the term 'human rights' and appraise competing justifications advanced in defence of human rights. I first consider arguments grounded in rationality, but find these unsatisfactory, in part because they depend upon an assumption that there is something morally significant about being human, a claim that is argued to be difficult to sustain unless underwritten by the idea of a higher being that created humans and therefore gives value to them. The universal appeal of such beliefs being questionable, I then consider the plausibility of a purported 'overlapping consensus' on human rights, but again find this problematic. Finally, I look at Richard Rorty's

post-modern account of human rights that seeks to circumvent what he calls ‘appeals to foundationalism’, by means of a ‘sentimental education’, but this, too, proves flawed, because (as widely acknowledged) it provides only a weak grounding for human rights.

In chapter 4, I look at the contemporary international human rights regime, considering some criticisms and evaluating an alternative. The criticisms hinge on the purported universalism of human rights, which is found to be problematic in several respects. Firstly, the so-called ‘Asian values’ debate highlights tensions that exist over the content of human rights. Secondly, the ambivalence of human rights with respect to power is discussed, both in terms of the state-centrism of human rights and the idea of using human rights as a ‘standard of civilisation’, that is, a means powerful states might use to judge the legitimacy of other governments, a practice which could be said to undermine the norm of self-determination. Finally, I consider Pogge’s proposed ‘institutional’ model of human rights, and conclude that, although Pogge at times seems to adopt a ‘standard of civilisation’ perspective, his strategy of taking as a benchmark the ‘underfulfilment’ rather than the ‘violation’ of human rights has merit, and is particularly appealing when trying to theorise the link between environmental sustainability and human rights.

Following this analysis of what human rights are, and what they might be, chapter 5 attempts to define environmental sustainability, focusing first on whether an ecocentric or an anthropocentric framework is appropriate for theorising sustainability, and then considering alternative ways of explicating the conditions for sustainability. A typical response to the challenge of environmental sustainability is to juxtapose future generations’ needs with present generation wants, as, for example, in the influential Brundtland report of 1987. However, I argue that such a strategy obscures more than it clarifies, and instead propose taking ecosystem integrity as a starting point for conceptualising environmental sustainability. In the latter half of the chapter I develop a framework for analysis of competing models of a sustainable economy. The conclusion advanced is that the ecological economics approach provides the most robust and appealing model of environmental sustainability.

Chapter 6 then turns attention to the political conditions for sustainability. The argument presented does not offer a utopian vision of the sustainable society, but instead considers possible green interpretations of three foundational norms – citizenship, democracy, and justice – which are necessarily interlinked. One

conclusion which emerges from this discussion is that the methods greens might adopt for instituting citizenship, democracy, and justice may well require the recognition of fundamental rights on the part of individuals if they are to avoid being vulnerable to oppression or injustice, even in an environmentally sustainable society.

In response to this, chapter 7 first rebuts the argument that rights and sustainability are mutually exclusive, and then looks at the idea of environmental human rights. While green theorists have engaged critically with almost every other aspect of liberal democratic politics, human rights have often been endorsed by green theorists with a view to promoting environmental human rights. However these are built upon the foundation of existing human rights which, in chapters 3 and 4 of this thesis, is found to be flawed. I conclude that a critical engagement with existing models of human rights is a necessary condition of any attempt to foster the idea of environmental human rights.

Finally, chapter 8 summarises the argument presented and assesses what conclusions can be reached on the extent to which human rights offer an appropriate framework for addressing the challenge of environmental sustainability in the context of globalisation. I argue that human rights may not be a sufficient condition for environmental sustainability, but that a sentimental concern for the fate of others, informed by knowledge of both the social and ecological embeddedness of human life, provides a coherent link between environmental sustainability and human rights in the context of globalisation.

Chapter 2: Globalisation

It is the contention of this thesis that issues in human rights and environmental sustainability inevitably come together and impact on one another in the context of a globalised or globalising world. The purpose of this chapter is to ask how and why this happens, or, what difference globalisation makes with respect to issues in human rights and environmental sustainability. Globalisation has been defined in a number of ways. For some it is purely economic, for others predominantly so, for others still it is a set of intrinsically linked and equally important processes of economic, political and cultural phenomena. One straightforward definition is:

Fundamentally, [globalisation is] the closer integration of the countries and peoples of the world which has been made possible by the enormous reduction of costs of transportation and communication, and the breaking down of artificial barriers to the flows of goods, services, capital, knowledge, and (to a lesser extent) people across borders. (Stiglitz 2002:9)

I am concerned here primarily with economic globalisation and the implications that this has for the environment, and thus for human rights. Defining globalisation principally in economic terms allows me to focus in this chapter on the relationship between the globalisation of the world's economy and environmental problems related to unsustainable patterns of production and consumption, and the consequent relationship between environmental problems and issues in human rights.¹ Economic globalisation is generally recognised as being driven or promoted by neoliberal economic policies. In some writing on globalisation these are responsible for all the evils of the world. For instance, in a polemical article, human rights theorist Adamantia Pollis asserts that, 'globalization [...] is underpinned by the ideology of neoliberalism, which is devoid of any normative principle of justice and humanity; it is market driven' (Pollis 2004:343). Though Pollis is justified in some of her concerns about the neoliberal model of economic globalisation, it is misleading to suggest that neoliberalism has no normative principles of justice. To be clear, neoliberalism is

¹ It should be noted that focusing on the interaction between environmental sustainability and human rights does not presuppose an anthropocentric ethic with respect to the environment. Rather, identifying the problem of environmental unsustainability as a consequence of patterns in the human economy affirms that humans are at the centre of the problem, but not the centre of the universe. An ecocentric approach is not thereby excluded. Nevertheless, I argue in chapter 5 that a weak anthropocentrism is the most tenable ethical basis from which to approach the question of how to achieve environmental sustainability.

understood here as an economic theory which can be most simply characterised in terms of promoting the idea that the economy should be freed from government. Adherents of neoliberalism hold that government regulation or other interference in the market place (such as state ownership or provision of goods) should be minimised, so as to maximise efficiency. Success is measured in terms of overall increases in economic activity. Neither justice nor humanity are absent from this theory – agents should receive the fruits of their own labour, and should not be arbitrarily deprived of them by government (by way of taxation), and wealth is expected to ‘trickle down’ through society, and improve thereby the general welfare. At the global level, neoliberal economic policies seek to facilitate world-wide ‘free trade in goods and services, freer circulation of capital, and freer ability to invest’ (Martinez and Garcia 1997). Insofar as economic globalisation impacts on political issues I will address them. Thus I consider human rights and globalisation, global environmental governance, and the human rights and environmental impacts of the purported weakening of state sovereignty in the context of globalisation.

Assertions of undeniable links between human rights and the environment are easy to find in academic discussion, NGO campaigns, and intergovernmental initiatives concerning the environment, sustainable development, and development projects more generally. A crude explanation of this interconnection might make reference to the global nature of environmental problems – the global environment is everyone’s home, and while there are highly localised instances of environmental degradation, there are also global problems, such as climate change, ozone depletion, loss of biodiversity, and so on, which would seem to demand global cooperation to be solved. Human rights are held to represent a global standard – almost all states have, at least formally, signalled their endorsement of the Universal Declaration of Human Rights (UDHR) – and so one might expect a global problem to be met with a global solution. Starting from the environment side of the equation, greens often argue that a ‘clean’ or ‘decent’ environment is an essential precondition for the realisation of human rights (see, for example, Sachs 1995; Piccolotti 2003; Hancock 2003). Starting from the human rights side, however, there is less evidence of an unfailing commitment to environmental issues on the part of human rights activists and scholars. Amnesty International, for example, explicitly reject the idea of an ‘environmental human right’ (Hancock 2003:56). Prominent human rights theorists such as Jack Donnelly (2003) and Michael Freeman (2002) mention environmental

issues as a contemporary concern relevant perhaps to human rights theorising, but the purported ‘indivisibility of human rights and the environment’ (Picolotti 2003:49) is undermined somewhat, or at the very least requires explication, in view of the substantive exclusion of environmental issues from most human rights theory.

One way of approaching such an explication is to consider the importance of environmental sustainability for human security.² If human rights are claimed in defence of human security, and that security is threatened by environmental degradation resulting from unsustainable economic practices, then there would seem to be a *prima facie* case for considering the environment to be a human rights issue. There is a great deal to be unpacked in this proposition; here I deal with only part of it. In section 1 I seek to show a link between human security and the environment. In section 2 of this chapter I discuss globalisation and human rights, but postpone until chapters 3 and 4 a detailed inquiry as to what exactly human rights are, and why people may be said to have such rights. In section 3 of this chapter I illustrate some of the ways in which the globalisation of the economy has contributed to environmental degradation, but I postpone until chapter 5 a substantive demonstration of the ways in which contemporary economic practices are unsustainable from an environmental point of view. In section 4 I offer a brief discussion of global environmental governance.

2.1 Human security and the environment

As noted above, almost every state has formally endorsed the UDHR. Article 3 of the UDHR asserts that all persons have the right to ‘life, liberty and security of person’. Steve Lonergan notes that ‘[i]nitially, human security was interpreted as meaning threats to the physical security of the person’ (Lonergan 2000:69). But security of person can also be threatened by a number of environmental factors. Firstly, environmental degradation and resource depletion are a potential cause of, or contributory factor in, violent conflict (Lonergan 2000:68; Neefjes 1999; Page 2000:34-36 Redclift 2003). Secondly, access to clean air and water is crucial for human life, and it has been argued that the right to water can be regarded as a human right (Alvarez 2003). Similarly, access to food is dependent on the environment in important ways and can clearly be regarded as crucial to human security and to the

² What I have in mind here is security of person, which, though not insulated from national security, is nonetheless a distinct field of inquiry.

fulfilment of human rights. As Vandana Shiva (1999) argues, the human right to freedom of speech can be undermined by hunger as well as by political repression. Thirdly, human security is threatened when people are removed from their land because of environmental threats, whether these threats be pollution, such as oil spills, other chemical spills, or radioactive contamination, or from flooding and rising sea levels or landslides and soil erosion. Another relevant consideration here is the removal of people from their lands to make way for development projects, such as mining and dams.

There is a vast literature on the ways in which human security has been threatened and compromised in the context of activities associated with globalisation and the degradation of the environment. Joan Martinez-Alier's work on 'the environmentalism of the poor' is often cited in this regard. In the face of development strategies to exploit minerals, oil and timber resources, 'the poor often find themselves fighting for resource conservation and a clean environment even when they do not claim to be environmentalists' (Martinez-Alier 2003:201). The environmental justice movement, most often associated with the USA and South Africa, emerged largely in response to localised threats to environmental security arising from corporate externalities, that is, the ecological costs that are not included in the market price of a given commodity (because the producer does not have to pay for the costs). For instance, the effects of oil production in the Niger Delta and the struggle of the Movement for the Survival of the Ogoni People have been much publicised since the death of environmental activist Ken Saro-Wiwa in 1995 (Sachs 1995; Robson 1999). Similar examples have been documented in relation to gold-mining in Peru (Martinez-Alier 2003:210-11) where indigenous and tribal people have suffered pollution and deforestation of their (claimed) lands, and in Suriname (MacKay 2002), where forced relocation of communities was avoided only by a drop in the world market price of gold, making mines in the interior of richly biodiverse tropical rainforest commercially unviable. The reprieve may be temporary, depending on the market price of gold. Many more such stories could be told.

These particular stories, I hope, point towards a general conclusion; that humans cannot be said to enjoy security of person when preponderant patterns of production and consumption, both in local communities and globally, are ecologically unsustainable. While it is clear from these cases that there are localised problems, my primary concern is with the global picture. Indeed, these local stories indicate a global

interconnectedness – the oil companies operating the Niger Delta, say, supply oil to petrol stations in Europe and North America – such that they may be said to be indicative of a more general problem of ecologically unsustainable patterns of production and consumption. The global picture is also an appropriate level for analysis because environmental problems, particularly if air or water-borne, do not necessarily stay local. Pollution does not respect state borders, as demonstrated by acid rain in Scandinavia generated by Eastern European industry in the 1980s and early 1990s. Similarly, rivers flowing through more than one country take wastes from each community downstream, and therefore require regional rather than national management. Some important features of the environment, such as breathable air, oceans, and seas, as well as less obvious resources such as the life-support facilities afforded by biodiversity, constitute a global commons, the preservation of which requires coordinated effort.

Looking at the global level, Alan Carter (1999:ch1) details the many ways in which our ability to feed ourselves is being seriously compromised. Firstly, global warming is contributing to changes in weather patterns that are likely to mean the loss of productivity in Europe because of a drop in temperatures with the disruption of the Atlantic gulf stream. At the same time, productivity in the American mid-west, the country's 'bread basket', is predicted to fall because rising temperatures there are drying out the land, increasing desertification. Secondly, the increasing dominance of large agricultural business enterprises, which typically harvest monocultures, are undermining biodiversity and leaving crops vulnerable to disease, disease that is likely to be made worse by the increasing use of pesticides. Thirdly, intensive farming methods are depleting topsoils and contributing to an overall loss of bioproductive material in soils, particularly in Europe and the US. Finally, as freshwater supplies dwindle globally, we are using more water for crop irrigation than at any time in human history. All this is happening against a backdrop of exponential population growth that is not expected to level out until the end of the twenty-first century, at around 10 billion people, up from 1 billion at the end of the nineteenth century.

Carter's depressing analysis is indicative of a range of discussions that conclude that an ever-increasing percentage of humans will face environmental threats to their security of person if unsustainable practices are allowed to continue. The focus of this thesis is not specific practices and their consequences, but rather, the theoretical underpinnings of the social, political and economic structures that maintain

these practices. To that end, in section 3 I discuss the ways in which the globalisation of the economy contributes to the maintenance of unsustainable patterns of production and consumption. In the next section, I look at the globalisation of human rights.

2.2 Globalisation and human rights

The study of globalisation and human rights has several dimensions to it. Firstly, there is tension between what might be called the ‘top-down’ and ‘bottom-up’ aspects of the globalisation of human rights – that is, between government-created international human rights frameworks and global civil society networks campaigning for governments to honour (and sometimes broaden) their human rights commitments. Secondly, there is the question of whether human rights represent the globalisation of Western norms, and the additional question of whether they should be rejected on that basis. These questions I address substantively in chapter 4, though they surface briefly in what follows. My concern here is to address two other recurrent questions in the literature on human rights and globalisation – firstly, the importance and alleged vulnerability of state sovereignty, and secondly, whether globalisation promotes or undermines human rights.

2.2.1 Globalisation and sovereignty

Globalisation is in some respects not new. A commentator writing in 1912 noted the ‘incredible progress of rapidity in communications’ and increasing financial interdependence (quoted in Woods 2000:2). Yet many argue that the pace of change today is more rapid than it has been in previous periods of intensive economic driven social and political change, such as during the industrial revolution, or the period of European colonialism.³ Moreover, it is reasonable to argue that the world operates as a single economic system to a greater extent than ever before – neoliberal economic policies have integrated almost every national economy into the world market system, and there are global ‘regimes’, in the form of the International Monetary Fund (IMF) and the World Trade Organisation (WTO), for regulating that system. Rare exceptions survive, North Korea, for example, remains isolated, but the majority of states that were identified as communist during the cold war have made, or are in the process of

³ The industrial revolution in Europe and North America took 200 years or so, while the period of colonialism began in the 1500s and continued until the late 1900s. Globalisation, by contrast, if dated to the aftermath of the Second World War, has been a period of massive change in 50 or 60 years (Howard-Hassmann 2005:8-13).

making, a transition to a capitalist economy. Countries that still identify as communist, such as China and Laos, whilst retaining one party systems, have introduced capitalist enterprise (Pollis 2004:347-50).

The extent to which this assimilation into a global capitalist economy is chosen or forced is a matter of some debate. Some scholars assert that state sovereignty is significantly weakened by the pressures of globalisation:

[T]here can be little doubt that economic globalization – particularly developments in the financial and commodity markets and the consolidation of global production capacity by transnational corporations, supported by an extremely pervasive ideology of global neoliberalism – is significantly weakening the capacity of even the most powerful states to regulate economic and social affairs within their territorial boundaries. (Stammers 1999:1001)

Such weakened capacity has important implications for both human rights and environmental sustainability. In particular, economic and social rights are said to be undermined by neoliberal economic policies that have led to the contraction of social welfare budgets as well as the removal of jobs from high-wage countries. State sovereignty is important here because the international human rights framework is inherently state-centric. States are responsible for protecting citizens' human rights, states are the agents who create whatever international or regional human rights instruments may be available, and states have recourse to the principle of sovereignty enshrined in Article 2 of the United Nations Charter in defending any action they take (or fail to take) that might be criticised by outside parties as violating human rights (Donnelly 2003:ch2). If it were true that sovereignty is being eroded by processes of globalisation, then this would have serious implications for the protection of human rights. Similarly, protection of environmental standards would also be threatened if state capacity and authority were undermined by globalisation.

Yet other scholars present a slightly more nuanced picture. Linda Weiss suggests that, while globalisation affects all countries, the impacts differ depending on the existing capacities of the state and the way in which integration into the global economy is managed (Weiss 1998:4). Ngaire Woods concurs, arguing that:

[T]he impact of globalisation varies, and one particular determinant is state strength. All states are affected by globalization, insofar as it alters their possibilities and opportunities. However, a much greater erosion of

autonomy is occurring in respect of weak states than strong. (Woods 2000:10)

The prevalence of the idea that globalisation has left all or nearly all states powerless is explained by Weiss and others as emerging in part from the tendency of national governments to blame unpopular policies on globalisation (Weiss 1998:14-16). But this perhaps overstates the extent to which governments are free to reject the globalisation of the economy. As discussed below in relation to the impact of economic globalisation on the environment, it is certainly the case that the IMF has forced neoliberal economic agendas on states as a condition of receiving loans. Insofar as states can decide that they do not need the loans after all, they may be said to be free not to accept these conditions. States may also accept the conditions and not implement them. But it is clear that there have been pressures on poorer states to accept neoliberal economic reform, particularly in the aftermath of the debt crisis of the 1980s (Woods 2000:11). The bargaining power of states in the WTO is similarly limited.⁴ Thus there is merit in Weiss' vision of a dichotomy between weaker and more powerful states, whereby weaker states experience some degree of loss of autonomy, whereas more powerful states play a role in facilitating global and regional economic integration (Weiss 1998:17-18).

2.2.2 The global economy and human rights

Tony Evans' and Jan Hancock's assessment of the impact of globalisation on marginalized communities, particularly the rural poor and subsistence farmers, is consistent with Weiss' model and suggests the further dimension that experience of globalisation is differentiated within as well as between states: '[G]lobalisation suggests simultaneous processes of integration and disintegration: integration of capital and economic relations and disintegration of traditional values that define society and community' (Evans and Hancock 1998:9). Drawing heavily from Karl Polanyi's *The Great Transformation*, Rhoda Howard-Hassmann finds that the erosion of traditional values, and with them community-based social and welfare support systems, has been a feature of previous economic-driven large scale social and cultural transformations, such as the industrial revolution. On the basis of this evidence, Howard-Hassmann argues that 'whether globalization improves or undermines human rights is not a matter that can be observed in the short term', and

⁴ The IMF and the WTO are discussed in more detail below, in section 3.

that while short-term effects may be negative, particularly for the poor and for those in predominantly rural or subsistence economies, the medium to long-term effects 'may well be positive' (Howard-Hassman 2005:1).

Howard-Hassmann is not insensitive to current human rights abuses, but simply points out that the transformation observed today has parallels with previous ones that have led to what are now viewed as positive outcomes. One example is that, whereas feudal landlords were once responsible for providing a minimum of social welfare in rural Britain, as peasants were moved from the land and migrated to cities, looking for jobs in the newly emerging industries, the certainty of social welfare was lost, but rights and freedoms were gained. The idea of social inequality has lost its former legitimacy, and steps have since been taken to secure social welfare for all (Howard-Hassmann 2005:6-9). Globalisation, it is argued, may be effecting a similar shift – as people's economic security is undermined by globalisation, 'globalization has spread the idea of human rights world wide' (Howard-Hassmann 2005:39).

While her analysis is in places perceptive, there is an important element missing from Howard-Hassmann's argument. At no point does she discuss the environmental implications of a globalised economy. Her work is typical of a rather simplistic approach to globalisation and the environment which observes an improvement in some environmental quality indicators correlated with increased wealth (Conca 2000:490). From this observation it is concluded that increased citizen wealth leads to improved environmental standards. Such a conclusion is all the more attractive as it appears to fit with Ronald Inglehart's notion of 'post-materialist values' and is confirmed by a parallel observation that the very poor in rural areas in developing countries often have a devastating impact on their environments at a local level, because they overuse environmental resources such as water and pasture in order to survive (Carter 1999:25).

Ken Conca points out the mistake in supposing that increased citizen wealth will inevitably improve environmental quality – some immediately identifiable environmental problems do improve with increases in citizen wealth, most notably air quality (Conca 2000:490), but this is often at the expense of poorer communities elsewhere, as polluting industries relocate to countries with lower regulatory standards. Less visible problems, such as the depletion of soils and forests, and stresses on global life support services afforded by the environment, are not generally improved by increases in per capita income. Moreover, McLaren (2003) rejects the

identification of over-use of environmental resources by those living in extreme poverty as a *cause* of environmental problems, and suggests instead that this should be seen as an *effect* of broader unsustainable patterns in the global economy. Failure to take note of the environmental problems associated with globalisation invalidates Howard-Hassmann's assertion that globalisation on its current path may have a positive long-term effect on human rights, because the long-term prospects for environmental sustainability on current trends are bleak. Indeed, as suggested above, we can reasonably expect to see environment-related threats to human security, and thus human rights, increasing in the medium to long-term, if the globalisation of the economy continues on its present unsustainable path.

Woods points to the important role played by powerful states, particularly the USA, not only in creating rules regulating economic globalisation, but more fundamentally in legitimating the ideas that underpin these rules: '[T]he role of such powerful states lies not just in enforcing rules, but also in generating and forming ostensibly 'universal' ideas and consensus about what international rules should be' (Woods 2000:9). Donnelly (1998) has suggested that the global consensus on human rights norms is so pervasive that human rights can now be considered a 'standard of civilisation', whereby compliance with human rights norms is the price of a seat at the table of international politics. Donnelly's proposal is problematic for two reasons.⁵ Firstly, a backlash against coercing human rights compliance through such measures as bilateral aid and loan conditionality has emerged (Balasubramaniam 1998; Hussein 2001). This questions not only the purported consensus on human rights but also the legitimacy of powerful countries setting a global moral standard. The issue is further complicated by the possibility of the global standard changing (say from compliance with human rights to cooperation in a war on terror). Secondly, it is difficult to reconcile the apparent global consensus on human rights with the numerous, well-documented violations of human rights that persist in the context of globalisation, some instances of which activists attribute to globalisation (in particular, of social and economic rights). Indeed, Donnelly elsewhere describes human rights as a necessary defence against the power of markets and states (Donnelly 2003:40).

⁵ For a more detailed discussion of these issues, see chapter 4.

2.2.3 Human rights, globalisation, and social change

Human rights can be said to exist on two different levels: firstly, human rights in their institutionalised form, affirmed by states and identifiable in treaties and positive law (what may be called the contemporary international human rights ‘regime’), and secondly, human rights as moral rights, justified by reference to norms that are said to be universal, rather than positive law. The content of these two levels of rights does not necessarily correspond, for example, claims emerging in the last ten years or so for recognition of an environmental human right have not yet been created in positive law in most countries, and have not yet been the subject of international agreement. Indeed, it is possible that the former category of positive rights can be used to impede claims presented in terms of the latter category of human rights (Evans and Hancock 1998; Stammers 1999). Thus there can be an ambivalent relationship between human rights and social change. The globalisation of neoliberal economics, strongly supported by the USA and other Organisation for Economic Cooperation and Development (OECD) countries, presents a significant obstacle to those who argue for alternative models of rights (and duties), such as Thomas Pogge’s institutional model of human rights (see chapter 4), and the accounts of duties typically attributed to environmental citizens in green theory (see chapter 6), and indeed alternative models of economic organisation (see chapter 5), at the same time as the globalisation of human rights proceeds. A key question to be addressed in this thesis is whether human rights, as a global framework for addressing threats to human insecurity, can be an adequate and appropriate framework for responding to the environmental challenges attendant upon globalisation. It is to the impact of economic globalisation on the environment that I now turn.

2.3 The environmental impact of the globalisation of the economy

Ngaire Woods offers a succinct summary of the processes of economic globalisation:

Technological change and government deregulation have permitted the establishment of transnational networks in production, trade and finance. [...] The new ‘production’ network describes firms and multinational enterprises (MNEs) who use advanced means of communication, and new, flexible techniques of production so as to spread their activities across the globe. In trade, globalization refers to the fact that the quantity

and speed of goods and services traded across the globe has increased, and so too has the geographical spread of participants, the strength and depth of institutions which facilitate trade, and the impact of trade on domestic economic arrangements. Finally, in finance, globalization has been facilitated by new financial instruments which permit a wider range of services to be bought and sold across the world economy. (Woods 2000:3)

These processes of economic globalisation are held to have had a positive impact on people's lives for two reasons. Firstly, globalisation makes available a greater variety of goods and services, at cheaper prices, to consumers in all corners of the globe, in every season (Stiglitz 2002:ch1). Secondly, consequent upon the growth in the world-wide economy that follows from the expansion of markets, world-wide prosperity is increased because of the 'trickle-down' effect, which can be explained with reference to Adam Smith's idea that a rising tide lifts all boats.⁶ Indeed, former US President George Bush claimed that '[g]rowth is the agent of change and the friend of the environment' (quoted in Doyle 1998:773). Both these arguments can be shown to be misleading. Firstly, while the economic cost of numerous goods has fallen, the ecological costs are often not counted, rather, they are 'externalised', but nevertheless accrue, with significant repercussions for the health and integrity of our global ecosystems (Jacobs 1991; Conca 2000; Speth 2003). Moreover, the ecological costs of globalisation generally affect the poor first, if not most. Secondly, while total global wealth has been increasing in recent decades, the gap between rich and poor has also been increasing, both between North and South, and within countries (Woods 2000; Shiva 2003; Pollis 2004).

Some researchers have suggested another potential benefit of globalisation, in the form of an environmental Kuznets curve, 'whereby environmental damage starts to decrease as a country becomes rich enough' (Andersson and Lindroth 2001:113). Yet this too is misguided, as evidence from the analysis of 'ecological footprints'⁷ suggests that richer communities displace their environmental costs onto poorer ones, both within and between countries. Environmental damage does not disappear, it simply disappears from the sight of wealthy consumers, as was seen in relation to air pollution in section 2. Increasing disparities between rich and poor thus present an

⁶ Though Smith envisaged capital staying within the community, whereas today capital is rather more mobile (Mander 2003:113).

⁷ For an explanation of 'ecological footprints', see section 4.

ecological problem as well as a social one. The globalisation of the economy is, then, a complex matter. I propose to examine it by answering two questions: What drives globalisation and how it is managed? What effects does it have on the environment?⁸ In the next section I go on to consider what means exist for controlling these effects.

2.3.1 Bretton Woods Institutions

One possible starting place is the globalising agenda promoted by the Bretton Woods Institutions, in particular the IMF and the WTO. This is an appropriate beginning because, while globalisation is often (rightly) associated with advances in technology that facilitate communication and transport at faster and cheaper rates than at any time in history, commentators from the political economist Ngaire Woods (2000:3-4) to the anti-globalisation campaigner Jerry Mander (2003:109-110) note that globalisation is also made possible by policy choices. Globalisation is neither natural or inevitable. It is artificial, in the sense of being human-made, and it is driven not (only) by technological developments nor inexorable market forces, but by human choices about how to respond to these. The Bretton Woods Institutions were established in the aftermath of the Second World War with the aim of financing the reconstruction of countries devastated by the war and of stabilising the global economy following the destructive effects of the global depression of the 1930s. Former World Bank economist Joseph Stiglitz records that the character and remit of the IMF changed somewhat in the 1980s with the adoption of a neoliberal outlook – promoting a global free market – which also came to dominate the WTO and to a lesser extent the World Bank (Stiglitz 2002:ch2). Certainly, the IMF and the WTO have been at the centre of debates and public demonstrations expressing concern and anger about the negative effects of globalisation since the well-publicised demonstrations at the WTO meeting in Seattle in 1999.

Criticism of the IMF centres on the fact that states receiving development loans from the World Bank have, since the 1980s, been required by the IMF to implement Structural Adjustment Programmes (SAPs), designed by IMF economists, intended to stimulate economic growth, stabilise the national economy, and reduce government debt. SAPs typically entail significant cuts in public spending and the

⁸ Note that I do not assume that environmental problems are unique to a globalised economy. The pre-industrial economy of Easter Island was clearly environmentally unsustainable. My interest in the environmental problems associated with economic globalisation is due to the contemporary dominance of neoliberal economics and the environmental problems that these policies currently cause.

deregulation of agriculture and industry to facilitate the integration of a particular country into the world economy and attract foreign investment (Bryant and Bailey 1997:60). In particular, poor and developing countries have been strongly encouraged by the IMF to welcome foreign direct investment (FDI) and to invest in export-oriented industries where they have a competitive advantage in the global market. Export-led growth has been key to the success of many 'winners' in the game of globalisation, such as South Korea and Singapore.

The environmentalist objection to SAPs is three-fold. Firstly, and most obviously, deregulating has an adverse effect on the environment where it involves reducing environmental standards. Moreover, some analysts suggest that deregulating does not, in fact, play a central role in attracting foreign investment, and that the so-called 'race-to-the-bottom' is, if not a myth (Conca 2000), no more necessary than it is desirable (Weiss 1998:10-12; Woods 2000:7; Porter 1999). Secondly, cutting public spending has typically meant cutting environmental protection budgets (which is fine if there are no longer any standards to police) as well as those of other public services such as health, education, and welfare. This impacts on human rights as well as the environment. Thirdly, in agriculture – a key component of the national economy for most poor and developing countries – pursuing a competitive advantage in the global market has often meant abandoning subsistence crops in favour of cash crops, reducing or eliminating crop rotation, increasing pesticide use, and increasing pressure on irrigation sources. This has the effect of reducing the quality of soils and contributing to desalinisation, as well as making the country dependent on imports of foods, which in turn is dependent on the success of the SAP. In countries where SAPs have failed to deliver the hoped-for economic growth, rural farmers who previously ate what they grew have gone hungry (Shiva 2003). Raymond Bryant and Sinéad Bailey sum up the problem thus: '[S]tructural adjustment programmes often simultaneously reduce the ability of states to respond to environmental problems and increase the seriousness and intensity of those problems' (Bryant and Bailey 1997:61).

The IMF is also criticised for being undemocratic, at the national level, in that SAPs may include measures, such as deregulating, that do not respect the will of the government receiving the loan, even where that government has been democratically elected. This can be seen as a further example of the ways in which globalisation undermines state sovereignty. Additionally, at the global level, loans must be

endorsed by 85% of contributing countries, and, as votes are weighted according to contributions and the USA contributes 17.5% of IMF coffers, the American government has an effective veto on all IMF-approved loans. Strom Thacker (1999) demonstrates that a government's failure to comply fully with IMF conditions on one loan has not generally been a barrier to receiving subsequent loans. Nonetheless, it is clear that the pressure on poorer states to adopt a programme of neoliberal economic reform is considerable.

The dominance of neoliberal economic ideas is also said to be evident in the activities of the WTO. The WTO, successor to the General Agreement on Trade and Tariffs (GATT) established in the Uruguay Round of GATT talks, is the forum in which global trade rules are agreed. The *raison d'être* of the WTO is to facilitate trade across the globe. Thus when Shiva (2003) criticises the WTO for its emphasis on 'barriers to trade' rather than 'barriers to justice', she is criticising the WTO for doing exactly what it is supposed to do. Conca argues that the neoliberal agenda pursued in the WTO 'promises the trade-based dismantling of three decades of environmental rule making and the selling of important dimensions of the global commons' (Conca 2000:492). These are strong claims. In assessing the impact of the WTO on the environment there are two questions to be asked. One concerns the way that the WTO contributes to the management of the global economy – are the WTO's rules sensitive to environmental concerns? The other question to be asked is more fundamental – is global trade good for the environment?

The WTO's environmental record is much disputed. While Conca (2000) is scathingly critical of the WTO, and Robyn Eckersley (2004a) finds the WTO guilty of encouraging a 'regulatory chill' – that is, a reluctance on the part of governments to impose or enforce environmental regulations on private enterprise – others are more circumspect. Examining the track record of WTO decisions in disputes between member states over environment related restrictions on trade, Eric Neumeyer finds that 'WTO jurisprudence has become increasingly environmentally friendly' (2004:1). Alasdair Young goes so far as to claim that environmental activists who claim that WTO rules are anti-ecological 'may be creating a self-fulfilling prophecy and contributing to a so-called "regulatory chill"' (Young 2005:47). Both Neumeyer and Young have (independently) studied WTO rulings on disputes between member states relating to measures designed to protect the environment. Where the WTO has found that such measures have constituted unfair barriers to trade, the ruling body has

done so not because it challenges the right of states to protect the environment, but rather because the particular measure has been applied arbitrarily or inconsistently (Neumeyer 2004:1-4; Young 2005:50-62). Indeed, it is claimed that,

[t]he reason that the WTO, and the GATT before it, usually ruled against regulations that claimed environmental exceptions to international trade rules is that the regulations were not particularly good; they were either clear attempts at industrial protection dressed up in environmentalist clothes, or they were poorly thought through and inappropriate tools for the environmental management needed. (DeSombre and Barkin 2002:18)

Young (2005:53) also notes that GATT Article XX explicitly recognises the right of governments to set standards of environmental protection above those internationally agreed, both in terms of consumption (where products to be imported are feared to have polluting effects or to be damaging to human health, such as genetically modified organisms, or beef containing growth hormones), or production (where products have been produced in ways that are particularly damaging to the environment, such as dolphin un-friendly tuna, or unsustainably harvested wood). The WTO has affirmed this principle also. Neumeyer has further suggested that governments need not comply with WTO rulings if they do not wish to, they simply have to put up with sanctions. ‘But this is not really an option for poor and small developing countries’ (Neumeyer 2004:4), an important point, one would think. Finally, while Eckersley (2004a) fears that the possibility of a clash with WTO rules inhibits the creation of strong Multilateral Environmental Agreements (MEAs), Neumeyer, taking a different view, argues that, ‘it is important to note that no provision contained in any MEA or any trade restriction undertaken in (alleged) compliance with any MEA has ever been disputed at the WTO’ (Neumeyer 2004:4). Nevertheless, Neumeyer is pessimistic about the future of environmental standards at the WTO. He laments the fact that WTO rules do not fully incorporate the precautionary principle,⁹ and that the Committee for Trade and the Environment established by the GATT and continued in the WTO has proven to be ‘a forum for rather fruitless discussion’ (Neumeyer 2004:6). The balance of evidence here suggests that the primary obstruction to increasing environmental protection in the WTO is lack of political will on the part of governments and the absence of leadership. Shiva

⁹ The precautionary principle, briefly stated, is the idea that given a product or development should be proven to be safe before it can be licensed, and that where there is scientific uncertainty, approval should not be granted.

(2003:142) is scathing of the Indian government's retreat from its erstwhile enthusiasm for resisting global trade deals that undermined environmental protection. Neumeyer also touches on the troublesome issue of developing nations' opposition to international environmental regulations: '[D]eveloping country opposition to a greening of the WTO rules is rooted in a much deeper frustration with the distribution of benefits from the WTO agreements, which are regarded as biased toward developed country interests' (Neumeyer 2004:7).

One particularly notorious example of WTO rules that are unlikely to benefit all equally, and that has been criticised by both environmental and human rights activists, is the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The rationale behind TRIPS is that in order to encourage investment in Research and Development, and thus innovation that will ultimately benefit consumers, private enterprises must be assured that their ideas will be protected from theft and exploitation by others. Several commentators have noted the prominent role played by American business interests in the development of the TRIPS agreement (Conca 2000; Matthews 2002; Shiva 2003). According to Duncan Matthews, pharmaceutical companies and copyright industries were particularly active in this 'because these sectors had relatively low entry barriers and consequently high exposure to piracy' (Matthews 2002:5). The final agreement was a result of negotiation and compromise, but succeeded in creating internationally binding rules regarding the recognition of copyright.

Some activists are sceptical of the likelihood of the public interest winning out given the apparent close relationship between big business and government in the creation of this agreement (Shiva 2003). What can be stated as fact, however, is that the TRIPS agreement allows for (among other things) the patenting of plant varieties and microbiological processes (FOEI 2005). This outcome has been widely attacked. In August 2000, the UN Sub-Commission for the Promotion and Protection of Human Rights unanimously passed a resolution expressing concern about the human rights implications of the TRIPS agreement (Singh 2000). Conca argues that, '[t]he enforcement of multinational property rights to biodiversity threatens to strip access from the communities around the world that previously had a stake in promoting biological conservation' (Conca 2000:490). Conca here picks up on a broader theme in debates about economic globalisation. As governments seek to attract FDI, they are often guilty of excluding their own local communities from decision-making

processes about the development of natural resources. In studies of conflicts between the norms of neoliberal driven economic globalisation on the one hand, and human rights and the environment on the other, Lynda Zarsky (2002) and others present numerous cases of World Bank and IMF-backed development programmes that have threatened access of communities to lands that they occupied but that have been earmarked for development.¹⁰

Returning to the question of intellectual/biological property, Matthews (2002) argues that the consensus between the EU and the US that was crucial in achieving the TRIPS agreement is now eroding as the implications of this far-reaching agreement become clearer, particularly in developing countries, but that substantive revision of the agreement is nonetheless unlikely. To date, there has been an amendment to the agreement to allow developing countries to import generic versions of some patented drugs, and Brazil and India are leading the efforts of a group of developing countries calling for a further amendment to TRIPS to require private enterprises to disclose the origin of plant ‘inventions’, or plants to be patented, thereby ensuring that the country of origin ‘received prior informed consent’ and ‘fair and equitable benefit sharing’ would follow (WTO 2005).

2.3.2 Environmental impacts

The second question to be asked in relation to the WTO, as one of the primary institutions for managing global trade, is whether such trade is good for the environment. Trade is an appropriate focus for investigating the impact of a globalising economy on the environment because other factors in the global economy are linked to trade. The impetus for FDI follows from enterprises trying to find a competitive edge in the global market. Globalised production networks are similarly a consequence of the drive to reduce production costs so as to increase competitiveness. Sari lists three ways in which trade and FDI can affect the level of pollution in a given territory:

¹⁰ For instance, Philip Hirsch (2003) discusses the World Bank funded Nam Theun II dam project in Laos PDR. Hirsch contends that, because Laos is a one party state, civil society is particularly underdeveloped and so consultation on the dam project has been ineffective. On the other hand, Fergus MacKay (2002) finds that Canadian mining companies operating with contracts granted by the government of Suriname have been unwilling to engage in substantive discussion with local communities, and that the mining companies have had the active assistance of the Suriname government in excluding local people from their (claimed) former lands.

[1] if trade and investment liberalization cause an expansion of economic activity, and the nature of that activity remains unchanged, then the total amount of pollution must increase.

[2] [the] composition effect, the effect derived from different comparative advantages [where] some sectors in different economies will expand, while others will contract. [...] If the comparative advantage is derived largely from lower environmental standards, then the composition effect will be damaging to the environment.

[3] the efficiency effect, resulting from different technologies utilized in the production system. Some technologies may reduce both input requirements of environmental resources and the pollution produced, but others may not have this effect. (Sari 2002:128)

Perhaps most interesting of these is the composition effect. This is where the interplay between countries' different comparative advantages often serves to displace environmental costs. For instance, where particularly polluting or resource intensive industries become more expensive in developed countries because of the cost of meeting increasing environmental standards, they may be relocated to developing countries where the costs are less because of lower standards. Sari cites the example of the steel industry. The drive to reduce carbon dioxide emissions in OECD countries is pushing up energy prices, therefore the cost of producing steel – an energy-intensive process – is also increasing. According to Sari (2002) steel production increased by 15% in the Asia Pacific region in the early 1990s. Carbon dioxide emissions from Indonesia, the subject of Sari's case study, are expected to rise as a consequence.

The globalisation of the economy not only displaces environmental costs, it also creates new ones. A Danish government study that showed that '1 kilogram of food traded globally generates 10 kilograms of carbon dioxide' (Shiva 2003:146). Given that countries like Britain typically export almost as much butter, for example, as is imported, the inefficiency of (at least some) global trade seems obvious (Shiva 2003:147). A point that is made repeatedly in the literature on environmental politics and economics is the ecological absurdity of exporting a resource from one country, processing that resource in another, and exporting the product back to the original country (see, for example, Dobson 2000:89-90; Mander 2003:117). Yet it is economically efficient because of the income generated through exports (in the case

of European and North American agricultural exports, of products that are highly subsidised). The ecological cost of such economic benefits is too often overlooked. A study published in 2003 under the title ‘The Counter-Intuitive Relationship between Globalization and Climate Change’, found that the impact of globalised trade on the environment in terms of carbon emissions and other greenhouse gases depended on the mode of transportation used. Barkin, quoted above defending the record of the WTO, argues that, because the same amount of fuel will take a given cargo far further by sea than by rail, and further by rail than by road, it is more ‘cost-effective’ to ship beef from Brazil to the east coast of the United States, rather than from the Midwest by land (Barkin 2003:12). Barkin’s specified aim is to point out the complexities of policy-making with respect to the environment, yet he does not draw attention to the fact that beef raised for export in Brazil is often farmed on land that has been cleared of rainforest. This example is symptomatic of arguments that isolating one aspect of the processes involved in global trade rarely reveals the total ecological cost.

The globalisation of the economy is also credited with exacerbating the problem of global insecurity because of competition for crucial environmental resources. This applies not only to commodities such as oil, which has long been a factor in security studies, but also resources that have previously been part of the global commons, such as water. Competition over access to water is widely recognised as a factor in conflicts in the Middle East and South Asia (Lowi 2000; Dolatyar and Gray 2000). The pressure on global freshwater supplies from increased use by industry, agriculture, and in human consumption has prompted widespread concern about its potential commodification, concerns that seem well founded given that ‘NAFTA and the WTO already have provisions that define water as a “commodity” and a “tradeable good”’ (Mander 2003:122-3). The potential global commodification of water has significant human rights implications. The UN estimates that 1 billion people world wide currently do not have access to clean drinking water (Alvarez 2003:71). Ignacio J. Alvarez argues that governments whose citizens lack such access are failing to fulfil their obligations to comply with international human rights agreements. Without such protection, there is reason to fear that the poor, in particular, would face greater hardship. Looking more generally at the use of ecological resources, it is also argued that market-driven economic growth necessarily leads to political as well as economic competition: ‘The more

resources one agent can master, the more resources competitors must acquire just to preserve their relative position' (Andersson and Lindroth 2001:117).

However, it should be noted that, from an environmental point of view, the problem identified here is not just the globalisation of the economy, it is firstly the nature of the economy that has been globalised – a market economy that is neither completely free nor sufficiently regulated in ways that protect the environment (and so is criticised by free market environmentalists as well as by those who would advocate substantive interference in the market to protect the environment). Secondly, the problem is, most acutely, one of scale. As Speth (2003) notes, human population is estimated to have increased four-fold in the past century, and is expected to level out at 10 billion towards the end of the twenty-first century. 'Since 1960, the size of the world economy has doubled and then doubled again' (Speth 2003:2). In ecological terms, these developments represent a massive and rapid increase in the consumption of resources and production of wastes. On current trends, the global economy is not sustainable.

In summary, the globalisation of the economy has serious implications for environmental sustainability. Globalisation, though neither natural nor inevitable, brings significant pressures, particularly to weaker states, which, often at the IMF's insistence, have had to adopt neoliberal economic policies that have served to undermine environmental protection. The scale of the global economy is also a significant concern since the rate at which environmental resources are currently being used, and the volume of wastes being produced, is now widely recognised to be unsustainable. Global trade patterns contribute to this problem in a number of ways, firstly, by increasing transport use; secondly, in some cases by reducing the control local communities have over their ecological resources; thirdly, by undermining biodiversity and threatening the commodification of the natural environment, as seen in initiatives like the TRIPS agreement and in the increasing prevalence of monocultures in agribusiness; fourthly, by increasing global insecurity through competition for control of resources and by undermining food security in many poor and developing states; fifthly, by displacing ecological costs, a problem compounded by the increasing inequalities that have accompanied globalisation; and finally by inhibiting environmental protection, as seen in the 'race to the bottom', and in the WTO's lukewarm approach to such environmental principles as the precautionary

principle. As noted above, the evidence on this last point was mixed, however, in that it is clear from the analysis of a number of commentators that political will on the part of states is an important factor in the lack of enthusiasm for environmental protection at the WTO. While the autonomy of some poorer states is clearly compromised by their relatively weak position in the global economy, Neumeyer attributes developing countries' resistance to environmental agreements at the WTO to a suspicion of richer countries' motives, and in particular a desire to see Northern agricultural subsidies cut, rather than a lack of capacity or autonomy in the face of globalisation. Yet the dominance of neoliberal norms in the global economy may also inhibit environmental protection in that trade is prioritised, arguably at the expense of pursuing human rights and environmental sustainability. However, recent efforts in global environmental governance have affirmed the need to pursue policies of 'sustainable development'. In the next section, I consider the effectiveness of such initiatives in the context of a global economy driven by neoliberal economic norms.

2.4 Global environmental governance

Sustainable development is a much contested concept. It has been circulating in green political and development theory since at least 1987, when the former Norwegian Prime Minister Gro Harlem Brundtland, in the report of the World Commission on Environment and Development (WCED), called for a strategy integrating environment and development. The strategy proposed was sustainable development, defined as, 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs' (WCED 1987:24). The report of the WCED was the principal inspiration for the United Nations Conference on the Environment and Developed (UNCED), popularly known as the Earth Summit, held in Rio in 1992, which produced Agenda 21, a global plan of local action to realise sustainable development, and ten years later world leaders reconvened, this time in Johannesburg, to discuss the implementation of Agenda 21. The report of the World Summit on Sustainable Development (WSSD), held in Johannesburg in 2002, affirmed the need to 'delink economic growth from environmental degradation' and 'promote economic development within the carrying capacity of ecosystems' (WSSD 2002:21). Some greens (see Dobson 1998) reject the principle of a growth-driven market economy altogether, and are deeply suspicious of sustainable development as a normative concept, located, as it clearly is, within an

anthropocentric view of environmental ethics. I reflect on competing visions of a green economy, and varying interpretations of the principle of sustainability, in chapter 5. Here I assess the prospects for delinking economic growth from environmental degradation by means of global environmental regimes, the tools that are commonly recognised in international political forums such as the WSSD – that is, tools accepted, created and authorised by states. However, I first look at the problems of the state-centric approach, in view of the concerns of a number of green theorists who question the ecological appropriateness of nation-states as a model of political organisation.

2.4.1 The state and environmental protection

State-centric environmental regimes share some formal characteristics with human rights regimes:

the state is both the subject and the object of most environmental regimes. National governments as agents of states are taken as authoritative subjects of regimes, their bargaining, concurrence, and ratification determine whether a legitimate regime exists, and they assume responsibility for compliance. States are also the primary objects of regimes: governmental compliance is the presumed key to regime effectiveness, and governmental implementation is the regime's primary task as a means to that end. (Conca 2005:188)

As with human rights regimes, it is the acceptance of norms of sovereignty that legitimates states' ability to participate as the only *authoritative* actors in environmental regimes, and it is the principle of sovereignty that also confers on states the right not to participate in cooperative regimes to resolve global environmental problems.¹¹ The much discussed weakening of sovereign autonomy in the context of globalisation is a factor in environmental problems insofar as the pressure to adopt neoliberal economic policies is widely seen as undermining environmental protection, but it is not necessarily a lack of agency that impedes global efforts towards sustainability. The recent reluctance of the USA, the most powerful nation on earth, and in the 1970s a global champion of environmental causes, to engage in global environmental regimes or even to accept need for

¹¹ Though other actors may have a role in advising, agenda setting, lobbying, etc.

substantial change of our environmentally-damaging economic practices, is well known and much lamented.¹²

Studies focussing on the civil society actors often over-emphasise the power that they have (Conca 2005; Vogler 2005). While states rely on now well-established international networks of physical scientists for assessments of environmental problems, state governments choose which scientists to listen to. NGOs, who perhaps listen to different scientists, typically call on *governments* to take action. Indeed, ‘NGOs in practice and in theory remain in a highly symbiotic relationship with state governments and international institutions, working to improve and redirect rather than supplant the latter’ (Vogler 2005:281). That said, non-state actors are far from incidental to environmental regimes. Edmondson thinks it ‘unlikely that the IPCC [International Panel on Climate Change] would have been formed without the initiatives of experts and scientists’ (Edmondson 2001:47), a finding consistent with Conca’s assertion that ‘there has been a palpable loss of agenda-setting power’ on the part of states involved in environmental regimes (Conca 2005:202). Moreover, in a study of participation in 22 environmental treaties, Roberts et al (2004) found a strong statistical relationship between the existence of vocal and active domestic NGOs and a willingness on the part of governments to sign and ratify environmental treaties.

However, Roberts et al record another finding, less cheering for environmental NGOs: ‘[T]he strongest predictor by far of likelihood to sign [environmental treaties] is the narrowness of a nation’s export base which directly and indirectly explained nearly sixty percent of the treaty ratification rates’ (Roberts et al 2004:45). They therefore conclude that ‘OECD nations must help poor countries diversify their export profiles’ (2004:45). Roberts and his colleagues may be correct in surmising that such a step might improve poor countries’ willingness to sign up to and ratify environmental treaties, but a narrow identification of the specific problem to be solved limits the scope of the answer that Roberts et al are able to arrive at, as well as neglecting the laggard status of the most wealthy country on earth, the USA, in environmental regimes.

If the problem is simply described in terms of how to increase willingness to sign up to environmental treaties, and most countries who are most willing to do so at present are in general wealthier and have a diverse export base, then it follows that

¹² It is possible that this is beginning to change. In February 2007 the American government participated in a multilateral forum on a successor to the Kyoto Protocol (Bhat et al 2007), however, generally speaking, the USA has not been a champion of environmentalism in recent years.

environmentalists should try to diversify the export bases of poorer countries as a means to increasing their wealth and decreasing their vulnerability to suffering economic downturn as a result of treaty ratification. But the broader question is why environmental treaties are valued – they are endorsed by environmentalists insofar as they are aimed at achieving some degree of environmental sustainability. The question looked at from this perspective is not, then, how to broaden the export bases of poorer countries, but how to move all countries, rich and poor, from currently unsustainable patterns of production and consumption, to environmental sustainability. The analysis of Roberts et al points in the direction of altering the behaviour of poorer states, whereas, in view of massive over-consumption on the part of wealthier states, a more critical analysis suggests that a change in the behaviour of wealthier countries is also urgently needed.

2.4.2 The ecological footprint and global environmental regimes

John Vogler has highlighted what he regards as a somewhat fruitless debate within green theory as to the proper attitude to take towards the state and environmental sustainability:

For theorists of radical political ecology, the state and interstate institutions are indissolubly bound up with processes of capitalist accumulation and domination. [...] The state is not irrelevant to global environmental degradation; it is necessarily an agent of that degradation.

This constitutes an axiomatic point that non-Marxist international relations scholars will simply deny. (Vogler 2005:236)

Vogler is aware that debate conducted in these terms can lead to ‘a situation where adherents simply “talk past each other”’ (Vogler 2005:234). One possible route into the debate that need not rely on Marxist assumptions about the state as agent-of-capital is to explore the idea of ecological footprints. Simply put, the ecological footprint is the total ecological impact of a given thing, be it a consumable product, an individual, a family, or a nation. It is a particularly appealing concept in environmental politics because it demonstrates, in a way that market values do not, the full ecological cost of whatever is being measured, and, in sophisticated models, can illustrate the distribution of that cost. The idea was originally put forward by Mathis Wackernagel and William Rees to measure the ‘area of ecologically productive land (and water) [...] required on a continuous basis to (a) provide all the

energy/material resources consumed, and (b) absorb all the wastes discharged [...] *wherever that land is located*, by a given population (Andersson and Lindroth 2001:114). Such measurements enable researchers to identify countries that run an ecological deficit – that is, use up more ecological space than is available within their territory. Two thirds of OECD countries run an ecological deficit, including the UK, the USA, the Netherlands, Belgium and Germany (Earth Council 1997). Among non-OECD countries, the worst offenders are Singapore, Hong Kong and Israel.

Assessing global environmental regimes by means of the ecological footprint approach can reveal serious flaws in their rationale. One example, the Kyoto Protocol, according to some environmental campaigners, looks less like a solution to global warming and more like an opportunity to increase the commodification of the erstwhile environmental commons (Mander 2003). Agreed in 1997, the Kyoto Protocol aims to cut the emission of greenhouse gases by creating a scheme that allocates a given country a right to pollute up to a certain level, and allows those countries who pollute less than that level to sell their surplus allocation. It also includes a credit scheme for carbon sinks, chiefly forests. It has been criticised for not doing enough to avoid the threat of climate change – even if the aimed for reduction of 5.2% of 1990 levels of global greenhouse gas emissions is met, a drop in global temperatures is not predicted. Indeed, it is far from clear that global greenhouse gas emissions at the rate of 98.4% of 1990 levels are ecologically sustainable without a significant increase in carbon sinks. There are further problems, for example, relating to the USA's refusal to ratify the Kyoto agreement.¹³ But most troubling to some is the very idea of a right to pollute, or to trade in clean air. The commodification of the natural environment represented by this system is anathema to some greens:

The basic concept – to solve the problem wherever it is cheapest to reduce emissions – closely tracks the logic of comparative advantage. [...] That the debate has moved so quickly to this techno-managerial level illustrates

¹³ The USA, the single largest emitter of greenhouse gases in the world, responsible for about 23% of emissions on 2003 figures, is widely criticised for having failed to ratify the Kyoto Protocol – indeed the regime would have collapsed had the Russian government not decided to ratify the treaty in late 2004. The USA, however, points to the exclusion of China, the second largest polluter, and other rapidly developing countries, such as India, from the provisions of the Kyoto agreement as a crucial flaw, and indeed this represents a significant obstacle to using the Kyoto Protocol to ensure that global levels of greenhouse gas emissions are sustainable. But American president George Bush has made clear that his opposition to the Kyoto agreement is in large part due to the cost to American business (White House 2001). Nevertheless, as noted above, the American government has signalled its tentative support for a successor to the Kyoto regime which will include China and India.

the power of the neoliberal logic within which environmental regime formation processes are increasingly ensnared. (Conca 2000:490-91)

Moreover, the Kyoto agreement does not challenge, but rather reaffirms, the legitimacy of a country running an ecological deficit, so long as it has the economic resources to pay other countries whose share of ecological resources the offending country is using (see chapter 5). This is objectionable to some because it does not reflect a genuine effort to foster global environmental sustainability, but rather maintains an unequal distribution of environmental costs and benefits.

The Kyoto Protocol is essentially a single-issue agreement. Agenda 21, a blueprint of action to be taken globally to manage human impacts on the environment, agreed at the UNCED in 1992 and reaffirmed at the WSSD in 2002, represents a more comprehensive attempt to manage the global economy so as to reduce environmental degradation. Indeed, the report of the WSSD explicitly recognised a need to ‘delink economic growth and environmental degradation’ (WSSD 2002:14). Yet Agenda 21 is also criticised by environmentalists for a variety of reasons. As Picolotti observes, ‘[t]he main concern of Agenda 21 is to meet the basic needs of human beings, such as nutrition, health preservation, decent housing, and education, each of which has a corresponding human right’ (Picolotti 2003:49). Ecocentrists will identify this as an obviously anthropocentric set of concerns. Even for those who reject ecocentrism as a basis for environmental ethics, this is not a trivial point. A model of environmental sustainability built upon preserving the environmental only insofar as it is necessary to meet human’s basic needs is potentially a very weak model of sustainability (see chapter 5). Indeed, the weakness of the vision of sustainability implicit in Agenda 21 is roundly criticised by some environmentalists. Timothy Doyle (1998) claims that Agenda 21 presents a vision of sustainable development that ‘constructs all environmental problems as ‘efficiency’ issues’, and thus does not question the logic of equating human development with economic development, nor of prioritising economic growth over other goals.

Many environmentalists are sceptical more generally of the genuine benefits that accrue to the environment from massive intergovernmental conferences on the scale of UNCED and WSSD. Seyfang (2003) notes the dismay of many activists at the lack of any substantive new agreements at the WSSD, while Vogler wryly remarks that the results of an ecological impact assessment on international environmental diplomacy since 1992 ‘would no doubt be shameful in terms of the

contribution to global warming of the millions of air miles travelled and to deforestation of the mountains of paper consumed' (Vogler 2005:237). Vogler nonetheless applauds the success of some international cooperative efforts, such as the Convention on International Trade in Endangered Species and the Basel Convention on Hazardous Waste, as vindicating state-centric environmental regimes. Eckersley (2004a) however, argues that prospect of similarly groundbreaking initiatives being successfully negotiated in the near future is bleak. This she attributes to the 'regulatory chill' described above. While it may be accurate to say that fears of WTO rulings that would undo the good work done by environmental regimes may be ill-founded, it is also the case that actors' perceptions do not always match realities, and that in any case there is good reason to perceive obstacles to environmental regimes. It is appropriate to return again to a theme raised in the discussion of human rights, the idea of a global standard based on a particular norm, whether it be Donnelly's human rights based standard of civilisation or the global dominance of neoliberal economics, Woods pointed to the role played by the most powerful countries in legitimating and forming consensus around dominant norms. It is clear, not only from the failure to ratify the Kyoto treaty, but also from the fact the USA was one of the few countries not to send its President or Prime Minister to the 2002 WSSD, but rather send a deputy, that the USA does not offer leadership on environmental issues. There is some sense that the EU has sought to fill the gap, but this effort is hampered by lack of consensus within the EU, and by conflicting messages in terms of EU policy on issues such as fisheries and agriculture (Jokela 2001). The dominance of neoliberalism in economic policy presents a serious challenge to environmental sustainability, a challenge that there is apparently little appetite for at the level of global governance.

2.5 Conclusion

Economic globalisation, driven by a neoliberal economic agenda, is causing and exacerbating environmental degradation, whilst the globalisation of human rights proceeds. At the same time, environmental issues impact on human security and thus present a challenge for human rights. The dominance of neoliberal norms, which underwrite policies promoting globalisation, weakens the autonomy of poorer countries. Donnelly's research suggests that the autonomy of states to resist at least formal acceptance of internationally recognised human rights standards has also been

weakened, insofar as compliance with such standards has been made a condition of bilateral trade and aid deals. The autonomy of states to resist global environmental governance is not, however, the most significant obstacle to achieving global environmental sustainability. Lack of strong leadership and the challenge that environmental sustainability presents to prevailing norms are more substantial and immediate problems. Just as human rights are seen by some to be threatened by economic globalisation, it is similarly difficult to envisage compatibility between economic globalisation pursued in terms of the neoliberal model and environmental sustainability pursued in terms advocated by most greens.¹⁴ Advocates of ‘sustainable development’ claim that economic growth can be ‘delinked’ from environmental degradation. In chapter 5 I explore some of the strategies that have been proposed for doing so, and suggest that the most robust definition of environmental sustainability is incompatible with currently dominant economic norms. The fundamental question at issue in this thesis is whether human rights, as a framework for addressing threats to human security, can ground an adequate and appropriate response to the environmental problems associated with globalisation. In chapter 4 I consider some doubts about the contemporary international human rights regime. However, problems with the contemporary human rights regime do not necessarily indicate problems with human rights *per se*; it may be that human rights in national and international law and politics could be reformed so as to better facilitate environmental sustainability. Therefore, in chapter 3 I look at the plausibility of the justifications offered for supporting human rights as universal morals.

¹⁴ Free market environmentalists are an exception here, but in chapter 5 I reject free market environmentalism as a viable strategy for achieving environmental sustainability.

Chapter 3: Justifying universal human rights

What human rights are and what it means for us to have them are important questions. The answers to these questions not only tell us what our human rights obligations are, but also help us to understand whether or not the institution of human rights is up to the job of protecting individuals from the negative impacts of environmental problems.¹⁵ The question animating this chapter is why we have human rights, but as Charles Beitz (1979:53) notes, addressing this question also entails some engagement with the issue of what human rights are.

One answer to the question ‘what are human rights’ can be obtained by looking at documents of international law, such as the Universal Declaration of Human Rights (UDHR). Understood in these terms, human rights are whatever governments collectively and individually proclaim them to be in acts of parliaments or international covenants. But this is not ordinarily thought to be an adequate explanation of what human rights are, for human rights are also moral claims about the rights that persons *should* have. Indeed, Chris Brown argues that legal rights are not, strictly speaking, human rights: ‘Rights associated with positive law are associated with particular jurisdictions and thus are not, as such, *human* rights – but, on the other hand, their ontological status is secure’ (Brown 1997:45). It is the moral character of human rights that is at the root of their controversy. The existence of human rights in positive law gives them a solid foundation that human rights as moral claims lack. These moral claims are said to be fundamental in that they are justified regardless of whether they are recognised by those in authority within the state or internationally. Indeed, historically, human rights have evolved as a set of rights the individual can claim by way of protection against the power of the state (Donnelly 1999a, Freeman 2002:167-8). But the idea that we have these rights simply in virtue of being human, and that their denial or modification is beyond the legitimate authority of governments (elected or otherwise), continues to be controversial.

This chapter therefore explores some of the ways in which political theorists have sought to justify support for human rights. Reasons for supporting human rights are important if we are to decide whether or not the idea of environmental human rights is a promising one. If human rights represent a universal truth, then justifying environmental sustainability in human rights terms might be more of a vital task than if human rights are held to be historically constructed. On the other hand, if measures

¹⁵ For a discussion of the kind of environmental problems referred to, see chapter 2.

deemed necessary to ensure environmental sustainability are seen to conflict with our human rights, we need to know how strong our commitment to human rights should be. Finally, if, as is often thought to be the case, human rights are understood to be *the* authoritative medium for making moral claims in local and global politics, then we will want to know if the human rights framework is hospitable to the normative claims made with respect to environmental sustainability.

Justifying support for human rights continues to be a contentious enterprise. Jacques Maritain's story of UNESCO delegates who could agree on a list of human rights, so long as they were not asked why they agreed (Maritain 1949:9), might easily have been the story of contemporary theorists. In this chapter I compress the range of contemporary debate to three positions: firstly, I consider the possibility of elaborating a philosophical foundation for universal human rights, starting with the work of Alan Gewirth; secondly, I discuss an attempt to bypass philosophical foundations by positing an overlapping consensus (in the Rawlsian sense) on human rights, as proposed by Jack Donnelly; thirdly, I look at Richard Rorty's 'postmodern liberal' defence of human rights, whereby human rights are regarded as a culture to be promoted by means of a 'sentimental education'. Clearly, this discussion is not exhaustive; many more theorists have attempted to justify support for human rights.¹⁶ The three approaches considered here nonetheless cover significant contributions to human rights theory in recent years, and the debate that can be drawn out between them is illustrative of the validity of Anthony J. Langlois' (2003) contention that we are some considerable distance from finding a universally, or even broadly, persuasive reason for supporting the idea of universal human rights.

One final note of introduction. In the course of this chapter and the remainder of the thesis I will make reference to various documents of international law, such as, the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966), which together form what is commonly called 'The International Bill of Rights'. It would be possible and perhaps plausible to defend the *idea* of human rights whilst regarding this particular statement of them as seriously flawed. But it is this statement of them, and especially the UDHR version, to which

¹⁶ I make brief reference, in footnotes, to some of these, where they share features with the approaches discussed in detail here.

reference is most commonly made in the various attempts to justify support for human rights. For the most part, I follow this convention.¹⁷

3.1 A philosophical foundation for human rights

Alasdair MacIntyre, who is hostile to the idea of universal human rights, nonetheless praises Gewirth's account of the justification for claiming that there are in fact universal human rights as one of the clearest and most analytically rigorous available (MacIntyre 1994:66). Gewirth's account is grounded in analytical philosophy, and aims to demonstrate that because the right to two fundamental goods – freedom and well-being – is a necessary truth, these rights are universally valid and thus must, on pain of self-contradiction, be accepted by all humans. Though other approaches could be studied here,¹⁸ Gewirth thus seems a good candidate to examine as an influential example of the attempt to justify support for universal human rights by means of appeal to philosophical foundations.

MacIntyre's best known objection to the idea that there are universal human rights is that the institution of rights is historically specific. Thus he argues that one reason Gewirth's defence of universal rights fails is because the means of recognising rights to freedom and well-being have not been universally available:

One reason why claims about goods necessary for rational agency are so different from claims to the possession of rights is that the latter in fact presuppose, as the former do not, the existence of a socially established set of rules. [...] (As a matter of historical fact such types of social institution or practice have not existed universally in human societies.) Lacking any such social form, the making of a claim to a right would be like presenting a check for payment in a social order that lacked the institution of money. (MacIntyre 1994: 67)

¹⁷ Obviously, 'environmental human rights' do not feature in the UDHR, but even where environmental human rights are under discussion the UDHR is frequently a reference point, for example, in Hancock (2003).

¹⁸ See, for example, John Finnis' (1980) account of 'natural rights' derived from natural law, which has been influential in some circles and clearly meets the criterion of attempting a philosophical foundation for human rights that would insulate rights from the doubts of relativists and other sceptics. However, Finnis' reliance on a particular religious framework potentially limits his appeal, and while his seven categories of 'intrinsically valuable basic goods' rely to some extent on intuition to prove their appeal, Gewirth's approach aims to be universally valid and demonstrable by rational thought alone. More influential has been H.L.A. Hart's (1967) answer to the question, 'Are there any natural rights', in which Hart posits an underlying equal right of all to liberty, from which further rights can be derived. I suggest below, however, that the idea of *all* persons having an *equal* right to liberty is in fact historically peculiar, and that reasons in support of the idea are thus at the very least desirable.

So, the claim of universal human rights runs aground on the fact that the institution of rights is a peculiarly modern and Western invention. It cannot be denied that the idea that all humans everywhere are morally equal has not universally been endorsed throughout human history. But to say that the existence of universal rights depends upon the existence of institutions to recognise those rights, as the ‘presupposition argument’ suggests, is to mischaracterize rights. As Donnelly (2003:8) notes, rights are claimed not when they are protected by courts and other institutions, but precisely when they are denied. Rights are claims about how societies should be organised, or more specifically about how individuals should be treated by those in authority in a society. It is only when rights are threatened that individuals have need of their rights. In this respect, rights are very different from cheques and money. Moreover, MacIntyre’s argument does not preclude the possibility that human rights, as an institution, could become universal, nor that the institutional forms the recognition of rights takes could vary. Indeed, with the advent of globalisation and the apparent acceptance of human rights regimes both at the global and regional level, it would appear to some that we now inhabit a world where the institution of human rights is universally acknowledged, if not adhered to. But this remains a controversial claim, which will be investigated further in chapter 4.

3.1.1 Rational agency

A more telling objection to Gewirth’s theory relates to his argument that as a matter of logical necessity, individuals have universal rights. The dialectically necessary method that Gewirth employs is intended to prove that it follows from an individual’s conceptual need of certain conditions for action that there are human rights to which all persons are entitled, a claim which Gewirth argues cannot be denied without self-contradiction or logical error (Gewirth 1982:46). These are rights to freedom and well-being, which Gewirth holds to be the necessary conditions for action. From this basis it would not be difficult to draw up a list of rights that would not be significantly divergent from those found in the International Bill of Rights.¹⁹ On the other hand, given that the capacity for rational agency is central to his argument, it is plain that Gewirth’s thesis cannot support rights for children and the

¹⁹ It does seem unlikely, however, that Gewirth’s theory would support the full list of rights found there. As Maurice Cranston (1967) scathingly suggested, the right to ‘periodic holidays with pay’ (proclaimed in Article 24) may not, in fact, be fundamental and inalienable, at least not within Gewirth’s scheme.

insane, a point he concedes himself (Gewirth 1982:55). This exclusion does not preclude persons having duties of care or respect towards children and the insane, but it does suggest that they are not morally equal to ‘purposive agents’, as Gewirth terms rights bearers.²⁰

It might be asked, at this point, what is meant by ‘the capacity for rational agency’. Implicit in this is a putative theory of human nature, whereby to be human is to identify purposes and pursue them in a rational fashion. Clearly, this putative theory of human nature excludes from the status of rights bearers those who are not capable of rationally pursuing their purposes. Insofar as this applies to people who may be thought incapable of caring for themselves, this is perhaps a relatively uncontroversial step. But it is more problematic than Gewirth would appear to acknowledge, since, as Rorty argues (see section 3 below), oppression of one people by another has often been justified in terms of the oppressed persons not being fully rational and thus not being seen to be fully human. On Gewirth’s model, identifying someone as a fellow human being entails making a judgment about the rationality of their conduct in pursuit of defined goals. Thus, it may be thought, Gewirth does not in fact offer a defence of rights that persons have simply in virtue of being human, as there is a further ‘capacity’ that persons must possess in order to qualify as a bearer of universal rights. This is not to say that Gewirth would wish his work to be used to justify the denial of rights to a group of persons who were deemed to be irrational, but there is, nonetheless, scope for such a strategy within his argument.

A further problem arises in the links between steps in his argument; from the logical necessity of the individual agent asserting that he has need of certain conditions for action to the agent having rights to freedom and well-being. He sums up his argument in seven steps, quoted here in full:

[I]f any agent denies that he has rights to freedom and well-being, he can be seen to contradict himself. For, as we have seen, he must accept (1) “My freedom and well-being are necessary goods”. Hence, the agent must also accept (2) “I, as an actual or prospective agent, must have freedom and well-being”, and hence also (3) “All other persons must at least refrain from removing or interfering with my freedom and well-being”.

²⁰ Jeremy Waldron also identifies this problem in Hart’s theory: ‘Hart’s analysis is in principle incompatible with the attribution of rights to beings incapable of exercising powers, such as babies...’ (Waldron 1984:12). One of the attractions of Rorty’s theory (see below, section 3), is that it does not fall foul of this problem.

For if other persons remove or interfere with these, then he will not have what he has said he must have. Now suppose the agent denies (4) “I have rights to freedom and well-being”. Then he must also deny (5) “all other persons ought at least to refrain from removing or interfering with my freedom and well-being”. By denying (5) he must accept (6) “It is not the case that all other persons at least ought to refrain from removing or interfering with my freedom and well-being”, and hence he must also accept (7) “Other persons may (are permitted to) remove or interfere with my freedom and well-being”. But (7) contradicts (3). Since, as we have seen, every agent must accept (3), he cannot consistently accept (7). Since (7) is entailed by the denial of (4), “I have rights to freedom and well-being”, it follows that any agent who denies that he has rights to freedom and well-being contradicts himself. (Gewirth 1982:50-51)

The problem arises between points (2) and (3). It only follows from “I, as an actual or prospective agent, must have freedom and well-being” that “All others persons must at least refrain from removing or interfering with my freedom and well-being” if there is something special about purposive agents (myself included) that means they are *entitled* to what they need for action. It may be that there is some special quality that so distinguishes purposive agents, but Gewirth has not specified it. Argument is needed here, as MacIntyre (1994:66-70) has complained.

Gewirth has amplified his argument elsewhere:

[T]he agent is saying that because freedom and basic well-being are necessary goods for him, other persons strictly ought to refrain from interfering with his having them. And this is equivalent to saying that he has a right to them, because the agent holds that this strict duty of noninterference by other persons is owed to him (Gewirth 1976:291).

However, this thesis remains unsatisfactory because the equivalence Gewirth asserts is not self-evident. Joseph Raz has complained that Gewirth ‘misconceives the relation between value and rights’ (2006:4), in that he assumes that something that has crucial value for a person must be the subject of a right that person holds. Raz, on the other hand, argues that there may be necessary goods that persons would not necessarily have rights to. Another problem is that a person does not automatically have a right to those conditions which are necessary for agency without the further criterion that he ought to have those things which are necessary for agency, because

he has some special status which means that his agency has intrinsic moral value. This point can be better understood if a person is substituted for another living being, say, a shark. It is not usually argued, even by ecocentrists, that individual sharks should all have rights to the necessary conditions for pursuing their chosen purposes.²¹ Thus it can be seen that a moral significance is being attached to the agency of humans in Gewirth's theory that is not generally held to be true of other beings.

The question at issue is then what is the source of that moral significance. Gewirth's argument would seem to suggest that rationality is the determining factor, but, as argued above, making rationality the determinant of special status may be problematic, in that this sort of standard has been used to justify the oppression of non-Western peoples, and women everywhere, in the past. What is implicit in Gewirth's theory here is a notion of what it is to be human, whereby humans are definitionally understood to be rational agents pursuing individual goals. But this rational, individualistic notion of what it is to be human is not universally assented to. What is needed, then, is an alternative explanation of what it is that makes humans, whether as purposive agents or any other notion of human nature, special, such that in virtue of X persons have rights to what they need to pursue their purposes.

The difficulty here has been summed up by Michael Freeman; 'the theory of human rights presupposes a moral ontology in which human persons not only exist but have special value. Such an ontology is not universal' (Freeman 1994:510). Not only is it not universally agreed that *humans* have special value, rather than, say, male humans, or white humans, or French humans, or any number of versions of 'these particular humans', the reasons for claiming that all humans have special value that have been put forward have tended to be based on a religious worldview. Even where this is not the case, as in Gewirth's theory, a particular notion of what it is to be human is implicitly described. What is problematic here is that people have competing visions of what it is to be human. As Langlois argues,

it is not clear, and it has never been clear, how authoritatively to give content to subjective rights simply on the basis of their claim to derive from our humanity, while providing a *cordon sanitaire* between this humanity and any substantive human tradition or conception of the good. (Langlois 2003:511)

²¹ For a brief discussion of ecocentrism, see chapter 5, section 1.

The International Bill of Rights sets out in international law the position that human beings are special, (that is, they are ‘sacred’, ‘inviolable’, ‘endowed with dignity’ and so on) and that they therefore have certain universal human (‘inalienable’) rights. These are two separate claims: (1) that humans are special, and, (2) that it follows from this that they have rights. Michael J. Perry (1998:58) holds that there are two possible challenges to the claim that human beings are special, sacred, inviolable, etc.

- (1) There are no persuasive reasons why any human beings are sacred.
- (2) Only some human beings are sacred (those of the agent’s own tribe, community, etc.).

Clearly, the second claim would not be endorsed by human rights advocates, but it is asserted by cultural relativists, or at least, the universality of human rights is sometimes denied on the basis that morality makes sense only within the context of the cultural community which gives it meaning. A common response to this type of argument is to point out that cultures are not static, and that it is therefore possible that cultural traditions that appear to be incompatible with human rights can, in fact, develop towards a convergence with human rights norms. Abdullahi A. An-Na‘im foresees just such a development with regard to Islam: ‘It may take some innovative reinterpretation of traditional [Islamic] norms to bring them into complete accord with the present formulation of the international standards, but the essence of these standards is already present’ (quoted in Caney 2003:87).

The idea that conflicting cultural (or ethical, to use Simon Caney’s terminology) traditions contain within them an essence or core of norms which are in fact universal has also been suggested, for example by Bhikhu Parekh (1999:135). Parekh, however, thinks the list of such values is very short – human unity, human dignity, human worth, promotion of human well-being, and equality (Parekh 1999:149-150). Taking a more pessimistic view, Peter Jones doubts the worth of any common values that could be identified, claiming that, ‘[e]ven if we could find values that have been endorsed by everyone everywhere, these are likely to be so meagre, so denuded of content, that they will provide a set of human rights that is hardly worth having’ (Jones 2003:35). But others find the empirical case persuasive. Ken Booth (1999) points out that all cultures have a notion of such virtues as hospitality, civility, right behaviour, and so on. Thus he endorses Donald Puchala in claiming that ‘at a fundamental level, moral behaviour is not a cultural trait but a human predeliction’

(quoted in Booth 1999:59). The argument here is that relativists mistakenly fail to recognise these values that find (differing) expression in all cultures. Insofar as these values are common to all cultural or ethical traditions, universal values are certainly possible.

This is persuasive as far as it goes, but the fact that all cultures share the concept of moral behaviour does not prove that all cultures share the *same* notion of what constitutes moral behaviour, that is, that all cultures interpret and express these virtues in the same way. Illustrating this point, Micheline R. Ishay (2004:365) cites Herodotus' tale of the Persian king Darius, highlighting the different ways in which Greeks and Indians honoured their dead; though both recognise the *value* of honouring their dead, each community found the others' *practices* offensive. Ishay nonetheless rejects relativism, but a significant obstacle to universalising respect for human rights as practice is the range of persons towards whom virtuous conduct is held to be appropriate or requisite. Parekh claims that, insofar as we can identify *human* values, 'it is self-contradictory to say that we should respect the dignity of our fellow-citizens but not that of outsiders' (1999:150). But fear of self-contradiction does not appear to have inhibited the violation of human rights. What should be noted here is that the idea of treating all humans equally and endowing them with rights simply in virtue of their being human, rather than in virtue of some cultural, national, or other status, *is* historically peculiar, and it is precisely this peculiar idea that the concept of human rights is invoked to universalise.

3.1.2 Human dignity

Turning to Perry's first claim (that there are no persuasive reasons why any human beings are sacred), to describe human beings as sacred obviously introduces a religious terminology, but it captures the sense of moral significance that is evidently attributed to humans both in Gewirth's attempt to find philosophical foundations for human rights, and in existing international human rights covenants such as the International Bill of Rights. The Universal Declaration of Human Rights talks in its preamble of 'recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family' as 'the foundation of freedom, justice and peace in the world' (in Brownlie 1995:256). In the Vienna Declaration of 1993, the latter is entailed upon the former: 'all human rights derive from the dignity and worth inherent in the human person' (UN 1993). Perry's question, then, is, what is this

inherent worth? Clearly, religious belief could supply an answer. If we are God's creation, and God has endowed us with dignity, as the Christian faith holds, then we each have inherent dignity, and, from that, in Christian terms duties follow (love one another) and in the terms of the International Bill of Rights, rights follow (a considerable list). These duties and rights apply universally because we are all, equally, God's creations, all children of God, all part of the same family. Taking God out of the picture, however, opens the way to the now familiar Nietzschean riposte that Christian morality is nothing more than a plea from the weak for equal treatment from the strong, a plea that ceases to be compelling in the absence of a God to sanction it. As will be discussed in section 3 of this chapter, Rorty is impressed by the Nietzschean critique, yet in his project of a sentimental education, seeks to find a means to bypass it. (It is not immediately clear that the idea of *equal* human worth is readily intelligible in terms of all faiths – Hindus and Buddhists, for example, do not hold that we are all of *equal* worth, though a system of duties is nevertheless intrinsic to each religion.)

If we are to embrace a universal set of rights entailed upon inherent human dignity, however, there must be intelligible reason(s) for accepting that humans do possess such a quality. Langlois (2004) bemoans the lack of engagement, on the part of contemporary philosophers and political theorists, with this difficult question. Freeman's recent work (2004) aims to sketch the role that religious belief might play in this, suggesting that different religious beliefs might simultaneously but separately sustain support for universal human rights, but Freeman has no answer to the problem of secularism. Yet the (Western) culture that inspired the human rights project we now find gaining credence throughout the world has become secularised to a considerable degree. Thus, in addition to religious understandings of the special status of human beings, secular conceptions of human sacredness are necessary (Freeman 2002:55).

A point often glossed over, though, is that neither secular nor religious understandings of human sacredness are 'neutral', nor necessarily compatible. Freeman describes Gewirth's thesis as 'resolutely secular'. Indeed, Freeman finds Gewirth's logically necessary method of rationally defining human rights so hostile to a religiously based defence of human rights as to be 'an implausible solution to the problem of diversity' (Freeman 2004:395). Instead, Freeman begins to look approvingly towards the work of John Rawls for a means to support human rights

whilst accommodating diversity of belief.²² He concludes by endorsing Peter Jones in saying that, ‘It is not the task of human rights theory to determine ultimate religious or philosophical truths, but to identify the rules that ought to govern the relations among persons with different beliefs’ (Freeman 2004:400). This seems to endorse something like the Rawlsian conception of ‘justice as fairness’, whereby fundamental philosophical and religious beliefs are a private matter, and only political questions are a matter of public concern (Rawls 1985). Freeman’s apparent acceptance of a reduced role for philosophy in providing justifications for human rights would seem to contradict some of his earlier work – as recently as 2002 he claimed that,

[w]e need reasons to support our human-rights actions, both because it is often not clear which actions human-rights principles require and because opponents of human rights can support their opposition with reasons. We must understand whether our reasons are superior, and, if so, why.
(Freeman 2002:56)

It is difficult to reconcile this need with the modest understanding of the role of philosophical foundations in justifying human rights expressed in the conclusion of Freeman’s 2004 article.

Nevertheless, Freeman’s retreat from philosophical foundations may be prudent in view of Perry’s conclusions regarding the possibility of finding a secular basis on which to justify the claim that human beings have a special status in virtue of which they have inalienable rights. Discussing Ronald Dworkin’s response to the question of what a secular notion of inherent human dignity might look like, Perry (1998:ch1) argues that something more is inferred in the quality of being sacred, inviolable, etc., than can be supplied in a secular cosmology. A secular notion of inherent human dignity would have to assert that there is meaning and worth in humanity in the context of a view of the universe as meaningless or a view that is agnostic about the possibility of meaning. Humanity, then, is the only solid reference point. For Perry, Dworkin’s argument rests on the ‘two combined and intersecting bases of the sacred: natural *and* human creation’, that is, natural evolution and the development of social institutions (Perry 1998:27) – human beings are seen to embody the pinnacle of both, thus human beings inspire unique awe in themselves. As Perry notes:

²² Given that Rawls explicitly excludes religious reasons from the range of acceptable justifications for endorsing a given conception of justice in the context of an overlapping consensus, it is not clear that an overlapping consensus based on competing religious doctrines is entirely coherent.

Dworkin seems to be using “sacred” in what we can call a weak, or “subjective”, sense – something (e.g., a human life) is sacred *because*, or *in the sense that*, it inspires awe in us and we attach great value to it – rather than in the strong, or “objective”, sense – something is sacred and *therefore* it inspires awe in us and we attach great value to it (Perry 1998:28).

The idea that beings that inspire awe in us should be protected by special rights is something that ecocentrists could easily endorse, but it would be unclear, to ecocentrists at least, why humans should have rights and animals not. Indeed, on the basis of something inspiring awe in us, it is not clear why the Great Wall of China, and other inanimate objects, should not have rights. The majority of ecocentrists do seek to differentiate between the moral status of humans and other beings. Robyn Eckersley (1992) explains one ecocentric approach, ‘autopoietic intrinsic value theory’, wherein value is ascribed to ‘self-generating living things’, which can encompass species, ecosystems, or individuals. This approach still requires human judgement about what counts as a self-generating living thing (amoeba? humans in catatonic states?) and is therefore worthy of the respect consistent with intrinsic value, and there is still the issue of differentiation with respect to (potentially competing) degrees of value accorded to different species or individuals in a particular context. What is problematic here for human rights advocates is the degree of the subjective element involved. It is further complicated by the variety, not necessarily overlapping, indeed often differing, of things in which human beings find awe. Relying on ‘awe’ to ground a commitment to the intrinsic value of beings in a lexical order determined by human judgment is a considerable distance from Gewirth’s hoped for logically necessary standard of universal human rights.

But such a standard may not ultimately be available. By Perry’s logic, if the idea of human dignity is central to human rights, and is inescapably religious, then the idea of human rights is itself inescapably religious. In the context of a multi-cultural world, that would seem to be a singularly unhelpful attribute for a system of universal rights. Equally unhelpful is Freeman’s conclusion that Gewirth’s attempt to provide a secular justification for support for human rights is logically compelled to assert that, ‘[a]ll cultures that seem to lack the concept of human rights must either have it *implicitly* or they are in a state of logical and moral error’ (Freeman 2004:394). It may

yet prove to be the case that there is one true religion, and that our status as children of a (hopefully) loving God is what underwrites our 'human' rights. There again it is equally possible that cultures that do not accept a given conception of human rights (whatever that may be) are indeed in logical and moral error. But neither argument seems useful to the champion of human rights in a multi-cultural, post-colonial world. Wars have been fought over claims similar to the former, and the latter claim is patronising or insulting. Neither claim seems likely to cut much ice in contemporary political debate. We would seem, then, to have reached an impasse. Like Freeman, Perry is nevertheless committed to the idea of human rights. Unlike Rorty (see section 3 below) he thinks it matters that human rights may be inescapably religious, but he finds the argument for human rights compelling nonetheless. Perry finds himself caught between his conviction that the justification for human rights is inescapably religious, and his conviction that, despite the lack of agreement in religious belief, there must nevertheless be universal human rights. Given that an appeal to philosophical foundations, such as that attempted by Gewirth, seems unable to advance us beyond this problem, the latter two sections of this chapter are devoted to two theorists whose arguments begin with the premise that philosophical foundations for human rights are unavailable, and attempt to find ways around this problem.

3.2 An overlapping consensus on human rights

Jack Donnelly has written extensively on human rights theory and practice. Of interest here are the arguments he has proposed in justifying the idea of universal human rights. These are two-fold. Firstly, Donnelly understands human rights as a necessary tool of the weak in protecting themselves against the strong in the context of a globalised world. Human rights are therefore necessary not in the logically true sense that Gewirth describes, but rather in the contingent sense of being an essential feature of modern social relations that enables persons to protect themselves from the excessive power of others in the context of a particular model of political and economic organisation. It follows from this that human rights are not to be 'found' by means of rational thought, but instead are socially 'constructed' in response to specific threats (Donnelly 1999a). They are nonetheless universal, Donnelly argues, insofar as the threats they combat, 'modern markets and states', are now universal, or near-universal (Donnelly 2003; 2007).

Secondly, Donnelly holds human rights to be the subject of what he calls an overlapping consensus, whereby human rights are a moral standard that is almost universally assented to, and as such is morally persuasive. Neither of these arguments appeals to philosophical foundations, indeed, Donnelly regards such appeals as misguided because of the contested nature of philosophical beliefs, but argues that this is not unique to human rights:

Like all social practices, human rights come with, and in an important sense require, justifications. But those justifications appeal to “foundations” that are ultimately a matter of agreement or assumption rather than proof. Problems of “circularity” or “vulnerability” are common to all moral concepts and practices, not specific to human rights. (Donnelly 2003:21)

It follows, according to Donnelly’s argument, that where there is evidence of agreement, then that is sufficient reason to consider as valid a moral concept or practice, such as human rights. Such agreement need not be absolute; instead, it can take the form of an ‘overlapping consensus’, as Rawls proposed in regard to establishing a shared conception of justice on ‘political, not metaphysical’ grounds. At the heart of Donnelly’s approach, then, is a rejection of the ideas put forward by both Gewirth and Perry.

Donnelly claims there is a ‘remarkable international normative consensus on the list of human rights contained in the Universal Declaration and the International Human Rights Covenants’ (Donnelly 2003:17). Although Donnelly does not offer much in the way of empirical evidence for this claim, it would be easy enough to find evidence in terms of the overwhelming number of countries that have signalled their endorsement of the UDHR and that have ratified the two International Covenants.²³ Similarly, the proliferation of regional human rights agreements over the latter half of the twentieth century points to broad support for human rights at the level of governments at least.²⁴ But others have come to probe the depth of this apparent consensus on human rights and in particular to explore what motivates governments to accept and adhere to (or not) human rights agreements. These arguments will be considered in chapter 4. In this chapter, I take Donnelly at his word in claiming there

²³ For instance, as of December 2006, the ICCPR has 67 signatories and 160 parties, and the ICESCR has 66 signatories and 155 parties. (OHCHR 2006)

²⁴ Examples include the European Convention on Human Rights (1953) and the African Charter on Human and Peoples’ Rights (1981).

is an international consensus on human rights and consider what, if anything, can be said about the normative status of human rights on the basis of them being widely endorsed.

Donnelly argues that the consensus on human rights circumvents the need for a substantive theory of human nature on which to ground human rights. In this way, Donnelly hopes to outline a theory that provides conceptual support for human rights whilst avoiding claims about the special status of human beings. This is fortunate, because '[g]iven that philosophical anthropologies are so controversial, there are great dangers in tying one's analysis of human rights to any particular theory of human nature.' (Donnelly 2003:17) Clearly, if human rights are linked to a particular understanding of what it is to be human, such as the individual as rational agent, as in Gewirth's theory, or as adherent of a particular religious faith, then the appeal of human rights may be undermined in the eyes of those who do not share that particular view. This much is implicit in Freeman's concern that Gewirth's resolute secularism is problematic in the context of cultural pluralism. So Donnelly's strategy of avoiding philosophical and religious justifications for human rights has much to recommend it.

But there is a problem in the way that Donnelly uses the idea of an overlapping consensus, for he seems to want this device to do two things. Firstly, the idea of overlapping rather than complete consensus is invoked to explain how agreement on a given list of human rights is possible in the context of cultural pluralism. Addressing Rawls' question, how can there be 'a stable and just society whose free and equal citizens are deeply divided by conflicting and even incommensurable religious, philosophical, and moral doctrines?', Donnelly claims that the idea of an overlapping consensus 'offers a plausible answer' which 'has an obvious extension to international society, particularly a culturally and politically diverse pluralist international society' (Donnelly 2003:40). However, Caney has noted that Rawls thought that an overlapping consensus on justice could hold in pluralistic societies that shared political institutions and had some degree of history of working in concert, factors which would inspire persons of differing fundamental beliefs to see the benefit of reaching a less deeply held political agreement about how society should be organised so as to facilitate justice. 'The problem with the idea of a global overlapping consensus', Caney concludes, 'is that these factors (such as a shared political system with its dynamics encouraging convergence) are absent at the global level' (Caney 2003:54). Indeed, Rawls himself specified a number of conditions that

would have to hold in order for an overlapping consensus to be used as a means to ground a political conception of justice, all of which apply, in Rawls' scheme, *within* societies (Rawls 1985:225; Hampton 1989:795-6).

Donnelly accepts that Rawls intended the idea of an overlapping consensus as a solution to pluralism within states, but Donnelly nonetheless believes that it can be applied beyond the domestic sphere, because, he argues, in the context of globalisation, modern markets and states have spread around the globe and are now near-universal (Donnelly 1999b:69; 2003:57-60). In a footnote he recognises modern markets and states as 'contingently Western' in the sense of having originated in the West, but as these means of economic and political organisation have 'spread, in very similar forms, throughout the globe' (Donnelly 2003:59), they can be taken to be universal. Human rights have often been described as having evolved in the West as a means of protecting the relatively weak individual, wrenched from earlier social relations of family and community that were more fixed and enduring, against the power of the state and the market in the post-industrial world, an assessment with which Donnelly would appear to concur (Goodhart 2003:943). Thus Donnelly construes human rights as a *necessary* response to the problems associated with the power of the modern state and the modern market. Freeman takes a complementary, if not identical, line when he writes,

[a]ll human societies have power structures, and many of them have throughout history had some conception of the abuse of power. The concepts of *natural rights* and *human rights* are particular ways of expressing this concern about the abuse of power. (Freeman 2002:167-8)

The spread of the modern state around the globe is, by Donnelly's reckoning, a response to Western colonialism, while the spread of international markets, the processes of globalisation in general, has been led by Western economic expansion. (Donnelly notes in passing that, in a world of sovereign states, 'markets... are an obvious choice' (Donnelly 2003:68), but he does not say what makes this obvious.) So, the (Western) human rights regime that is necessary to protect individuals from the potential excesses of markets and states have become a necessary universal feature in virtue of the fact that the Western models of political and economic organisation have been exported around the globe. This process of export would presumably not have been possible without the attendant Western supremacy in matters military and economic. The point to be made here is that the export of human rights, even as a tool

to protect the weak from the excesses of power made possible by the export of Western models of economic and political organisation, is not morally neutral, as Donnelly seems to imagine it is. The closest he comes to responding to this criticism of human rights is this:

There is no doubt that human rights are more individualistic than many other social and political practices. But to rail against it in the absence of an alternative solution to the very real problems of protecting the individual and human dignity in the face of modern markets and states is, at best, utopian or short sighted. (Donnelly 2003: 114)

It may be that to attack the only tool available to do an important job is foolish and short-sighted. But it does not follow from this that one must subscribe to the consensus on human rights, rather than *looking* for an alternative solution. In his discussion of globalisation as a background condition against which human rights are necessary, Donnelly comes close to reifying the globalisation of markets and states. Yet Donnelly is also critical of an ‘unthinking acceptance of a world of sovereign states’ (Donnelly 2003:66). As noted in the previous chapter, globalisation is neither natural nor inevitable. It is the consequence of policy choices. Donnelly seems at times to foreclose the possibility of making alternative choices about both the manner of economic or political organisation a society might adopt, and whether to endorse universal human rights as articulated in the UDHR. Green theorists, on the other hand, point out that alternative models of economic and political organisation are not only feasible but also desirable (see chapters 5 and 6).

3.2.1 Human rights as practice, human dignity as value

The second problem with the way in which Donnelly uses the idea of an overlapping consensus on human rights is indicated in the preceding argument. Consensus is held to be a persuasive reason to endorse human rights. In short, the fact of consensus proves the moral worth of human rights. Donnelly is not alone in subscribing to such a view. In proposing a ‘non-ethnocentric universalism’, Parekh also makes reference to the ‘moral authority based on the consensus of world opinion’ (1999:140). But, as Freeman observes, this appeal to consensus as proof of moral status does not stand up: ‘It [Donnelly’s thesis] is unconvincing, however, not only because it is not clear that a *sincere* consensus exists, but also because consensus is factual not moral, and therefore, in itself, justifies nothing’ (Freeman 2002: 64).

Similarly, Nigel Dower argues, ‘whatever the importance of consensus in theory (as well as in practice) it cannot by itself be sufficient or be a substitute for other theories [...] which provide the materials from which the consensus is drawn’ (Dower 1997:95). An example here would be the prevalence in Europe for many years of the view that Jews were inferior to other persons. The appalling treatment of Jews by the Nazi regime during the Second World War was one of the key factors that inspired the revival of the idea of human rights in the aftermath of that war (Donnelly 1999a:72; Langlois 2001:80). This example illustrates two points. Firstly, consensus on a particular idea does not demonstrate its moral or right or just character. Secondly, consensus on a given idea now does not guarantee that the popularity or acceptability of the idea will persist. It is therefore apparent that consensus rests on something else, a point Rawls himself understood – one of the purposes of introducing the idea of an ‘original position’ into the reasoning process for deciding principles of justice is to eliminate the potential for power relations to influence outcomes. The absence of such constraints in the real world is at the root of a significant criticism of human rights, which will be discussed in chapter 4.

In a recent article clarifying his position on human rights universalism, Donnelly describes human rights as a ‘social practice’, not a value, and justifies human rights as a universal *practice* in the following terms:

The functional universality of human rights depends on human rights providing attractive remedies for some of the most pressing systemic threats to human dignity. [...] Whatever our other problems, we all must deal with market economies and bureaucratic states. Whatever our religious, moral, legal, and political resources, we all need equal and inalienable universal human rights to protect us from those threats. (Donnelly 2007:288)

The argument here seems to be that human rights as a practice are universally accepted insofar as they provide effective defence against the threats to human dignity posed by two institutions (markets and states) which happen to have been universalised. If that is the case, then the value at the core of human rights as a practice is human dignity. This much is perhaps uncontroversial. But it does not necessarily follow from there being the same *threats* to human dignity in places A and B that the same practices are appropriate in defending human dignity in A and B,

unless it is the case that human dignity is understood in almost exactly the same ways in both places.

Donnelly deals with this point by suggesting that human rights are ‘relatively universal’, that is, they are universal at the conceptual level, but can be implemented and interpreted in different ways. This point is perhaps intelligible in the abstract, but the examples he offers suggest a more universalistic than relativistic understanding of human dignity. These include the possibility of designing electoral systems differently in different countries (which presupposes democracy) (Donnelly 2007:299), tolerance of a prohibition on apostasy as long as it is not incompatible with human rights (a position that renders ambiguous as much as it clarifies) (Donnelly 2007:301). Such examples do little to combat the argument of opponents such as Brown, who claims that ‘the contemporary human rights regime is in general, and, for the most part, in detail, simply a contemporary, internationalised and universalised, version of the liberal position on rights’ (Brown 1997:43). This is perhaps a bolder claim than can easily be sustained. As Jeremy Waldron (1987:ch1) has argued, there is more than one liberalism. Criticism of human rights as a liberal discourse fails to recognise that liberals, such as Jeremy Bentham and John Stuart Mill, have been among the strongest critics of the idea of natural or human rights. But many have concurred with Brown in highlighting the individualism, secularism and rationalism inherent in human rights as articulated in the UDHR (see, for example, Pollis and Schwab 1994).

The historical constructedness of human rights identified by both Donnelly (1999a) and Freeman (2004) suggests that a reconstruction of human rights is possible, but it is not obvious how universal human rights could be reconstructed so as to avoid entirely the charge of favouring liberalism without them losing their coherence. One possible answer is suggested by Rowan Cruft (2005a), who explores the idea that human rights should be justified individualistically. In such a scheme, religious and moral beliefs, at both an individual and a community level, would play a central part in justifying human rights, but they would not be deterministic:

Both a person’s society and a person’s own choices can influence the features that justify human rights for that person, but this influence is not inevitable. It follows that a person’s individualistic right-justifying features can be fairly epistemologically inaccessible. (Cruft 2005a:81)

Cruft’s proposal would presumably not be endorsed by Donnelly, since it leads to the conclusion that human rights are to an extent non-universal, in the sense that different

persons may have different human rights, depending on which (perhaps epistemologically inaccessible) features of their interests are said to justify their specific human rights. It is also unclear how such rights might be institutionalised. The legal interpretation of rights has often been undertaken with regard to relevant precedents, but Cruft's scheme would render the authoritative status of precedents unclear at best. Cruft's argument is instructive, though, in recognising the implausibility of either cultural influence or reason exercising a determining influence in support for human rights at an individual level. In view of this, and absent from the domestic conditions that Rawls thought would encourage convergence around an overlapping consensus, it seems doubtful that the idea of an exclusively 'political' overlapping consensus of the type Donnelly envisages would spontaneously ground support for human rights.²⁵ The idea of separating our political (public) beliefs from our religious or philosophical (private) convictions is itself a liberal idea and is not a strategy that all people will find appropriate when agreeing common standards of how individuals should be treated. Donnelly (2003:50) explicitly supports liberal neutrality as an appropriate strategy to adopt, because, he argues, in absence of 'knowing' what the good life should be it is prudent to be tolerant of competing visions of how one should live. But this liberalism is itself insensitive to the complexity of conceptions of human dignity as described by Cruft.

This is not to say that political agreement across cultural or ethical perspectives is not possible. For instance, research on tension over water resources in the Middle East has yielded some potentially encouraging results. A number of academics and politicians have maintained that, in recent history, water scarcity has been a source of tension in the region, to the extent that it has been a cause of war. On the basis of their analysis of conflict in the Jordan River Basin, the Euphrates-Tigris Basin, and the Arabian Peninsula – three areas that have seen exponential growth in demands on water resources in the past 100 years – Mostafa Dolatyar and Tim Gray test a different hypothesis. They find that while the scarcity of water resources has raised tensions, it has not been sufficient to spark conflict in the absence of other factors leading to war, such as, in particular, antithetical ideologies. Importantly, they present a further finding that, in some instances, the scarcity of water seems to have been a crucial factor in motivating actors to put aside ideological differences and to

²⁵ Yet there is clear evidence of international support for human rights, as Donnelly claims. However, I argue in chapter 4 that there are plausible grounds for claiming some of this support is coerced.

pursue a diplomatic solution to conflict over access to resources. 'In other words, water is too vital a resource to be put at risk by war; increasing water scarcity generally concentrates the minds of decision-makers to find sustainable solutions by means of co-ordinated, co-operative and conciliatory arrangements' (Dolatyar and Gray 2000:67). In short, it seems that environmental security as a factor in practical reasoning could legitimate (even necessitate) the exclusion of fundamental beliefs from questions of politics, especially the distribution of common goods, as Rawls envisages in his idea of an overlapping consensus.

But there is an important difference between this example and the debate over human rights, and indeed, the debate about environmental sustainability. What is distinctive about the situations that Dolatyar and Gray studied is that the participants in the negotiating process shared a common understanding of the problem to be addressed. In these circumstances, practical reasoning – reasoning about what to do with regard to a given problem – is possible even in the presence of divergent fundamental beliefs. What is missing from some discussions about human rights, and many debates about environmental sustainability, is a common understanding of the problem to be addressed. In short, the problem is not 'given', but is itself contested. Fundamental (metaphysical) beliefs play a role in shaping people's understanding of a particular problem. For ecocentrists the problem of realising environmental sustainability is not simply a matter of reorganising our economy in a way that limits environmental damage. Rather, it is also a matter of recognising the inherent value in the natural environment and modifying our behaviour accordingly. A substantial element of achieving environmental sustainability from an ecocentric point of view therefore entails enlarging our moral community to include within the scope of moral concern non-human animals, plants, and even sand and stones (see Eckersley 1992; O'Neill 1993).

Similarly, fundamental beliefs reflecting metaphysical commitments contribute to the kind of non-universal human rights Cruft envisages. Cruft considers it possible that allowing 'cultural' practices, such as female genital mutilation, is a human rights violation for some women, but, on the other hand, banning such practices could be a violation of human rights for others. Which of these is the case depends upon the interplay between the women's own sense of their cultural and individual identity and the interests that their human rights should therefore protect (Cruft 2005a:280-1). A comparable argument is found in Talal Asad (1997), a study

of the variability of the idea of torture. The agreement that no individual should suffer ‘cruel, inhuman and degrading treatment’ (Article 5 of the UDHR) is held to be ‘universal in scope, but particular in prescriptive content’ (Asad 1997:111), and the difficulty Asad finds in identifying a dividing line between some aspects of torture and (consensual) sado-masochist practices again highlights the problem of epistemological accessibility.

Some feminists would certainly be sceptical of the evident conservatism of such arguments, particularly the specific example advanced by Cruft, which is neither defended nor disputed here. It is, however, illustrative of the way in which fundamental beliefs – religious, moral, the type of beliefs excluded from playing a justificatory role in an overlapping consensus – may well influence the ways in which problems are understood.²⁶ Yet Donnelly would argue that Cruft and Asad here make the mistake drawing normative conclusions from the fact that cultural practices differ. Cultural relativism, Donnelly argues, is an ‘important antidote to misplaced universalism’ (Donnelly 2007:296). But he remains committed to human rights as a universal practice able to defend individuals from the threats to human dignity inherent in modern markets and states, and is not too troubled by the idea that, since human dignity could be understood in different ways, human rights, as a universal practice, may presuppose a conception of human dignity that is not, in fact, universally shared. In this respect he comes close to Rorty, who is unapologetic in his defence of liberalism as the best set of values currently available, and whose justification for human rights is considered in the next section.

3.3 Human rights as a ‘sentimental education’

Like Donnelly, Richard Rorty does not offer a defence of human rights based on philosophical foundations. Instead, he argues that human rights should be understood as a ‘culture’, a culture that is perhaps inevitably liberal. However, where liberalism is ascribed to in a ‘contingent’, ‘ironic’, and ‘post-modern’ way, rather than a more solidly committed way, Rorty believes that human rights proponents need not

²⁶ A complementary argument is developed by Brian Feltham (2003), who argues for allowing a persons’ values to play a role in practical reasoning. The merit of this, he claims, is ‘the value of being able to take a certain attitude towards one’s own life, to be able to endorse it as a life well lived, [...] this value can ground reasons that bear on what we ought to do’ (Feltham 2003:28-29). To fail to recognise the values that people have and their relevance to practical reasoning, on Feltham’s argument, is to invite frustration and resentment – clearly this is not an ideal outcome if one is concerned to promote universal human rights.

apologise for their liberalism. Moreover, Rorty's liberalism differs from that of other liberal rights theorists such as Hart or Gewirth or Thomas Pogge,²⁷ in that he insists that human rights do not rely on the typically liberal appeal to rationalism, but are instead the product of what he calls a 'sentimental education'. He therefore rejects appeals to what he calls 'foundational truths'. A sentimental education proceeds by the telling of sad and sentimental stories that invite the listener to imagine what it is like to be in the victim's position, and therefore inspire sympathy. He shares Donnelly's belief that the existing consensus on human rights makes enquiry into their philosophical foundations redundant, but is nevertheless concerned to point out the error of philosophers in searching for such foundations because the rationalism that has characterised such endeavours has led to the belief that human rights can be promoted by pointing out that those who fail to support them are irrational. On the contrary, Rorty argues that what opponents of human rights typically lack is not reason, but rather sympathy and security. The project of increasing support for human rights is therefore advanced by increasing these two vital commodities.

3.3.1 Suffering as a transcultural fact

Rorty has explicitly called on human rights theorists to abandon their search for philosophical foundations, not least because he regards the types of answers that have thus far been advanced as not being terribly useful. Hence, he endorses Eduardo Rabossi in saying that, 'the human rights phenomenon renders human rights foundationalism outmoded and irrelevant' (quoted in Rorty 1993:116). There are two purported reasons for this. First, the manifest consensus on human rights belies the need for philosophical defences – we are already agreed that human rights are contingently a good thing; we need not waste our time squabbling with philosophers over why they are so good. In discussing Donnelly's reliance on consensus, above, it became apparent that consensus in itself tells us little about the (potential) value of the thing at issue. This same criticism applies to Rorty's use of the consensus argument in support of human rights. However, there is a second and more important claim in Rorty's work: he agrees with Rabossi in asserting that there are no 'morally relevant transcultural facts' (Rorty 1993:116). What he means by this is that the various attempts adherents of human rights have made to ground human rights in 'facts' about

²⁷ Pogge's account of human rights, though intended as a critique of, and alternative to, 'mainstream' approaches, is nevertheless clearly rooted in a liberal, rationalistic approach to rights theorising. His 'institutional' model is discussed in chapter 4.

human nature, such as humans' inherent rationality, or their status as the creation of a particular God, cannot be universally supported in the context of a plural world. It follows that the spread of the idea of human rights to the point of there being the consensus he and Donnelly now herald, has not been consequent upon appeal to such 'transcultural facts'. That being the case, the debate about transcultural facts has no practical value: 'Since no useful work seems to be done by insisting on a purportedly ahistorical human nature, there probably is no such nature, or at least nothing in that nature that is relevant to our moral choices' (Rorty 1993:119).

However, Rorty in fact smuggles both a 'transculturally relevant fact' and an implicit theory of human nature into his defence of human rights. The appeal to sympathy suggests that there is something all humans are capable of: suffering. Because all humans can suffer, all humans can, in theory, imagine what it is like to experience a particular manifestation of suffering that another person experiences, and that, in theory, should elicit sympathy. Animals also suffer, but Rorty suggests that the most useful way to differentiate animals from humans is to say that 'we can feel *for each other* to a much greater extent than they can' (Rorty 1993:122, emphasis in original). This sounds suspiciously like a tentative theory of human nature, something Rorty has unequivocally denounced as not having any analytical value (Hayden 1999:61). Indeed, Christopher Berry suggests that, where Rorty posits sympathy as a device that facilitates the identification of sufferers as 'one of us', it seems that, 'after all, some standard notion of human nature does have some work to do by rendering identification possible' (Berry 1986:129). Furthermore, Rorty's comparison of human rights with aspirin – both are remedies to common problems, and no-one who has known their benefits would subsequently refuse them – not only simplifies to a degree that might discount the need for local variations in the interpretation of human rights, it also seems to presuppose some degree of universality, the possibility of which in moral or cultural terms Rorty denies (Rorty 2000, Peerenboom, 2000).

Rorty would perhaps respond that the 'inevitable' preference for liberalism is contingent upon it being the best idea around at present – this is not a universalist position because the argument is *not* that liberalism will always be the best option. But there are further problems in Rorty's work that result from his commitment to liberalism, however ironic or contingent. Richard Bernstein has complained that,

[s]ometimes Rorty concedes that there are important differences among the varieties of liberalism, but these differences are *political* not

philosophical... [but] he does not clarify what constitutes “the political” or how one is to evaluate critically competing political *arguments*. (Bernstein 1987:547)

In an essay written by way of response to Bernstein, Rorty tells us that philosophers are ‘useful for, roughly, private rather than public purposes’ (Rorty 1987:572). Elsewhere, however, he endorses Rawls’ ‘Difference Principle’ as an example of what philosophy can ‘hope to do’, which is, ‘summarize our culturally influenced intuitions about the right thing to do in various situations’ (Rorty 1993:117). There is clearly some ambiguity in Rorty’s separation of public and private, political and philosophical. The separation of the public from the private is a familiar liberal strategy which has stimulated an established body of criticism, some of which leaves Rorty’s theory looking rather vulnerable. Rorty may feel that no particular work is needed to demonstrate why philosophers should address some questions rather than others, but he is misguided if he thinks that this also applies to political agents. As Jo Burrows rightly points out: ‘Often political issues cannot even be identified pragmatically, that is non-ideologically’ (Burrows 1990:328). Indeed, Nancy Fraser attacks Rorty’s liberalism on the grounds that,

[Rorty’s theory] stands or falls with the possibility of drawing a sharp boundary between public and private life. But is this really possible? [...] the social movements of the last hundred or so years have taught us to see the power-laden and therefore political character of interactions which classical liberalism considered private. (Fraser 1990:312)

3.3.2 The failure of reason

Despite this, Rorty’s theory of human rights is instructive because he offers a convincing explanation of the failure appeals to respect human rights as the rational thing to do. Rorty points to the example of Thomas Jefferson:

The founder of my university was able both to own slaves and to think it self-evident that all men were endowed by their creator with certain inalienable rights ... Like the Serbs, Mr. Jefferson did not think of himself as violating human rights. (Rorty 1993:112)

The simplistic character of some of Rorty’s comments about the Balkan conflict notwithstanding, Rorty here makes the important point that the problem for human rights activists is not the rare case of the psychopath who treats ‘human beings’ in an

inhumane way, but rather, the average member of a community who fails to recognise people who are not members of his or her (self-defined) community as ‘human beings’. Justifications of human rights that rely on accepting our common humanity on the basis of our rationality (such as that espoused by Gewirth) are bound to fail, in Rorty’s view, because, ‘everything turns on who counts as a fellow human being, as a rational agent in the only relevant sense – the sense in which rational agency is synonymous with membership in our moral community’ (Rorty 1993:124). The same holds true for religious based defences of human rights, or any other defence of human rights that rests on a truth claim – human rights are violated not because the (universal) truth is repudiated, but because the validating characteristic of humanity is used as a tool for exclusion. Thus it is possible for persecutors to think of themselves, like Jefferson, as not violating universal rights.

In responding to proponents of such arguments, Rorty finds it instructive to think of them as deprived, not of rationality, but rather: ‘It would be better – more suggestive of possible remedies – to think of them as deprived of two more concrete things: security and sympathy.’ (Rorty 1993:128) It can be noted that this hardly applies to Rorty’s chosen example – Jefferson – who does not seem to have lacked either sympathy or security, but these two values are at the heart of Rorty’s understanding of human rights as a ‘human rights culture’, and furnish an answer to the second question proposed above, namely, what does Rorty think does the work of expanding our moral community and bolstering our support for human rights, if philosophical or religious foundations are doomed to failure.

The example of Jefferson clearly needs to be explained, but it is first worth pursuing Rorty’s argument further. He amplifies his argument against an appeal to philosophical or religious foundations by identifying an alternative strategy he thinks more likely to be effective. If, he claims, saying that ‘our little differences are insignificant compared to the one big commonality of a universal truth’ has no impact on the moral choices people make, then the best strategy is to hope that a ‘sentimental education’ can ‘redescribe’ the little differences in a way that renders them insignificant (Rorty 1999:86). Thus, rather than suggesting, with Immanuel Kant or Gewirth, that our rationality can ground a universal morality, Rorty proposes that we should look to David Hume’s notion of the human capacity to experience cruelty and sympathy. Quoting Annette Baier, he explains, ‘Hume held that “corrected

(sometimes rule-corrected) sympathy, not law-discerning reason, is the fundamental moral capacity”’. (Rorty 1993:129)

Patrick Hayden has claimed that Baier’s work on Hume, one of the sources from which Rorty derives his thesis, does not support Rorty’s conclusions. Specifically, Hayden points to the fact that Hume thought that “‘artificial” rules of justice [are required] to lead our sentiments beyond their local partiality’ (Hayden 1999:62). But Rorty clearly acknowledges here Hume’s belief that rules might of necessity play a part in guiding sentiment. Nevertheless, the emphasis in Rorty’s work is on a sentimental education, not the development of rules, though perhaps human rights could be interpreted as the sort of rules a sentimental education might inspire people to adhere to. A sentimental education proceeds by way of hearing sad and sentimental stories that encourage sympathy for the victims. Such an education encourages individuals to see the (little) differences between themselves and the victims of the stories as less significant than the (equally little) similarities between us, ‘such little, superficial, similarities as cherishing our parents and our children – similarities that do not interestingly distinguish us from many nonhuman animals’ (Rorty 1993:129). According to Rorty, while little progress has been made by those who tell us that ‘kinship and custom are morally irrelevant’, the telling of such stories has encouraged us in the West to enlarge our moral community. Thus, the success of the international human rights regime, to date, is held to owe more to ‘agents of love’ (anthropologists, artists and journalists) than to ‘agents of justice’ (judges, theologians and philosophers) (Rorty 1991).

There is a clear debt to Christianity in Rorty’s thinking: Implicit in the sentimental stories he appeals to is the universal Christian command ‘love thy neighbour’, which Rorty (1993:122) describes as Christ’s fundamental message, a message he explicitly hopes to secularise. As well as being aware of the debt to Christianity in his proposed human rights culture Rorty also notes Friedrich Nietzsche’s contempt for its message of brotherly love. Acknowledged, too, is ‘our sense that sentiment is too weak a force’ and that we resist this as a basis for morality largely because it follows that the fate of those whose human rights are not secure rests in the hands of those who already enjoy security. In order for those currently threatened to have a better, more secure future, it depends upon the powerful taking the trouble to care (Rorty 1993:129-30). This fits the story of Jefferson’s apparently hypocritical behaviour better than Rorty’s suggestion that people who disrespect

human rights are in some way deprived. It also suggests that something more is needed than security and a capacity for sympathy in order for a sentimental education to be effective.

Rorty's reading of the history of the concept of human rights would seem to suggest that the limits of liberal tolerance are enlarged each time a given community learns to think of some new group of outsiders as within the scope of moral concern, and therefore being due the courtesy of being treated with dignity and respect. But the question of what determines the location of that boundary requires further investigation. Rorty hopes a sentimental education will push it ever wider, but 'harder' contingencies, such as the material conditions in which people live, equally play a role. Rawls cites the example of the European wars of religion, whereby religion shifted from being a matter of public policy to being a private concern, primarily because it was too costly to pursue disagreements over religious differences at the state level (Rawls 1985:225). For Rorty, it is no coincidence that the West, the most industrialised and technologically advanced culture in history, is also the historical home of the concept of human rights and the most promising candidate for adopting a human rights culture. As Rorty explains: 'Security and sympathy go together. [...] Sentimental education only works on those who can relax long enough to listen' (Rorty 1993:128).

There are obvious parallels here with the difficulties for Donnelly's argument from consensus on human rights to a justification for human rights. Consensus on a given norm is contingent, as Rorty readily accepts, but given that contingencies can be 'hard' as well as 'soft', there are reasons to suspect that the consensus on human rights would not be so strong if human rights had not found their way into the foreign policies of many of the most powerful governments in the world today. Moreover, the problem of human rights being contingent upon 'security' demonstrates that continued or growing consensus is not inevitable. Just as the boundary between those within and outwith the scope of equal moral concern expands, it can also retract (as it did in 1930s Germany), and this is most likely to be correlated with a decrease in our sense of our own security. As discussed in chapter 2, the increasing likelihood of environmental threats to human security that are caused by environmentally unsustainable patterns of economic globalisation are therefore, on Rorty's reading, likely to undermine the purported consensus on human rights. This is not a problem

Rorty can adequately respond to. As both Brown (1997) and Freeman (1994; 2002) conclude, Rorty's proposed sentimental education is ultimately too weak to provide the kind of intellectual defence for human rights that many activists would hope for.²⁸ This leaves the advocate of human rights seeking to justify support for human rights in philosophical terms at an impasse: Rational justifications fail; the purported consensus on human rights does not in itself furnish reasons to support them; a sentimental education is too weak to withstand a decrease in our security, which is precisely the point when human rights are vulnerable. Freeman concludes that the only option left is to make 'a nonrational decision either to accept or reject solidarity with humanity' (Freeman 1994:514), which, despite Freeman's doubts about Rorty's approach, clearly echoes the latter's conclusions.

3.4 Conclusion

Of the three possible routes to justifying universal human rights considered here; firstly by means of rational enquiry, secondly by means of an overlapping consensus, and thirdly by means of a sentimental education; none of proved entirely satisfactory. Rational approaches such as Gewirth's presuppose something that cannot be rationally proven and moreover is to some extent at odds with the secularism of a rational approach; that is, that humans beings have some inherent, intrinsic worth. Moreover, the secularism of Gewirth's approach, which is said to be characteristic of the contemporary human rights regime in general, is offensive to some people whose world view is fundamentally religious.

The overlapping consensus model proposed by Donnelly failed largely because consensus in itself does not indicate that the subject of the consensus is good or bad or desirable or not. In the next chapter, I also discuss some doubts about the empirical claim that there is an overlapping consensus on human rights. A further

²⁸ Langlois (2001) also finds Rorty's theory too weak, and proposes an alternative based on Cass Sunstein's idea of 'incompletely theorised agreements', which are supposed to represent an improvement on the consensus model that Donnelly proposes in that the incompletely theorised agreement allows for metaphysical beliefs to play a part in justifying commitments. Support for human rights on the basis of an incompletely theorised agreement, according to Langlois, would be contingent upon individual beliefs, so that those who found rights to religious freedom, say, contrary to their position, could essentially derogate from that aspect of the overlapping agreement on human rights. Beliefs would also be expected to change over time. This basis for universal human rights seems to me to be even weaker than Rorty's proposed sentimental education, which Langlois attacks, and, as Langlois himself concedes, '[a]n incompletely theorised agreement is inadequate, however, for the important question of dissent from the dominant human rights discourse' (Langlois 2001:123), which Rorty finds the most difficult problem that human rights advocates confront.

difficulty in Donnelly's argument arose in relation to his understanding of the universalism of human rights, which was contingent upon the globalisation of markets and states. Human rights were understood to be the best tool available to protect human dignity in the face of the threats presented by markets and states. Implicit in this account is a relatively universalistic account of human dignity, one in which to be a flourishing human being is to exercise autonomy, self-determination, democratic self-expression, and so on. Absent, however, from Donnelly's understanding of the threats posed by markets and states are the environmental problems argued in chapter 2 to be attendant upon economic globalisation.

The final approach discussed above was Rorty's idea of human rights as a sentimental education. Rorty accepts that human rights are inherently liberal, but argues that a contingent commitment to liberalism should not deter adherents from asserting the universal value of human rights. Rorty is convincing in his claim that human rights advocates who appeal to what he calls 'foundational truths', such as God, or reason, cannot provide a persuasive answer to the question of why someone should care about the human rights of a stranger unless they share those particular foundational truths. The better strategy, Rorty concludes, is to appeal to sentimental stories that invite imagination and sympathy. Given that sympathy, in Rorty's view, is to some extent contingent upon security, the probability of increasing environmental problems and the attendant threat to human security discussed in chapter 2 indicates that there is reason for concern about future levels of support and respect for human rights. In view of these and other threats, it is not surprising that most commentators find Rorty's prescription of a sentimental education too weak a basis for justifying human rights.

On the other hand, Freeman's conclusion that individuals must choose (or not) a nonrational commitment to solidarity with humanity is arguably also weak. But it is not necessarily liberal, as Rorty avowedly is. Indeed, as will be discussed in chapter 6, the notion of solidarity has also been a feature of green communitarian writing. The commitment to solidarity, however, does not necessarily entail a commitment to human rights as the best means of acting on this value. The next chapter explores some of the criticisms that have been levelled at the contemporary international human rights regime, and considers a possible alternative.

Chapter 4: The contemporary international human rights regime:

Some criticisms and an alternative

In the previous chapter, I raised doubts about the purported international consensus on human rights. This is not to suggest that human rights are not widely endorsed by governments, intergovernmental organisations such as the African Union, the European Union, and the United Nations, and by non-governmental organisations such as Amnesty International and Human Rights Watch, as well as the Red Cross. However, when looking at support for human rights professed by governments, it is claimed that some of this support is a matter of *realpolitik* rather than spontaneous endorsement, particularly in non-Western states. On this reading, a degree of support for human rights is in fact coerced. A framework for understanding and examining this claim is provided by Jack Donnelly's work on the idea of human rights as a 'standard of civilisation'. Donnelly argues that support for human rights is coming to be seen by the international community as the price of a place at the table in international politics. In the final section of this chapter, I suggest a similar idea plays a role in Thomas Pogge's thinking about human rights. While human rights advocates might welcome the scope for encouraging greater compliance with human rights norms, towards the end of the chapter I argue that using human rights as a standard by which to judge others can be problematic.

Moving away from state elites to the grass roots level, it has also been claimed that the purported consensus on human rights is less evident than adherents would wish. But many commentators attribute some of this apparent resistance to the contemporary human rights regime not to the idea of human rights *per se*, but rather, to human rights as they tend to be interpreted and implemented in contemporary world politics. Critics in this debate point to the state-centrism of human rights, and to what has been called the 'ambivalence with respect to power' that has been characteristic of human rights practice. Commentators such as Abdullahi An-Na'im conclude that, in view of these criticisms, a reconceptualisation of human rights is needed. One possible candidate for a new way of understanding human rights that could address the problems of state-centrism and ambivalence with respect to power is proposed by Pogge. Pogge's 'insitutional' model of human rights aims to demonstrate how the chronic 'underfulfilment' of human rights, particularly socio-economic rights, in developing countries, could be addressed if human rights were re-

conceptualised on an insitutional, as distinct from an interactional, model. I argue that this new orientation towards the chronic underfulfilment of human rights is better equipped to address the kind of human rights issues likely to arise as a consequence of environmental degradation than the contemporary international human rights regime. Before discussing Pogge's institutional model, I consider two kinds of criticisms about the contemporary human rights regime; firstly, doubts about the consensus that is claimed to endorse the International Bill of Rights, and secondly, the ambivalence of human rights with respect to power.

4.1 Doubts about consensus

One oft-studied field that may shed light on doubts about consensus is the so-called 'Asian values' debate. The Asian values debate began in the aftermath of the Asian economic boom of the late 1980s and 1990s, and though it has died down a little since the 1997 economic collapse, it is nevertheless instructive to consider some of the arguments presented in that context. Public and academic attention was particularly sparked by the 1993 Bangkok Declaration, made by a group of Asian leaders by way of prelude to the Vienna World Conference on Human Rights. The 'debate' responds to the claims made in that document and in public statements by a number of Asian government officials, notably from Malaysia, Singapore, Indonesia and Thailand, that there are specifically Asian values, and that these values are distinct from and (in some versions) incompatible with the UDHR model of human rights (Bauer and Bell 1999:3-23; Othman 1999:171; Langlois 2001:12-45). Anthony J. Langlois summarises these values as broadly concerning culture, economics, and the role of the state, with the arguments being used by Asian state leaders to 'legitimate a soft-authoritarianism style of leadership in which the individual is subservient to the good of the community', and where civil and political rights are held to be depend upon social and economic rights, therefore legitimising policies that prioritise economic development at the expense of civil and political rights (Langlois 2001:24). Hence Vitit Muntarbhorn's finding that, while remarkable consensus exists over economic and social rights in Asia, with considerable attention paid to a 'right to development', recognition of and subscription to the 'universal' rights to such goods as freedom of thought, expression and association, and freedom of religion, is far less certain in the region (Muntarbhorn 2001:81-92).

Much of the criticism of human rights advanced by those engaged in the Asian values debate is not new. To give only one example, Malaysian politician and human rights scholar Hishammuddin Tun Hussein enumerates seven points of contention with respect to the ‘North’s’²⁹ understanding of universal human rights (2001:76-79). (1) Diversity is not taken seriously. (2) The South is blamed for problems for which the North is at least in part responsible, for example, drug trafficking (when it is people in the North who do the majority of the drug consuming). (3) Human rights do not take into account the place of community. Human rights are secular, yet the majority of the world’s inhabitants profess a religion. These religions generally promote ethics of duties or *the* right, rather than rights. (4) Human rights are unevenly upheld by the international community. The example given relates to the very different international welcomes received by Myanmar and Israel. Human rights should not be a matter of ‘realpolitik’ (2001:77). (5) Nations of the South require time to develop their own (appropriate) institutions – ‘Abrupt transplants never work’ (2001:77). (6) The North focuses on civil and political rights, whereas, ‘imperilled by the twin forces of globalisation and liberalisation’, Asian people ‘are more concerned with the right to food, the right to shelter and the right to work’ (2001:79). (7) Linking human rights to aid, trade and foreign direct investment undermines the alleged universalism – ‘If the right to development is to be truly inalienable and fundamental, there cannot be conditionalities’ (2001:79).

There are broadly two types of criticism here – one relates to hypocrisy or double standards on the part of the West, (points (2), (4), and (7)), – the other relates to the claim that there are distinctly Asian values that are not recognised, and are undermined by the supposedly universal doctrine of human rights. In response to this latter charge, it is worth noting that many of the problems raised have in fact been highlighted before by Western critics of human rights. Waldron’s (1987) review of the arguments Jeremy Bentham, Edmund Burke and Karl Marx advanced against the idea of natural rights reveals a long history of intellectual concern over the concept of inalienable rights of man *qua* man, many of which are echoed in more recent debate. Hussein’s first complaint, that the doctrine of human rights does not take the fact of diversity seriously, is an echo of Burke’s complaint that the French revolutionary idea of the natural rights of man abstracted from one circumstance to another, thus failing

²⁹ I take those Hussein identifies as ‘the North’ to be roughly synonymous with ‘the West’, though both these terms are inadequate.

to take account of local particularity (Waldron 1987:85; 166-8). The sixth point Hussein raises is compatible with much of Marx's critique of the rights of man as the rights of the bourgeois liberal³⁰ (Waldron 1987:126-30). Similarly, the individualism of natural rights, attacked differently by Marx and Burke (Waldron 1987:184-90), finds a fellow critic in the third point of Hussein's attack on human rights. This demonstrates, if nothing else, that neither 'Western values' nor 'Asian values' will be subscribed to by all those who are thought to be 'Western' or 'Asian'. Indeed, scholars have pointed out that those who claim to defend particular cultural values against the universalism of human rights have often been guilty of oppressing the people they claim to represent, whereas the language of human rights has been taken up by oppressed peoples in countries where elites have rejected it (see, for example, Wilson 1987a:8-10). Cultural relativism, it is argued, goes hand in hand with political conservatism.

To test the idea that some state leaders have used the purported Asian values to defend their own positions, rather than their people, Langlois (2001:46-72) studied grass roots support for human rights (as defined in the UDHR model) in South-East Asia. He conducted fifty interviews with academics, activists, NGO staff and think-tank members from Malaysia, Indonesia and Singapore. The questions posed included 'are there human rights, how do we know, and which rights are they?' For many interviewees, religion played a major part in their worldview, such that God (Allah, in fact) supplied the answer to these questions. According to Langlois (2001:63-65), discussions of such varied issues as women's rights, gay rights³¹, and most strikingly, religious freedom, revealed that, where people's understanding of the world is religious – that is, people support human rights because those rights specify standards of behaviour that it is one's religious duty to uphold; one knows this because of revelation; the content of these rights is knowable because religious texts and their interpreters can explicate them – then human rights are not universal, because different rights are specified. This finding is to some extent in harmony with the argument in the previous chapter regarding the role that fundamental religious or philosophical beliefs play in shaping beliefs about human rights.

³⁰ That said, Waldron argues that Marx's view of these rights as the rights of citizens, rather than of man, was more ambivalent (see Waldron 1987:158).

³¹ The right to freedom from discrimination on the grounds of sexual orientation is not included in the International Bill of Rights. Langlois nonetheless documents hostility to gay rights on the part of his interviewees, and notes their identification of gay rights as 'Western'.

As noted in the previous chapter, Donnelly (2003:96-98) argues that variation in the interpretation of rights can be accommodated if rights are universally endorsed at the conceptual level. But Langlois believes that the differences he finds at the level of interpretation cast doubt on the plausibility of consensus on the concept. This argument can be illustrated with reference to Langlois' (2001:67-72) discussion of rights to religious freedom. In a study focused on Islam as practised in South-East Asia, and its compatibility with the UDHR, he finds that, 'there is not, within Islam, latitude such that people are 'free to get free' as they are in the West. On the contrary, the only freedom to be legitimately had is freedom within the ethics of Islam' (Langlois 2001:68). In the opinion of a number of interviewees, Islam is not conceptualised as a religion that one can choose to 'give up', in the way that one can choose to change job, or house. This is not to say that all South-East Asians, or even all Muslim South-East Asians, do not accept a human right to religious freedom. However, it is to say that the interpretations here are so radically different that these rights to religious freedom can be described in the same terms if, and only if, one chooses not to examine the contested meaning of the terms. Religious freedom understood as the freedom to practice a religion is quite different from the freedom to choose not to practice a religion, and is something different again from the freedoms granted by a given religious code.

But others remain critical of this sort of argument. Norani Othman (1999), studying the possibility of grounding human rights in Islam in Malaysia and Indonesia – two of Langlois' test cases – argues that 'although Islam may be as culturally contingent as its Western counterpart, it nevertheless has the capacity to yield a notion of universal human rights' (Othman 1999:170). Othman acknowledges that there are,

those Muslims who claim outright that current human rights concepts and standards (especially those incorporated within prevailing international human rights documents) are completely alien to Islam and incompatible with Islamic law as they interpret it. (Othman 1999:171)

But she points to struggles for women's rights in Malaysia as evidence of people challenging the particular interpretation of Islam that opposes human rights. Neither Islam nor human rights emerge from this process of challenge and re-interpretation as the previously 'fixed' concepts that were held to be antithetical. This idea of re-interpretation of human rights through challenges from different social movements is also present in the recent work of a number of Western scholars. Those who highlight

the historical constructedness of human rights, such as Stammers (1999) and Freeman (2002) demonstrate that the focus and content of human rights has evolved over time and is unlikely to remain as it is. Approaching the debate from the other side, Raimundo Panikkar (1982) and An-Na'im (1999; 2001) argue that cultural or religious doctrines such as Islam are also not static. Moreover, resigning oneself to the belief that human rights and particular world views are incompatible offers little by way of constructive practical advice on how to respond to the fact of human rights abuses or underfulfilment. Notwithstanding Asad's (1997) point that what constitutes suffering is culturally and even individually variable, there are, as Freeman (1998) argues, nonetheless instances of practices that seem intuitively to be wrong to the extent that no-one should be subjected to them. The epistemic difficulties raised by Asad and Cruft, as discussed in the previous chapter, suggest that it may sometimes be difficult to determine whether or not a practice that seems intuitively to be a human rights violation should in fact be so understood. But sometimes it may not. In neither case does it straightforwardly follow that no action should be taken. Similarly, the claim that different values are held by those responsible for, or complicit in, practices that are judged to be human rights violations does not unproblematically provide grounds for inaction by others. As Andrew J. Nathan observes:

To refrain from intervening is to side with those on top. Given the ubiquity of power, between and within cultures, there is no option of a power-free discourse over values. One way or another, moral choice is unavoidable. (Nathan 2001:358)

Doubts about consensus, then, are no more a guide to (in)action on human rights than is consensus.

4.1.1 Human rights as a 'standard of civilisation'

Donnelly thinks the unavoidable choice is in favour of human rights, not because of power relations within *cultures*, but because of the power of markets and states. Thus, he responds to the claimed particularity of Asian values by reiterating his commitment to the view that the fallout from the globalisation of markets and states makes human rights universally necessary, even if they are not universally supported: '[C]ontemporary Asian individuals, families, and societies face the same threats from modern markets and states that Western societies do, and therefore need the same

protections of human rights' (Donnelly 1999b:69). Stammers, who is otherwise critical of Donnelly, reaches a very similar conclusion:

[I]t is not necessary to accept the legitimacy of a teleological modernization thesis to recognize the extent to which the globalizing dynamics of political and economic power have created powerful tendencies towards universalization and homogenization. So, even if it were true that peoples of particular cultures did not need human rights before, a good case may be made that they certainly need them now! (Stammers 1999:993)

But Donnelly (1998) has also described human rights as a nascent 'standard of civilisation', whereby respect for human rights is the price to be paid for a place at the table in international politics. Tracing the history of the idea of 'standards of civilisation' in international relations from the nineteenth century to the present, Donnelly finds that powerful states have used their own standard of civilisation to determine the kind of relations they will have with weaker states. Only those governments that powerful (Western) governments considered legitimate have been recognised as equal players in the game that is international politics, and treated accordingly. States not meeting this standard have been the subject of 'extra-territoriality agreements', or in extreme cases, colonialism (Donnelly 1998:3-11). Today, we can see parallels of this sort of differentiation at the international level in the existence of so-called 'pariah states', or 'rogue states', such as North Korea, or, formerly, South Africa. Another manifestation of this sort of discrimination is found in the European Union's criteria for membership.

This constructivist understanding of human rights recognises that state actors, in an arena where peer recognition brings considerable benefits, have powerful incentives to meet the standard of civilisation demanded by those who support human rights *if* such actors occupy positions of power. One of the ways in which powerful state actors can and do practically incentivise support for human rights is by attaching human rights conditions to trade and aid packages (Neumeyer 2003). The use of such strategies leads Hussein to complain that 'the entire issue [of compliance with human rights norms] is reduced to a question of political might and *realpolitik*' (Hussein 2001:77). A similar claim is made by Langlois (2003:512). If these doubts are valid, then the Rawlsian overlapping consensus that Donnelly finds with respect to human rights is in fact closer to what Rawls called a *modus vivendi*, a less stable agreement

where such consensus as may be found is a product of shifting power relations and interests, which may develop into an overlapping consensus, but may not (Rawls 1993:164-166). The purported consensus on human rights is met with a degree of cynicism by some commentators who see the universalism of human rights as a form of neo-imperialism on the part of Western powers (Evans and Hancock 1998). A similar cynicism has met some interpretations of the idea of 'sustainable development', particularly where industrialised Western powers seek to curb the industrialising options of poorer countries. One Malaysian scholar claims that the environmentalist pretensions of the West are simply a public excuse for forcing developing countries to buy Western environmentally friendly technology whilst obtaining the rights to seed patents developed from Southern hemisphere resources. He also dismisses human rights:

[A]lthough the campaign for democracy and human rights is in the name of protecting the interests and rights of minorities, in essence, it works to secure the view held by the advanced countries on the subject and, thus giving the campaign a hegemonic character. (Balasubramaniam 1998:389)

One point to note here is that, should the most powerful actors withdraw their support for human rights, or should the international arena change such that those who do not support human rights become more powerful without meeting the 'human rights' standard of civilisation, then, where international politics is seen as a zero-sum game, the power of those supporting human rights is weakened, and so actors would have (cynical) reasons to abandon their support for human rights.

The idea of human rights as a standard of civilisation also casts some light on the claim that Western powers are hypocritical in their approach to human rights. One of the key ideas embodied in the contemporary idea of human rights is the right to self-determination.³² This right recognises that all individuals are morally equal, insofar as each person has the right to determine for himself his own preferred course of action (provided his choice does not infringe the rights of others). It is, therefore, an essentially democratic right, because it affirms that no-one can legitimately assert authority over another without their consent. This right can clearly be said to be in a liberal tradition, with a history traceable back at least as far as John Locke's idea of a

³² As Iris Marion Young (2001:26) notes, the right to self-determination does not appear in the UDHR, but it has nevertheless been hugely influential in the post-Second World War discourse on human rights, and was incorporated in the International Covenant on Economic, Social and Cultural Rights, which was drafted in 1966 and went into force ten years later.

social contract. But the liberal values embodied in this right are not at issue here. What is problematic is that, if support for human rights is coerced, then it would seem that the democratic values embodied in the right to self-determination are not respected.

It might be countered that, while support for human rights may be incentivised, to say that support is coerced is too strong a claim. Countries have a choice about whether or not to accept the loans or aid packages that come with human rights (or other) conditions attached. Moreover, governments who accept such conditions can also exercise some discretion in how or even whether to implement them. Indeed, Neumeyer (2003) has found that non-compliance with conditions attached to multilateral aid has rarely been a factor in determining whether subsequent funds would be made available to the defaulting country. But, as discussed in chapter 2, many argue that, in the context of globalisation, poorer countries have very little real choice about whether or not to accept the conditions imposed by Western institutions when negotiating trade and aid deals (Shiva 1999; Speth 2003). On the other hand, it can be argued that power relations are inevitable in any political situation, and so to conclude that a decision has been coerced because one party was more powerful than another is no more than to say that it is a decision that has been made in the context of politics, and that practically, it is hard to imagine what conditions would be necessary in order for there not to be the possibility of unequal power relations influencing a decision (not) to support international human rights standards. Iris Marion Young (2001) would respond that it is precisely because social interaction is inevitable, and because unequal power relations are likely, that political institutions must be designed to take account of the interests and preferences of participants in any decision-making practice.³³ As is argued in the next section, the ambivalence of human rights with respect to power raises some difficult issues in this regard.

4.2 The ambivalence of human rights with respect to power

Social movements have long politicised ideas of natural rights, and later human rights, in pursuit of their goals. Stammers (1999) holds that, insofar as human

³³ Young offers a nuanced account of the obstacles to freedom in view of the inevitability of social interaction. 'Freedom, then, means regulating and negotiating relationships so that all persons are able to be secure in the knowledge that their interests, opinions, and desires for action are taken into account' (Young 2001:35).

rights remain contested, they are an important instrument in campaigns for justice. However, when particular sets of rights become institutionalised, they may come to be used to defend the status quo, rather than to advance the claims of the disadvantaged and disenfranchised. In the latter half of the twentieth century social movements in a number of colonised states successfully claimed their human right to self-determination. These claims were in part presented in the European idiom of rights going back to Locke. The success of these movements led to independence from European powers, however, the experience of many African and some Asian post-colonial states has not been the widespread protection of human rights. Moreover, the language of rights is sometimes used by leaders to frustrate external efforts to promote human rights. This paradox in human rights is not new. Although human rights are not synonymous with the natural rights claimed by early liberals, there is a comparison to be drawn in the use of natural rights and human rights:

[T]he idea of natural rights ceased to be an instrument for political change and, rather, “came to be used to impede further change” when “the original and largely bourgeois proponents of natural rights gradually moved out of political opposition and into control”. (Stammers 1999:996, quoting Donnelly)

Two points are of interest here. Firstly, the argument of the anti-colonial movements was based in part on identifying an anomaly in dominant political practice, namely, the West proclaimed rights to self-determination for Europe but not for Africa.³⁴ Operating within the dominant paradigm, it has been possible for movements to achieve results by arguing that a set of values that are claimed to be universal ought to be universally applied. This has also been the basis of some arguments concerning rights for women, where success has been mixed (Rao 1995). Social movements are not guaranteed success simply by working within the terms of the power structures they seek to challenge. For one thing, success in claiming a particular right depends, as Rorty rightly observes, on getting the powerful to care (see previous chapter). The ‘progress’ of human rights, by which is meant increasing recognition of rights for previously excluded groups of people, has been a product not only of identifying and resolving anomalies in the application of supposedly universal rights, but also identifying previously unnoticed threats to human rights. This

³⁴ An-Na‘im (2001:100) notes that the idea of human rights was cited by both African leaders and European colonial powers in the struggles over decolonisation (see also Bain 2003:133-6).

identification, in turn, engenders further reflection on what specific human rights there are, as well as asserting that previously excluded groups ought to be included. A relevant example here is the emerging idea of environmental human rights. A number of human rights scholars, including Freeman (2004), Donnelly (2003), Stammers (1999), and Langlois (2001), have mooted the possibility of there being legal recognition of some form of environmental human right in the future. But none have considered the implications of the hostility of much green political thought to the liberalism and individualism of human rights (see chapter 7). If environmental concerns are to be assimilated into the human rights framework, then some degree of renegotiation of both the form and content of human rights will be (probably) required.

4.2.1 State-centrism and human rights

One point to consider when exploring the ambivalence of human rights with respect to power, then, concerns the structure of the human rights framework. If human rights are about protecting human dignity, and threats to human dignity come in the form of abuses of power, then human rights, as they are conceptualised in international and national law and politics, need to be oriented to the location of power. The centralised state was and is a site of extraordinary power that has the potential to present considerable threats to individuals and/or groups. As Donnelly repeatedly notes, modern markets, as well as states, also pose considerable threats to human dignity. Moreover, as noted in chapter 2 and discussed further in chapter 5, the globalised economy is having a damaging impact on the environment, which in turn poses further threats to human security. But the contemporary international human rights framework established in the International Bill of Rights is notably state-centric.

An-Na'im (2001) holds that all societies and communities can relate to the notion of struggles for justice, thus he agrees with Donnelly that the Western practice of human rights can achieve a Rawlsian overlapping consensus. For these scholars, the globalisation of Western political and economic forms, achieved in part, or at least begun, through coercive means, need not entail the wholesale adoption of Western forms of resistance to the negative fall-out from these phenomena. Instead, local populations can approve the institution of universal human rights, but give local flavour to their normative content (An-Na'im 2001:93-9; Donnelly 2003:96-98). But

An-Na'im has doubts about the plausibility of a consensus on human rights as they are currently institutionalised. Human rights, as set out in the UDHR, are rights to be protected from the state. Pogge (2002:58-64) illustrates this point by highlighting the differences between a common assault and an assault by a police officer. The latter, perpetrated by an agent of the state, is taken to be a human rights violation, whereas the former, perpetrated by a private citizen, is not.³⁵ At the same time, it is the government of the state, through its agents, that is simultaneously responsible for protecting human rights. As An-Na'im (2001:96) puts it: 'Although the purpose of the modern conception of human rights is to restrict the exclusive power of the state, it is the same state that controls the means by which that purpose is to be achieved.' Onora O'Neill has compared this to 'putting foxes in charge of hen houses'. She is certainly correct in observing that while having the capacity, in terms of legitimate power and authority, to ensure respect for human rights, may be a necessary qualification of whichever agent is to be responsible for human rights, it does not follow that those who have such a capacity 'can be trusted to do so' (O'Neill 2005:435). On the other hand, the only plausible alternative to state-centrism, that agents outwith the state might be made in some way responsible for ensuring that governments honour their human rights commitments, is impeded by the norm of state sovereignty, enshrined in the UN Charter.

Sovereignty is both a norm, the principle of which is that the autonomy of states should be respected, and an institution, an established model of political organisation. It is also an expression and exercise of our human right to self-determination (An-Na'im 2001:96-7; Bain 2003:134), and the most proven means yet devised for managing plurality and achieving tolerance in a diverse and globalising world (Jackson 2000:156-183). The international human rights regime initiated in the aftermath of the horrors of the Second World War was created with the aim of preventing governments from abusing their citizens on the massive scale seen in the Nazi inflicted Holocaust. The human rights framework thus pre-supposes the existence of functioning sovereign states. While Freeman (2002:154-156) is rightly sceptical about the supposed autonomy of many (perhaps the majority of) sovereign

³⁵ This oversimplifies somewhat; Pogge devotes some time to explicating the 'official' nature of human rights abuses or 'underfulfilment'. For instance, if the police officer refused to stop or apprehend the private citizen who assaulted another individual that would also constitute a human rights violation, again, on the part of the police officer. Pogge concludes that the defining feature of a human rights violation is that they involve some form of 'official disrespect' (Pogge 2002:64). See also Richard Wilson (1987b:140-141) on the distinction between human rights violations and 'common crime'.

states in reality, and particularly in the context of globalisation, the doctrine of sovereign autonomy is nonetheless at the heart of the human rights regime. Individuals have rights against the state for which the state is responsible. Other states *can* take action to hold a government accountable if it should fail to honour these obligations (Freeman 2002:155). Indeed, Raz (2006) sees human rights as marking the limits of legitimate sovereignty. But action in support of human rights and in conflict with sovereign autonomy has rarely been anything more than public statements of disapproval, and, particularly during the Cold War, there was very little appetite on the part of governments to actively promote human rights internationally (Donnelly 1999a).³⁶ This to some extent changed under the presidency of Jimmy Carter in the US (see Shue (1980) and Beitz (1979)), but it remains the case that states have appealed to the right to have their sovereign authority respected when criticised by external agents over human rights.³⁷

As Robert Jackson somewhat glibly notes with reference to failed states, ‘Sovereignty can be dangerous’ (Jackson 2000:294). Where there is no state, there is no agent responsible for the security of human rights:

“Failed states” such as Somalia suggest that one of the few things as frightening in the contemporary world as an efficiently repressive state is no state at all. (Donnelly 2003:36)

Following through the logic of Donnelly’s argument, if (as Donnelly claims; see above) human rights have emerged globally as a necessary response to the sovereign state (and market economies), and human rights depend upon the sovereign state for recognition and implementation, yet states may fail, then there would seem to be a flaw in the system. Of course, to exclude the possibility of failure implies embracing paternalism, and it would hardly make sense to sacrifice the liberal value of freedom in order to guarantee human rights. However, where the failure is systemic rather than individual, there is reason to doubt the suitability of recognising states as the

³⁶ In the aftermath of the Cold War, there was some optimism regarding the alleged ‘triumph of liberalism’ and an expectation of greater willingness to put concern for human rights at the centre of foreign policy (see Fukuyama 1992; Brown 2005). The only humanitarian intervention to date that has been undertaken without the consent of the sovereign government was the NATO led action in Kosovo in 1999, which can at best be viewed as a partial success (see Wheeler and Bellamy 2002:481-483). Since the international terrorist attacks of September 11th 2001, the prominence of human rights concerns in foreign policy has diminished somewhat.

³⁷ Similarly, states have been able to use the norm of sovereignty in order to frustrate international efforts to take binding action on environmental problems such as climate change (see Conca 1994).

appropriate agents to protect human rights.³⁸ To illustrate, R.J. Vincent compares the international sovereignty based regime to an egg carton, and individual states to eggs (Vincent 1986:123-5). If an individual egg goes rotten there may be identifiable internal reasons for that. But, given the diversity of beliefs and ideologies, as well as physical circumstances and capacities (of states), it is not necessarily the case that they will all slot unproblematically into identical spaces in the carton. This is the essence of Christopher Clapham's complaint:

[T]he idea of statehood presupposes that human beings can be organized into territorially-based hierarchies which they can be compelled or induced to accept, and that the economic resources will be forthcoming to maintain the rather expensive institutions which statehood entails. That such a form of organization can be made to work throughout the world is improbable; that it can be made to coincide with the territories often haphazardly bequeathed to newly independent governments by departing colonial powers is staggering in its presumption. (Clapham 1999: 531)

The ability of the sovereign state to respond to the pressures of economic globalisation varies significantly, with post-colonial states being among those least able to protect their citizens from the negative fallout of the global market that Donnelly recognises as a serious threat to human rights (see chapter 2, above). In view of the significant resources required to ensure the protection of human rights, O'Neill complains '[i]t is an empty gesture to assign obligations needed for human rights to weak states' (O'Neill 2005:435). Similarly, on the basis of the resources required, An-Na'im doubts the universal suitability of what he identifies as the Western model of human rights protection, specifically, the *legal* protection of human rights by pursuing prosecution of perpetrators as both a punishment of individual offenders and an example to others. According to An-Na'im, the legalistic paradigm developed and currently pursued in the West is ill-suited to post-colonial Africa, and indeed compounds many of the problems such states presently face. The Western model 'presupposes that the violation of rights is the exception rather than the rule' (An-Na'im 2001:105). Where it is not the case that the violation of human rights is the exception, a number of problems render the standard human rights paradigm ineffective: (1) The systematic nature of human rights abuses in post-colonial Africa,

³⁸ In chapter 6 I also discuss doubts about the exclusive sovereignty-based international order from an environmental perspective.

especially in terms of social and economic rights but also in terms of political and civil rights, is such that the courts could not cope with the numbers of potential claimants without significant additional investment in resources both human and material. Such investment is not presently forthcoming, nor is it likely to be so given the economic constraints faced by most states in these circumstances. (2) Potential claimants also often lack the financial resources to press their claims, for example, in terms of access to legal advice and time off work. More fundamentally, many victims of human rights violations lack the education to make them aware of the opportunities that they could pursue with respect to the legal protection of their human rights. (3) The courts in a number of post-colonial states are weak and/or corrupt.³⁹ For these reasons, An-Na'im claims:

Although the problem is lack of conditions and requirements, it can be argued that the modern conception of human rights itself is an instrument of social injustice and repression. [...] what should be rejected is the universalization of specific assumptions and institutional arrangements for the legal protection of human rights. (An-Na'im 2001:102)

In light of these difficulties, he proposes that alternative strategies of implementation (rather than protection) of human rights should be pursued. Such an approach implicitly recognises the limits of the state-centric model of human rights, but, rather than rejecting the concept of human rights altogether, attempts to find locally appropriate solutions to the problem of implementing human rights within a universal framework that does not serve many post-colonial states well. It is at this point that An-Na'im becomes regrettably vague: the details of what alternative strategies of implementation might be are wanting. He proposes that the legal approach should continue but be broadened to include 'mediation, arbitration, and other customary mechanisms to resolve disputes that are more appropriate to the social and economic conditions in Africa' (An-Na'im 2001:110), but also that root causes of systemic human rights abuses must be addressed. However, An-Na'im recognises that 'addressing the root causes of human rights violations is an extremely complex and protracted task' (An-Na'im 2001:110). Among his specific recommendations are 'drastic structural changes in international economic and political relations', the details of which he does not provide. In addition, he speaks of a need to address

³⁹ An-Na'im's findings are based on a study of fourteen post-colonial African states, but he believes his research is more generally applicable.

‘delicate issues of sovereignty and the paradox of self-regulation’ (An-Na‘im 2001:113), and speculates on an increased role for the UN or similar international agencies. Insofar as An-Na‘im makes a case for these changes, he is persuasive, but the details are not trivial.

One potentially fruitful innovation in human rights that moves away from the state-centric paradigm is the nascent idea of corporate responsibility for human rights (and environmental protection). Recent developments in this area include the OECD’s ‘Guidelines for Multinational Enterprises’, first drafted in 1976, then largely ignored for almost twenty-five years before being significantly revived and revised in 2000; and the United Nations’ Global Compact, initiated in 2000, enumerating nine principles of corporate responsibility for human rights, and social and environmental issues (King 2001; MacLeod and Lewis 2004:79-80, 83-85). Both sets of standards are voluntary, and while the OECD’s guidelines rely on governments to encourage compliance and implement monitoring systems, the UN’s Global Compact is facilitated directly by the UN. The jury is still out on whether these initiatives will deliver on human rights protections,⁴⁰ however, given that both remain committed to a global capitalist agenda, these strategies are unlikely to provide the basis for the radical action needed to ensure environmental sustainability. Moreover, as co-operation with these initiatives remains voluntary there is no scope for those suffering from the violation or underfulfilment of human rights to insist that corporate organisations be held accountable. This (limited) movement away from the established norm of the state as the sole agent with responsibility for human rights suggests growing recognition of the need for alternative ways of responding to human rights issues. But this is very much an emerging practice and the developments are to some extent ad hoc. In the next section, I consider a much more systematic attempt to theorise an alternative to the contemporary international human rights regime, Pogge’s institutional model.

⁴⁰ The initial signs were not as encouraging as might have been wished. Of the thirty corporations reporting on their human rights activities in the first year of the UN Global Compact, none were deemed ‘worthy of publication’ (MacLeod and Lewis 2004:84), which is to say that none of the efforts made by corporate participants were thought significant enough to merit the Global Compact’s public approval. On the other hand, this also indicates that the UN Global Compact’s Advisory Council is prepared to act more rigorously than some sceptics feared – it is not prepared to ‘rubber stamp’ just any initiative that is claimed to be an example of corporate social responsibility.

4.3 Thomas Pogge's 'institutional' model of human rights

Thomas Pogge has proposed a new way of understanding human rights that differs quite radically from conventional understandings, and which, if accepted, would have far-reaching implications for political and economic institutions at a national and global level. One of Pogge's key innovations is the proposal that underfulfilment, rather than violation, should be the standard by which the security of human rights is assessed, and by which the human rights credentials of governments and other institutions are judged. What Pogge refers to as the 'institutional' model of human rights, as distinct from an interactional model, focuses on the way that human rights are understood to operate, rather than what the content of human rights is. A further distinction of Pogge's model is that he explicitly defends a moral conception of human rights, rather than being committed to legal rights as the paradigmatic aim of human rights claims. Finally, the institutional model Pogge proposes is claimed to be immune from the attacks of libertarians who have traditionally been opposed to the obligations implicit in honouring social and economic rights, where these rights are seen to be positive rights.⁴¹ If these claims can be verified, then Pogge's theory would not only answer the challenge of addressing a situation of endemic human rights violations (or underfulfilment, in Pogge's vocabulary), and have gone some way to outlining a plausible way of responding to the problem of state-centrism, but it would have done so whilst maintaining broad acceptability within mainstream politics. This would be quite an achievement. Before testing these claims, I briefly outline Pogge's institutional model.

One important feature of the institutional model is that it is explicitly a 'moral approach' (Pogge 2002:54), in that it enjoins people to take responsibility for the human rights of others by not supporting human rights-violating institutions. Pogge thus defines human rights as 'moral claims on the organization of one's society' (Pogge 2002:64), or, put differently, 'postulating a human right to X is tantamount to declaring that every society ought to be so organized that all its members enjoy secure

⁴¹ The libertarian critique (see, for example, Nozick 1978) relates to the infringement of liberty that is supposedly entailed in recognising positive rights. Whereas respecting negative rights requires only that the agent refrain from a particular action, respecting positive rights, it is argued, requires the agent to take some specific action, such as provide food or economic support. Typically, civil and political rights are said to be negative rights, and social and economic rights are said to be positive rights. But this distinction is contentious. As both Henry Shue (1980) and Vandana Shiva (1999) have argued, a hungry man is not a free man, thus the two sets of rights are interdependent. It is also not the case that civil and political rights are only negative, and social and economic rights positive. One of the obstacles An-Na'im identified above to the fulfilment of civil and political rights in post-colonial Africa is a lack of education.

access to X' (Pogge 2000:52). Pogge is looking beyond the legal route to human rights protection. The fulfilment of human rights relies on morally motivated action of citizens rather than just legal recognition and codification of human rights.

Tim Hayward (2005a:40-42) doubts the wisdom of this aspect of Pogge's approach. Pogge explicitly rejects what he calls the 'familiar' institutional model, 'that conceives a human right to X as a kind of meta-right: a moral right to an effective legal right to X' (Pogge 2002:45). Instead, Pogge is open to different ways of implementing human rights in different societies and cultures, and therefore rejects the idea of a necessary link between legal and moral rights. This is consistent with An-Na'im's approach, but Samantha Besson points out that Pogge undermines his own argument by elsewhere insisting on some degree of constitutional guarantees for democracy (Besson 2003:520). However, Pogge's inconsistency does not answer the question of whether human rights should necessarily aspire to be legal rights. This is the way that Donnelly (2003:40) understands them, claiming that human rights aim to be 'self-liquidating'; the moral right is claimed by a social movement campaigning for a legal right that will then make appeal to moral rights unnecessary because the right will have been secured. But An-Na'im's point is that legal protection does not equate to fulfilment of rights in many post-colonial states. It is this problem of the gap between protection and fulfilment that leads Pogge to embrace the idea of alternatives to legal protection. Thus while Hayward is justified in observing that, 'if a human right is to 'constrain legal and economic institutions', as Pogge envisages, it is hard to see how it will unless it has some constitutional force that can be applied, as necessary, through law' (Hayward 2005a:41), it is also appropriate to draw a distinction between necessary and sufficient conditions. The legal protection of human rights may be necessary, but it is not sufficient.

A related point to be elucidated is Pogge's distinction between the 'observance' and the 'fulfilment' of human rights (Pogge 2000:50). While human rights may be observed by a government insofar as they are legally codified and publicly endorsed, those rights may yet remain underfulfilled, even if they are not violated in the conventional sense. If a person does not speak out against her government for fear of persecution from others in her society, from which she reasonably expects that her government will not protect her, then it cannot necessarily be said that her right to freedom of speech has been violated, since the government has done nothing actively to prevent her from speaking out, but Pogge argues that her

right to freedom of speech is underfulfilled, because she does not *securely* enjoy the right to freedom of speech (Pogge 2000; 2002).⁴² Conversely, if a person were assaulted by a police officer in a society where human rights are generally respected and where inappropriate behaviour by agents of the government is independently investigated and punished, then, on the institutional model, human rights are not underfulfilled. It is the *general* (in)security of human rights that matters here. Pogge acknowledges that not every society could plausibly guarantee the human rights of every person under their jurisdiction all the time, but he proposes,

an idea of reasonable security thresholds [whereby]: Your human rights are fully realized (fulfilled) when their objects are sufficiently secure – with the required degrees of security suitably adapted to the means and circumstances of the relevant social system. (Pogge 2000:52)

A third important feature of Pogge's institutional model of human rights is his claim that negative, rather than positive, duties arise with respect to human rights, in that one has first the negative duty not to uphold coercive institutions that undermine the fulfilment of the human rights of others, though, if this is not possible, compensatory action may be appropriate. So, according to Pogge, a person who owns no slaves in a society of slave owners is nevertheless responsible for the underfulfilment of human rights if she 'contributes taxes to the government' or her 'labor to the economy' (Pogge 2002:66). As such, she is failing to fulfil the negative duty not to support human rights-disrespecting institutions and contributing to the underfulfilment of human rights in her society. Pogge thinks it important that negative rather than positive duties be involved for two reasons. Firstly, as noted above, he claims thereby to be insulated from the libertarian critique of positive duties, and secondly, negative duties are, according to Pogge (2000), more onerous or morally compelling than positive ones:

The most remarkable feature of this institutional understanding is that it can go well beyond minimalist libertarianism without denying its central tenet: that human rights entail only negative duties. The normative force of others' human rights for me is that I must not help uphold and impose upon them coercive social institutions under which they do not have secure access to the objects of their human rights. (Pogge 2002:66)

⁴² There is, however, a subjective element to this that may be problematic – how can 'reasonable' fears of being left unprotected be distinguished from unreasonable fears by any objectively verifiable means?

The last feature to note is that, on Pogge's understanding of the way that human rights claims work, the duty not to support coercively imposed social institutions that cause or contribute to human rights insecurity extends *globally* insofar as we are implicated in a global social system.⁴³ In support of this he makes reference to Article 28 of the UDHR, which states that, 'Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized'. Article 28 does not itself specify a right, but rather, makes reference to the institutional setting within which the other rights listed may be realised, or, in Pogge's language, fulfilled. Thus he claims:

Our responsibilities entailed by human rights are engaged by our participation in any coercively imposed institutional order in which persons avoidably lack secure access to the objects of their human rights, and these (negative) responsibilities are extended, then, through the emergence of a global institutional order in whose coercive imposition we collaborate. (Pogge 2000:55)

Note that Pogge states that human rights responsibilities kick in when people 'avoidably' lack secure access to the objects of their human rights. There are three issues to be clarified here. The first is what counts as *secure* access, a question dealt with, albeit perhaps unsatisfactorily, by introducing the 'reasonable security threshold' mentioned above. The second is how it can be established that persons *avoidably* lack secure access to the objects of their human rights. The third is Pogge's implicit claim that the global institutional order, rather than local or national problems, is either the explanatory factor, or a significant contributory factor, to the lack of secure access some persons have to the objects of their human rights.

In contrast to Rawls,⁴⁴ Pogge argues that human rights problems often found in developing countries are a consequence not (exclusively) of local corruption and oppression, but rather of a global system that, as well as being characterised by

⁴³ It follows from this that, where persons do not share to some extent in 'our' social institutions, then we have no legitimate interest in the security of their human rights. But Pogge thinks it extremely unlikely for any individual living under conditions of a globalised economy to be so isolated.

⁴⁴ Rawls has argued that his 'difference principle' should not apply globally because one of the conditions for the difference principle to hold is that the persons it covers should be engaged in social cooperation. Rawls finds that this cooperation is not evident at a global level, but rather, applies within states only. Pogge (2002:104-116) takes issue with Rawls on this point and argues that one effect of economic globalisation is that people who live in different states are engaged in social cooperation, which, Pogge argues, need not be advantageous to all parties in order for relations of justice to arise.

massive inequality, also makes corruption attractive and fails to foster democracy.⁴⁵ Alan Patten has complained that ‘Pogge never really shows how the international factors he emphasizes account for global poverty’ (Patten 2005:21). This is a valid complaint up to a point – Pogge does not provide a detailed explanation of specific policies and their causal impacts. But there is a considerable literature analysing the variable impacts of globalisation. Pogge’s position is broadly consistent with the conclusions of Clapham (1999) and An-Na’im (2001), as well my argument in chapter 2, which claim that both the institutions of sovereignty and the global market economy undermine the capacity of governments in weak states to address human rights issues, including the chronic underfulfilment of social and economic rights.

To demonstrate that this situation could be otherwise, Pogge (2002:196-215) proposes what he calls a ‘Global Resources Dividend’ (GRD), effectively a tax on the extraction or use of natural resources to be levied on the governments of the territories where the resources are found, and used to alleviate severe poverty, either in the form of direct payments to governments to fund poverty eradication, or, where government corruption is a concern, to NGOs, such as Oxfam, who can be trusted to devote the resources to alleviating suffering and addressing the underfulfilment of human rights. The proposal is ‘moderate’ in the sense of being realisable without substantial change to existing institutional arrangements, and Pogge argues that it would have an additional benefit of improving environmental conditions, because in taxing the use of natural resources it would provide an incentive for the development of alternative resources.⁴⁶ The GRD has been criticised by some as missing its target – taxing the use of natural resources in the countries where they are extracted, rather than where they are processed and/or consumed makes it likely that the burden of taxes will fall disproportionately on those countries whose primary industries are the export of raw materials, predominantly poor countries. Pogge counters that the tax would be passed on to consumers in developed countries, but some remain unconvinced (Hayward 2005b). Despite these criticisms, the GRD does serve to validate Pogge’s claim that

⁴⁵ In this regard he makes reference to the international borrowing rights and exclusive property rights to natural resources that governments enjoy, regardless of the way they came to power. Pogge (2000) thus proposes a number of measures to disincentivise coups d’etat; measures he claims that would render democracy in transition countries more stable.

⁴⁶ Hayward (2005b) doubts the veracity of this last claim, because, he argues, there is a contradiction between relying on taxing the use of natural resources to fund a dividend that will generate sufficient funds to eradicate severe poverty at the same time as hoping to discourage the use of the very resources that need to be used in order to generate the tax. He also highlights the arbitrariness, from an environmental point of view, of taxing resources that are easily accountable, such as oil, as Pogge proposes, rather than taxing the use of resources that are particularly environmentally harmful.

severe poverty is avoidable in that an alternative institutional arrangement could alleviate the problem. The underfulfilment of human rights is not, therefore, a matter of a lack of resources, it is a political problem. The solution Pogge proposes is the replacement of the contemporary human rights regime with his new institutional model of human rights.

4.3.1 Negative human rights duties

One of Pogge's primary concerns in specifying a negative duty not to support institutions that disrespect human rights is to insulate himself from the libertarian critique of positive duties as an infringement of the duty-bearers' rights. Pogge's intention is not to attack the libertarian position, but rather, to find a way around the force of the criticism of positive duties, normally associated in particular with social and economic rights. According to one critic (Besson 2003:513-9), the success of this approach depends in part on being able to maintain the distinction between what Pogge calls institutional and interactional understandings of human rights. On an interactional model, a person may discharge his human rights duties by not actively violating anyone's human rights. But, on the interactional model, economic and social rights may be violated (or underfulfilled) unless one takes positive action. For example, if someone has the right to be free from hunger, on an interactional account, the only way to avoid violating that right when confronted with a starving person is to take the positive action of giving him food. It is this obligation to take positive action that is objectionable to the libertarian.

The institutional understanding that Pogge proposes assumes the prior existence of institutions, which the interactional model does not, and makes those institutions responsible for human rights, but individuals have human rights responsibilities vis-à-vis institutions insofar as they must not support institutions that contribute to the underfulfilment of human rights. Thus, the government is responsible for ensuring freedom of speech, and to discharge its duties sufficiently, it must not only directly protect freedom of speech through refraining from unreasonable censorship, but also by protecting individuals from any private threat to freedom of speech, such as intimidation. The individual is then able to discharge her human rights duties negatively simply by not supporting institutions that disrespect human rights. Put in terms of social and economic rights, it is the responsibility of the government (or other relevant institution) to foster for its people secure access to the

objects of such rights, for example, the right to work. This it might do by providing appropriate education and training. But it is the responsibility of the individual not to support institutions that disrespect human rights, so where a government or other institution undermines the right to work for some or all of its citizens, perhaps through active discriminatory measures against certain minorities *or* through failing to take action on discriminatory practices in the private sector, then the human rights-respecting individual has a negative duty not to support the institution concerned, in this case, the government.

How is this to be achieved? To return an example cited above, Pogge says that in a society that allows slavery, owning no slaves yourself is not enough to fulfil your (negative) human rights duties, as it *would* be under the interactional model, because through contributing your taxes to the government or your labour to society, you contribute to the maintenance of a coercively imposed institution that violates human rights. Pogge proposes the following possible solutions:

I might honor my negative duty, perhaps, through becoming a hermit or an emigrant, but I could honor it more plausibly by working with others toward shielding the victims of injustice from the harms I help produce or, if this is possible, toward establishing secure access [to human rights] through institutional reform. (Pogge 2002:66)

This answer raises a number of further questions. Firstly, it is clear that where the negative duty not to support institutions that disrespect human rights is difficult or impossible to fulfil, then compensatory action of some kind is appropriate. But what Pogge does not make clear is how individuals are to decide that the negative duty cannot be fulfilled, nor how much or exactly what kind of compensatory action is required. Again, there is clearly a subjective element that limits the scope for clarity here.

A more telling problem than this is the range of options for avoiding action that would count as upholding an institution that disrespects human rights; becoming a hermit or an emigrant. Neither of these options is in fact readily available to the overwhelming majority of people – Pogge indirectly affirms this himself in claiming that social cooperation is global. If Pogge is right that global social and economic interconnectedness is so strong, then it follows that becoming an emigrant would not enable anyone to escape culpability for supporting human rights disrespecting institutions, since such institutions are not limited to nation-states. On the other hand,

the prospects for becoming a genuine hermit seem equally dubious. Even Henry David Thoreau, who is much heralded by some greens as a providing a model of modest, sustainable living, and who clearly sought to withdraw from nineteenth-century New England society, contributed his commerce to that society (Thoreau 1986:ch1; see also de Geus 1999:73-85). Cruft (2005b) has argued that Pogge's proposed insitutional model in fact entails a number of duties, including 'other-directed precautionary duties', that are likely to be resisted by libertarians.⁴⁷ In a reply, Pogge (2005) claims that the negative duty not to support human rights disrespecting institutions generates derivative obligations, which are not duties in the strong sense that the initial negative duties are, but rather are derived from the moral force of the negative duty, and include only such obligations as are necessary to meet the requirements of the negative duty or make suitable compensation. However, given the impossibility of observing the negative duty in the contemporary world as Pogge sees it, it is not clear that these more onerous (in the sense of requiring positive action) derivative obligations are in fact avoidable. Therefore it is not clear at all that Pogge can regard himself as having avoided the libertarian critique.

In proposing compensatory action, Pogge has moved from a negative duty not to support institutions disrespectful of human rights to a positive obligation to provide some form of compensation.⁴⁸ Pogge has also moved from an institutional approach, where human rights are to be claimed against governments or other institutions, to something more like an interactional model, where individuals are morally obliged to provide compensation where they cannot fulfil their negative duty not to support institutions disrespectful of human rights. So, as Besson observes, 'some of the alleged negative duties individuals have 'not to support unjust institutions' in fact hide

⁴⁷ These 'other-directed' duties might include, such duties as the duty to try to ensure that others respect human rights. To fail to recognise these duties, Cruft argues, 'sits uneasily with Pogge's commitment to the *institutional* view of human rights' (Cruft 2005b:33).

⁴⁸ Precisely what this compensation would be remains unspecified. Patten (2005) worries that Pogge's notion of social cooperation could be interpreted to mean that whenever a rich person is involved in some way with a poor person, the rich person can be deemed to be in a coercive relationship with them. Pogge (2005) replies that the compensation due as a result of failing to discharge the negative duty should only respond to the fundamental rights expressed in the idea of human rights (thus limiting the extent of appropriate action), which he claims arise from the interests of all humans in having their basic needs met (Pogge 2002:225n91). But needs are a notoriously difficult concept on which to base any programmatic guidelines (see, for example, Berry 1999). Pogge (2005) also holds that the degree of compensation should be in proportion to the degree of responsibility individuals have for supporting a human rights disrespecting institution. This caveat perhaps rightly places greater responsibility for human rights on the shoulders of the powerful, but it does not empower those who suffer the underfulfilment of human rights. Rather, the weak continue to be dependent upon the strong taking the trouble to care, as Rorty pointed out. For a further discussion of this issue, see previous chapter, or, with reference to the idea of 'post-cosmopolitan citizenship', see chapter 6.

positive duties' (Besson 2003:519). Besson concludes that the abstract separation of institutional from interactional understanding of human rights in practice fails because,

[w]hat individuals, who violate their negative duty not to support institutions which do not respect positive duties, are ultimately asked to answer for, are violations of positive duties by institutions which represent them [in some sense] and therefore cannot be entirely separated morally from them. (Besson 2003:518-9)

Pogge himself acknowledges that 'A commitment to human rights goes along with interactional moral commitments; but', he goes on, 'this is no reason to identify the former with the latter' (2002:65). As noted above, he is also explicit in regarding the appeal of his institutional model as being consistent with (what he calls) the 'central tenet of minimalist libertarianism: that human rights entail only negative duties' (Pogge 2002:66). The institutional approach seeks to uphold this claim, whilst achieving far more than libertarian approaches to human rights can, particularly with regard to social and economic rights. But I would follow Besson in arguing that Pogge has not entirely succeeded here.

4.3.2 The institutional model and universalism

There is another ambiguity in Pogge's argument to which I wish to draw attention. Human rights have an additional purpose in Pogge's model, in that they serve as a standard by which to judge the justice, and thence the legitimacy, of our global institutions. The idea of using human rights in this way is not new in itself; as noted above, Donnelly moots the proposal that human rights be seen as 'a standard of civilisation', whereby the cost of a place at the table of international politics is compliance with international human rights regimes. The difficulty here is that, as one Malaysian Minister complained, human rights become a matter of '*realpolitik*', as the richer, more powerful countries set human rights standards and effectively bribe poorer countries with trade and aid packages that contain human rights conditions. Pogge's proposal differs from Donnelly's in that Pogge invites those in the wealthier countries not to judge particular countries' human rights records, but to use the institutional understanding of human rights to judge the contemporary global order, and assess its appropriateness in terms of its likelihood of fostering respect for human rights.

Thus Pogge sees human rights as a '*single, universal standard*' (Pogge 2000:67, italics in original). In the context of a multicultural world, this may give some pause for thought, though perhaps not typical cosmopolitans. Pogge's response to this is quite uncompromising:

If the Algerians want their society to be organized as a religious state and we want ours to be a liberal democracy, we can both have our way. But if the Algerians want global institutions to be designed on the basis of the Koran and we want them to render secure the objects of human rights for all, then we cannot both have our way. With respect to our global institutional order, *one* conception will necessarily prevail – through reason or force. There is no room for accommodation here, and, if we really care about human rights, then we must be willing to support the global order they favor, even against those who, perhaps by appeal to other values, support an alternative world order in which the objects of human rights would be less secure. (Pogge 2000:68)

Two questions spring to mind here. The first concerns how, exactly, one institutional order will prevail. Pogge talks here of reason or force, but his discussion of the GRD suggests a third option – economic encouragement. As noted above, the GRD is ideally to be distributed through governments, but where this is not possible (for example, where there is no effective government, or where there are grounds to suspect government corruption) through aid agencies and NGOs, which would then require more scrutiny than that to which they are currently subjected (Pogge 2000). The GRD would thus create an incentive for governments to tackle poverty and corruption and foster greater respect for human rights. Where progress is made it may be rewarded with a greater share of the GRD.

Yet this sounds suspiciously like a form of coercion. Certainly, it is vulnerable to the charge that respect for human rights will remain a matter of *realpolitik*. Pogge makes repeated reference to the coerced imposition of the contemporary global order on the poorer countries. He is, perhaps, correct in this, but it is not clear from his argument what an *uncoerced* global order would be like; nowhere does Pogge provide an explanation. If the coerced imposition of any order is unjust, then a clearer understanding of what constitutes coercion is needed in order to assess the legitimacy of his GRD proposal. If some coercion is acceptable (indeed, inevitable?) if it is to impose the *right* institutions, then there is a different argument to be made, and one

with which Pogge has not explicitly engaged. This, I suspect, is Pogge's real argument, since what he finds most objectionable about the present global institutional order is not that it is coercively imposed, but that it leads to the chronic underfulfilment of human rights for so many people.

In the context of a pluralistic world, where people have many different conceptions of what constitutes a good life, this latter type of argument risks being as divisive as it is persuasive. Indeed, Pogge's strong universalism disclosed in his unmistakable conviction that human rights are a better guide to the good life than the Qur'ān, which he nonetheless recognises others are deeply committed to as a guide to a good life, is illustrative of the problem of pluralism. Insofar as human rights provide a non-perfectionist account of the good life, they can be defended as allowing for cultural diversity. But Pogge insists that they are the only appropriate standard by which to assess global institutions, and that alternative standards, such as the Qur'ān, should therefore be rejected. Given that there is no objective way of judging these morals, many will be sceptical. Furthermore, the historical record on this issue is not encouraging. Enforcing a global standard of human rights is, on the face of it, very different from enforcing the 'standards of civilisation' that legitimised slavery and colonialism, for example, but there are parallels nevertheless that give cause for disquiet:

The new standard of civilization is defended normatively as the means to promote the advancement of the backward. It is not clear, however, why human flourishing is better promoted by the construction of an identifiable 'other', an 'us' and 'them' from amongst the myriad ways of understanding and classifying the world. (Kingsbury 1999:91)

Both Booth and Rorty, though different in their approaches, see the aim of encouraging the spread of human rights as helping to make 'the other' *an* other, thereby redescribing, in Rorty's language, the sense of difference between peoples, and rendering it less threatening (see Booth 1999 and Rorty 1993). The idea of human rights as a standard of civilisation, explicit in Donnelly's work and at the very least implicit in Pogge's, would seem to undermine this endeavour.

The second question I would raise follows on from this last point. Quite simply, how do we know that human rights provide a better basis than the Qur'ān, or say, the Bible, does? It is unfortunate that Pogge has chosen here to juxtapose the Qur'ān and human rights, not least because a number of Muslim scholars have tried to

show ways in which Islam and human rights are compatible, and ways in which support for human rights may be derived from the teachings in the Qur‘ān. But that should not detract attention from the substance of Pogge’s point. In making reference to ‘other values’ which would render ‘the objects of human rights less secure’, Pogge clearly has a substantive account of human rights in mind, one presumably, that rejects the idea that apostasy is a crime and perhaps favours freedom of religion. But if this is the case, then Pogge undermines his claims for a broader appeal for his institutional understanding of human rights based on its focus on conception rather than content. He comes close to saying, as Rorty does, that anyone would prefer human rights to the other values, if they understood the benefits that human rights would bring. Thus he has a tentative theory of what it is to be human, or at least, of what every humans’ best interests are. And while I would concur with him in preferring human rights to any alternative way of regulating social relations, I cannot *prove* that I am right to do so, and that the devout follower of a religious doctrine that conflicts with human rights, and prefers this way of life, is wrong to do so.

At this point it might be argued that the majority of people do seem to think some notion of human rights to be a good thing, and that, if it could be proved that human rights were affirmed by the majority, there would then be a democratic mandate that would render illegitimate any dissent from the view Pogge puts forward. However, this proposal raises another telling problem with Pogge’s theory. In placing responsibility for the implementation of human rights in the hands of individuals, Pogge invites individual judgement about what human rights there should be. On the evidence presented in Langlois’ study, it is perfectly plausible to imagine an individual, Bob, affirming respect for human rights in general, but finding one or more specific rights objectionable. Acting on his negative duty not to support the underfulfilment of human rights, Bob decides that he shall withdraw his support from various institutions, or, where he cannot do so, work to offer compensation. But he does not support the right to freedom from discrimination on the grounds of gender. Indeed, he thinks a woman’s place is in the home. So, conscientious though he is in honouring his other human rights duties, he continues his support of any institution that fosters gender discrimination. It might be that there are a lot of people who agree with Bob and follow his example, thereby contributing to the underfulfilment of human rights for women, but respecting other human rights. What this example illustrates is that there are good reasons for not making the protection of rights of

disempowered groups the responsibility of the democratic majority, but rather, relying on courts to be independent. As noted above, Pogge is not entirely clear cut on the question of whether the institutional model can be completely dislocated from the legal protection route that An-Na'im finds insufficient, but I suggest that in fact neither is sufficient on its own.

That is not to say that Pogge's institutional model is without merit. Pogge can be commended for recognising that the contemporary international human rights regime is ill-equipped to deal with the chronic underfulfilment of human rights that is endemic in very poor countries. The institutional model he proposes represents a way of conceptualising human rights such that they address this problem. Clearly, this innovation is of significant interest in view of the current and potential future threats environmental problems pose to human rights. If the worst predictions about increasing environmental degradation are proven to have been founded, then the kind of human rights issues likely to arise will be similar in character to the kind of problems Pogge particularly wishes to address – the problems of severe poverty such as lack of access of sufficient food, clean water, basic shelter and medical care. A model of human rights that can offer a means of conceptualising the dynamic between individuals, governments, corporations and global institutions that would better facilitate the fulfilment of human rights has much to recommend it. Furthermore, the idea of making individuals instead of, or better, as well as, governments responsible for the fulfilment of human rights is appealing, despite the difficulties noted above. It also comports with more active notions of citizenship proposed (in particular) in environmental political theory which are discussed below in chapter 6.

Pogge is guilty of optimistically assuming an ideal human rights-respecting individual, who, on learning that he has in fact been violating his negative duty not to contribute to the underfulfilment of human rights, will be moved to act in support of human rights. The foregoing discussion also demonstrates that Pogge's model is not immune to some of the important criticisms that can be levelled at the contemporary international human rights regime. On the other hand, Pogge's institutional approach, in obliging individuals to resist supporting human rights-disrespecting institutions, is a potential corrective to Donnelly's tendency to reify markets and states, and suggests the possibility of change. The existence of institutions that threaten human rights is neither natural nor inevitable, and is as susceptible to change as the prevalence of environmentally unsustainable patterns of living.

4.4 Conclusion

A number of criticisms have been advanced against the contemporary international human rights regime, including the charges that the consensus on human rights is in part coerced, that some of the rights contained in the International Bill of Rights are not universally endorsed, and that human rights are ambivalent with respect to power. One consequence of this is that, just as human rights can be used as tools to protect the interests of the weak, they can also be used to impede change. This point was illustrated in the state-centrism of human rights, which is problematic because of the need to recognise other threats to human dignity, such as corporate power. However, the emerging norm of corporate social responsibility indicates that conceptions of human rights need not be fixed, rather, the way that human rights are institutionalised can evolve to respond to changes in the threats to human security.

This conclusion suggests that when assessing whether human rights provide an adequate framework for responding to the challenges of globalisation, particularly increasing environmental problems, scholars must consider both the human rights regime as it is and possible innovations. The problem of state-centrism and a predisposition to the legal protection of human rights, rather than an orientation towards the chronic underfulfilment of human rights associated with extremely poor countries, was also criticised. Pogge's institutional model of human rights presents a potential solution to these issues, and is therefore of considerable interest to those theorising ways of addressing the kind of problems identified in chapter 2 in terms of environmental threats to human security. The idea of making individuals rather than states responsible for human rights by recognising a negative duty not to support institutions that contribute to the underfulfilment of human rights could have a significant impact, particularly if the content of human rights could be extended to take account of environmental threats, an issue I address in chapter 7.

On the other hand, Pogge, like Donnelly, affirms something like a 'standard of civilisation', which divides peoples and asserts the superiority of some over others. Though perhaps not Pogge's intention, this aspect of Pogge's institutional model may limit its appeal in the context of a plural world. Historically, such devices have been met with resistance, and there is a suspicion amongst some environmentalists in poor countries of the concept of sustainable development being used in the same way. The next topic to deal with here, then, is how the concept of environmental sustainability

can or should be understood, hence the next chapter looks at ways of defining environmental sustainability.

Chapter 5: Defining environmental sustainability

The aim of this chapter is to explore what is meant when ‘environmental sustainability’ is discussed, and to cut a path through some of the confusion surrounding attempts to define environmentally sustainable patterns of living. One route into this debate is to consider different ideas as to what causes environmental problems, or, more specifically, what factors legitimate and sustain the prevalence of environmentally unsustainable patterns of living. Green theorists have studied a variety of possible causes, ranging from human spiritual and cultural attitudes towards nature, to patterns of social and political organisation, through to models of economic organisation. I think it likely that these all play a causal role and therefore I do not propose to isolate any single explanatory variable. Nor do I exclude there being other possible or actual causes.

However, I do want to suggest that some approaches to environmental sustainability are more helpful than others. To that end, my first task in this chapter is to challenge the view that genuine theories of environmental sustainability are necessarily ecocentric. Justifications for policies aimed at realising environmental sustainability can be phrased in a number of ways, including in terms of the rights of future generations of humans, the rights of non-human nature, or, rejecting rights language, because environmental sustainability is virtuous in the Aristotelian sense and thus something that should be pursued, or because of moral duties owed to non-human nature or to future generations. Definitional problems are further complicated by the distinction drawn by some between *environmental* sustainability (broadly speaking, the continuation of an environment habitable for humans), and *ecological* sustainability (the continuation of the biosphere as healthy living planet).⁴⁹ Often these distinctions are thought to correspond to a spectrum of ‘shallow’, ‘weak’, or ‘reformist’ environmentalism through to ‘deep’, ‘strong’, or ‘radical’ environmentalism, and are linked to ecocentric versus anthropocentric approaches. I argue, on the contrary, that a plausible argument for a robust model of sustainability can be advanced in anthropocentric terms.

Thereafter I look at the distinction that is often drawn between needs and wants in environmental discourse, typically implying a critique of the indulgence of present generation wants at the expense of future generations’ needs. I argue that this

⁴⁹ I tend to use the term ‘environmental sustainability’, but this is not intended to imply a shallow or weak or merely reformist attitude.

distinction does little to advance our understanding of environmental sustainability. Finally, in section 5.3 I return in more detail to some of the issues raised in chapter 2 in relation to the environmental impact of economic globalisation, and propose a framework for evaluating three alternative models of economic organisation to contemporary market economies. The discussion of the conditions for environmental sustainability continues in chapter 6, with analysis of the political institutions that might underpin an alternative economic model.

5.1 Ecocentrism, anthropocentrism, and environmental sustainability

It was argued in chapter 2 that environmental sustainability is inevitably threatened in the context of a global market economy. Given the focus of this thesis on whether human rights, as a globalising discourse, is an adequate and appropriate framework in which to address the environmental problems associated with globalisation, the concentration on economic globalisation as a significant cause of environmental unsustainability is warranted. But broader debates about the causes of environmental problems are also relevant to the present inquiry for a number of reasons. As argued in chapter 2, the prevalence of a particular model of economic organisation is not an arbitrary or immutable fact, it is the product of human policy choices, and policy choices are themselves a reflection of values and of ideas about how people should live. The ecocentric argument is that a wholesale change in Western spiritual and cultural attitudes to non-human nature is required in order to reverse currently damaging trends.⁵⁰ Ecocentrists have argued that an anthropocentric approach is not able to achieve this wholesale change. Since the object is to overcome what Tim Hayward (1998) calls ‘human chauvinism’, an ethical approach based on concern first for human well-being seems an unlikely candidate for generating the hoped for paradigm shift. One question to be addressed in this chapter, then, is whether ecocentrists are correct in arguing that anthropocentrism is an obstacle to environmental sustainability. If so, this would have significant implications for the idea that human rights, by their nature anthropocentric, could be an appropriate tool in addressing the environmental problems associated with globalisation.

⁵⁰ Ecocentrism here is taken also to encompass biocentrism, which accords value to all living creatures, whereas ecocentrism is sometimes interpreted as according value to ecosystems rather than individual organisms. For a range of ecocentric perspectives, see Eckersley (1992), Attfield (2003), Naess (1973), Leopold (2002), Salleh (1992), Mathews (1987).

5.1.1 Ecocentrism, anthropocentrism, and intrinsic value

There are a variety of proponents of what is broadly termed ecocentrism, defending a number of different positions with regard to both ethics and politics. To reduce this plurality to a few key tenets inevitably sacrifices nuance and detail, but it is nonetheless useful, for the purposes of defining environmental sustainability, to highlight some salient points that are recognisably ecocentric. Ecocentrists regard the environmental crisis as an ethical crisis as well as a political and economic one, which is to say that the prevalence of environmentally unsustainable patterns of living is a failure of ethics rather than exclusively of politics or economics.⁵¹ It follows from this that the remedy to environmental problems lies not (only or primarily) in articulating and advocating different policies, but rather, in defining and promoting different values. Central to this argument is the distinction between instrumental and intrinsic value. Anthropocentrists, it is claimed, value non-human nature only instrumentally, as a resource to be used or consumed to achieve particular ends, whereas ecocentrists argue that nature has intrinsic value – value independent of the uses it can or does have for humans (Attfield 1999). The anthropocentric attitude of instrumental valuation is explained variously as the product of the dominance of economic rationality (Hancock 2003); the modernist disenchantment of the natural world, proceeding from the insights of Francis Bacon and Isaac Newton, and culminating in the industrial revolution (Marshall 1995); or the continuation of patriarchy beyond the social sphere and into human – non-human relations (Salleh 1997). Whatever the causal root of this attitude, the resultant human chauvinism facilitates a lack of care for the environment that has paved the way for the policy choices that have brought on the environmental problems now faced (outlined in chapter 2).

The solutions proposed by ecocentrists to these problems vary in detail, but some broad themes are discernible. Most importantly, nature is to be recognised as having intrinsic value. The consequence of this would be that there would be a presumption in favour of preserving a given feature of nature, rather than a presumption in favour of human use of the environment being acceptable (Naess 2003). Secondly, humans are to be recognised as necessarily a part of, rather than apart from, non-human nature. The community of moral concern is therefore radically altered and expanded to include animals, plants, ecosystems, rocks and sands. In this respect ecocentrists present a challenge to what might be thought of as the typical

⁵¹ Though ecocentrists are not unique in doing so; some anthropocentrists also take this view.

position of liberal democratic politics, and certainly to the proponent of human rights; the individual human is not to be construed as an autonomous, rational agent, and the centre of moral value. Instead, because humans can only exist if embedded in an ecological context, the self is to be understood as ‘relational’, rather than independent of the rest of nature. An example of this type of thinking can be found in Robyn Eckersley’s development of ‘transpersonal ecology’ (based on Warwick Fox’s work), whereby the individual is constituted by both social *and* environmental relations:

According to this model, we are neither completely passive and determined beings (as crude behaviourists would have it) nor completely autonomous and self-determining beings (as some existentialists would have it). Rather, we are *relatively* autonomous beings who, by our purposive thought and action, help to constitute the very relations that determine who we are. (Eckersley 1992:53)

Another influential proposal is Aldo Leopold’s ‘land ethic’, which, ‘enlarges the boundaries of the community to include soils, waters, plants, and animals, or collectively: the land’ (Leopold 2002:39).

The proposal that nature has intrinsic value is, I argue, a distinctly ecocentric claim. Anthropocentrism is, by definition, grounded in the claim that humans have value,⁵² and the value that is ascribed to non-human nature is typically justified in terms of the more or less abstract use that it has for humans.⁵³ Some prominent anthropocentrists have explicitly attempted to disprove the coherence of the intrinsic value position.⁵⁴ However, I doubt that the debate over whether nature has intrinsic or

⁵² Though why is usually not specified (see the debate in chapter 3 re Perry et al).

⁵³ Abstract because the uses identified can include the ‘aesthetic’ or ‘contemplative’ value of knowing that environmental ‘resources’, such as wildernesses or ladybirds or pond algae, exist without the valuing human ever directly ‘using’ the resource. See O’Neill (1993) and Wissenburg (1998) on the range of reasons for which individuals might value non-human nature.

⁵⁴ Often a counter to this position is framed in terms of the ‘last man’ (or, in Keekok Lee’s (1993) politically correct version, ‘last person’) argument, whereby a hypothetical thought experiment is said to reveal that most people do intuitively believe that nature has intrinsic value. While this is to an extent persuasive, I suggest that such arguments lead to something of a theoretical cul-de-sac, rather than serving to guide debate on policies that might or might not help societies shift towards environmentally sustainable patterns of living. The last man argument runs thus: if the last man on earth cut down the last tree, would he have done something morally wrong? If yes, then there has to be intrinsic value in non-human nature, since there is neither valuer left nor human subject to derive instrumental value from the erstwhile healthy tree. But this position can be opposed by including in the definition of instrumental value aesthetic value, or spiritual value. The debate therefore spills into a discussion of what, precisely, counts as intrinsic value, and what is only instrumental value. As O’Neill (1993:9) points out, this eventually leads to a *reductio ad absurdum* type argument, since instrumental valuations cannot go on indefinitely. Hayward (1998:25) also points out that moral argument derived from the purported intrinsic value of X is tautologous, since the argument runs; ‘X has intrinsic value, therefore X should be protected, because X has intrinsic value’.

only instrumental value is especially important in defining environmental sustainability, and identifying relevant policy-guiding norms, in the context of globalisation. Insisting on the intrinsic value of the natural world is unlikely to be persuasive to the broad spectrum of political opinion in what ecocentrists rightly characterise as a largely disenchanting world. Certainly, opinions can be changed, and ecocentrists such as Eckersley (1992) have highlighted the role that government might play in promoting the idea of nature having intrinsic value in environmental citizenship education in schools. But, as Alan Carter (2000) argues, there is no necessary link between the ethical motivation behind a particular policy and the outcome of the policy:

[S]ome poor people need to burn far more wood than they would need to if they possessed wood-burning stoves. Hence, if one wants to stop them denuding the ground of tree cover and hastening the process of desertification, then one needs to aid their society in attaining a certain level of development. One might feel one needs to go even further and provide not wood-burning stoves but biogas generators, say. And one might want to do so simply because one wishes to stop those living in that un-developed or underdeveloped society from destroying their natural environment. And the motivation for that could be purely biocentric. (Carter 2000:451)

Conversely, anthropocentrically motivated policies can (and do) have outcomes that ecocentrists would welcome. The reason for this is clear when the ecocentric way of understanding humans as necessarily ecologically embedded beings is taken into account – any attempt to preserve or maintain the integrity of the environment for humans inevitably does so for non-human nature also. This position is also affirmed by anthropocentrists, from liberals, such as Wissenburg (1998), to communitarians, such as de-Shalit (2000). So, it is possible to accept the ecocentric claim that environmental problems require a broader engagement than a focus on economic policy would provide, whilst bypassing the debate over the intrinsic value of non-human nature. It is enough, for the present purpose, to note that humans are ecologically embedded, and therefore argue that, whether on account of the intrinsic value of nature, or because of the profound importance the natural world has for humans, finding environmentally sustainable ways of living is vital.

Carter's target in the above passage is Andrew Dobson's (1998) typology of theories of sustainability that run along an axis of deep green to shallow green, corresponding more or less to ecocentric through to anthropocentric positions. Carter rejects the view, formally stated by Naess in his 1973 article 'The Shallow and the Deep, Long-Range Ecology Movement', and since repeated by many ecocentrists (including Dobson), that an anthropocentric position equates to a shallow and reformist approach, whereas the ecocentric position is deep and radical. Ecocentrists might respond that an anthropocentric ethic that puts human welfare first is unlikely to secure the degree of environmental protection that respect for the intrinsic value of nature would ensure. But there is no prior reason why this must be the case. Bryan Norton proposes the ecological value of 'integrity' as a standard by which to assess models of sustainability, whereby the most desirable policies are those that protect the integrity of ecosystems (see Norton 1999 and 2002).⁵⁵ The justification for this policy preference is presented in anthropocentric terms, specifically, preserving the integrity of global and local ecosystems is held to be good because doing so preserves the greatest possible number of options and opportunities for future generations. This is a desirable strategy, and a just strategy, because the actions of present generation humans will affect the options available to future generations, but it is not possible to predict accurately precisely what the needs and wants of future generations will be.⁵⁶ Therefore, since humans are ecologically embedded beings, the best approach to take is to bequeath to future generations the healthiest possible ecosystem, and let future generations make their inevitable selective judgments about which particular aspects of the environment to value for which purposes. This approach, I argue, has the benefit of being politically intelligible to a broad audience, and is capable of grounding a robust model of environmental sustainability that would deliver the aims of ecocentrists and anthropocentrists alike, without relying on ethical commitments that are not widely shared.

⁵⁵ For a more detailed discussion of 'integrity' as a benchmark for sustainability see chapter 6.

⁵⁶ This is in part because environmental resources that have been useless to one generation may, with technological development or other changes, come to be important for a future generation. An oft-cited example here is uranium (see Holland 1999:61), but other examples include changing attitudes to areas of natural wilderness, such as the Scottish highlands, once seen as dangerous and forbidding places, now valued as places for recreation and as having aesthetic value (see O'Neill 2007). Hence de-Shalit (2000) is correct in arguing that nature, or more precisely what is identified as 'nature' by each generation, is socially constructed. Nevertheless, the biophysical fact of humanity being ecologically embedded means that constructing nature as something separate from human activity is misleading.

5.1.2 Social and ecological embeddedness

Turning to the second important theme of ecocentric theory identified above, I argue that the ecocentric proposal that the self should be understood to be ‘relational’, that is, ‘always already’ embedded within an ecological as well as a social context, is only distinctive by a matter of degree. Eckersley describes green politics as ‘post-liberal’ in part because of what she sees as the paucity of the liberal account of individual autonomy:

From the perspective of the ecological model of internal relations, the liberal idea of autonomy as independence from (or “freedom from”) others is seen as philosophically misguided. (To the extent that interconnectedness with others is acknowledged under this particular liberal interpretation, it is likely to be experienced as threatening, as causing a loss of self.) (Eckersley 1992:54)

The claim here is that humans are neither completely independent from nature nor from other humans. Social and ecological embeddedness should not be seen as threatening, or causing a loss of self, since it is the ecological context that gives humans life, and the social context that teaches humans how to live. Recognition of this fact is held to be emancipatory in that it facilitates a changed relationship between humans and non-human nature that delegitimises the modernist discourse of human dominance and mastery over nature, in favour of a new set of relations based on justice and the recognition of the right of non-human nature to flourish.

The implicit claim that liberalism does not recognise the social embeddedness of humans seems to me to be misguided. Liberal theorists of rights typically note that rights are not absolute, but rather entitle the right-holder to whatever good is specified only insofar as that entitlement does not interfere with the equal rights of others (Jones 1994:138-142). Thus the right to free speech does not extend to the right to incite violence against minorities. Moreover, liberal theory is no more a unified perspective than is green theory. Whilst liberals such as Robert Nozick and John Locke can be said to be anti-ecological (de Geus 2001), the liberal theory of John Stuart Mill is quite different. Millian ideas that can readily appeal to greens include his later support for a steady-state economy, his foreboding over the indiscriminate exploitation of natural resources during the industrial revolution, and his humility

about the fallibility of human knowledge (de Geus 2001; Stephens 2001).⁵⁷ Nor is it clear that all liberals would recognise themselves as advocating a view of social relations that constrain autonomy as necessarily involving a ‘loss of self’. Mill’s defence of freedom of speech, specifically his argument that confronting views contrary to one’s own helps to avoid subscribing to a position only as lifeless dogma, suggests a positive dimension to social embeddedness. Mill’s influence is admittedly weaker than it once was, but the point to be made is that while Eckersley’s criticisms might be accurate with respect to Locke and Nozick, they are not true of all liberals. The relevance of this for the present discussion is that ecocentric resistance to the individualism of the human rights discourse can be said to be attacking a straw man – the human rights framework does not necessarily posit a disconnected autonomous individual. As discussed in the previous chapter, human rights are invoked to protect individuals from oppression, they need not, however, imply a view of humans as completely atomistic, autonomous beings.

On the other hand, neither the contemporary human rights regime, nor the liberal tradition from which it emerged, sufficiently recognises the ecological embeddedness of human life; in this respect Eckersley’s criticism is valid. But, as already indicated, this perspective need not be grounded in ecocentrism. Norton’s anthropocentric model of sustainability understood in terms of the value of ecological integrity clearly affirms not only that humans are ecologically embedded, but that this has significant implications for policy choices. Similarly, Hayward’s (1998) theory of ‘enlightened anthropocentrism’ recognises the inevitability of an ecological dimension to human life. The clearest difference between the two perspectives is the claim about value; ecocentrists claim that nature has intrinsic value, whereas anthropocentrists see instrumental value in nature. But, as already indicated, instrumental value can be broadly interpreted. The more telling point, however, is the ontological claim that humans are ecologically embedded beings, but this can be sustained from either perspective. There is arguably only a semantic difference in the

⁵⁷ That said, Mill was clearly interested in the idea of progress, which some greens have been critical of because of the implicit teleological approach that is said to underpin ideas of the unquestioned value of technological development and economic growth, and which is said to be contrary to the cyclical nature of the natural world (Dobson 2000:62-105). On the other hand, Barry (1999:249-251) argues that the task of green theory is not to reject the idea of progress but rather to reinterpret progress such that it is concerned with human rather than economic development. A complementary line is taken by Nigel Dower, who argues that, ‘economic growth [...] is justified, when it is justified, by the fact that it enables people to achieve a better quality of life, better that is in terms of criteria of well-being other than more wealth’ (Dower 2000:40-41).

consequent motivation for acting prescribed by weak anthropocentrism and ecocentrism – one acts either out of ‘enlightened self-interest’ (Hayward 1998), enlightened in the sense of understanding and affirming the ontological claim that humans are ecologically embedded and realising that it is therefore in one’s own interest to protect the environment; or out of an identification with the natural world where the self is ‘relational’ (Mathews 1991), in the sense of encompassing a broader identity that recognises the self as ecologically embedded, realising that to harm the environment is ultimately to harm oneself.⁵⁸

The reason that all this matters for the present discussion was highlighted above. Taking their cue from Naess (1973), a number of green thinkers have perpetuated a distinction between ‘shallow’ and ‘deep’ green theories that equates to ecocentric and anthropocentric accounts of environmental ethics, and informs a radical versus reformist politics. On this basis, it is argued that ecocentrism is a precondition of environmental sustainability. On the contrary, what is demonstrated here is that an anthropocentric approach is equally capable of grounding a persuasive model of environmental sustainability. It also has the appeal of being more intelligible to the majority of people who do not, at present, share ecocentric values. This is not to deny that what might be called strong anthropocentrism, or, more specifically, the assumption that humans can continue to consume environmental resources indiscriminately, is deeply flawed and misguided. But what I have tried to demonstrate is that the most problematic aspect of such an approach is not the value it places on the environment, but rather the empirical error of assuming that humans are not dependent on their environment. The remainder of this chapter is therefore devoted to defining environmental sustainability from a ‘weak’ or ‘enlightened’ anthropocentric perspective.

5.2 Needs and wants and future generations

Perhaps the most widely cited definition of sustainability is the ‘Brundtland definition’, put forward in the Report of the World Commission on Environment and Development (WCED) in 1987, which declares that ‘[h]umanity has the ability to make development sustainable to ensure that it meets the needs of the present without compromising the ability of future generations to meet their own needs’ (WCED

⁵⁸ Both approaches share a tendency to postulate a ‘transformative’ experience that will inspire in environmental citizens the understanding of themselves as ecologically embedded beings. For further discussion of this point see chapter 6.

1987:24). While a number of greens have been critical of the (qualified) endorsement Brundtland gives to continued economic growth, the themes of prioritising needs rather than wants, and showing concern for future generations, appear repeatedly in green theories of sustainability. One oft-discussed response to the problem of providing for the needs of future generations has been the idea of ‘maintaining natural capital’, or sometimes only ‘critical natural capital’, that is, the ecological resources necessary for human survival (see, for example, Turner 1992; Goodland and Daly 1996).

However, Alan Holland (1999) has criticised the idea of natural capital as being an appropriate device for measuring sustainability. Following the economist Herman Daly, Holland points out that ‘the economic notion of ‘natural capital’ is an *essentially* relational concept: it makes no sense to ask how much natural capital is represented by a grain of sand or lump of coal ‘in itself’” (Holland 1999:59, italics in original). For that reason Daly is persuasive in his argument that one can only feasibly speak of the complementarity of natural and human-made capital – that is, the coal as well as the knowledge of how to mine it and how to convert it into heat or electricity – rather than substitutability between natural and human-made capital. But Holland goes further than this in his critique of the substitutability debate, because, as noted above, it is not easy to know what will be useful to future generations:

Thus it turns out that, amongst other complications, the concept of natural capital contains an epistemological variable: changes in the level of natural capital are contingent, not only upon changes in the natural world, nor simply on its actual utility, but upon changes in assumptions about its utility. [...] Referring back to the example of uranium, this century would seem to reckon it a considerable addition to the store of natural capital. If the next century judges the nuclear experiment to have been an unmitigated disaster, judgements as to the state of our current natural assets would need to be seriously revised. (Holland 1999:61)

The only way of making sense of the idea of natural capital in a way that assists us in deliberating strategies for environmental sustainability, is what Holland calls the ‘physical stock’ approach (Holland 1999:63-65) or what Norton refers to as the ‘Listing Stuff’ approach (Norton 1999:119). This is the idea of furnishing future generations with the opportunity to make of the natural capital available what they will with the human capital they inherit and develop themselves. Since what future

generations will need/want cannot be predicted with certainty, the fairest thing to do is to leave them everything possible.⁵⁹ Of course, bequeathing everything, complete with an accurate inventory, is a rather Sisyphean task, so the most viable way of operationalising this strategy, according to Holland, is to use ‘indicator species’, a well-known approach in ecology of testing the health of an ecosystem by looking for particular species that will only thrive in unpolluted environments (Holland 1999:65). This fits well with Norton’s (2002) idea that what should be preserved is the ‘integrity’ of the environment.

This is a rather different approach than that immediately apparent in Brundtland’s recommendations and in many other strategies for sustaining the environment for future generations. The most prominent complaint with the Brundtland interpretation is that it endorses as legitimate continued economic growth:

The concept of sustainable development does imply limits – not absolute limits but limitations imposed by the present state of technology and social organization on environmental resources and by the ability of the biosphere to absorb the effects of human activities. But technology and social organization can be both managed and improved to make way for a new era of economic growth. (WCED 1987:24)

However, the report also clearly states that economic growth is a legitimate aim of developing nations insofar as it alleviates the material deprivation of the very poor, whereas wealthier populations are enjoined to ensure equity of access to ‘the resources required to sustain that growth’ (WCED 1987:24) (which presumably includes human as well as natural capital), and are further required to alter their ways of living such that they do not exceed the capacity of ecological resources.

John S. Dryzek (1997) is rightly sceptical of what he calls the ‘Promethean response’, whereby it is believed that technological innovation will, in the future, solve current environmental problems, disputing the need to change environmentally damaging practices. But there is some middle ground between relying on technological innovation to facilitate endless economic growth, and rejecting

⁵⁹ Robin Attfield (1998:211) argues that we can predict ‘some of the basic needs of future people’, which seems intuitively true – surely all future generations will need breathable air, clean water, sustainable soils for growing crops. But, as I argue below, ‘needs’ is a term that confuses more than it clarifies. Moreover, restricting concern to what are seen to be ‘basic needs’ is likely to yield a weaker account of sustainability than might be desired, certainly than would be possible if the integrity of the ecosystem were taken to be the appropriate measure, since, as Wissenburg (1998:211-212) argues, it is conceivable that basic needs could be met whilst living in a ‘global Manhattan’.

technology, or growth, as having any part to play in overcoming environmental problems. Both Carter (1999:ch1) and Goodland (1995) point to the increased environmental destruction that is attendant upon the extreme poverty of many people in developing countries, where resources are overused by people in order to survive. The pressures of rapid population growth are also a relevant issue here, but not less so than the vast inequality in consumption of environmental resources that exists between the global rich and poor. What all this points to is the error of rejecting outright the legitimacy of continued economic growth on the part of the poor – inequality within the present generation is as much a part of environmental ethics as is inequality between generations. Economic growth pursued on conventional models across the world is likely to be ecologically disastrous (NEF 2006), but it may nonetheless be a limited part of the solution to environmental problems. Green scepticism about both technological innovation and economic growth is entirely justified if they are taken to be unquestioned goods, but equally, greens are naïve if they take either to be unquestioned harms.

5.2.1 The problem of needs and wants

However, there is a notable ambiguity in all of this, and curiously enough one that afflicts both the Brundtland definition and many alternative ways of approaching the question of intergenerational justice, which is the normative implications of differentiating needs from wants. It is easy enough to agree that the needs of all should be satisfied before the wants of any, but it is not immediately clear how wants, rather than needs, can be objectively determined. Andrew Dobson indicates some awareness of this problem but retreats from it:

If the needs/wants problem seems presently intractable, it is enough for our purposes – that of identifying the principal features of the radical green sustainable society – that the emphasis on reduced consumption brings up the question sooner or later, and that therefore the distinction between needs and wants is one of the intellectual features of the various pictures of such a society. (Dobson 2000:80)

Even those who have attempted to sketch in more detail the features of ‘a radical green sustainable society’ have studiously avoided the question. Arne Naess, in outlining eight principles of deep ecology, lists as the third principle: ‘Humans have no right to reduce this richness and diversity [of life forms] except to satisfy vital

needs' (Naess 2003:264). In an explanatory note, he goes on to say, '[t]he term "vital need" is deliberately left vague to allow for considerable latitude in judgement. Differences in climate and related factors, together with differences in the structures of societies as they now exist, need to be taken into consideration.' (Naess 2003:265).

Also looking at the question of needs and wants, Ted Benton suggests that the idea of needs may be most intelligible in the context of emergencies, where it is obvious that people need food, shelter, water, sanitation and health care. But such a minimalist conception of needs is not adequate for a long term theory of sustainability:

To meet needs in a way which is proper, or appropriate to humanity is to meet them in ways which satisfy normative, cultural requirements. So, for humans to meet their need for food is not solely a matter of consuming a certain necessary bundle of nutrients, but it is a matter of collecting, preparing, and socially consuming what are culturally recognized as foods according to the customs and standards of the people involved. (Benton 1999:205)

It should be added that these customs and standards are neither fixed nor given, but rather are learned and adapted over time and across communities. It follows that there is no objective standard of needs that can be determined for the purposes of environmental sustainability, presumably a conclusion with which Naess would concur. An additional variable is the level of technological development. Greens are often fans of Rousseau, finding in his critique of the increasing reliance on technology, and the attendant increasing distance from the ideal (idealised) state of nature, a parable for modern dependence on technology that is damaging to the environment, and ultimately to human well-being (Dobson 2000:111-112). An example here is nuclear technology and the problem that nuclear waste remains toxic for many thousands of years. The decision to use nuclear technology places on this generation, as well as many future generations who had no part in the decision-making process, the obligation to accommodate nuclear waste as safely as possible. But nuclear technology is used in medicinal contexts as well as for creating energy and weapons. It would be a particularly misanthropic environmentalist who would suggest that medicinal benefits of environmentally damaging technology are a luxury,

not a necessity, and so should be forsaken, without at least a debate about whether the benefits are worth the risk.⁶⁰

Hayward (1998:ch5) suggests that, in view of the difficulty of judging whether something is a necessity or a luxury, standards of needs must be intersubjectively determined. Hayward uses the language of preferences and interests, but rejects the idea, accepted in neoclassical economics, that preferences are fixed, and argues that, through intersubjective engagement, preferences can be ‘interrogated’ and potentially educated, to arrive at ‘genuine’ interests. There are a number of problems with this. Firstly, it is patronising and potentially oppressive to deny that what a person believes their interest to be is in fact their interest. Secondly, if the principle of intersubjective agreement on standards of needs or genuine interests is accepted, this weakens the normative force of the concept of needs. Needs, on this model, are whatever the democratic body agrees them to be. A self-interested demos therefore presents problems to the rest of the world and to future generations.

This is a problem of democratic politics, which will be discussed further in the next chapter. The point to note here, however, is that Norton’s idea of environmental sustainability understood in terms of preserving the integrity of ecosystems circumvents the needs/wants problem. It does, however, depend on humans caring about the fate of future generations. Concern for future generations is a virtue that green theorists of citizenship have suggested ways of inculcating, but it is not necessarily a spontaneous attribute of all humans (see chapter 6). What these last points demonstrate is that neither economic nor political solutions to the problem of environmental sustainability will be sufficient independently, they must be developed in tandem. The remainder of this chapter assesses three proposed economic solutions; the following chapter considers what political strategies might support and foster such change.

5.3 Two problems and three solutions

The need for sustainability comes from the fact that ‘[t]he global ecosystem does three things that the human economy cannot do without, or do for itself’ (Prugh et al 1999:15). These are, firstly, provide resources, secondly, assimilate waste products; and finally, perform ‘environmental services’, for example, biodiversity, the

⁶⁰ The idea of weighing up the benefits versus the risk of a particular path of development, or policy option, is a theme identified by Ulrich Beck (1997) in his idea of a ‘risk society’ which he argues characterises contemporary life. For further discussion, see chapter 6.

regulation of climate, or ‘amenities for consumption’ (Jacobs 1991:3-5). The structure of the global economy causes (at least) two significant problems which threaten these essential functions: firstly, what is called the ‘tragedy of the commons’, and secondly, the practice of ‘discounting’, or, the result of discounting, ‘externalities’.

As stated in chapter 2, by ‘global economy’ I mean an economy organised around neoliberal economic principles, promoting growth-led development, and fostering globalised networks of production and consumption. To be clear, the neoliberal emphasis on export-led growth is not necessarily characteristic of market economies. Indeed, the market is valued not only for its potential to promote growth but also because of its capacity to foster innovation and as a mechanism for coordination. I argue below that neo-liberal policies emphasising export-led growth at fairly robust rates are environmentally problematic, but this might not hold true for market economies in general. However, in the section on free market environmentalism, I further argue that coordination by market prices to the exclusion of government oversight, is also problematic from an environmental point of view.

Neoliberal economics encourages increasing economic globalisation and endorses economically rational behaviour. The tragedy of the commons⁶¹ occurs when economically rational agents use a commonly owned (or non-owned) resource in economically rational ways. To take a simple example, suppose that fishing boats A, B, and C fish a public lake for their livelihood. The skipper of boat A decides to buy a bigger net with which to catch more fish, and thereby increase his share of the market. This is economically rational because he exclusively benefits from the investment in the bigger net (more fish to sell, so more profit), while the cost in ecological terms (fewer fish to catch tomorrow) is spread equally amongst him and his competitors. So the next week the skipper of boat B decides that he should also buy a bigger net, so as to maintain his share of the market relative to boats A and C, and in this he also behaves rationally, and the process continues as each economic agent seeks a comparative advantage in the market.

This ‘ratcheting’ effect that markets tend to have undermines the sustainability of the resource; unchecked increasing demand will eventually exhaust the regenerative capacity of the lake. That said, it should be noted that growth *per se* is not necessarily the problem (Jacobs 1991:26). Growth in the rate of extraction of a

⁶¹ The tragedy of the commons was famously highlighted in an article of that title by Garrett Hardin, published in 1968, the ‘commons’ originally having referred to common grazing land in pre-industrial Europe, which Hardin used as an analogy for commonly used environmental resources today.

resource might mean 100 fish being caught in year 1, 103 in year 2, 107 in year 3, and so on. A steady rate of 100 fish being caught per year would represent zero growth. But this too would be unsustainable if the fish stocks were only replenished at a rate of 80 fish a year. This problem illustrates why simply switching to a zero-growth economy, as some greens have suggested, is not enough. Indeed, the real question is not simply the rate of growth in the economy, but the extent to which an economic model takes account of rates of ecological regeneration.⁶² Thus the problem of climate change, a typical tragedy of the commons issue, would not be solved simply by halting carbon emissions at today's levels, as those levels are themselves unsustainable. The climate change issue also draws our attention to the problem of renewable and non-renewable resources. Carbon emissions for the most part come from burning fossil fuels, the depletion of which is a source of considerable concern, as they are non-renewable in human time-frames and industrialised economies are heavily dependent on them. Yet the pollution from burning fossil fuels is threatening the sustainability of renewable resources, such as breathable air and fertile soil, and the depletion of renewable resources, though it has received less attention in the popular media, is of even greater concern than the depletion of non-renewables. Many of the world's renewable resources are not privately owned and so are subject to the logic of the tragedy of the commons.

Discounting also represents economically rational behaviour. It is the practice of placing less value on costs or benefits that occur at a distance from us. To take, again, a simple example, if I am offered £100 today or in ten years time, I would rather have it today. There are several reasons for this. Firstly, I may be dead ten years from now. If I am alive, £100 buys more today than it would in the future. Even if the £100 were adjusted for inflation, I may reasonably expect to be wealthier in ten years than I am now, and £100 means more to me, makes more of a difference to my life, when I am poorer. For all these reasons I quite rationally 'discount' the future.

⁶² Dobson (2000:62) describes the 'limits to growth' thesis, based on the research of the Club of Rome in the 1970s, as 'an article of faith' amongst greens. The conclusion of the report by Meadows et al was that there are ecological limits to possible levels of economic growth, and that, eventually, indeed, within 100 years, ecological systems would collapse if the pursuit of economic growth continued. In response to this, a number of greens endorsed the idea of a zero-growth economy. However, as Carter (1999:ch1) notes, a zero-growth economy can also be environmentally destructive. What matters, then, is not the level of economic growth, but the rate of consumption of ecological resources relative to the natural absorption/rejuvenation rate. It should also be noted that endless recycling does not solve the problem of the increasing consumption of resources that is attendant upon economic growth, since the recycling of goods itself requires energy because of the typically high entropic value of post-consumer waste (Jacobs 1991:13-15; Dobson 2000:67-68).

Economic agents discount across both time and space. To take an example discussed by Jacobs (1991:27-28), if a chemical company is able to release effluent into a river that then poisons fish, and people use the river for drinking water downstream, then the chemical company does not bear the full (social and ecological) cost of producing the chemicals. Further, unless the company is fined for such discharges or is by law made to clean up the river, the market price of the chemicals will not include the full cost of producing the chemicals, and so the transaction between the customer buying chemicals and the chemicals company produces 'externalities', that is, negative costs which fall on agents external to the transaction (Jacobs 1991:28-29). According to Joan Martinez-Alier, 'one can see externalities not as market failures but as cost-shifting successes' (Martinez-Alier 2002:257). In this case, externalities fall on people poisoned by the drinking water in terms of loss of health, on fishermen in terms of depleted fish stocks, and unless and until the river is cleaned up, on future generations, as well as plants and animals, now and in the future. Externalities can take the form of pollutants and/or loss of environmental resources, either renewable or non-renewable. Insofar as lower prices are preferred in the marketplace, there is no economic incentive for companies to internalise externalities.

These two problems, the tragedy of the commons and discounting, are widely agreed on facets of market economies. What to do about them is much debated of course, as will be discussed below. But first it is useful to rehearse briefly the discussion in chapter 2 of why all this matters. The globalisation of the economy is clearly linked to environmental degradation, which in turn threatens human security, thereby contributing to the underfulfilment of human rights of the present generation, particularly the poor. The poorest of this generation are feeling the impact now. It is mostly poor people who live on lands subject to flooding, and it is in particular in sub-Saharan Africa that soils are drying out at alarming rates, made worse by drought. The IPCC holds human caused global warming to be responsible for both increased flooding and increased desertification, as well as stronger and more frequent extreme weather events such as hurricane Katrina (Page 2006:38-40). But, as noted above, it is also future generation humans that will bear these costs, in terms of reduced options and a greater burden of risk compared to those facing previous generations. These two constituencies, present generation poor and future generations, are inevitably excluded from market transactions, thus do not have the opportunity to influence economic activity, and the environmental impacts they experience are (quite

rationally) discounted by those who do. What this means is that there is an information gap in the market. Externalities are the consequence of this information gap.

It is now possible to outline the problem facing those trying to define environmental sustainability specifically in the context of globalisation: The market-driven nature of the global economy has two features which foster ecological degradation – the tragedy of the commons and the problem of discounting. To make the economy sustainable, it is necessary to find ways of making economic agents appreciate the full ecological costs of production and consumption. Firstly, a model of sustainability has to have a solution to the tragedy of the commons; economic actors must not be able to pollute or extract materials from common resources such as air, water, grazing lands, etc., without somehow being made to recognise and internalise the ecological costs of doing so. Secondly, with respect to the problem of discounting, both in terms of pollution and the depletion of resources, insofar as economic agents care about the fate of their children or grandchildren, mechanisms must be developed to close the information gap that exists with regard to externalities. Thus one question for a model of sustainability to address is how can the demands of intergenerational justice be integrated into an economic model?

But economic agents also discount across space as well as time. As an economically rational agent, if cheaper goods are available from countries with lower regulatory standards than my own, then I will prefer the imported goods to those produced domestically, thereby contributing to environmental damage abroad and global damage from the ecological impact of transport costs. A full account of what future generations are owed might deal with this problem; if all externalities could be fully internalised for the sake of future generations, the present generation would also presumably benefit. But the fact of massive economic inequality makes the displacement of environmental costs easier, because the poor who lack the economic resources to register their preferences in the market also typically lack the political power to call attention to the injustice of disproportionately suffering the problems of externalities (Shiva 2003). The displacement of environmental costs onto poorer communities is therefore more likely in the short term, which serves to deepen environmental problems in the long term.

The poor often live on cheaper land that is cheap precisely because it is environmentally insecure, either because subject to 'natural' problems such as flooding (though exacerbated, in recent years, by human-induced climate change), or because polluted by toxic waste (Rosen 1994; Shiva 2003). Poor people therefore often experience environmental problems from which richer communities are at present relatively insulated. There is a scientific consensus, though, that these problems will become more widespread (Page 2006). Green theorists can be said to be misguided if they focus on intergenerational justice as the measure of sustainability, since looking at intragenerational justice offers a better chance for the early identification of problematic patterns of economic behaviour. As Goodland observes, '[i]f the world cannot move toward intragenerational sustainability during this generation, it will be that much more difficult to achieve intergenerational sustainability somewhere in the future' (Goodland 1995:6). Moreover, insofar as environmental threats to human security are recognised as undermining human rights, it is appropriate, in a global order that affirms the value of human rights, that the economic problems producing these environmental harms be resolved. There is therefore a third important question for environmental sustainability to address; the issue of intragenerational justice. A model for sustainability should look to decrease inequality between and within nations, and at the very least should not entrench or perpetuate existing inequalities. This is not a sufficient condition for environmental sustainability, since, for example, increases in population over time could be to the detriment of future generations, but it is, I argue, a necessary condition.

In summary, I have identified a three-question framework for analysing models of sustainability: 1. How is the tragedy of the commons addressed? 2. How are the demands of intergenerational justice recognised? 3. How are the demands of intragenerational justice recognised? In the remainder of this chapter, I use these three questions to consider the relative merits of three competing models of environmental sustainability; free market environmentalism, ecological modernisation, and ecological economics. This study does not exhaust the possible range of models of sustainability, rather, it evaluates three positions on a scale of increasing interference in the global market economy. Whereas previous comparative studies have assessed sustainability models in terms of their adherence to green principles (Dobson 1998), or in terms of their compatibility with liberal democracy (Labaras 2001), the aim of

this study is to identify which of these approaches is most promising in addressing the environmental problems specifically associated with globalisation.

5.3.1 Free market environmentalism

Free market environmentalists, such as Terry Anderson and Donald Leal (1991; 2005), contend that the environmental problems the market engenders are a consequence of political interference in the market, and the fact that markets are incomplete. If the market was allowed to operate fully and freely, Anderson and Leal claim, then the ecological costs of production would be fully internalised in the market price of goods, and environmental quality would improve. Indeed, in this analysis, the complex spontaneous order created by the market is said to be a mirror of the complex spontaneous order of ecosystems. Thus, the solution to the tragedy of the commons is to eliminate the commons; that is, privatise public or common goods.⁶³

This argument boils down to the idea that better care is taken of any given resource if it is owned by someone who has a direct interest in that resource's continued cultivation, than if it is owned by the public, or not owned at all. So, if rivers were privatised, chemical companies would be charged a price for releasing effluent into the river, as would swimmers for recreational use, fishermen for fishing rights (presumably with quotas), and so on. The owner of the river would set the price to be paid for each activity, the price being determined by the prices being offered by competitors, and the relative costs of each type of activity to the resource. As the owner of the river would presumably want to maximise his income from the resource, he has an interest in pricing polluting activity highly, thereby maintaining the quality of the river.

Privatising environmental common or public goods is particularly attractive, free market environmentalists claim, because it eliminates the danger of special interest groups influencing the political process that would otherwise determine the fate of these goods. In short, the free market is held to be less corruptible than politics. Anderson and Leal also argue (2005) that the market is a better, faster and more

⁶³ Public goods are technically things like the security provided by police forces. Common goods are things like fresh air – they exist anyway, with or without a government. I take them to be the same class of goods here in that they share certain features – they benefit everyone, even those who choose not to pay for them, and indeed it is practically impossible to exclude people from the services provided by public or common goods.

efficient communicator of values than the political process is. Market-based transactions are more responsive to consumer demand than politicians are to voters' demands, particularly as voters typically express their opinion effectively only once every few years at election time. Moreover, voters decide for whom to cast their ballots on a range of issues. On the other hand, the market allows consumers to disaggregate their values, and use their economic power to indicate precisely their preferences, to which producers must respond in order to maximise profits and maintain or increase their share of the market relative to their competitors.

The only practical difficulty here, then, is how to restrict access to the river, or clean air, or any other common resource, so as to prevent its use by people who have not paid for the service. Indeed, Michael Jacobs rejects free market environmentalism on the grounds that it is practically impossible as a solution to the tragedy of the commons, because the type of goods that suffer from the tragedy of the commons do so precisely because they cannot be 'captured, commodified, and bought and sold' (Jacobs 1995:16). While this is not strictly true of lakes, it is clearly true of a stable climate and breathable air. But free market environmentalists argue that where there is a demand for technology that limits access to a public good or a common good, then the technology will be developed. After all, this is how markets work, they provide incentives for innovation. It might seem far-fetched to imagine that there might one day be a way of restricting access to clean air only to those who had paid for it, but it is worth noting that the WTO has speculative plans for trade rules should water be fully privatised globally (Manger 2003). Moreover, biodiversity, one would think, could not be privately owned, but the TRIPS agreement, one of the outcomes of the Doha round of WTO trade talks, allows, among other things, the patenting of plants (see chapter 2). So we can see that there are reasons to take seriously the arguments of free market environmentalists. Indeed, if the technology to make private air workable should become available, then it is conceivable that the privatisation of air would solve the tragedy of the commons.

But privatising public or common goods raises important ethical questions. Discussing public goods, Andrew Light argues that 'publicly provided goods have the normative status of publicly recognised needs' (Light 2000:214). Certainly, it cannot be denied that we all need clean water and breathable air. It may be argued, then, that we should not have to pay for them, that it would be unethical to privatise them, particularly on a global scale. Yet we already have to pay for food, which we also

need.⁶⁴ The onus, then, is on opponents of free market environmentalism, to show why other goods that we need, such as water and air, should not also be commodified. To this it might be replied that the commodification of food has not been a stunning success, that the pressure a global economy puts on farmers in developing countries to switch from subsistence to cash crops makes neither social nor ecological sense, and that the evidence on increased inequalities resulting from intensified global trade suggests that the benefits from privatising the commons would not be evenly distributed (see Shiva 1999; Woods 2000).

Increasing inequalities, both within and between countries, raise again the problem of discounting – poor communities are much more vulnerable to both environmental exploitation, as they have limited resources with which to pursue a comparative advantage in the global economy, and environmental degradation, as they have fewer resources with which to protect their populations from the effects of climate change and toxic pollution. Free market environmentalists rely on economic growth to raise the economic wealth of all, but by accepting inequalities, also accept limits on the poor communities' abilities to be active in and influence the market. Note that it is relative, rather than absolute, poverty that makes a difference to this – certainly the absolutely poor cannot participate in the market, but relative poverty means that market outcomes are skewed in favour of those with greater economic power. Thus the demands of intragenerational justice receive very little recognition in free market environmentalism.

It should also be noted that free market environmentalism rests on certain assumptions with which many greens are uncomfortable. Free market environmentalism takes preferences as indicated in the market as given.⁶⁵ That is, it assumes that people's preferences are sovereign, and so, if someone wants to spend their money on a 4x4, then there is nothing more to be said about it. The market will price such commodities highly if the ecological costs are fully included, but the individual is free to pay that price if he so desires. As argued above, it is certainly problematic to suggest that people do not know what is in their own long term best interests, and that their liberty should therefore be restricted, but it is also problematic

⁶⁴ There is also the problem, discussed above, that needs and wants are difficult to determine objectively.

⁶⁵ Another important assumption free market environmentalists make is that the environment only has value insofar as it contributes to human welfare. This view is anathema to many greens, in particular ecocentrists, but one need not take an ecocentric perspective to be unpersuaded by the argument of free market environmentalists.

to accept environmentally damaging behaviour without criticism or comment. By taking consumer preferences as sovereign, free market environmentalists do not necessarily indicate any concern for, or interest in, future generations. Indeed, the problem of discounting continues in the context of free market environmentalism. If I would rationally prefer £100 now rather than in ten years time, then I might well rationally prefer to strip my woodland of timber for a profit and not worry about the next generation. The next generation, meanwhile, does not have an opportunity to express their preferences in the market place, they simply inherit the sum total of preferences our generation has expressed, the balance of which will also reflect the balance of the present generation's spending power. In short, the most wealthy will get to decide what environmental resources we bequeath to the future. Thus free market environmentalism offers at best an ambiguous, and an undemocratic, response to the demands of intergenerational justice.

In summary, free market environmentalism does not provide convincing answers to the three questions that form my evaluative framework. The free market response to the tragedy of the commons would perhaps be effective if the technology became available, but it raises serious ethical questions. Free market environmentalism has nothing to offer in terms of intragenerational justice, it accepts Adam Smith's promise that a rising tide lifts all boats, despite the fact that Smith did not envisage the degree of capital mobility witnessed today (Mander 2003:113), and despite the fact that inequality has been increasing both within and between nations for the past decade (Woods 2000; Shiva 2003). And given that future generations are necessarily excluded from market transactions, and the market is to be the sole agent for resolving environmental problems, intergenerational justice is also poorly accommodated in free market environmentalism.

5.3.2 Ecological modernisation

Ecological modernisation shares some features with free market environmentalism, in that it seeks to harness market forces to make progress on environmental issues, but it also sees a role for government action. In this respect it may be thought of as a middle way, or perhaps 'third way', between free market environmentalism and the much more interventionist ecological economics approach. Ecological modernisation is particularly attractive to politicians as it essentially denies the purported zero-sum relationship between environmental protection and economic

growth, and instead emphasises the economic opportunities created by the demand for new environmentally friendly technology. Thus the ecological modernisation approach to sustainability promises to benefit everyone – the environment, the economy, and, again because of the trickle-down effects of continued economic growth, people too.

A central claim of ecological modernisation theorists, such as Mol (2002), Barry (2003; 2006b), is that environmental sustainability is a precondition for economic growth in the twenty-first century. The key strategies to achieve sustainability are a supply-side focus to environmental regulation, because post-production solutions are held to be both inadequate and unwieldy, and to integrate environmental aims into all sectors of public policy (Labaras 2001:93-4). The relationship between government and the market is constructed as one between problem-setter and problem-solver. The government defines the goals of environmental policy and encourages the market to find ways of achieving these goals. So, for example, the ‘polluter pays’ principle, applied by governments, creates in the market an incentive for companies to find clean production methods. Acting on this incentive will allow companies to pursue a comparative advantage in the marketplace, both domestically and on a global scale, as consumers increasingly demand environmentally friendly goods.

With respect to the tragedy of the commons, the benefits of an ecological modernisation approach are uncertain. There is nothing intrinsic to ecological modernisation that encourages a global focus, indeed, even advocates of ecological modernisation have acknowledged as much:

Neither does ecological modernisation take into account the global dimensions of the environmental crisis, nor the need for global political co-operation to deal with global environmental problems. On this issue, ecological modernisation is limited to being a domestic approach to environmental problems. (Barry 2005:316)

The domestic preoccupation fits, of course, with the political desire to secure a comparative advantage in the global economy – politicians are answerable to the present generation of constituents in their own country only, and voters have a justifiable concern with economic stability. But the domestic preoccupation fails to recognise the extent to which the global economy itself contributes to environmental problems.

Ecological modernisation does not, then, offer specific answers on the question of how to avoid the tragedy of the commons. But it is clear that, where the political will to achieve an international consensus is there, then the principles of ecological modernisation could be applied globally, to address commons type issues, such as climate change. The 1997 Kyoto Protocol can be studied as an example of the ecological modernisation approach in action – governments have agreed targets on carbon emissions, and have created a mechanism (tradable emissions permits) for the market to do what the market does best – find the most cost-effective way of meeting the targets. This should provide incentives for the development of new, cleaner technology. Setting aside the problems associated with the exclusion of major polluters like the US, India and China from the agreement,⁶⁶ and also setting aside concerns raised by many environmental scientists that the targets are not nearly ambitious enough, there are further concerns that the trading scheme does not work as it was hoped.

Trade in emissions permits within a country does not disrupt overall the amount of emissions that the country produces. But trade in emissions rights between countries may well result in country A producing more emissions than country B. While this may be advantageous to country B, it is not straightforwardly advantageous to the planet, for a couple of reasons. Firstly, it does not necessarily promote the technological innovation hoped for. The most cost-effective way of reducing emissions need not involve investment in new, cleaner technologies if increased polluting rights can be purchased with the profits from polluting activity. Secondly, it does not even guarantee environmental protection. If country A has oil reserves in an ecologically sensitive natural wilderness, and country B has natural features that make hydropower a cheap and viable energy source, then allowing country A to purchase emissions credits from country B may give country A an incentive to exploit its oil reserves, thereby disrupting a sensitive ecosystem. Clearly, in this example, the environment has not gained. Note that the deficiency is not in the market. The market is efficient precisely because it does not require an ‘overseer’ of some kind to coordinate action. The free market environmentalist is quite correct in arguing that political or technical overseers are less efficient at communicating information with different actors than uncoordinated market prices are. Yet

⁶⁶ It looks likely that these countries may well be participants in the yet to be negotiated successor to the Kyoto Protocol (Bhat et al 2007).

coordinated action is precisely what is needed to achieve environmental sustainability.

There is also a question of ethics lurking in the background here. Suppose the initial allocation of trading permits across a scheme involving four countries gives an equal number and value of permits to each country as shown in table 1.⁶⁷ At T1 each country has an equal right to pollute up to a certain level, which overall represents a reduction in the level of emissions, as shown below in table 1.⁶⁸ A year on, at T2, trade between permit holders has altered the rights to pollute held by each country, such that some now emit more than what might be thought their ‘fair share’ of pollutants.

Table 1

Country	T1 Allocation	T2 Allocation
A	25	35
B	25	15
C	25	10
D	25	40
Total	100	100

Now suppose that the distribution of initial allocations is in fact determined, not equally, nor by population size, but by a measure of the capacity that the territory of the country has to absorb pollutants, that is, the ecological capacity, which, in the case of carbon emissions, we might crudely measure in terms of the amount of land in that country that is covered by trees. The figures at T1 and T2 would then be as shown in table 2. What this means is that countries B and D use more ecological resources than are available within their own territories. They run at an ecological deficit, while countries A and C have a surplus (shown in table 2). As long as the surpluses balance or outweigh the deficits, then there is a sustainable equilibrium. The ecological modernisation approach accepts this. Precisely because it takes a supply-side approach, it has nothing to say about the distribution of the consumption of ecological resources (Barry 2005:311). Hence, David Pepper argues that ecological modernisation ‘is likely to foster continued attempts at displacement and externalisation of both environmental and social costs’ (Pepper 1998:1).

Table 2

Country	Eco-capacity	T1 Allocation	T2 Allocation	Surplus/Deficit
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⁶⁷ In the case of Kyoto this was not the case, but this is supposed for the sake of a simple illustration.

⁶⁸ Creating a ‘right’ to pollute is itself problematic, but again, let us set this issue to one side.

A	25	25	15	+10
B	5	5	10	-5
C	30	30	20	+10
D	40	40	55	-15
Total	100	100	100	0

Turning to the question of intragenerational justice, though, this is a matter of concern. Ecological modernisation relies on the idea of being able to pursue a comparative advantage in the global economy to make progress on environmental issues. That presupposes inequality. Inequality *per se* may not be a bad thing, indeed, natural inequality is inescapable – nature has distributed some ecological resources unevenly. But it was claimed above that substantial economic inequality is a factor in the unequal distribution of environmental harms. Insofar as this claim is justified, ecological modernisation may further contribute to, rather than eliminate, the displacement of environmental harms to poorer countries, especially where ecological modernisation policy maintains a domestic focus. Moreover, by accepting inequality in terms of the amount of ecological resources that can be consumed, tied to relative economic power, the ecological modernisation approach accepts, indeed, endorses, considerable injustice within the present generation. In effect, the poor still have very limited opportunities to express their preferences in the market.

On the question of intergenerational justice, the results are more positive. Advocates of ecological modernisation typically give enthusiastic endorsement to the precautionary principle, which requires proof that a given product is safe before that product can be made available on the market. Where the evidence is disputed, the product cannot legitimately be made available. Thus, even though future generations cannot express a preference in the market, the acceptance of this element of political interference in the market allows the interests of future generations to be safeguarded, provided the political will is there. This acceptance of limited political interference in the market indicates a key difference between ecological modernisation and free market environmentalism. That said, where the solution to the tragedy of the commons proposed by free market environmentalists was clear, the ecological modernisation approach to this problem was less certain. Thus there is cause for

concern as to whether an ecological modernisation approach could guarantee future generations the ecological inheritance they might wish for.

In summary, the ecological modernisation approach also cannot adequately answer the three questions that form my evaluative framework. The benefits of the hybrid strategy of government-set market-achieved goals to protect the global commons looked uncertain. While there was a clear commitment to intergenerational justice, the question of intragenerational justice was largely ignored in the ecological modernisation model. Moreover, like free market environmentalism, ecological modernisation implicitly accepts the ‘right’ (if it may be called that) of some countries to run an ecological deficit, which clearly must be at the expense of other countries. Finally, ecological modernisation does not challenge, but rather embraces, the export-led growth model of development that neoliberal economics encourages, and which has to date has led consistently to the increased consumption of ecological resources. This, it seems to me, is not a robust understanding of environmental sustainability.

5.3.3 Ecological economics

Ecological economics is by far the most radical (in terms of most strikingly different from currently prevalent ideas about economic organisation) of the three approaches considered here. While both free market environmentalists and ecological modernisation advocates accept some of the key principles of neoliberal economics, for example, that growth is good for the economy, that growth should be measured in terms of total economic activity, and that growth is potentially limitless (given the right technology), ecological economists, such as Martinez-Alier and Schlupmann (1991), Gowdy (2000; 2003), take a very different approach. They question growth as the central goal of economic policy, reject undifferentiated growth as a measure of well-being, and recognise limits to growth insofar as countries are enjoined to live within their ecological capacity. If there is to be growth in the economy it must be separated from physical growth (Goodland 1995). This is also an aim of ecological modernisation, but whereas ecological modernisation expects the market to find ways of growing the economy without increasing the material throughput,⁶⁹ ecological economics proposes the setting of a ‘sustainability boundary’, to be determined by the ecological capacity of the country. The economy must not then be allowed to surpass

⁶⁹ The amount of material resources extracted from the environment, converted into products, and then into post-consumer waste.

that boundary. Thus one of the key prisms of analysis is the ecological ‘carrying capacity’ of either the earth as a whole, or a particular state.

Practically, Goodland and Daly (1996:1004-1005) propose that economic management focus on maintaining natural capital for future generations, but, as discussed above, a more robust account of sustainability would focus on the integrity of the ecosystem. This can be achieved by ‘using key environmental indicators to define the level of environmental capacity’ (Jacobs 1991:95),⁷⁰ and then, through a mixture of regulation and tax incentives ‘constraining the economic behaviour of firms and households’ such that the boundary is not breached (Labaras 2001:90). Jacobs, refers to this two-stage process as ‘sustainability planning’. The political level at which sustainability planning takes place depends on the impact that a particular issue has (Jacobs 1991:97). To return to a couple of earlier examples, carbon emissions have a global rather than a local impact, so global planning is necessary. The problem of over-fishing in a particular river, on the other hand, can be resolved by local planning. This flexibility as to the political level at which decisions are made is described by E.F. Schumacher as ‘appropriateness’ (Dobson 2000:106), and has significant implications for political institutional arrangements, as will be discussed in chapter 6. A reflexive approach to policy is also mandated, since the integrity of the ecosystem must be continually monitored, and the sustainability boundary revised, where necessary, to sustain the environment as technological innovation, population levels, and other variables, fluctuate. Like ecological modernisation advocates, proponents of ecological economics endorse the precautionary principle, but unlike those in favour of ecological modernisation, ecological economists also engage directly with questions of consumer demand, and in particular the scale of economic activity relative to ecological capacity (Daly 2006). Thus while it is recognised that a great deal can be achieved by improving the efficiency of energy-consuming products, such as cars, and finding new and more efficient ways to recycle post-consumer waste, not using a car and avoiding waste altogether is considered preferable to efficiency improvements or recycling.

Looking at our three question framework, the solution to the tragedy of the commons is clear – sustainability planning can feasibly be expected to protect the

⁷⁰ The scientific capability is for the most part there for this. Ecologists use the presence of key ‘indicator species’ to determine the health of a river. At the global level, the IPCC, a global consortium of scientists producing peer-reviewed studies, could provide the kind of information that would be needed to set a sustainability boundary.

commons. This also serves intergenerational justice well, which is further enhanced by ensuring that the present generation does not live beyond its ecological means. With respect to intragenerational justice, ecological economics also has much to recommend it in that it pays detailed attention to the distribution of both consumption of environmental resources and environmental wastes. Thus we would not expect to find poorer communities disproportionately suffering from environmental degradation as we do now.

That said, there are also a number of questions unanswered. In particular, it is unclear what level of welfare poorer countries could expect within an ecological economics framework. Although ecological economics does not exclude growth, markets are to be severely restricted; growth is only permissible when achieved in ways that do not increase material throughput, and annual growth rates are expected to be much less than the 3% that is conventionally thought to be quite healthy. This closes one door to economic development for much of the Third World. The alternative, perhaps, is redistribution of wealth, or at the very least welfare, in terms of technology transfer, education, and almost certainly a relaxation of patents of medicines and agricultural products. That may be more realistic as a means to ending poverty – a recent New Economic Foundation (NEF) study (2006) suggested that poverty-reduction pursued through conventional economic growth is likely to be ecologically disastrous over the long term – but there is limited political will for such action in Europe and even less in the USA, and in developing countries there may be justifiable suspicion at having welfare defined by others on their behalf. A further problem is that sustainability planning, a central strategy of ecological economics, may lack political appeal in view of the Soviet experience of planned economies. The planning implied here is closer to management of human-environment relations than the setting of production (and consumption) targets practised in the former Soviet bloc. Ecological economics does not eschew markets *per se*, but the market is to be heavily regulated, and the ecological limits of permissible *material* growth are clearly defined. This would be likely to have the effect of eliminating a considerable amount of global trade, for example, in products that can be made domestically, and in agriculture, the transport costs of importing food stuffs out of season would be substantial.

These latter points highlight a further problem. Sustainability planning would depend on public and political support for its effectiveness to a far greater extent than

either free market environmentalism or ecological modernisation. The transition from growth-led economies to sustainability planning as the organising principle of both domestic and international economies would be extraordinarily difficult, and would mean overturning the fundamental principles that underpin both national economic policies in Europe, and the policies of international financial institutions such as the IMF and the WTO. At present there is neither the political will nor public appetite for such radical and far-reaching change. It is also difficult to see how one country or even a small coalition of countries could move towards sustainability planning on their own, without facing economic collapse. In short, ecological economics demands a strong, and global or near global consensus on the necessity of working towards a strong model of sustainability that, at present, is conspicuously absent. For this reason, Labaras (2001:92) describes ecological economics as ‘incomplete’, providing, as it does, a near utopian vision, without any clues as to how it might be achieved.

In summary, then, ecological economics provides a convincing model of a sustainable economy that can protect the global commons and meet the demands of intergenerational justice as well as at least some of the demands of intragenerational justice. On the other hand, it seems less politically viable, at present, than the alternatives studied here. Contrary to Labaras’ conclusion, this seems to me to be reason for further research, rather than abandoning the idea. Detailed economic analysis of a transition to an economy organised around the principles of ecological economics is beyond the scope of this thesis. But green theorists have suggested innovations in political institutions that could orchestrate a growth in public support for such a transition. These potential political strategies are the subject of the next chapter.

5.4 Conclusion

The features of a definition of environmental sustainability as identified here can be summarised as follows: Firstly, environmental sustainability requires an ontological perspective in which humans are understood to be ecologically embedded beings. On the other hand, it does not necessarily require a commitment to the belief that nature has intrinsic value. Thus, environmental sustainability can be adequately theorised from an anthropocentric perspective. Secondly, neither a clear, nor a robust definition of sustainability emerges from differentiating needs and wants, and prioritising the needs of future generations over the wants of the present. A more

useful approach, in the sense of being clearly intelligible and translatable into policy goals, is Norton's idea of the integrity of the ecosystem as a standard by which to assess models of environmental sustainability.

Of course, the integrity of the ecosystem will in part be a function of the stresses to which it is exposed, hence the third area studied here was the specific problems associated with a global market economy. These were analysed to yield a three-question framework for analysing three models of sustainability; free market environmentalism, ecological modernisation, and ecological economics. Given its focus on the scale of the economy and the ecological capacity of the environment, ecological economics was found to offer the most persuasive answers to the issues of addressing the tragedy of the commons and the problem of discounting, the demands of intergenerational justice, and intragenerational justice.

The political implications of adopting ecological economics as a model of sustainability included affirming the principle of 'appropriateness' in deciding at which political level decisions are to be made, and reflexiveness as standard attitude to policy decisions. It is clear that the ecological economics approach mandates substantial changes to living patterns and economic organisation, as well as political institutions, and the transitional path from a global market economy organised around neoliberal principles to an economy organised on the principles of ecological economics remains unspecified. This, I argued, suggests the need for further research, rather than to abandon the idea. But I also suggested there is little evidence at present for public or political appetite for such fundamental change, therefore one of the tasks of theorists of environmental sustainability is to explore the ways in which political institutions might be reformed in order to foster support for such a robust model of sustainability. The focus of the next chapter, therefore, is green interpretations of citizenship, democracy, and justice.

Chapter 6: The politics of environmental sustainability:

Citizenship, democracy, and justice

In the previous chapter I argued that an ecological economics approach to sustainability was in principle the most persuasive one. Ecological economists argue that there are physical limits to the material throughput that the planet can sustain, and that patterns of production and consumption need to be modified so as to be brought within these limits. It is important to note that such limits are not fixed, however. They are variable in relation to the size of the human population, the level of welfare that the population expects or requires, and the level of technological development. Nevertheless, ecological economists stress that a vision of human development predicated on ever-continuing economic growth is fundamentally misguided. Thus, changes in our economic relations are both necessary and inevitable – if we do not make such changes voluntarily, it is feared that increasing environmental degradation will precipitate ecological conditions that will significantly disrupt current patterns of living (see chapter 2).

Two questions, then, seem to be in need of an answer: Firstly, what political arrangements would adequately ground a sustainable society? Secondly, how do we get there from here? Pursuing answers to these two questions has caused green theorists some difficulties. Many utopian visions of a sustainable future characterised by harmonious relations between nature and humans, and humans and humans, have been published and debated within green theory (de Geus 1999; Bookchin 1987). They have also been attacked for their very utopianism (see Pepper 2005). On the other hand, those taking an incremental approach to realising environmental sustainability (by proposing policies that would reform our current institutions) have been rejected because they risk co-optation and arguably advocate a shallow reformism that is inadequate to the challenge posed (Hancock 2003).

Given this quagmire of debate, what I present here is a discussion of the principles of citizenship, democracy, and justice, as they have been (re-)interpreted in green theory. The aim is to critically engage currently dominant political models, principally liberal democracy, as well as appraise green conceptions of the political conditions for environmental sustainability. That is not to say that there is a unified green vision of what are the appropriate models of citizenship, democracy, and justice for sustainability. The present chapter explores a selection of recent proposals for new

ways of understanding the enduring concepts of citizenship, democracy, and justice, that have long been seen as corner stones of political institutions. The deliberative democrat is held to be more likely to advocate environmentally sustainable decisions, while the debates in the literature over how citizenship is best understood point towards a desire on the part of green theorists to link environmental duties with the ecological footprint. Rights, however, are not emphasised, which, I argue, undermines claims that environmental politics can foster social justice. Thus theories of citizenship also have implications for green theories of justice, which are the subject of the final section of this chapter.

6.1 Greening Citizenship

Green interpretations of citizenship are many and varied. In addition to competing accounts of the duties and virtues of green citizenship, distinctions are also drawn between weaker and stronger versions, characterised as ‘environmental’ versus ‘ecological’ citizenship by Andrew Dobson (2003), or ‘environmental’ versus ‘sustainability’ citizenship by John Barry (2006a), ‘passive’ versus ‘active’ by Graham Smith (2004). Although there are differences between the three contrasts, broadly speaking, the former category in each case is seen as a model of citizenship that does not engage critically with prevailing norms or institutions, but modifies behaviour in response to either economic incentives or legal restrictions. The latter category entails a more wholesale change, not only in behaviour but also in values. It is this latter model of citizenship that is generally seen to be connected with deliberative democracy. While behaviour might be changed by fiscal policies such as a tax on plastic bags, it is impossible to tell whether the change in behaviour has been accompanied by a change in values, or, if the tax were withdrawn, the environmentally sustainable behaviour (not using a new plastic bag for each visit to the shops) would also discontinue (Dobson and Bell 2006:3). On the other hand, advocates of deliberative democracy (and citizenship education⁷¹) regard part of its appeal as being the capacity to change values, with changes in behaviour spontaneously following. Whereas the passive citizen responds to ‘altered incentive structures’ to consume less and recycle more; the active citizen participates in

⁷¹ Citizenship education, mostly directed at school children, has been the subject of considerable debate among green scholars in recent years. I touch on this debate only tangentially in what follows, leaving it to others to consider the desirable scope and content of citizenship education, and its relationship to the (green) state. For a discussion of these issues, see Bell (2004).

political decision-making, either through deliberative forums, or through collective action to effect institutional change (Smith 2004:144). Barry (2006a:33) adds that it is not just a right, but a duty, of sustainability citizens, to engage in the latter type of activities.

Some feminists have at this point raised doubts about the literature on environmental citizenship. As well as speaking in rather hackneyed terms of ‘masculine’ and ‘feminine’ virtues, where the masculine virtue is ‘wildness’ and the feminine virtue is ‘caring’,⁷² greens have also been guilty of failing to take note of earlier feminist criticism of republican, and particularly Aristotelian, notions of citizenship, from which John O’Neill (1993) and James Connelly (2006) draw inspiration. Sherilyn MacGregor complains of green citizenship theorists in general:

They assume a gender-neutral citizen and a gender-neutral model of citizenship practice that mask the realities and specificities of gender inequality while depending on a division of labour that frees autonomous citizens to participate in the public domain. (MacGregor 2006:106)

An example of this tendency is evident in the duty to respond ‘passively’ to altered incentive structures in the economy (that would tend towards a re-intensification of labour processes, especially in the domestic sphere), whilst simultaneously ‘actively’ participating in time-consuming deliberative forums for decision-making. This conundrum leads some to wonder ‘who will be minding the kids?’, in Mary O’Brien’s phrase (quoted in MacGregor 2006:110). There is also an invidious tendency among some environmentalists to regard the problem of overpopulation as a problem concerning only women (Wissenburg 1998:84). But what is of most concern to feminist commentators is not the chauvinism of a male-dominated discipline (irksome though that is), but rather, that green theorists of citizenship have been blind to the structural inequalities that the emphasis on citizenship responsibilities may come to mask and re-entrench. Moreover, the focus on duties rather than rights devalues the rights-based mechanisms that have been developed (and fought for) to underwrite equality in society. As will be discussed below, it cannot be assumed that deliberative democracy will be blind to inequalities in society. Therefore, strong rights to equal

⁷² I grant that some ecofeminists have also emphasised so-called feminine virtues of caring and compassion, and have argued on this basis that women are better at being environmentally friendly than men. I agree with Eckersley (1992) that this argument is misguided. MacGregor (2006) stresses the oft-made point that the idea of women as caring mistakes a socialised disposition for a natural predisposition.

treatment would seem to be an important mechanism for ensuring an equitable distribution of duties.

Duty does indeed loom large in green theories of citizenship. Connelly claims that '[e]cological citizenship is not characterised by rights but by the self-imposed duties of the citizen' (Connelly 2006:63). This contrast between rights and duties is frequently held to be one of the defining features of green citizenship as opposed to liberal democratic citizenship. The liberal democratic citizen is characterised as one whose relationship to the community is determined by the possession of certain rights, and who enters the community in order to further his own privately determined ends, with regard to which the state (or government of the community) is neutral (de-Shalit 2000:104). In the republican tradition in citizenship, on the other hand, there is a 'focus on deeper reciprocity between rights and duties' (Connelly 2006:63). In other words, the entitlement to the rights afforded by the community is to some extent dependent upon the performance of certain duties. This relationship is constitutive of the republican community insofar as it is conceived as a communal enterprise, whereas the liberal democratic 'community' affords opportunities for individual enterprise and is indifferent to the goals of each of its members, unless those goals threaten the ability of others to pursue their ends. Thus in liberal democracies there is a reciprocal tolerance, and the emphasis is on rights rather than duties. Some sceptics of the idea of environmental human rights base their criticism on the egotism of a rights-based culture, which, so the argument goes, leads to a disregard of our impacts on others (people and non-human beings), and absolves us of our reciprocal responsibilities (see chapter 7).

6.1.1 Stewardship

Terence Ball (2001) proposes the green virtue of what he calls 'punctuated reciprocity', whereby duties to others do not depend upon standing in reciprocal relations with them. Instead, we have a duty as members of an intergenerational community to provide for future generations, just as we would wish that future generations had provided for us. Such a norm, if widely fostered, would serve as a corrective to the practice of discounting the future, discussed in chapter 5. Punctuated reciprocity also invokes a particular model of community that again stands in opposition or contradiction to the liberal democratic one. Ball sees the community in something approaching Burkean terms (although the communitarianism of Burke is

not necessarily implied), as an ongoing enterprise across generations that stand in ‘asymmetrical’ relations to each other with regard to the duties and rights each can exercise. The idea of the community as ‘stewards’ rather than ‘sovereigns’ has also been proposed by Robin Attfield (1998), which again has implications for the practice of discounting. Whereas a sovereign authority may choose not to discount the interests, or ‘rights’ if there be any, of future generations, the steward is not so entitled. The relationship between the steward and its heirs is not, and could not be, reciprocal, but there is nevertheless a duty on the part of the steward not to discount the heirs’ interests or rights.⁷³ A further endorsement of stewardship comes from Barry (2002) who proposes ‘ecological stewardship’ as a virtue-based approach to green citizenship, which, he argues, should be understood as a reflexive practice for coping with the ongoing task of managing human-environment relations in a way that necessarily links present activities to future generations.

There is, as Edward Page (2006:115-117) notes, a ‘motivational assumption’ present in all of these accounts of environmental stewardship, which is that people have a sentimental concern for and interest in future generations, often, but not exclusively, of their own families. What this means for citizens is that they are not free to pursue their own interests without regard to the interests of others, rather, they have a duty, for the sake of their grandchildren, not to be the self-interested rational egotist of neoliberal economic theory, but instead to act to preserve the integrity of the environment. I argue below, in section 6.3, that this is an important alternative to self-interest, which is insufficient as a motivational force for maintaining environmental integrity when generations do not overlap, but the stewardship argument is vulnerable to the charge that people do not, in fact, care about future generations.

A further problem with the stewardship model is whether citizens can be said to have duties in virtue of benefits they receive non-voluntarily (Page 2006:123). For example, if I inherit a cat from a friend, though I did not ask to receive this cat, and in fact dislike cats, then it is not self-evident that I ought to keep the cat and look after it, simply because I was given this ‘benefit’. However, it may be possible to overcome the non-voluntary benefit problem if, adapting Thomas Pogge’s approach to human rights (see chapter 4), the duty to act as an environmental steward is cast in terms of negative rather than positive duties. A full elaboration of this proposal is not the

⁷³ I leave open here the question of whether future generations can have rights. For a discussion of this question, see Attfield (1998). I also discuss the issue briefly in chapter 7.

subject of this thesis, however, a brief sketch can be given of the type of citizenship duties involved. A negative duty not to diminish the integrity of the environment would be less onerous than positive duties to preserve the integrity of the environment, since it would require only that environmental citizens refrain from engaging in environmentally destructive behaviour.⁷⁴ A positive duty to act as stewards, on the other hand, would require citizens to act in particular ways, such as participate in deliberative forums or engage in community sustainability work, and so on.

The positive/negative distinction does not follow the same lines as the distinctions noted above between ‘active’ and ‘passive’ models of citizenship, since the citizen as steward is not passively responding to altered incentive structures, but rather, is actively pursuing a particular way of living that avoids contributing to environmental degradation. Should individual citizens find that they cannot avoid failing to honour their negative duty not to diminish the integrity of the environment, then derivative compensatory obligations might follow, such that, in practice, environmental citizens might find that they are after all obliged to engage in deliberative forums or sustainability work. But unlike Pogge’s negative duty not to contribute to the underfulfilment of human rights, it is not impossible to honour one’s negative duty as environmental steward. This might be achieved by living sustainably, for example, buying locally grown organic produce, living in carbon neutral homes, using public transport, etc., or perhaps by living in an eco-anarchist community, though, as I argue below, it is not, in my view, desirable, that this latter option be the only way of discharging one’s citizenship duties.

In any case, the stewardship model of citizenship is capable of being endorsed from a variety of perspectives and being adapted to different models of political organisation. On the other hand, both communitarian citizenship and post-cosmopolitan citizenship imply particular models of community that depart substantially from contemporary norms.

⁷⁴ However, positive action to improve a relatively poor environmental inheritance would fall beyond this obligation, hence it might not yield a strong model of sustainability if the starting position were poor.

6.1.2 Communitarian citizenship

Avner de-Shalit endorses Michael Jacobs' observation that '[l]iberalism [...] fails to explain to people the relationship between social goods and their own well-being' (de-Shalit 2000:93); de-Shalit therefore rejects liberal democracy in favour of communitarian socialism, inspired in part by the Rousseauian model of small rural communities mentioned above, and in part by the experience of work collectives such as the Israeli kibbutz. 'Socialism', he explains, 'is a theory of community as collective action, with citizenship being attuned to this collective action' (de-Shalit 2000:199). Thus part of being a citizen is working for the common good of the community.⁷⁵ Community is defined here as 'a process of collective reflection on ideas and identity' (de-Shalit 2000:110). So citizenship also involves engagement with, and renegotiation of, notions of the identity of the community, as well as reflection on and collective deliberation about how the community should live.

It is this process of reflection and deliberation, that, according to de-Shalit, saves his model of communitarian socialism from some of the standard criticisms of communitarianism. Communitarian societies have often been thought insular and potentially oppressive to anyone who does not embrace the majority vision of the common good. Marcel Wissenburg warns that:

Green communitarianism would be the nightmare of Utopia come true. It would be a world of fear – fear for new techniques, developments and ideas, fear for environmental risks and dangers, fear for one's neighbours. To ensure that a communitarian society would conform to a particular ideal of the environmentally friendly sustainable society, important liberties would have to be curtailed. [...] At any rate, the freedom to transform society away from the ideal would be gone. (Wissenburg 1998:224-225)

De-Shalit disagrees. By putting collective reflection at the centre of his model of community, he argues that the community is constituted by an openness to debate and ideas and therefore will not become oppressive. Ideas or beliefs are subjected to the critical evaluation of citizens, and citizens only 'rationally endorse' the ideas of the community if they are seen to be rational. Reasoned commitment to shared ideals is

⁷⁵ Page (2006:120) suggests that the environmental credentials of communitarianism are weaker than de-Shalit believes since it is the survival of the community that matters, which may impede cooperation across communities that affirm different values, which of course is crucial to resolving global issues such as climate change.

the test of membership of the community, thus de-Shalit's communitarianism escapes also the 'harsh partiality' of communities where belonging is based on ethnicity, race, or some other historical connection.

Therefore, it can be said that this is not a model of community vulnerable to the liberal critique of communitarianism, i.e. that it treats the 'other' or some minorities as not equal. Not only are the institutions open to procedures that allow minorities to express themselves, but minorities are encouraged to do so, since the majority needs its beliefs to be questioned in order to maintain their vitality. (de-Shalit 2000:111)

This last claim – that the majority needs its beliefs to be questioned in order to maintain their vitality – is surely a proposition John Stuart Mill could readily endorse, being, as it is, entirely consistent with his defence of free speech. Thus it would seem that liberalism is not so morally bankrupt after all. But it is difficult to believe that the majority would benevolently insist on having their beliefs questioned so as to maintain vitality without recourse to a rights-based mechanism to defend the minority if they questioned beliefs more vigorously than the majority cared for. Or perhaps Wissenburg (above) is being too sceptical; it may be that, were a committed group of communitarian socialists to form a community, it would turn out to be a positive Utopia that not only tolerated but encouraged difference. The empirical evidence is limited; some small eco-anarchist communities do exist, but it is not clear from this how plural societies could easily organise themselves in this way. Alan Carter (1999:255-272) points to anthropological studies of tribal societies to argue that a society of eco-anarchist communities would readily accommodate difference by periodically changing composition; those who found they were not accepted by the majority in one community could simply move to another. This is not a solution likely to persuade liberals such as Wissenburg.

6.1.3 Post-cosmopolitan citizenship

Dobson's work on citizenship has another take on the debate about the nature of the political community, which takes another view of the motivation to discharge one's environmental duties. He argues that a special feature of globalisation is that many of the decisions we make impact on the lives of other people who we may not think of as members of our community, and of whom we may not even be aware (Dobson 2003:ch.1). As discussed in chapter 2, globalisation is an unequal process of

interactions: the power that some people in wealthier countries have to influence, however unwittingly, the lives of others in poorer countries, is generally not reciprocated. The most common medium through which such power is expressed is market transactions. In view of the impact that market externalities have on the environment, and that environmental degradation has on the global poor, Dobson argues that ‘we’ are ‘always already’ in relationships of justice with the poor, in virtue of the harm inflicted on them by markets and the global institutions that support them. Put simply, ‘the ecological footprint produces political relations by producing circumstances of justice’ (Dobson 2006a:448).

Dobson (2006b) is clearly sympathetic to Pogge’s account of the demands of justice to the global poor, but rather than constructing a more onerous model of *human rights*, as Pogge does (see chapter 4), Dobson grounds his proposals for achieving justice in the *duties* of a new type of citizenship – post-cosmopolitan. The post-cosmopolitan community is created by the patterns of harm that globalisation weaves:

post-cosmopolitan citizenship’s ‘community’ is created by the ‘historical’ or (better) ‘always already’ obligations of globalization. This differs markedly from the ideal and discursive boundaries of cosmopolitanism in its (post-cosmopolitanism’s) rooting of the space of citizenship in ‘global actualities rather than transcendent principles’. (Dobson 2003:81)

For Dobson, this account of citizenship represents an improvement over cosmopolitanism because it rests on a stronger motivation for action. Cosmopolitan obligations are generated by our shared humanity. The duty to take action to assist those in distress is therefore the duty of the good Samaritan – in short, cosmopolitans say one should help others because individuals have equal moral standing and because one is able to help. In post-cosmopolitanism, on the other hand, obligations are generated by a prior action that has caused harm. So, whereas cosmopolitanism implies obligations to all mankind,

[p]ost-cosmopolitanism’s rootedness in identifiable relations of actual harm, in contrast, limits obligations to those implicit in these relations. These may still be extensive and demanding, as in the case of global warming. But this very example makes clear that obligations are not those of ‘all humankind’ since not all humankind contributes unsustainably to global warming. (Dobson 2003:81)

The burden of responsibility for action to counter global warming falls most heavily on those who have contributed to it. The model post-cosmopolitan citizen is not, then, the good Samaritan, but rather, the perpetrator of an injustice who readily seeks to redress the harm done. Dobson (2006b) characterises this motivation as ‘political’ rather than ‘moral’ because it is a relationship of justice, rather than benevolence. While benevolence requires us to be humanitarians and respond to need, justice requires us to take account of the extent to which the need we encounter is our fault. More importantly, the individual has a choice about whether or not to be benevolent, but cannot legitimately choose to be unjust. However, recognising someone as a ‘recipient of justice’ (in Dobson’s phrase) is itself a moral issue, resting on moral claims about what it is to be a human. To claim that humans are ‘always already’ in relationships of justice is also implicitly to claim that all humans are equal and that one owes justice to those who are one’s equals. The argument of those who reject cosmopolitanism is that non-citizens are not the moral equals of citizens of a particular community. Indeed, some claim that, while all humans are entitled to certain basic goods, our duties to fellow citizens are stronger than our duties to non-citizens, thus, discounting the interests of outsiders is legitimate, because the interests of those within the community take precedence. For Dobson, on the contrary, the relevant political relationship is not shared membership of a political community defined in terms of nations or states, but rather, the relationship between perpetrator and victim of harm.

I want to suggest the possibility of *unreciprocated and unilateral* citizenship obligations, and to claim that this type of obligation is both definitive of ‘post-cosmopolitan citizenship’, as well as that which distinguishes it most obviously from liberal citizenship and from the reciprocity of civic republican citizenship. (Dobson 2003:47)

The possibility of unreciprocated and unilateral obligations has some attractions, not least those indicated above when discussing Ball’s idea of ‘punctuated reciprocity’. But linking these obligations to past harms, rather than encouraging them independently, raises some problems.

Firstly, Hayward suggests that if citizenship is restricted to those who have caused harms, then the victims of ecological harms are non-citizens. Dobson (2006a:449) responds that this apparent inequality is only a problem if you regard citizenship as ‘status’ rather than as ‘practice’. Citizenship as practice is Dobson’s

concern, the status of being a post-cosmopolitan ecological citizen indicates that you have caused harm, it is not, therefore, a 'status' people would ordinarily covet. Not everyone will have citizenship duties, or not all the time, nor equally, because some are more responsible for environmental problems than others. The burdens of environmental citizenship fall most heavily on those most (historically) responsible. Hayward rightly points out that 'we do need to know how ecological citizens are to be identified' (Hayward 2006:439), and on this matter Dobson is unclear. Dobson claims that anyone who has been complicit in causing ecological harm has an obligation to engage in citizenship practices. But what if people refuse? Their peers might try to shame them into action, but this will not succeed if the prevalent opinion in society permits one to shun one's ecological duties, a situation not beyond the realms of possibility. Dobson (2006a) explicitly regards citizenship as a horizontal, not a vertical, relationship which implies an absence of an authority common to all citizens that could compel recalcitrant citizens to undertake their duties. A further question is what duties might fall on the descendants of people who do not fulfil their citizenship obligations. Dobson speaks of a 'historical community of obligation' (Dobson 2003:81). Applied beyond the realm of environmental issues, this might be taken to imply, for example, that the present descendants of former slave owners should pay reparations to the descendants of slaves. Whether or not that should be the case is not a question I wish to pursue here. Rather, my point is that Dobson's argument leaves unclear who precisely will be environmental citizens.

Secondly, if citizenship practices are unilaterally undertaken, then the role of the victim continues to be passive, indeed, cannot be otherwise. Put differently, if someone crashed into my car, I would want him to pay for the repairs. But I would be thought naïve if I trusted the reckless driver to diligently attend to the repairs himself. I would want to be able to press my legitimate claim against him. In short, I would want to be able to exercise rights. Dobson speculates briefly on the possibility of extending existing notions of human rights to include environmental rights (2003:90-93), but he characterises citizenship practices as duties rather than rights, and does not seem to recognise a specific need for victims of ecological injustice to be able to press rights claims on those responsible for ecological harm. This deficiency leads to a third problem. Dobson (2003:34-35) claims that his citizenship proposals are informed by a feminist ideology. I take this to indicate that he is conscious of the way that power structures in society can serve to disenfranchise people who are theoretical equals. It

is all the more surprising then that he is not alert to the extent to which his own proposals may be disenfranchising. Though he would certainly not support the ‘winners’ of globalisation having any more power over the fate of the ‘losers’, by placing responsibility for addressing ecological injustice in the hands of those who caused it, he re-entrenches their power over the lives of those who have been harmed. Furthermore, by emphasising the unilateral duties of the powerful whilst apparently undervaluing the rights of the weak, he denies the weak the tools they need to reclaim power over their own lives and define for themselves what justice demands. If the extent to which redress is justly required is determined by those responsible for injustice, it would be naïve to think that justice would really be done. But this is the trap into which Dobson seems to have fallen. He builds a model of citizenship on ‘global actualities’ whilst ignoring the actualities of human fallibility.

That is not to say that the model of citizenship Dobson proposes is redundant. On the contrary, it demonstrates that citizenship is intimately connected with justice, and provides one of the clearest formulations of a widespread desire among greens to link political obligation to the ecological footprint. Yet it appears that separating justice from rights raises difficulties. One of the unresolved issues of environmental citizenship, whether construed as a stewardship role, or post-cosmopolitan citizenship, is the motivation to act in green ways, to discharge one’s environmental citizenship duties. The stewardship approach assumes that people are motivated by concern for their immediate heirs, but some environmental problems will concern people who will live many generations from now. In Ball’s notion of punctuated reciprocity as a stewardship model, the obligation to future generations is more generalised, but there is nonetheless a motivational gap to be addressed, a problem I return to in relation to justice and future generations in section 6.3. Dobson’s post-cosmopolitan citizenship has a clear position on motivation but one that looks backwards rather than forwards, which I argue makes it less appealing than he suggests. Given the kibbutz model, de-Shalit’s communitarian citizenship could provide an explanation for motivation in terms of community solidarity and an environmental work ethic as constitutive of individual identity. But, as noted above, his defence of plurality and difference is unpersuasive in the absence of explicit recognition for minority *rights*. Although I concede that the empirical evidence is not there to authoritatively disprove de-Shalit’s claims, I am inclined to side with Wissenburg in fearing the potential for oppression

in communitarian citizenship. A tentative conclusion can be offered, then, that citizenship shorn of rights seems unpromising, and though greens have bemoaned the selfishness and individualism attendant upon the emphasis on rights in liberal democracy, the value of rights should not be neglected if the poor and minorities are not to be made more vulnerable. In the next chapter I therefore return to the theme of environmental human rights. In the meantime, it is appropriate to return to the question of what should be sustained and why. In chapter 5 I suggested that the integrity of the environment was the most appropriate benchmark of sustainability, and stated that ‘reflexiveness’ and ‘appropriateness’ were key to environmental decision-making. Greens have frequently endorsed deliberative democracy, both as a way of building these values into political institutions, and as an improvement on liberal democracy, which is attacked by greens as being inhospitable to environmental values. Deliberative democracy is also often said to be linked to environmental citizenship in that deliberation is held to foster an environmental ethic that will underwrite citizenship practices. In the next section, I assess the promise of deliberative democracy for environmental sustainability.

6.2 Liberal democracy, deliberative democracy, green democracy

There is no necessary connection between environmental sustainability and democracy (Achterberg 2001b). It is possible to argue that sustainability is a necessary precondition of democracy, in that life itself, democratic or otherwise, is threatened if we pursue unsustainable ways of living, but the reverse does not hold. Democracy is only good (or necessary) for sustainability if it achieves ecologically good outcomes, and these cannot be *guaranteed* by democratic procedures in a free society. Given the freedom to choose, people may not choose to adopt sustainable practices. On the other hand, there is also no necessary connection between environmental sustainability and authoritarian regimes. While Humphrey (2004) justifiably argues that the true empirical test of a green authoritarianism would require the existence of a green autocracy dedicated to environmental sustainability, there are non-empirical reasons to be sceptical of the merits of a ‘green Leviathan’. For non-environmental reasons, in the absence of an Aristotelian ‘best man’ to rule, democracy does seem to many if not most people to be the ‘least bad’ form of government available. It may, therefore, be advocated as a route to environmental sustainability if it is better able to facilitate a peaceful transition to an economy

consistent with the principles of ecological economics, or if it is better able to deliver social justice, which ecologists might value for both instrumental and non-instrumental reasons. In particular, Joan Martinez-Alier's (2002) work on what he calls the 'environmentalism of the poor' indicates an urgent need to instigate democratic procedures to negotiate the distribution of environmental harms and benefits. In light of these considerations, and given both the general popular appeal of democracy and the recent preference for democratic government evident in green theory,⁷⁶ my interest here is in democratic forms of government.

Greens have been deeply critical of the quality of existing democratic norms and procedures. Two primary concerns are raised – firstly, that liberal democratic states have become principally 'administrative' states (Dryzek 1992; Conca 2000), and secondly, that the norm of political equality is undermined by the prevalence of what is called 'interest group liberalism' (Anderson and Leal 2005; Baber and Bartlett 2005). The administrative state is held to be symptomatic of globalisation, the pressures of which oblige the government of any given state to function as a facilitator for capitalist enterprise. Government policy is therefore focused on maintaining a competitive advantage in the global market-place. In such circumstances, it is claimed, business interests inevitably trump environmental interests (Conca 2000; Mander 2003). This antagonistic relationship arises because of the government's reliance on tax revenues to fund public programmes, which are in turn crucial to the government's legitimacy. As discussed in chapter 5, ecological modernisation seeks to render benign this antagonistic relationship between the environment and business by diminishing the extent to which economic growth necessarily entails ecological destruction.

Ecological economists, though, are sceptical of the viability of this strategy in view of the need for ever-increasing economic growth in a global, market-driven economy (again, see chapter 5). Taking into account the problems of entropy and of fairly static natural rates of ecological regeneration, combined with an exponential increase in population, ecological economists argue that even an ecologically modernised economy cannot sustain growth at currently desired levels (Jacobs 1991; Goodland 1995; NEF 2006). Although most greens would acknowledge that 'nature' is to some degree constructed and that humans' capacities to use the Earth's resources

⁷⁶ Several volumes taking a positive perspective on the relationship between environmental sustainability and democracy have been published in recent years – see, for example, Barry and Wissenburg (eds) (2001), Doherty and de Geus (eds) (1996), and Minter and Taylor (eds) (2002).

to provide food and energy are a function of the level of technological development, it is nevertheless the case that increasing technological development cannot be relied upon to square the circle. Indeed, many argue that it is the relentless pursuit of technological development that has fuelled profligate consumption of ecological resources, consequently narrowing options whilst perpetuating the environmental problems that are the central concern of the green movement.

The problematic relationship between politics and business is said to be compounded by the incidence of ‘interest-group liberalism’, whereby well-organised and well-funded interest groups dominate the political agenda at the expense of democratic equality (Baber and Bartlett 2005). Although citizens have equal rights to vote, they do not have equal capacities to influence the media and the political agenda. Particularly disadvantaged in this scenario are poorer constituencies, or constituencies that are not represented at all in the political process, such as future generations of humans and non-human nature. The interests of such constituencies are said to be marginalised by political parties that depend on donations from private enterprises to fund campaigns, and that are more likely to be influenced by corporatist interest groups than by the concerns and claims of weaker groups in society. Thus the position of those already marginalised by poverty tends to be further compounded by the political process.

Another problem of exclusion is highlighted in Robyn Eckersley’s (2005) critique of ‘exclusive sovereignty’. Though undermined somewhat by globalisation in the experience of some countries (see chapter 2), the norm of sovereign autonomy enshrined in the Charter of the United Nations nevertheless continues to be asserted when states seek to resist pressure from neighbours over environmentally damaging practices. It has become almost a cliché to note that pollution does not respect state boundaries, and that environmental impacts therefore affect people who have no role in authorising them. Finally, contemporary liberal democracy is also accused of fostering ‘short-termism’, whereby regular elections, purported to ensure the accountability of politicians, discourage bold initiatives and long-term planning (and thinking), and again make politicians captive to powerful interest groups that may particularly focus their energies at election-time. None of this is conducive to the project of ‘sustainability planning’ discussed in chapter 5, which may reasonably be expected to require a collaborative effort between countries and generations. On the other hand, deliberative democracy builds into political decision-making the

reflexiveness that was said to be an essential feature of maintaining an economy organised around the principles of ecological economics.

6.2.1 Democracy and the politics of risk

The limits of liberal democracy are particularly apparent, it is argued, in the new situation in which citizens presently find themselves, characterised by Ulrich Beck as a 'risk society' (Beck 1997). The politics of risk, Beck argues, are a consequence of the production of increasingly hazardous materials in industrial processes. As technological development continues, these risks 'are no longer limited in scale, neither geographically nor in time nor socially; by the same token they cannot be covered by any insurance' (Achterberg 2001a:103). Examples include nuclear waste, which remains toxic for thousands of years, affects all people irrespective of age, wealth, gender, etc., and may cause toxic rains to fall many thousands of miles from the site of initial contamination. The ecological risks associated with global warming and the potential risks of the use of genetically modified organisms are further examples. The presence of such risks in society forces citizens to reflect on the values and choices that have given rise to these risks. Thus, in Beck's view, the late-industrial age has gone from being a period of 'autonomous' modernisation, in the context of which the development of technology was widely seen to be unqualified good, to 'reflexive modernisation', wherein citizens critically evaluate the costs incurred and the benefits gained from industrial activity. Wouter Achterberg (2001a:109) argues that bequeathing such risks to future generations (who had no input in creating these risks) constitutes a violation of their human rights, and that the defence of such initiatives as nuclear power on the basis that they increase the total stock of capital available to future generations is thus invalidated. However, the short-term focus of liberal democracy inhibits development of the long-term perspective that is crucial to a comprehensive understanding and evaluation of the risks of late-industrial society.

The conclusion of Achterberg and others who have drawn on Beck's analysis is that the appropriate democratic model for risk society is a deliberative one. The 'problem-solving' approach of the liberal democratic state is inhospitable to the more critical and evaluative questions that citizens confront with regard to public policy in the context of a risk society. Jan Hancock and Tony Evans (1998) argue that this 'problem solving' approach is also characteristic of the apparatus of the international

human rights regime. What is needed, they claim, is a critical approach oriented towards evaluating conflicting goals, rather than seeking compromise. Eckersley, whose theory of ‘critical political ecology’, inspired by critical theory, might be a suitable candidate, argues that the ties of community in the context of risk society are ‘no longer nationality, ethnicity, religion, or language but rather a common exposure to actual or potential ecological harm’ (Eckersley 2005:176). As a consequence, the appropriate model of sovereignty for the risk society is ‘inclusive sovereignty’. She argues that ‘citizenship type rights should be conferred on people outside a political community but likely to be affected by ‘proposed developments’’ (Eckersley 2005:176).

Clearly, then, the politics of risk have a significant impact on the green understanding of both the scope and character of democracy – deliberation is vital, and participation is to be the right of all those likely to be affected by any given decision. This approach to democratic politics complements the ecological economics perspective discussed in the previous chapter where the level of political decision-making is determined by E.F. Schumacher’s principle of ‘appropriateness’ – whether a decision is made by local, national, or international agents is determined by how localised are the implications of the proposed development. The traditional sovereignty of liberal democratic states is therefore compromised on two fronts; green democracy is variable as to the level at which decisions are made and as to the relevant constituents.

It is also apparent that green conceptions of democracy are tied up with citizenship. A key feature of the distinction drawn between the representative democracy typical of Western liberal democratic states and the deliberative democracy proposed in green theory relates to the way in which the citizen is conceptualised. Russell Keat (1994) has pointed out that people are able to act differently in different settings, so that while it may be true that in the market citizens typically act as consumers (that is, as rational egotists with individual preferences, privately and independently formed, which they seek to satisfy), in political forums people can, and often do, act as citizens (that is, as members of a community with a notion of what is in the public interest). The argument that follows from this observation is that, while liberal democracy treats citizens as consumers, or, rational egotists with privately formed preferences, deliberative democracy implies an active

model of citizenship among people with a shared or sharable conception of the public good.

In reality, the distinction between liberal democracy and deliberative democracy is probably less clear than theoretical abstractions suggest. Firstly, as Attfield has observed, actually existing liberal democracies do disclose some notions of a public good. For instance, marriage is incentivised, and cohabitation discouraged, in the British tax system (Attfield 2001:152). Secondly, an oft-proposed first step in greening liberal democracies is to make democratic procedures more participatory, which would somewhat blur the lines between traditional representative liberal democracies and deliberative democracies (see, for example, Wissenburg 1998; Humphrey 2004). Finally, deliberative democratic procedures may themselves adopt representative mechanisms for decision-making, which raise a number of questions regarding legitimacy and authenticity (see below and O'Neill 2002; Smith 2003; 2004). But among these similarities is a fundamental difference. Deliberative democracy is for the most part favoured by greens because it affords an opportunity largely absent in liberal democracy to initiate and engage in public debate about environmental sustainability as a common good.

6.2.2 Deliberative democracy as a solution to the problem of needs and wants?

One point of entry into this debate was raised in the previous chapter. Green theorists and activists have long been preoccupied with the distinction that it is said can be drawn between needs and wants. I have already indicated that I do not find this a particularly useful way of conceptualising sustainability. But even though the needs/wants distinction is of little use in defining environmental sustainability, it is nonetheless clear that some people, particularly in the West, are going to be asked, indeed are already being asked, to lessen the environmental impact of their lifestyles. On the other hand, poor people in developing countries may argue that they have to damage the integrity of their local environments in order to satisfy basic needs, which may be said to have the status of human rights (Shue 1980). It is therefore likely that some degree of public debate about needs and wants is on the cards. Although few people would deny that the average Westerner consumes more than they strictly need to, it is extremely difficult to determine in the abstract exactly what a person needs. Dobson asks, rhetorically, 'do we need kiwi fruits? but, then, do we need tea?' (Dobson 2000:90). However, he also notes that 'the option of doing without things'

has been omitted from UK Green Party campaign materials (Dobson 2000:86), presumably because it is thought to be unlikely to appeal to a society of profligate consumers. Wissenburg (1998:207) argues that we have unconditional rights to ‘goods of the needs category’ but only conditional rights to ‘goods of the wants category’, but, being a committed liberal, he is reluctant to acknowledge an objectively verifiable set of goods that would meet human needs because doing so would arguably deny individuals the right to determine for themselves what constitutes a good life. Remarkably, given their positions at almost opposite ends of the green spectrum, Arne Naess takes an almost identical line (see previous chapter).

Deliberative democracy is seen by many as a potential resource for resolving some of the difficulties of challenging people to want less whilst respecting people’s right to determine for themselves what they need. Hayward, as noted above, casts this debate in terms of ‘preferences’ and ‘interests’, rather than needs and wants, and argues that, whereas ‘preferences carry no automatic weight in decision-making processes [...] interests have a necessary claim to be *recognized* but not necessarily *satisfied*’ (Hayward 1998:108-109). What this suggests is that, in the context of deliberative democracy, all people have a right to *claim* certain interests, but their position may legitimately be questioned by others engaged in the deliberative process. It is hoped that in the process of debating and seeking justification for propositions, unreasonable claims will be defeated. As Walter Baber and Robert Bartlett (2005:165-184) note, the standard of what counts as ‘unreasonable’ is, of course, open to interpretation,⁷⁷ but one of the aims of deliberative politics is to come to what Hayward describes as ‘intersubjective agreement’ on such matters.

6.2.3 Deliberative democracy and the environmental citizen

While deliberative processes cannot guarantee a green outcome, it is argued that a general commitment to environmental sustainability is more likely in the context of deliberative institutions. In short, deliberative institutions can help to ‘green’ citizens. De-Shalit (2000:178) offers some small-scale empirical evidence in support of this, and claims that frequently the obstacle to ecological awareness among the general public is not lack of sympathy for the green agenda, but rather, lack of

⁷⁷ Baber and Bartlett consider three models of deliberation, ‘Habermasian’, ‘full liberalism’ (drawing on Amy Gutmann and James Bohman), and ‘Rawlsian’, that offer different ways of assessing reasonableness, as well as nuanced discussions of the character of deliberation. The detail of these debates is beyond the scope of this thesis.

knowledge. One attraction of deliberative democracy is that it ‘rests on improved information flows’, and,

it is argued that democratic deliberation provides motivation and encouragement to articulate preferences and justifications which are oriented toward the common good – the reciprocal requirement to put forward reasons and to respond to challenges makes it difficult to sustain preferences held on purely self-interested grounds. (Smith 2004:145)

There may be grounds, then, to think Wissenburg too sceptical when he says that ‘there is no reason to believe that after a process of dialogue and deliberation, any random set of flesh-and-blood individuals will make the good decision’ (Wissenburg 1998:223), but he is justified in observing that rational and environmentally sensitive deliberation in one community could well lead to the conclusion that the ‘good decision’ is to dump toxic waste in the territory of another community. Such potential outcomes explain why Eckersley (2005) and Dobson (2003) have argued for a reconceptualisation of sovereignty and citizenship, such that neither is held to be co-terminous with state borders, but instead should follow the contours of ecological impact. But even with this proviso, the inevitability of green outcomes may have been oversold. As John O’Neill (2002) points out, proponents of deliberative democracy are misguided if they assume that deliberative forums can resolve all disagreements. Some values may ultimately be incommensurable. In that case, the best that deliberative democracy can offer is a harmony in difference.

Although advocated by a remarkable range of green theorists, from green liberals such as Wissenburg (1998), through those seeking a reformed liberal democracy (Barry 2001), to green communitarians (de-Shalit 2000) and eco-anarchists (Bookchin 1987), there are a number of unanswered questions in the literature. One such question relates to the ‘inclusive sovereignty’ proposed by Eckersley. She holds that the right to participate in democratic deliberation regarding environmental decisions should be extended to all those ‘likely to be affected by ‘proposed developments’’ (Eckersley 2005:176). It is unclear, though, what counts as ‘likely to be affected’. The most obvious definition would be anyone whose material interests could be damaged, were a proposed development to go ahead. Material interests could include health or economic well-being, and at a stretch might cover local people who feel that there is some spiritual significance to a given piece of land. But this would exclude from participation anyone who did not have a direct

connection with the land, but was nonetheless interested and wished to express an opinion about the proposed development. Such exclusion would surely not be acceptable to the many green activists who have welcomed concerned individuals from outside a given community engaging in direct action to try to conserve a particular ecological resource, as happened in, for example, the protests over the Newbury bypass.⁷⁸

However, allowing anyone who feels interested to participate in deliberation risks being non-democratic in the sense of failing to respect rights to self-determination. If a particular community wants to destroy an area of forest (which, say, provides habitat for a rare species of flower or bird) so as to create more agricultural land to feed a burgeoning population, it is problematic to claim that people with no connection to the community have a right to involve themselves in deliberative forums engaged in reaching a decision about the proposal, particularly if a majority is required to carry the decision. This scenario is further complicated if the community in question live in a developing country and the outsiders seeking to influence the decision are from developed countries that have already destroyed much of their own wilderness (O'Neill 2007:ch8). Martinez-Alier has been deeply critical of first world environmentalists who propagate what he calls 'the cult of wilderness' (2002: vii), that is, environmentalists concerned to preserve what is left of 'wild' earth, regardless of the impact this may have on poorer communities who live in or around such 'resources'. But to deny the legitimacy of intervention to prevent environmental destruction abroad would undermine the capacity of green activists to criticise environmentally destructive activities outwith their communities and their immediate environs. Clearly, then, there is a potential tension between 'inclusive sovereignty' and self-determination.

A final problem related to questions of power in deliberative democracy is raised within deliberative forums:

It is simply assumed that face-to-face participation is more democratic.

However, studies of face-to-face assemblies have shown that they are not

⁷⁸ Similarly, the principle of 'appropriateness' as a guide to the level of government at which decisions are made may be problematic if, for example, different levels were to claim jurisdiction over a particular issue. This could perhaps be rectified if an independent panel were appointed to settle disputes, but such a panel would only be successful if accepted by all parties, and may be seen to lack democratic accountability.

necessarily democratic panaceas and are easily manipulated by powerful and experienced citizens. (Smith 2004:147)

Moreover, even if deliberative forums increase the likelihood of participants being *informed* about environmental problems, there remains the difficulty that they may not fully *understand* the complexities involved. This is not to cast doubt on the intelligence of citizens, but rather to acknowledge the degree of specialisation involved in some areas of environmental research. The role of experts who advise or present evidence to deliberative forums is therefore potentially an extremely powerful one, which again may undermine the democratic credentials of deliberative democracy (Baber and Bartlett 2005:ch10).

A further issue is how decision-making forums are structured. Deliberative democracy can be practised in a variety of ways, such as, through focus groups, citizens' juries, or in councils either comprising or representing the entire community. As already noted, small anarchist communities are championed by a number of greens (see, *inter alia*, Bookchin 1987, Carter 1999). Among the attractions of such communities are the fact that they can be more democratic than larger associations that find it practically impossible to include everyone in decision-making processes and therefore rely on some degree of representation. But the more recent trend has been to reject eco-anarchism in favour of larger, pluralist states, not least because of worries raised above that small communities can be uncomfortably insular and intolerant of difference, and because 'the local level is not always the most suitable for dealing with the scale and complexity of many environmental problems' (Smith 2004:147). But if a larger community is assumed, we encounter the problem of representation. O'Neill (2002) refers to Borges' story of the perfect map in order to illustrate the difficulties posed in seeking to find legitimate representatives of any given community. The perfect map would be one that perfectly replicates the real world on a 1:1 scale. But it would be impractical – that is why we favour representation, both in maps and in democratic institutions. However, randomly selected participants on citizens' juries or in focus groups may fail to express the will of the majority of those they are taken to represent, even if they take it to be their duty to do so.

Even more difficult than ensuring the legitimate representation of actually existing citizens is the question of how, if at all, to represent the interests of future generations of humans, and of non-human nature. The use of proxies representing

both constituencies has been proposed (Dobson 2000:122-123), but this would seem to be undemocratic, as presumably those suitable to be proxies for future generations would be ecologically-minded citizens, and so the deck would be stacked in favour of the green agenda. Perhaps this is acceptable if the purpose of adopting deliberative mechanisms is to reach greener outcomes. Indeed, the express desire of many proponents of environmental citizenship education is to teach people to think and act with the interests of non-human nature and future generations in mind. However, Humphrey's point, above, remains. Democratic outcomes are not, and cannot be, pre-determined. To fail to grasp this fact is to fail to value democracy. Green outcomes presumably could be reached through authoritarian means given the right application of coercive power, but this route has been rejected by the majority of contemporary scholars of environmental politics. Therefore, green theorists can be presumed to value both democracy and environmental sustainability. That being the case, it is incumbent upon them to respect both values when appraising models of deliberative democracy.

Greens have endorsed deliberative democracy because it is thought to overcome the features of liberal democracy that make the latter particularly ill-suited to fostering environmental sustainability, such as short-termism and exclusivity. Public deliberation as a political model also has the appeal of instituting the reflexiveness which was said in the previous chapter to be a necessary feature of environmental sustainability. Moreover, green theorists have proposed a model of deliberative democracy that transcends the borders of the ecologically-arbitrary nation-state, and instead includes in its constituency all those exposed to ecological risk by a given policy. However, there remain unanswered questions as to how to balance inclusive sovereignty and the right to self-determination. More generally, advocates of deliberative democracy have sometimes appeared to oversell its potential benefits. It is also argued that deliberative democracy can help to 'green' citizens, but the evidence on this point was mixed. A further unresolved question was what resources deliberative democracy can offer with respect to the problem of future generations. However, in the discussion of citizenship, I suggested that a stewardship approach might best protect the interests of future citizens. In the final section of this chapter, I return to the question of future generations to consider what goods or resources future generations might be said to be owed as a matter of justice.

6.3 Justice and future generations

There are a number of possible ways of construing justice in green politics. It could refer to relations between present generations of humans, or to relations between present generations of humans and non-human nature, or to relations between present and future generations of humans. In the limited space available here, I restrict myself to the last of these three questions – intergenerational justice – having dealt briefly with intragenerational justice in chapter 5. Wissenburg argues that sustainability and justice are not intrinsically related:

the first concerns the question of *how much* of which resources should exist or be made to exist over time, the second concerns the question of *what to do* with whatever exists at one particular moment. (Wissenburg 2007:3)

But to argue for a relationship between sustainability and justice is not arbitrary. Unsustainable patterns of life constrain the amount and quality of ecological resources available for distribution, now and in the future. Put simply, a situation is unjust if greater opportunities for A are bought from common resources at the expense of fewer opportunities for B, without B's consent. In a finite ecosystem this applies both between and within generations: as discussed in the previous chapter, neither present generation poor nor future generations have the opportunity to express their preferences, or 'give their consent', in the market transactions that are currently determining the range and quality of ecological resources available to them. Intergenerational justice has long preoccupied green theorists. Advances in technology, particularly in the fields of agriculture and industry, have massively increased the resources available today relative to those available to previous generations. But scarcity has not been eliminated. On the contrary, rapid population growth, from one billion persons worldwide at the turn of the twentieth century to six billion world wide at the turn of the twenty-first, has created unprecedented stress on natural resources, not only to provide adequate food, water, and shelter, but also to provide raw materials for industrial processes and to assimilate wastes. Given that present generations have the capacity to influence considerably the resources that will be available to future generations, the question arises, what, if anything, do present generations owe to posterity?

The answer that the ideal-type proponent of liberal democracy might give to such a question is complicated by the commitment liberals typically hold to the

neutrality of government with respect to the good.⁷⁹ In a plural society, government should not favour one conception of what constitutes a good life over another, instead, it should foster the widest possible availability of the means for individuals to pursue their own privately determined conception of the good, interfering only to prevent any individual from pursuing a vision of the good life that inhibits the capacity of others to achieve a good life. Intergenerational justice, it is argued, is incompatible with liberal neutrality, because to be just to future generations requires that people choose now on behalf of future generations what environmental goods they would want to be preserved. It is also probable that some sacrifice on the part of present generations will be required in order to maintain a particular environmental good for future generations. It is with these sorts of conflicts in mind that Michael Hannis (2005:578) argues that ‘we can have neutrality *or* ecological sustainability, not both’. A hypothetical example may help to clarify these issues. Suppose the government prohibits development on a particular area of land that provides habitat for an endangered species because it is thought to be a good thing that biodiversity be maintained for future generations. This prohibition thwarts the pursuit of a particular conception of the good, in this case the one held by the developers. In choosing posterity over the developers, the government has given up its neutrality. On the other hand, siding with the developers would not have been entirely neutral either, if there had been people currently alive who had reason to value the forest to the extent that its preservation was crucial to their idea of the good without reference to posterity.

There are two relevant issues here. The first is that the capacity of future generations to pursue their particular conception(s) of the good may be constrained or undermined by actions taken now. To an extent this has always been the case – the capacity of future generations to travel to another solar system is to some extent constrained by the failure of generations up until now to develop the technological capacity to do so. Future generations may wish that their forefathers had invested more in space technology. But it is within the power of future generations to change investment priorities and do their best to get to Pluto. As discussed in chapter 2, the kind of environmental problems that arise from unsustainable development and growth strategies are not so easily reversible. Indeed, both the scale and the irreversibility of environmental problems have the potential to pose tremendous

⁷⁹ There is a considerable literature on liberal neutrality which I do not directly engage with in the limited space available here. I subscribe to the view that sustainability, as a precondition for the pursuit of other goals, is not an issue there can be neutrality about.

problems for future generations. If, for instance, the polar caps melt sufficiently to alter the Atlantic Gulf Stream, a number of choices (for example, to grow crops suitable to a temperate climate) that were available to this generation will be closed to future generations. There are two reasons to reject the idea that technological innovation will solve these problems. One is that it is an awfully big risk to take to assume that the technological means would be forthcoming, and that, in the old adage, prevention is better than cure. The second is that those who had other reasons for valuing the forest might not find the idea of breathing through an iron lung terribly appealing. Put another way, people alive today have no business presuming that future generations would not have preferred just to inherit a temperate climate without the need for technological innovation to make the alternative palatable.

The second point that can be explicated with reference to the forest development example is that neutrality with respect to the good among the present generation may not, in fact, be possible. Individual conceptions of the good may conflict, and it may fall to a public authority to choose which one should be allowed to advance in a particular case. Moreover, completely neutral societies, Attfield argues, would be unsustainable, ‘as they would have to tolerate (and indefinitely at that) unsustainable practices’ (Attfield 2001:152). What liberal neutrality refers to, then, is neutrality with regard to a plurality of conceptions of the good, limited by crucial liberal values such as tolerance. Sustainability is also arguably coming to be among the core values held by liberal democratic states, at the very least rhetorically, in that the government of most states that would be considered liberal and democratic (and many states that would not) have in recent years made some public commitment to some notion of sustainability, most often sustainable development (Barry 2006a). But how sustainability is interpreted has considerable implications for the range of choices open to future generations. In the following discussion I consider two possibilities, Wissenburg’s restraint principle, and Norton’s idea of integrity.

6.3.1 The restraint principle

Wissenburg, a proponent of green liberalism, has devised what he calls the ‘restraint principle’, derived from Rawls’ just savings principle, as a norm that could provide rules to facilitate environmental sustainability. The savings principle, if adopted, will ensure that each generation will not be ‘worse off relative to *any* previous generation’ (Wissenburg 1999:176). This is also the aim of the restraint

principle, but the restraint principle has been developed by Wissenburg specifically with the special problems of environmental resources in mind. It holds that:

no goods shall be destroyed unless unavoidable and unless they are replaced by perfectly identical goods; if that is physically impossible, they should be replaced by equivalent goods resembling the original as closely as possible; and if that is also impossible, a proper compensation should be provided. (Wissenburg 1998:123)

Clearly, a community adopting the restraint principle is likely to incur considerable costs that they might not otherwise do. This is a problem that also exists for Rawls' savings principle. But Wissenburg (1999:180) argues that it is nonetheless rational to adopt the savings principle because it is in the interests of generation 1 to invest in the future of generation 2, given that generation 2 will one day have a role (to a greater or lesser extent) in ensuring that generation 1 does not suffer in old age, and the same argument applies to the restraint principle. In short, investing in the future creates and sustains bonds of trust between generations that co-exist. The motivation is therefore self-interest – generation 1 has an interest in creating a bond of trust between itself and generation 2. Justice to future generations is not achieved, on Wissenburg's argument, by pondering the needs or interests of people generations hence, nor of introducing proxy votes for future people in democratic forums, rather, it is achieved by maintaining a compact built on trust and self-interest between overlapping generations.

There is, however, reason for concern as to how robust the restraint principle is. In explaining the principle Wissenburg says substituting a particular resource for either an identical item, or appropriate compensation, is only acceptable when it is impossible to do otherwise: 'no part of nature should be destroyed unless necessary, in which case it should be renewed, replaced or substituted by an adequate compensation' (Wissenburg 1998:207). The move from 'only when it is impossible not to take X action' to 'only when it is necessary to take X action' is more than semantic, given that Wissenburg assiduously 'dodge[s]' the debate about the difficulty of distinguishing basic and non-basic needs', as Eckersley rightly complains he does (Eckersley 1999:262). Wissenburg specifies that 'rights to needs goods can as a rule support only user rights, not ownership rights: that is, the right to destroy an object can only be part of a person's set of rights if destruction is a necessary condition for its being used' (Wissenburg 1998:207). But what constitutes 'needs goods' is not

explained. As already noted, though he endorses deliberative democracy, Wissenburg is typically liberal in being committed to the idea that preferences are sovereign.⁸⁰ What emerges from this complicated picture is an account of sustainability that allows for, if necessary, the potentially irreversible destruction of ecological resources, and only a subjective basis on which to judge what is necessary. As noted in chapter 5, Wissenburg candidly acknowledges that his green liberalism might well produce a ‘global Manhattan’ if followed as a model of sustainability. A global Manhattan would limit the choices of future generations substantially relative to the choices available to the present generation. On this reading, it would be difficult to view the restraint principle as offering justice to future generations. In view of Wissenburg’s apparent acceptance of a global Manhattan as plausible and sustainable, Eckersley (1999:262) bemoans the lack of ‘ecological guarantees’ in green liberalism.

6.3.2 Justice and integrity

It was noted above that there are no guarantees in politics of any shade, and that to seek them is a fool’s errand. Nevertheless, one might reasonably hope for a more robust understanding of justice to future generations than the restraint principle provides. Part of the problem is derived from the way in which sustainability is conceived. In chapter 5 I proposed Norton’s model of interpreting sustainability in terms of the integrity of the ecosystem, rather than explicating the conditions under which goods may legitimately be substituted for equivalent goods or compensation. Here justice to future generations is assessed in terms of the ‘options and opportunities’ available to them (Norton 1999:131-137).⁸¹ Injustice is therefore understood to be the unequal distribution of harms and benefits across generations – an opportunity today should not be pursued if it can only be exercised by harming a future person’s interests by narrowing his opportunities to live a life of his own choosing. Inheriting a sustainable environment maintains the range of options for future generations.

⁸⁰ Wissenburg correctly argues that liberals do not accept any preference as valid – a preference for attacking people, for instance, is not tolerated within liberalism. But he argues that while certain preferences can be labelled environmentally harmful, they cannot legitimately be ‘disqualified’ (Wissenburg 1998:220-221).

⁸¹ Norton draws a distinction between options and opportunities – a simple reading of which might characterise options as choices but opportunities as the capacity to exercise them, thus the one is dependent upon the other. The detail of Norton’s argument is not crucial to the point being made here. Henceforth I shall refer only to opportunities, but I accept Norton’s argument on this point.

At this point it might be suggested that the opportunities of future generations would be enhanced if present generations bequeathed to their heirs more development, rather than less. It might be argued that, on current trends of dwindling oil supplies, increasing energy demand, and insufficient capacity in alternative fuels to cater for the whole or even most of the energy market in the UK, it would be irresponsible of the government not to invest in new nuclear power stations, because nuclear power is the only reliable method currently known to be able to service the energy needs anticipated in the short- to mid-range future. Not to do so would, it could be argued, decrease the opportunities available to future generations relative to those available today, because future generations would not have sufficient energy resources to meet their needs. Clearly, if a pristine forest were destroyed to make way for a nuclear power station, then the opportunities available to future generations would have been narrowed, relative to the present generation.⁸² But if a brown-field site were used for the nuclear plant, then the charge of narrowed opportunities is more difficult to sustain. However, if increased risk, as discussed by Beck (above), is considered to be a *threat* to opportunities, then there may yet be grounds for regarding the nuclear development to be an injustice to future generations. Given that the present generation has not found a safe method for storing nuclear waste indefinitely, the risk posed to future generations of significantly reduced opportunities consequent upon radiation leaks makes the choice of nuclear power an injustice to future generations. Norton's idea of ecological integrity as the guiding principle of sustainability could prove an appropriate norm where the economy is organised according to the principles of ecological economics – that is, where ecological capacities are not outstripped – but if it is to protect fully the opportunities available to future generations then threats to opportunities posed by development must also be taken into account.

It is precisely these sorts of considerations that Beck regards as the moral questions characteristic of 'risk society'. In comparison to the restraint principle, the synthesis of Norton's and Beck's position described here has the benefit of not being undermined by reference to unspecified needs. However, like any account of the

⁸² Note, however, that the relative position of future generations to the present one is not an uncomplicated starting point. Justice to future generations might be better served by aiming to restore either a local environment to its condition at some point in history. For instance, many moor lands in the UK that currently support various species of grasses and birds were previously dense forests. How integrity should be interpreted at a local level is therefore an issue to be decided in deliberative forums.

dynamic between intergenerational justice and sustainability, it cannot deliver the guaranteed sustainable outcomes some greens have hoped for. Ecosystem integrity can only be maintained by ‘flesh and blood’ environmental citizens, who, in the context of democratic deliberation, are free to choose their own ends over those of future persons. Maintaining the integrity of the ecosystem is preferable to the restraint principle because it is more sensitive to long-term problems, such as climate change or nuclear power, that need not affect behaviour on a model of sustainability concerned with the relative well-being of overlapping generations, since the effects of climate change are gradual and incremental. But over the long-term, these effects will be felt several generations hence. On the integrity model, on the other hand, the benchmark for sustainability is set higher – protecting the integrity of the ecosystem for one generation also has the effect of protecting it for generations beyond those with whom generation 1 overlaps. However, if one generation inherits a poor quality ecosystem, there is no immediate motivation to improve the ecosystem to the extent being discussed here – to make the radical changes to global economic organisation as well as political institutions envisaged in pursuing the ecological economics approach to sustainability. As a matter of self-interest, generation 1 has a motivation to maintain the quality of the ecosystem for generation 2. But the integrity model may require some generations to take action to improve the integrity of the ecosystem, and it is plausible that the benefits will take some time, perhaps a generation or more, to filter through. At the same time, the costs may well be thought likely to fall upon more than one generation. The motivation, then, cannot be self-interest. Instead, the motivational assumption already highlighted in the stewardship model is implicit in the integrity approach: it is assumed that people have a sentimental concern with the fate of future generations. Indeed, integrity as a standard of sustainability can be thought of as a strong version of the stewardship account of our duties to future generations.

At this point in the debate it is necessary to return to questions of citizenship. For what generation 1 owes to future generations as a matter of justice now seems to depend upon what model of citizenship is affirmed. Dobson’s proposed post-cosmopolitan citizenship has the potential to produce a rather unhelpfully parsimonious account of justice between generations: focusing on those who have caused problem X may inhibit co-operative action to address it, which, given the threats to human security that environmental problems can pose, is surely the more

urgent issue. Taking an intergenerational view, demanding that the direct descendants of polluters accept a greater degree of responsibility for the costs of realising environmental sustainability or human rights may undermine the mutual trust Wissenburg hopes the actions of generation 1 will inspire. Yet it is also apparent that the unequal distribution of ecological harms and goods constitutes an injustice that people might legitimately seek redress for, and it is clear that developed countries have played a far greater role in creating these. What all this suggests is that a more careful explanation of the implications of a historical account of justice is required. A generalised acceptance of there being ‘always already’ relationships of justice among people whose lives interact, consciously or otherwise, might be part of being an environmental citizen. If narrowing a person’s opportunities can be construed as harming them – and I would argue that it can⁸³ – then both tackling ecological debt and caring for future generations may be motivated by a desire to prevent future injustice, rather than to rectify past injustice. In short, if we are ‘always already’ in relationships of justice then our attention should be directed forwards, not backwards.

But this presumes that generation 1 will look on future generations as their moral equals, rather than discounting their interests, and it also entails the claim that preventing future injustice is a moral priority. Wissenburg’s restraint principle can affirm that this is the case with regard to overlapping generations, but over the longer term, the picture becomes less clear. Turning to Dobson’s account of post-cosmopolitanism, the motivation for honouring ‘duties’ to future generations is, I argue, assumed, rather than explicated. Thus ultimately the stewardship model of citizenship is at least as persuasive as Dobson’s model, given the motivational assumption implicit in both. But the stewardship model also encounters difficulties specifying duties of justice. Attractive though Ball’s notion of punctuated reciprocity is, he is clear that it is a virtue to be taught and cultivated, not an abstract account of duties of justice, a point also made by Barry in his account of ecological stewardship. Furthermore, in view of the non-voluntary benefit problem raised above in relation to the fact that ecosystem integrity bequeathed over several generations cannot be said to have been voluntarily received, the most persuasive argument for a stewardship

⁸³ Of course, it could be the case that narrowing someone’s opportunities would in fact benefit them. For example, an alcoholic who is deprived of the opportunity to get drunk may reasonably be said to have been benefited by this restriction. What is at issue here is the restriction of opportunities to flourish, or to pursue a reasonable conception of the good, which, I argue, is a plausible consequence of continuing environmental degradation.

approach rests on the assumption that people do care about the fate of their descendants. This seems to me to be a plausible assumption to make, and it need not rest upon a communitarian account of citizenship and identity – stewards could be Kantians like the good Samaritan, rather than Burkean in the communitarian sense – but it is an assumption. Absent from this assumption, there is a motivational gap in the integrity model of sustainability, which cannot be resolved by rationalist appeals to self-interest. Indeed, the only appeals that could conceivably be made to the unconvinced would be of the sentimentalist sort proposed by Richard Rorty with regard to human rights. Democratic deliberation about environmental decision-making must therefore include discussion of whether and how much environmental citizens care about future generations. It may be that they do not.

6.4 Conclusion

Deliberative democracy, environmental citizenship, and intergenerational justice are interconnected in accounts of environmental sustainability. The extent to which one model of environmental sustainability is preferred over another is ultimately determined by democratic deliberation; few green theorists now advocate authoritarian routes to a sustainable future. Although deliberative democracy clearly represents an advance on liberal democracy from a green perspective, the merits of deliberative democracy have at times been oversold. As Wissenburg argues, ‘flesh and blood’ environmental citizens may ultimately decide to continue to bequeath serious environmental problems to future generations.

Theorists of environmental citizenship, however, have argued that fostering a reconceptualisation of what it means to be a citizen would minimise this risk. For the most part, the greening of citizenship entails a more active and engaged approach to citizenship and to the community than that found in liberal democratic models. Citizens are not mutually disinterested, they are stewards, or communitarians, or post-cosmopolitans, and they are concerned with duties rather than rights. This aspect of environmental citizenship I found troubling; protection for minorities, I have suggested, depends on rights being recognised as well as duties.

Finally, citizenship was also found to be bound up with theories of justice, and with the extent to which it can be assumed that individuals care about the fate of future generations. In the abstract I argued that the idea of ecological integrity is a better guide to what present generations should seek to maintain for future

generations, bypassing, as it does, the difficult question of needs and wants, and overcoming the difficulty of long-term environmental issues not necessarily being addressed if one is only concerned with the fate of generations that overlap with one's own. However, this approach was found to rest on a motivational assumption that may not, in fact, prove valid in real world democratic deliberations. Whereas Wissenburg's restraint principle can be argued to be a rational choice insofar as it is in an individual's self-interest, the restraint principle may not protect distant rather than overlapping future generations from environmental harms, and is in any case unlikely to ensure environmental sustainability to the standard advocated in the previous chapter.

This problem illustrates the difficulty of justifying concern for distant rather than overlapping future generations in terms of rational self-interest. However, the appeal to a sentimental concern for future generations, which is presumed in the environmental sustainability as integrity model, is less secure. In chapter 3 I argued that Rorty's proposal for human rights grounded in a sentimental education would seem too weak a foundation for many advocates of human rights. It may reasonably be assumed that advocates of environmental sustainability might also wish for a stronger foundation than appeals to sentiment seem likely to provide. In the next chapter I consider the plausibility of an alternative foundation: environmental human rights.

Chapter 7: Rights *or* sustainability, rights *and* sustainability

In the previous chapter I argued that questions of rights ghost issues of citizenship, democracy, and justice in green politics. Yet some green theorists, such as William Ophuls (1974) and Garrett Hardin (2005) have taken the view that individual rights are a potential threat to, or might have to be sacrificed for, environmental sustainability. On the other hand, Wilfred Beckerman (1999; 2000) has argued that protecting human rights should be prioritised over ensuring sustainability, on the basis that the most important thing that the present generation can bequeath to future generations is not a sustainable environment, but rather, a fair society. In the first section of this chapter I argue that both of these positions, those proposing sustainability over rights, and those advocating rights over sustainability, are misguided. The position I defend is that, in view of the environmental impacts on human security attendant upon current patterns of economic globalisation, a commitment to human rights is interdependent with a commitment to environmental sustainability. Thus, in the latter part of the chapter, I explore the plausibility of uniting environmental sustainability and human rights, in the idea of environmental human rights. This is a proposal that has often been made almost casually in the literature on both human rights and environmental sustainability, and which I suggest has been somewhat under-theorised. While I defend the view that human rights and environmental sustainability are not necessarily mutually exclusive, neither are they straightforwardly compatible, particularly if environmental sustainability is simply to be added to the list of human rights proclaimed in the contemporary human rights regime. Environmental human rights, I conclude, are plausible if and only if attention is paid to the problems identified with human rights earlier in the thesis.

7.1 Human rights or environmental sustainability, not both?

Ophuls, writing in 1974, predicted ‘the inevitable coming of scarcity to societies predicated on abundance’, and with this, ‘almost equally inevitable, will be the end of political democracy and a drastic reduction in personal liberty’ (Ophuls 1974:47). Ophuls has often been understood to imply that we can either have democracy and individual freedom, or we can have sustainability, but we cannot have both. Pursuing both would lead to the destruction of the environment to the degree where scarcity caused societal breakdown and a return to authoritarianism as a matter

of necessity. Taking a similarly apocalyptic tone, Hardin, in an article originally published in 1968, laments ‘the tragedy of freedom in a commons’ (Hardin 2005:28). The freedom he has in mind is mostly economic, and, in particular, procreative freedom. In this regard, he specifically attacks the UDHR right to found a family, which is proclaimed in Article 16.1. Writing more than 30 years later, Beckerman argued that, rather than trying to predict future environmental demands and protect resources accordingly, ‘our most important obligation to future generations is to bequeath to them a ‘decent society’ in which there is respect for basic human rights’ (Beckerman 2000:22).

The detail of the argument put forward by Ophuls and Hardin is not quite the apology for environmental authoritarianism which it has sometimes been presented as. For example, neither embraces authoritarian government as a good way to live. Rather, they both suggest that an absence of individual moral responsibility makes authoritarianism necessary. Indeed, Hardin states that, ‘The only kind of coercion I recommend is mutual coercion, mutually agreed upon by the majority of the people affected’ (Hardin 2005:34). It is Hardin’s and Ophuls’ pessimism about the possibility of encouraging social change towards a morally driven environmental citizenry that leads them to conclude authoritarianism is, if not desirable, certainly inevitable. The arguments regarding democracy and citizenship discussed in the previous chapter suggest a greater degree of optimism among more contemporary greens.

Nevertheless, it is worth considering the argument that either environmental sustainability or human rights should be prioritised, looking firstly at the idea that environmental sustainability should be prioritised over human rights. What this might mean in practice is that democratic rights to elect representatives who would have a say in deciding environmental policies might be waived, or the right to protest against unwanted policies might be denied both in terms of freedom of speech and of association, or perhaps it would become acceptable for governments to detain without charge or trial individuals thought likely to impede environmental sustainability in some way. Would this deliver environmental sustainability? Perhaps, if governments were led by environmental philosopher-kings, but I suspect that few environmental activists would feel confident in surrendering the means of holding governments to account on environmental policy.

Just as human rights can rest on a consensus underpinned by power (as discussed in chapter 4), so too can a particular model of sustainability reflect power

relations, and serve to entrench disparities in power. Joan Martinez-Alier's work on what he calls 'the environmentalism of the poor' suggests that defending the civil and political rights of marginalized groups is key to protecting the environment. He argues that an important part of the conflict over how sustainability should be conceptualised is a conflict over language. The relevant question is therefore, 'who has the power to impose particular languages of valuation?' (Martinez-Alier 2002: viii). For example, an exclusionary tendency can be seen at work in terms of a powerful consensus around the idea of environmental sustainability as environmental *preservation* that prevailed in the 1980s and 1990s, and was evident in the creation of wildlife parks, which have often justified the exclusion and displacement of indigenous populations from their lands, on the grounds that these people did not conform to some externally determined notion of environmentally appropriate behaviour (O'Neill 2007: 201-202). In these instances, claims to use of the land that do not rest on preserving it as a wilderness space are excluded because wilderness preservation has been determined to be the appropriate way of valuing the land in question. John O'Neill (2007) identifies here a comparison with the logic of colonialism, also justified with reference to externally determined standards. As discussed in the previous chapter, the emphasis on inclusiveness in the green literature on deliberative democracy and citizenship runs counter to this exclusive tendency. But what this example suggests is that human rights provide important safeguards against a particular conception of environmental sustainability being imposed to the disadvantage of some groups. It can be concluded from this discussion that prioritising environmental sustainability over human rights is not an attractive strategy.

The second option I proposed to consider is that human rights should be prioritised over environmental sustainability. Indeed, Beckerman claims that the focus of policy makers now should be on bequeathing to future generations a just society rather than a green society. What this might mean in practice is that governments exempt their countries from global environmental regimes, such as the successor to the Kyoto Protocol, on the grounds that, in order for their citizens to enjoy human rights to economic security, it is necessary to pursue rapid economic growth. Given current levels of technological innovation, so the argument would go, it is necessary to burn fossil fuels and emit considerable levels of greenhouse gasses, but this is the price to be paid for economic rights. Future generations may find their economic rights harder to secure as a consequence of environmental degradation, but, since

Beckerman argues that future generations do not have rights, this is not a *rights* problem.⁸⁴ This, in view of my argument above in chapter 5, is not an attractive proposition. Pursuing economic development at the price of bequeathing environmental problems to future generations seems likely to undermine the positive impact of bequeathing to future generations societies in which human rights are respected. The reason for this is found in Richard Rorty's argument, discussed in chapter 3, that sympathy and security go together. Not always, perhaps; some people who enjoy personal and economic security today who clearly have little sympathy for those whose rights remain chronically underfulfilled. But I contend that this problem would be exacerbated if more people faced threats to their human security as a result of increasing environmental degradation. This, I argued in chapter 2, is the probable outcome of increasing economic globalisation, which the contemporary human rights regime does not necessarily challenge (see Evans and Hancock 1998; Stammers 1999).

On the other hand, Beckerman's (2000) concern that people should not live in absolute poverty, and his belief that a fairer distribution of goods would follow from the more widespread fulfilment of human rights, is to some extent consistent with my argument above and is a position that many greens would endorse. However, in chapter 4 I noted a number of problems with the contemporary human rights regime. Firstly, the ecological embeddedness of human beings is not recognised. Secondly, the contemporary human rights regime is notably state-centric, in that individuals have rights against the government of a state. The models of inclusive citizenship discussed in the previous chapter, whereby individuals are said to have rights that follow the contours of risk, or of ecological harm, suggest the possibility of rights against foreign governments. These rights, I noted, were problematic, in that they might compromise rights to self-determination, which, in view of the discussion above of the possibility of 'environmental colonialism', seem also to be important. One possible solution to such conflicts is suggested in the idea of 'appropriateness' as to the level of political decision-making, as discussed in chapter 5, which suggests a further threat to the norm of state sovereignty. Human rights have also been said to

⁸⁴ Beckerman (1999) does not in fact agree that future generations will have too many problems coping with environmental degradation because he argues that should any resource become seriously in danger of being exhausted then feedback mechanisms in society and the market will lead to price increases or investment in the development of alternative technologies. For a discussion of why I disagree with Beckerman's position on the market, see chapter 5.

represent a challenge to the sovereignty-based international order (Donnelly 2003), yet to date states have mostly been unwilling to challenge the sovereign authority of governments in the name of humanitarian intervention (see chapter 4). Indeed, Evans and Hancock (1998) regard the contemporary international human rights regime as being embedded firmly within the sovereignty-based international order. On the other hand, human rights are neither fixed nor given. Alternatives to the contemporary human rights regime might better facilitate environmental sustainability. In this regard, a number of greens have proposed the idea of environmental human rights. If Jack Donnelly (2007) is correct in arguing that human rights are tools for protecting human dignity, then it seems plausible to suggest that a new model of human rights ought to take account of contemporary threats to human dignity. That being the case, it follows that if my argument regarding the environmental impact of economic globalisation is valid, then an adequate theory of human rights would be one that could take account of the environmental threats to human dignity. In short, there would seem to be a need for environmental human rights.

7.2 The idea of environmental human rights

A number of scholars make reference to the idea of environmental human rights. Within the field of human rights, Stammers (1999:992) identifies environmental human rights, along with women's rights, as one of the areas in which there is debate about how the international bill of rights should be extended, while Anthony J. Langlois (2001) speculates on the possibility of there being a 'human right to an adequate environment'. Within green theory, Robyn Eckersley notes the attractiveness of the rights framework whereby rights 'trump' lesser considerations, and thus the possibility that environmental rights could guarantee ecological outcomes where interests compete (Eckersley 1996:216). Jan Hancock (2003) and Tim Hayward (2005a) have both undertaken book-length treatments of environmental human rights, each assuming that the case to prove is that *environmental* human rights are plausible, taking as given the argument that human rights are both plausible and enjoy universal or near universal assent. The arguments advanced in chapters 3 and 4 of this thesis present a more complicated picture, and on that basis, it seems reasonable to suggest that the idea of environmental human rights has been under-theorised in academic writing to date. In particular, there has been little discussion of the implications of adopting the traditionally liberal notion of rights with a view to

furthering the project of realising environmental sustainability, which, as noted in the previous two chapters, has often been thought to be in tension with liberal democracy.

There are two possible approaches to articulating environmental human rights. Either environmental rights may be derived from existing human rights documents, or an entirely new bill of environmental human rights may be argued for in the spirit of, but independently from, existing human rights. Hancock takes the first approach, while Hayward takes something akin to the second, arguing for a newly defined environmental human right to be enshrined in national constitutions. These two recent works therefore lend themselves to an analysis of the ways in which the idea of environmental human rights has been tackled within green politics. The focus on green scholars, rather than human rights scholars, is appropriate, since it is incumbent upon green scholars to be aware of the environmental implications of adopting the language of liberal democracies, which, Eckersley claims (1996:214-216) human rights clearly embody.

Hancock argues that the full realisation of the rights enumerated in currently accepted human rights instruments such as the UDHR and the two International Covenants would require the recognition of two environmental human rights. Although a broader spectrum of environmental human rights might be desirable, 'to guarantee the environmental conditions required for the enjoyment of legally stipulated human rights, it is necessary to adopt only two environmental human rights' (Hancock 2003:6); specifically, the right to (1) an environment free from toxic pollution and (2) ownership of natural resources (Hancock 2003:1). It is Hancock's contention that, given the threats to human health, dignity, security, and well-being posed by environmental harms, these two environmental human rights are necessary for the full realisation of such rights as the right to 'life, liberty and security of person' (UDHR, Article 3), rights to property (UDHR, Article 17), 'the right to social security' and the right of all to the 'realization ... of the economic, social and cultural rights indispensable for his dignity' (UDHR, Article 22), and perhaps most obviously, the right of all to,

a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, medical care and necessary social services, and the right to security in the event of unemployment, sickness, widowhood, old age, or other lack of livelihood in circumstances beyond his control. (UDHR, Article 25)

Finally, Article 28 states that ‘Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized’, and Article 30 states, ‘Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity ... aimed at the destruction of any of the rights and freedoms set forth herein’.

The argument seems to be not that there should be these two environmental human rights, rather, that these rights already exist, insofar as they are implicit in existing human rights covenants, and that they should therefore be recognised and made explicit. For Hancock, the greatest obstacle to the full realisation of human rights (including the two environmental rights) is the capitalist system and, more importantly, the dominance of (neo-classical) economic rationality in political thinking. In light of the pressures of economic globalisation and the dominance of economic rationality in political decision-making, Hancock (2003:17) argues that governments’ support of human rights reflects a desire to claim and maintain legitimacy vis-à-vis their citizens and the international community, rather than a genuine commitment to satisfying the needs and protecting the well-being of citizens (which, in Hancock’s view, ought to be the test of a government’s legitimacy). Hancock’s argument can be summarised as follows; if political decisions are made in economically rational terms, then environmental protection is sacrificed; if, however, ecological rationality prevails, then the realisation of human rights will be seen to necessitate strategies of environmental protection (Hancock 2003:17-33). Such strategies may be encapsulated in the two environmental rights that Hancock specifies.

Hayward’s argument is somewhat different. His book ‘takes as its premise that human rights have a justification and legitimacy which precludes their being rejected’ (Hayward 2005a:35) and seeks to claim the same status for environmental rights by arguing that an environmental human right should be embedded in the national constitution ‘of any modern democracy’ (Hayward 2005a:1). Indeed, a number of constitutions written in the past twenty years already recognise some form of environmental right(s) (Hayward 2005a:201) – and consideration of these developments, as well as moral argument, leads Hayward to propose a general environmental human right: namely the ‘right of every individual to an environment adequate for their health and well-being’ (Hayward 2005a:1). Hayward finds support for his proposed right in the draft principles of the UN Sub-committee on Human

Rights and the Environment and adopts the chosen formulation from the influential Brundtland report (2005a:28-9). Explaining the relationship between the proposed environmental human right and the Brundtland idea of sustainable development, he goes on to note that rights to social justice and rights of future generations ‘would require to be stated separately’ (Hayward 2005a:29). This differs somewhat from Hancock’s approach, which sees the realisation of social justice as being dependent upon the fulfilment of all human rights, which would in turn mandate the realisation of the two environmental human rights he proposes. In short, where Hancock posits an inherent inter-relatedness, Hayward allows for the separation of environmental rights and other forms of justice, in constitutional law at least. However, Hayward is clear that a constitutionally enshrined environmental human right is not, and should not be, a panacea for the environmental movement. Rather, he sees it as but one strategy in a much broader struggle.

Hayward’s proposed environmental human right is at once narrowly focussed and yet open to the charge that it mandates a multiplicity of rights that may prove too extensive to be workable. He devotes a couple of pages to speculating as to which specific procedural and substantive rights *might* be needed to realise a right of all to an environment adequate for health and well-being (Hayward 2005a:29-31), then steers himself away from committing to any of these more specific rights, noting that context would play a role in shaping interpretations, thus making it impossible to be prescriptive about what rights would be needed everywhere to protect the proposed environmental human right. Hayward goes on to argue that the ‘declaratory formulation’ is in keeping with the style of established human rights (Hayward 2005a:31). Others, such as Eckersley (1996), have committed themselves to a detailed list of the procedural rights needed to underwrite a declaratory right of the kind that Hayward proposes. These include what are typically thought to be (environmental) citizens’ rights, such as rights to be informed of proposed developments in a particular local area, rights to information about environmental impact assessments, and so on. It should be noted, however, that Eckersley’s notion of inclusive sovereignty would entitle those outside of the citizenry traditionally conceived to these citizen types rights (see chapter 6). However, if established, Hayward’s constitutional right to an environment adequate for human health and well-being would set a standard whereby it would be incumbent upon all governments that adhere to human rights to establish and maintain for their citizens access to some version of these procedural rights.

Both Hancock and Hayward avoid discussion of philosophical problems with human rights. Hancock explains that:

Methodologically, this examination is predicated upon analysis of existing human rights texts rather than upon philosophical grounds because of the ontologically contested nature of philosophical claims to human rights. (Hancock 2003:11)

Hayward, in a footnote to a 2001 article, brackets much of the historical criticism of the abstraction, class bias and cultural imperialism of existing human rights, as ‘moot points’, but goes on to say that ‘the content and weight of certain specific rights’, is a matter that requires further discussion (Hayward 2001:132-3). In his 2005 book, which does indeed include further discussion of these issues, he sees the challenge as being, on the one hand, to prove that the notion of environmental human rights does not ‘overextend’ human rights discourse, and, on the other hand, to ‘defend the apparent reduction of environmental concern to a concern with human interests in it’ (Hayward 2005a:25). Both Hancock and Hayward therefore take the status of human rights as given. Although Hancock wants to see the rationality that informs the interpretation of human rights overturned, neither theorist is troubled by ‘the ontologically contested nature of philosophical claims to human rights’. This attitude is not uncommon amongst green scholars who have discussed the possibility of there being environmental human rights. One possible explanation for this is the prevalence of the idea that there is ‘an overlapping consensus’ around the idea of human rights, such that support for human rights is ‘near universal’ as Donnelly (1999b; 2003) claims. As was discussed in chapter 4, there are those who doubt the integrity of the claimed consensus, and one of the points I explore in what follows is whether or not that is a serious problem for the idea of environmental human rights. Before turning to this question, however, I first consider what advantages and resources the human rights framework has to offer the project of realising environmental sustainability. In a less than perfect world, it may be that the potential benefits of discussing environmental sustainability in terms of human rights sufficiently offset any philosophical misgivings.

7.2.1 The merits of environmental human rights

There are a number of clear strategic advantages in presenting claims for environmental justice in the language of human rights. Firstly, there can be little

doubt that human rights discourse has come to be *the* authoritative language in which moral claims are presented in the context of both democratic polities and international political forums. Reflecting this dominance, the legal codification of human rights has developed and multiplied since the 1948 UDHR. Adopting rights language lends legitimacy and intelligibility to complex claims that, as Avner de-Shalit (2001:117-9) observes, are often poorly understood by the general public. Institutionalising these rights in international conventions and/or national constitutions increases the opportunities for the legal protection of the environment. As Eckersley (1996) notes, the rights discourse has its origins in liberal politics, a point also made by Chris Brown (1997). For some, this renders it implacably opposed to environmental ends, given, for example, the tendency in liberal politics to value the individual abstracted from his (social and ecological) environment.⁸⁵ Yet one attraction of the rights-based approach is that it may afford the opportunity to reshape the terms of human rights. Engaging an influential discourse presents opportunities to challenge the understandings of the terms in which debate is conducted. It is in this spirit that Hancock's concern to ground human rights in ecological rationality might be understood. Pointing to the advent of the idea of social and economic rights, Stammers (1999) argues that the scope of 'liberal rights' (by which he means political and civil rights) was extended by nineteenth-century social movements adopting the language of rights to further their aims. He sees a central place for social movements in driving social change (Stammers 1999:986).

Drawing on Stammers' work, Eckersley (1996:219-20) observes the success of the socialist inspired 'immanent critique' of liberal rights and asks whether the green movement could achieve something similar. Thus the notions of autonomy and justice that Eckersley finds central to the mainstream conception of human rights should be understood in broader terms than is currently the case. Vandana Shiva has pointed to the indivisibility of so-called 'first' (civil and political) and 'second' (social, economic and cultural) generation rights, arguing that 'Freedom from hunger is no less a human right than freedom of speech. Without the former, the latter does not exist' (Shiva 1999:88). What is needed to ensure the fulfilment of human rights is more than their legal protection, it is also the capacity to realise them. The task of the human rights advocate is therefore to identify institutions or structures that inhibit or

⁸⁵ Eckersley (1996) berates the liberal tendency to abstract the individual from his social context. In chapter 5 I argued that this criticism is perhaps over-stated, but endorsed Eckersley's view that the ecological context of human life is typically overlooked.

undermine the realisation of human rights as well as those that directly threaten human rights. If a sustainable environment were understood to be as much a material precondition for the exercise of civil and political rights as food and water are thus argued to be, then, contrary to Beckerman's position, such rights may be thought to be 'indivisible' from environmental rights also, and norms or institutions that threatened or undermined sustainability would also be the target of human rights claims. Environmental human rights thus understood might well be consistent with Thomas Pogge's institutional model of human rights – indeed, Hayward's understanding of human rights is explicitly derived from Pogge's model, whereby, in contrast to the contemporary human rights regime, the underfulfilment of human rights is taken as the relevant standard (see chapter 4).⁸⁶

A second respect in which environmental human right(s) may be attractive is apparent in the logic of human rights. As J.G. Merrills explains in a discussion of the conceptual difficulties that arise in linking the environment and human rights, 'rights are a way of marking out a protected area within which the rights-holders are free to pursue their goals' (Merrills 1996:27). The point of claiming environmental human right(s) is therefore to promote an adequate environment (Hayward), or the right to ownership of environmental resources and an environment free from toxic pollution (Hancock), as being beyond the sphere of political compromise. Thus debates about whether governments should prioritise the environment over development, or vice versa, are easily settled where further development is not essential to the fulfilment of other human rights. In this context, the advantage of a rights-based approach is that, following Dworkin, 'it serves to 'trump' competing claims for utility maximisation' (Eckersley 1996:216; Dworkin 1984).

Hayward expands upon this line of argument by suggesting that embedding environmental rights in national constitutions serves a broader purpose than simply providing for the protection of the environment by legal action. One effect of environmental human rights would be the mandating of the procedural rights discussed above. Hayward (2005a:125-127) claims that the legal recognition of such rights would have a positive impact on the democratic credentials of environmental

⁸⁶ That said, Hayward has some reservations about Pogge's argument, specifically relating to the latter's claim that human rights can be effective as moral rights only. Hayward contends, on the contrary, that one of the objects of those claiming moral rights is to have those rights legally recognised and protected. Without such legal recognition, Hayward argues, the moral right is weakened (see Hayward 2005:38-41). Hence Hayward's position is in some ways closer to the contemporary international human rights regime, in that he is arguing for constitutionally enshrined legal rights.

decision-making procedures, would help facilitate environmental justice, and would foster an ethic of custodianship, all key aspects of a sustainable society. Another positive effect would be to introduce environmental ethics to a wider and younger audience wherever citizenship training is part of the national curriculum, and to contribute to the environmental education of the general public. Finally, ‘Such effects would serve to consolidate the essential aims of environmental protection as being a matter of public interest rather than partisan cause’ (Hayward 2005a:126).

Finally, environmental human rights could be interpreted along the lines suggested in Pogge’s institutional model (discussed above in chapter 4). Individuals would then have a negative duty not to support human rights-disrespecting institutions, as well as governments being responsible for the legal protection of human rights. The individual duty could be readily assimilated as a practice of environmental citizenship, at the same time as providing citizens with a means of conceptualising the link between actions and environmental impacts. If de-Shalit (2000:178) is correct in suggesting that one of the primary obstacles to active environmental citizenship is a lack of knowledge and understanding of environmental issues, then environmental human rights so understood could prove an important educative tool.

In summary there are (at least) four areas within which advances may be made by adopting a rights-based approach to environmental issues. Most straightforwardly, opportunities for legal action to protect the environment are increased. Second, and perhaps more significantly, the idea of environmental protection and its importance is arguably strengthened, made more credible, more easily understandable, and is authoritatively embedded in the legal and political fabric if some form of environmental human rights is recognised. Thirdly and relatedly, claiming environmental human rights may create opportunities to reshape the understandings of key elements of political vocabulary. Finally, environmental human rights understood on an institutional model may provide a conceptual tool that would help explicate the link between actions and environmental impacts to putative environmental citizens.

7.2.2 Problems with environmental human rights?

On the other hand, there are also a number of reasons for caution with regard to the attractiveness of the idea of environmental human rights. One respect in which the logic of human rights is potentially problematic for environmentalists is its

anthropocentrism. As discussed in chapter 3, Michael Perry (1998) holds that to claim a human right is to say that there is something morally significant about being human. Human rights discourse recognises that individual humans have a right to what they need, or a right to pursue their own interests, in a way that individual snails, or giant pandas, or (more complicatedly) forest ecosystems do not. Catherine Redgwell identifies ‘a conceptual shift from conservation to ‘ecological consciousness’’ (Redgwell 1996:73) in the last thirty years or so of international conventions concerning the protection of the environment generally and threatened species in particular. For Redgwell, the advent of environmental human rights would bring benefits to the protection of other species, as it would protect human and other species’ habitats simultaneously. She therefore argues that the increasing dominance in political and legal thought of ‘weak anthropocentrism’, which values nature instrumentally as the inalienable context of human life, and thus recognises the interconnectedness of human life and that of other species, goes some way to ‘breaching the dam of anthropocentrism’ (Redgwell 1996:87).

Nevertheless, the fact that individuals of other species are not valued in the same way as individual humans are in the human rights paradigm does undoubtedly elevate humans over other species, and this will be unappealing to ecocentrists. Moreover, Hayward acknowledges that, where environmental human rights are accepted and there is a conflict between ‘human interests’ and ‘non-human interests’, then ‘the human interest will prevail’ (Hayward 2005a:34). With this in mind, Klaus Bosselmann proposes an ‘ecological limitation’ to environmental human rights. Such a limitation ‘refers to the fact that individual freedom is determined not only by a social context – the social dimension of human rights – but also by an ecological context’ (Bosselmann 2001:119).

Even so, the ecological context that can support human life need not necessarily be as biodiverse nor be less polluted than it is today. As observed above, Wissenburg has suggested that a global Manhattan could be ‘sustainable’ in the sense of being adequate to support human life, if people are prepared to accept it. There is, therefore, reason for concern about the quality of environmental sustainability a rights-based approach could offer. Hayward would acknowledge that even though they act as ‘trumps’, rights are not absolute; rights trump utility, not other rights. The right of any individual to freedom of speech, for example, is limited by the right of all to security, thus the freedom to incite violence is circumscribed. An ecological

limitation to human freedoms would seem to be implicit in the notion of environmental human rights proposed by Hayward and certainly Hancock, but the precise point at which human interests would ‘trump’ the imperatives of environmental protection cannot be determined *a priori*. The fact also remains that environmental human rights do not promote the intrinsic value of the biosphere, an important goal for many greens. What they do promote is the fundamental value of a human interest in the environment, but that may yield a rather weaker vision of sustainability than many greens would hope for. On the other hand, an enlightened citizenry of environmental stewards could interpret environmental human rights in terms of a strong notion of sustainability. As argued in chapter 5, anthropocentrism is not necessarily correlated with weak sustainability.

It is unlikely that any one argument would satisfy all greens. The aim here is to evaluate the extent to which environmental human rights might be thought to be a useful tool in relation to environmental sustainability. If the question is whether, strategically – that is, with the aim of effecting widespread political change in a democratic manner (if not always in a democratic context) – environmental human rights are useful, then the charge of anthropocentrism is not necessarily something that should discourage advocates of a rights-based approach. De-Shalit advises that the ecocentric approach is often unpersuasive to the public at large, who may be more concerned with economic security than long-term environmental sustainability. Hayward points out that the accusation of anthropocentrism does not recognise the subtlety of either the anthropocentric or the non-anthropocentric position: The anthropocentric position, if ‘weak’ (as above) recognises the inter-connectedness of human and non-human life in a way that ‘strong’ anthropocentrism does not, and, further, the goal of preserving the ecosystem as a whole is indirectly indicated in promoting environmental human rights, even if the motivation is human-centred. On the other hand, it is argued that,

[a] human rights approach provides a link to interests and motivation, and thus to actual practices, in a way that more abstract notions of a ‘right of environment’ or of ‘nature’s intrinsic value’ do not. (Hayward 2005a:35)

Environmental human rights can thus to some extent be defended against the charges of inherent liberalism and anthropocentrism. But an important element of a weak anthropocentric theory, as discussed in chapters 5 and 6, was concern for the welfare of future generations. Environmental sustainability protected by reference to

the right to live in an environment adequate for the health and well-being of the present generation is consistent with seriously degrading the environment that future generations will inherit. Hancock's formulation of environmental rights, promulgating the right to live in an environment free from toxic pollution, and the right to ownership of natural resources, is arguably more robust, but would nevertheless conceivably allow for the overuse of resources that are owned by the present generation, thus bequeathing an impoverished range of resources to the next generation. The question therefore arises as to whether future generations can be said to have rights, specifically, rights which the present generation has a duty to recognise and not infringe, and it is a question that has been much debated in environmental ethics.

Ruth Macklin (1981:151-152) argues that there is no currently identifiable subject that can be said to be the future generation-rights holder, a line also taken by Beckerman (2000:18). In reply to this Ernest Partridge (1990) offers the example of a campsite, which is said to prove that future generations can have certain types of rights. The campsite example runs as follows: if I stay at a campsite I am generally recognised as having a duty to leave the campsite in as good a state as I found it for the next potential user. This holds true whether the next person comes along next week or many years after I am dead. Partridge is confident that this proves that future generations can have what he calls 'designative rights', which are rights correlated to duties that are owed to a collective of people who can be described but not identified. But there are two problems with this argument. Firstly, it yields a potentially very weak version of sustainability, since the duty bearer is obligated to leave the environment, or the campsite, only in as good a state as it was found. Secondly, it is not clear why it is that future people have rights here. They cannot be said to have rights in a contractual or a reciprocal sense, since there is no clear contractual or reciprocal relationship. Thus it seems plausible that the duty I have to clear up the campsite is closer to the stewardship duties discussed in the previous chapter, which do not depend on corresponding rights, but are instead tied to a model of citizenship. De-Shalit (1995:114-116) considers the possibility that future generations might have rights in virtue of having interests. But this raises the problem that, for a future person to have any interest at all, he would have to exist, so he would have an interest in existing. Thus if a future person has rights in virtue of his interests, then he has a right to exist. This, as de-Shalit notes, is unacceptable, both in terms of the proactive

duties it might be said to place on current humans, and in terms of the impact on population numbers. These debates indicate that the case for future generations having rights does not seem a sufficiently robust basis on which to argue for environmental sustainability.

This casts a further doubt on the direct usefulness of the idea of environmental human rights, particularly if they are conceived in the avowedly legalistic terms that Hayward proposes. In the previous chapter I argued that Andrew Dobson's idea of post-cosmopolitan citizenship was problematic in that it recognised duties of justice in relation to environmental harms that may have been perpetrated by people already dead. Environmental human rights might be thought to give rise to the same sort of problems. Suppose I am born in a small island state in 2120, and that, when I am two years old, life on the island becomes untenable because of rising sea levels. I may have the right to live in an environment adequate for my health and well-being, but the people who have violated my right are not my contemporaries, they are the people and governments of previous generations. Quite obviously, I cannot seek legal redress against the dead.⁸⁷

However, I can act as an environmental steward and seek to maintain the environment for future generations, and environmental human rights might well help me in discharging my environmental citizenship duties. For example, if the right to live in an environment adequate for my health and well-being entails, as Eckersley suggests, rights to be informed of proposed developments, or rights to access environmental impact assessments, then as an environmental citizen I might find these rights crucial. Furthermore, such rights would have an impact on some cases within the present generation. Not all environmental problems are gradual and incremental. The siting of a toxic dump, for instance, can immediately impact on the health and well-being of local people, and would be directly captured by either Hayward's or Hancock's formulation of human rights. Similarly, those who have been made environmental refugees in virtue of conservation policies that equated environmental protection with wilderness preservation might well argue that the right to an

⁸⁷ A related point to be noted here is Derek Parfitt's well-known 'non-identity problem'. Parfitt (1984) argues that I cannot rationally wish that different decisions had been made before I was born, since it is the precise pattern of decisions that were made that led to me being born as the person that I am. Parfitt therefore argues that future individuals cannot be said to have been harmed by policies that bring about their existence. I suggest that this point makes little practical difference when making decisions about environmental policies, since, we can act as environmental stewards independently of the rights or claims of future generations (see chapter 6).

environment adequate for health and well-being, or the right to ownership of natural resources, would mean that they ought not to have been removed from their lands. So, although environmental human rights encounter some problems in relation to future generations, this does not render the idea of environmental human rights redundant.

What all this suggests is that the idea of environmental human rights is indeed plausible, and also has the potential to be useful to environmental citizens. But there remain the problems with the contemporary international human rights regime identified in chapter 4 and discussed briefly in the first section of this chapter. Thus I suggest that environmental human rights merit the endorsement of greens if and only if they are conceptualised differently to those rights recognised in the contemporary international human rights regime. The standard by which to judge the (in)security of environmental human rights is that proposed by Pogge, that is, not whether the rights have been directly violated but whether or not they are underfulfilled. This is appropriate because it better captures the chronic and systematic nature of some of the problems associated with economic globalisation. There is also merit in Pogge's proposal that individuals be responsible for human rights in that they have a negative duty to refrain from supporting human rights-disrespecting institutions. As noted above, this could be understood in terms of a duty as an environmental citizen. In chapter 4 I argued that Pogge fails to insulate himself from the libertarian critique he seeks to avoid, because the only plausible way of fulfilling this negative duty in a globalised world is to become a hermit, which, in itself is problematic since it is not consistent with many people's conception of a good life. It is also reasonable to argue that this negative duty falls foul of some of the doubts I raised in the previous chapter about environmental citizenship in that it envisages a more onerous model of citizenship than many liberals might be comfortable with and this in turn leaves, at the very least, unanswered questions about the division of labour. But it does not necessarily entail the identification with community inherent in republican and communitarian notions of citizenship discussed in chapter 6. It is closer to the post-cosmopolitan view of recognising the inevitability of social interaction and human interconnectedness, and, with that, the possibility of injustice.

Doubts about the consensus on human rights, and arguments about conflicting values, present further problems for the idea of environmental human rights. Non-Western critics of human rights have also at times rejected the implicit universalism

they see in the idea of sustainable development (again see chapter 4). Indeed, it is clear from O'Neill's and Martinez-Alier's work that there are reasons to be sceptical of environmental standards that are applied without the informed consent of the people affected. Human rights are undeniably universalist, and the terms in which human rights are defended by political theorists sometimes do little to assuage the concerns of those who fear that human rights proponents are opposed to cultural difference. But, as argued in chapter 4, it does not follow that cultural relativism offers an appropriate guide to action.

Implicit in my argument in the thesis has been the claim that human rights work as a package deal, and that environmental sustainability, being crucial to human security, ought to be recognised as such. The view of human rights as a package is exemplified in Shiva's point (above), which is that civil and political rights and social and economic rights are interdependent, presumably with environmental rights as well. On this basis, it matters very much to the environmentalist if human rights to freedom from discrimination are not respected. It might be, for instance, that a particular ethnic group is discriminated against in that the land that they live on is polluted by toxic waste and the authority does not prevent or correct this. In this instance, freedom of speech, to be able to speak out about the injustice, is also important. Thus it is easy to see the strength of the package deal approach. But there are corresponding weaknesses. The adoption of the human rights framework enjoins environmentalists to argue for a package, some elements of which are not universally respected, as seen in chapter 4. It may be that environmental issues are more amenable to having universal appeal as a human rights issue than freedom from discrimination on the grounds of gender, or freedom of religion may have. In this case, environmentalists might feel that their case would be enhanced if they argued that the right to an environment adequate for human well-being (or whatever the chosen formulation) is a more important human right than these other rights with less universal appeal. But if it is permissible to cherry-pick which rights are recognised, then the whole package begins to unravel. My aim in section 7.1 was to discredit the idea that we can have environmental sustainability or human rights, but not both. On the contrary, neither is secure without the other.

7.3 Conclusion

One of the aims of this thesis is to evaluate whether the human rights framework is an appropriate one in terms of which to respond to the environmental challenges associated with globalisation. This might be thought a misguided project in view of the assertions of scholars who have endorsed the view that either environmental sustainability, or human rights, should have priority. The justification for such views is either that the freedoms associated with human rights will undermine environmental sustainability, or that a world in which human rights are respected will be of greater value to future generations than a world in which certain ecological resources are preserved. Both these positions are flawed. Human rights and environmental sustainability are interdependent, particularly in the context of globalisation as it is currently pursued, where economic activity typically entails environmental degradation, which in turn undermines human security. The discussion in the previous chapter demonstrated that individual rights are necessary in order to guard against the potential for environmental politics to become oppressive. In this chapter it was shown that a powerful consensus around a particular model of environmental sustainability can also generate circumstances in which fundamental rights are ignored and abused, for example where environmental protection was understood in terms of wilderness preservation and used to justify the exclusion of people from their lands. Thus respect for human rights can be an important corrective to the more problematic aspects of the universalism disclosed in environmental values.

But it was also noted in this chapter that, although human rights and environmental sustainability are not mutually exclusive, neither are they straightforwardly nor immediately compatible. Thus the latter part of the chapter considered the plausibility and appeal of the idea of environmental human rights. Taking the status of human rights as given, and adding environmental rights, is an imprudent strategy in view of the problems exposed in the contemporary human rights regime. Therefore, insofar as environmentalists wish to institutionalise a right to some standard of environmental protection that will have the force of trumping other concerns, then it is incumbent upon green theorists to follow up on Eckersley's proposed project of an 'immanent critique' of human rights. This might lead to an endorsement of something akin to Pogge's institutional model of human rights, which, though not without its problems, is attuned to the criticisms of state-centrism

and is directed at the underfulfilment of human rights. The idea of environmental human rights has much to recommend it, if, and only if, human rights are not taken as they are, but are instead reinterpreted so as to address the problem of the underfulfilment of human rights, and so as to recognise the ecological as well as the social embeddedness of human life.

Chapter 8: Human rights, environmental sustainability, and the inevitability of moral choice

The aim of this thesis has been to examine the dynamic between human rights and environmental sustainability in the context of globalisation. It is evident from the analyses presented in chapter 2 that economic globalisation as it is currently pursued is environmentally unsustainable, and that environmental degradation is a significant and growing source of human insecurity. Environmental sustainability is the relevant test since a sustainable environment is a precondition for all human activity. Humans are ecologically embedded beings. There are a range of positions on the standard or quality of environmental sustainability required, and I do not pretend that my argument will satisfy all of them. I have, however, followed Bryan Norton in arguing that sustainability is best interpreted in terms of ecosystem integrity as the best means of bequeathing a range of options and opportunities to future generations. However, commitment to such a standard depends on a presumed concern for the fate of future generations over the long term. Nevertheless, a more minimal standard of environmental sustainability is also being undermined in the short term. That being the case, environmental sustainability is clearly a challenge for human rights.

In the thesis, I have sought to assess whether the contemporary human rights regime provides an adequate and appropriate framework for responding to that challenge, and I have argued that it does not, as human rights are currently interpreted. There are several reasons for this, not least of which is the problem that neither the contemporary human rights regime, nor any of the theoretical justifications or expositions of human rights studied here explicitly recognise the ecological embeddedness of human activity. However, demonstrating that humans are ecologically embedded beings is relatively straightforward, whereas demonstrating why individuals should act to protect the human rights of others, or to preserve the environment for the sake of future generations, proved much more difficult. In this concluding chapter, I consider some of the difficulties of universalism, the justification of obligations regarding human rights and future generations, the inevitability of moral choice, and the extent to which the human rights framework can be said to be an appropriate one for addressing the challenge of environmental sustainability.

8.1 Universal standards and the inevitability of moral choice

The contemporary human rights regime is, on Jack Donnelly's argument, supported by an overlapping consensus, analogous to that proposed by John Rawls as a means of devising domestic principles of justice. But there are also complaints that the apparent overlapping consensus on human rights is to some degree coerced, and that compliance with human rights standards is in fact 'a question of political might and *realpolitik*' (Hussein 2001:77). Donnelly's proposal that human rights be understood as a standard of civilisation arguably accepts the legitimacy of coercing compliance with purportedly universal values, indeed, of using coercive measures to universalise a particular set of values. Thomas Pogge's institutional model of human rights, though innovative in focusing on the underfulfilment of human rights rather than the legal protection of them, also implicitly accepts the legitimacy coercing compliance with a universal standard, and his commitment to human rights appears to be premised on the belief that people would naturally prefer human rights to alternative standards, such as a world organised according to the principles and values espoused in the Qur'ān.

The question of coercion is particularly important with respect to Pogge's theory because of his focus on the coerced imposition of an unjust institutional order on people as the crucial factor in determining the underfulfilment of human rights. In contrasting human rights with the Qur'ān, Pogge signals his support for the apparently coerced global enforcement of human rights standards, but not of Islamic law or morality. It would seem, then, that coercion is acceptable if the 'right' standards are being enforced. But in a pluralistic world, this is a deeply problematic line to take, and indeed, one that has been taken before and used to justify a great deal of oppression and injustice in colonial enterprises. In chapter 7, I also highlighted examples of environmental values, externally defined, being used to justify the violation of rights. In view of these past mistakes, as well as the difficulties of present pluralism, it might reasonably be argued that coercing compliance with human rights standards is not acceptable.

But such an argument would commit one to the view that where human rights are violated by a person who does not recognise human rights, in a society that does not recognise human rights, then there is nothing to be done about it. However, as Andrew Nathan points out, a neutral line over human rights is not possible, since trying to remain neutral in the face of oppression is in effect allowing the oppression

to continue. Thus moral choice is inevitable. Moral choice is also inevitable with regard to environmental sustainability. To delay decision or profess agnosticism as to the present generation's obligations to future generations is to side with those who argue that the future will take care of itself, and therefore legitimise bequeathing to posterity diminished biodiversity, over-stretched life support systems, exponential population growth, and toxic wastes that will last many thousands of years.

Richard Rorty's solution to this problem is simply to say that it does not matter that there are no independent terms available in which to argue the case, liberal values just are better (than the Qur'ān, or anything else yet to be discovered or argued), but commitment to human rights should be ironic, in the sense of acknowledging that it might turn out after all that this commitment is misguided. Until that is proven, however, human rights are our best bet. Michael Freeman and others complain that this leaves human rights as a moral standard considerably weaker than many would wish, but I do not see a convincing argument that yields a stronger defence of human rights whilst sensitive to the problem of pluralism. Rowan Cruft's idea of individualistically justified human rights is perhaps a candidate, but Cruft himself acknowledges the epistemological difficulties of such approach. The democratising trend in Pogge's institutional approach, which makes individuals responsible for human rights insofar as they are enjoined either not to support human rights-disrespecting institutions, or where this is unavoidable, to take compensatory measures, perhaps allows for individual judgment about the individual rights of others, but I argued in chapter 4 that an institutional model of human rights alone is not sufficient; legal protection, as well as collective action to undermine oppressive institutions, is required if disempowered groups are to be protected.

Turning to the inevitability of moral choice about environmental sustainability and the fate of future generations, there are plausible grounds for arguing that commitment to environmental sustainability need not be so ironic. There is now a well-documented scientific consensus on human responsibility for environmental problems such as global warming and climate change. It is also clear that, as ecologically embedded beings, it is in the interests of *all* humans that the environment be sustained at least to the minimum standard necessary to support life. Environmental sustainability may therefore have the potential to be a fairly uncontroversial universal value. While some greens have been thought to be 'anti-science' in view of their hostility to increasingly dangerous technological

development, others such as Ulrich Beck have emphasised the value of a critical engagement with scientific debate. Scientists can advise of the potential risks and gains consequent upon any particular development, but citizens must then reflect on this information to make judgments about what degree of risk they are willing to accept in return for what level of technological development. In short, citizens must make choices about what they value, and how much risk or what costs they are willing to accept in order realise their goals. Thus the way in which environmental sustainability is interpreted makes a significant difference to the extent to which environmental degradation is avoided, and the costs incurred in terms of changes to patterns of living. In chapter 5 I argued that neither free market environmentalism nor ecological modernisation were able adequately to accommodate both intragenerational justice and intergenerational justice, whereas ecological economics, though problematic in other ways, offered the possibility of a more robust model of environmental sustainability, but required significant changes in global patterns of production and consumption. Reflection on environmental decisions implies a judgment about the extent to which citizens today are willing to export costs to distant peoples, be they contemporaries in other, often poorer, countries, or future generations. As argued above, this moral choice is inevitable. It is clear, then, that environmental sustainability shares some illuminating features with human rights.

8.2 Concern for distant people and environmental human rights

There is also a parallel discernible in the problem of justifying support for human rights and environmental sustainability. Both depend on concern for distant people, but it is not always clear what is presumed to be the motivation or the justification for individuals to care about distant people. Meanwhile, it is evident, both in the environmental externalities attendant upon economic globalisation, and in the chronic underfulfilment of human rights, that distant people are generally valued less than spatial and temporal contemporaries. A number of possible justifications for human rights and environmental sustainability were considered in this thesis. Justifications for human rights that are grounded in rationally derived philosophical foundations, such as Alan Gewirth's, imply a model of the human being as a rational agent, an assumption shared in certain aspects by neoliberal economics, but this individualistic and rationalistic notion is not universally assented to. Gewirth's dialectically necessary method is unable to provide an answer to Michael Perry's

question of what it is that makes human beings such special creatures that they are uniquely worthy of a particular standard of moral consideration. Perry suggests that the only coherent answer to this question is God. Freeman concluded that a secular justification for human rights is ultimately unhelpful, but the plurality of religious doctrines, in addition to the existence of atheists and agnostics, suggests that an exclusively religious foundation for human rights will not suffice either.

Moving away from this search for foundational truths, Donnelly proposes a Rawlsian overlapping consensus on human rights. This is to some extent an empirical claim, but it is also flawed as a justification of universal human rights, since consensus is morally neutral – it indicates nothing as to the desirability of the subject of the consensus. It is also not a particularly strong basis on which to build support for human rights, since consensus now is no guarantee of consensus in the future. A third justificatory strategy was found in Rorty's proposal that human rights be thought of as the desirable product of a sentimental education. Here, the justification for human rights is based on the assumption not only that individuals care about the fate of strangers, but also that they should. Rorty rejects rationalist appeals to universal truths and claims that there are no 'morally relevant transcultural facts' (Rorty 1993:116), but his defence of human rights in fact commits him to the assumption that suffering, and humans' unique capacity for sympathy, are morally relevant transcultural facts. Thus there is evidence of a tentative theory of human nature in his argument.

A more troubling point conceded by Rorty himself is that many will find sentiment too weak a foundation for human rights, particularly since, as he argues, sympathy has a better chance of moving individuals to act in defence of human rights when the individuals in question enjoy relative security. Yet it is human security that increasing environmental degradation threatens to undermine. Freeman doubts the strength of Rorty's sentimental basis for human rights, but he ultimately in effect takes a Rortyan line when he argues that individuals face 'a nonrational decision either to accept or reject solidarity with humanity' (Freeman 1994:514). The most persuasive justification for human rights rests on the intuition that people do care about their fellow human beings, and Rorty therefore proposes that a sentimental education be cultivated as the best means to bolster support for human rights, as an expression of this 'care'. Though weaker than appeals to rational foundations claim to be, this is consistent with both secular and religious beliefs, insofar as it does not address the question of why humans are special, but simply assumes that they are.

On the other hand, appeals to rational self-interest can be said to justify environmental sustainability in terms of the 'restraint principle' proposed by Marcel Wissenburg. Here, it is in a first generation's rational interest to invest in protecting the environment as a means to secure the trust of succeeding generations that will overlap with the first generation, and, on the basis of these bonds of trust, subsequent generations will feel obliged to care for the first generation in their old age. But some environmental problems, such as climate change, build up incrementally over long periods of time, thus it would be possible for the first generation to degrade the environment in ways that will not impact on overlapping generations, but will impact several generations hence. Conversely, a first generation might wish to invest significantly in environmental protection to try to reverse environmental damage, thus incurring substantial costs and making changes to patterns of living that would impact negatively on the relative welfare of overlapping generations, but, if continued, benefit distant generations. Thus it is possible that first generation would impose on contiguously or immediately overlapping generations substantial costs without the promise of benefits within their lifetimes. In this scenario it is only rational for the first generation to act as described if it is assumed that overlapping generations will care sufficiently about more distant future generations to accept the burden. But this moves the argument beyond self-interest. Rational self-interest can only underwrite a weak model of environmental sustainability. Green theorists who have promoted the idea of environmental stewardship, such as Terence Ball and Robin Attfield, do generally seem to assume that most people have a sentimental concern for the fate of future generations. As with human rights, it might be thought that sentiment is too weak a basis on which to ground arguments for environmental sustainability, but the upshot of my analysis is that such arguments are more persuasive than appeals to reason.

However, I do not suggest that sentiment alone is a sufficient basis for justifying either human rights or environmental sustainability. What is also needed is knowledge of the potential and actual impacts of actions, which in turn is dependent upon an understanding of humans as both socially and ecologically embedded beings, and in particular an awareness of individuals' inevitable interconnectedness in the context of globalisation. Possible routes to generating such knowledge include Andrew Dobson's notion of post-cosmopolitan citizenship discussed in chapter 6, but I argued that the historical approach implied there is ultimately unhelpful to the

forward looking task of realising environmental sustainability. On the other hand, a reinvigorated notion of ‘environmental human rights’, taking account of the ecological embeddedness of human rights and adopting from Pogge’s institutional model the focus on the underfulfilment of human rights and on negative duties not to support human rights-disrespecting institutions, is in many respects a promising proposal. Yet, it is misguided to propose simply adding environmental claims to the existing list of human rights, in the hope of capitalising on the pre-existing consensus on human rights, or taking the status of human rights as given, as has been suggested in the literature on both human rights and environmental politics. Moreover, if the assumed sentimental concern for the fate of future generations proves in fact to be mistaken, then, even if generally respected and fulfilled, environmental human rights are likely to secure a weaker model of sustainability than that which I have endorsed. Human rights do not, then, provide a sufficient framework for responding to the challenges posed by environmental sustainability. Nevertheless, a renewed understanding of human rights may well prove instrumental in furthering the goal of environmental sustainability.

This thesis had as its key aim an assessment of the interaction between human rights and environmental sustainability in the context of globalisation, with specific reference to the question of the extent to which the challenges of the environmental problems associated with economic globalisation could be met within the terms of the human rights framework. My investigation has demonstrated the contested character of much of the terrain and exposed the inadequacies of many of the arguments employed therein. It also supports the conclusion that sentiment, informed by an understanding of humans as socially and ecologically embedded beings, though perhaps a weaker foundation for either human rights or environmental sustainability than many would wish for, nonetheless provides a motivation for (and the best available justification of) caring about others, which is key to both human rights and environmental sustainability in the context of globalisation.

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