

*Brian Baxter*

## Political Liberalism, the Non-Human Biotic and the Abiotic: A Response to Simon Hailwood

*Abstract:* S. Hailwood argues that if political liberals, in the Rawlsian sense, refuse to grant non-human nature anything other than instrumental value, then they may properly be characterised as human chauvinists, but not as inconsistent political liberals. He also argues that political liberals who do grant non-instrumental value to the non-human are thereby committed to a form of moral valuation of the abiotic. However, an analysis of what is involved in regarding non-human biota as possessing instrumental value reveals that humans must recognise the existence of interests, needs and desires of those non-human organisms which they wish to treat instrumentally. Given this, political liberalism in its most persuasive form, as articulated by Barry, implies that political liberals are not permitted to decide arbitrarily that non-human biota have only instrumental value. But the crucial role of interests in this argument precludes the attribution of any form of moral value to the abiotic.

### 0. Introduction

This paper is in part a response to Simon Hailwood's admirable discussion of the connection between political reasonableness, as it has been developed in the Rawlsian tradition of political liberalism (Rawls 2001), and the concept of nature's 'otherness', involving a recognition of the logical and causal independence of nature and natural processes from the human uses to which they are put in the formation of, in a very broad sense of the word, 'landscape' (Hailwood, this issue). The response is in the form of an exploration of what are two points over which there seems to be some disagreement between us, in spite of my strong fundamental agreement with the overall thrust of Hailwood's paper.

From a consideration of these differences I intend to go on to present my own perspective on the connection between the case for the recognition of the moral considerability of non-human nature and the implications for the Rawlsian tradition of political liberalism, particularly as developed in the version of this liberalism presented by Brian Barry (Barry 1995). This perspective is part of an overall case for ecological justice that I have presented in my recent book *A Theory of Ecological Justice* (Baxter 2005).

The basis of my disagreement is that I support an interests-recognition version of moral thought which is clearly central to the moral theorising characteristic of the liberal tradition in general, and the political liberal tradition in particular. Tom Regan has usefully distinguished two kinds of interest which liv-

ing beings may possess—welfare and preference interests (Regan 1983, 87–88). The latter presuppose sentience of a sufficient degree to warrant the claim that a being has desires, preferences or concerns about at least some things. The former requires only that the being that possesses the welfare interest can be positively or adversely affected with respect to its good, well-being or welfare. It need not possess the capacity for awareness of such effects, and thus need not possess sentience.

The full defence of an interests-recognition theory of moral thought would require, among other things, a careful discussion of these two types of interest and of the issue of whether non-sentient organisms possess at least welfare interests and of whether such interests can ground their moral considerability. Although there is no room here to undertake this analysis, which I have attempted elsewhere (see Baxter 2005, 45–59), it might be helpful to briefly outline its main points.

The basic thought which guides the argument is that even though non-sentient life-forms cannot be aware that they have a good, it is still the case that they do have it. The good of, say, a relatively simple life-form such as a bacterium is whatever is needed to enable it to survive and reproduce. There is no incoherence, or resort to mere metaphor, in saying of such a non-sentient life-form that it is thriving or ailing, having its welfare impaired or enhanced, in those circumstances in which it can carry on those activities involved in surviving and reproducing easily or with difficulty. Hence, it is intelligible to speak of even non-sentient life-forms as possessing welfare interests. Sentience is not a necessary condition of having those interests.

There are those who seek a *reductio ad absurdum* of this claim, by assimilating non-sentient organisms to other complex, non-sentient entities which exhibit complex forms of functionality, such as human artefacts (see, for example, DeGrazia 1996, 227–229). No-one thinks that machines have welfare interests, it is argued, but organisms which lack sentience are just like them. They can be damaged and destroyed, but not suffer harm or have their welfare impaired. They do not have welfare interests, and so cannot even *prima facie* have any form of moral status in their own right (although we may, of course, have moral duties with respect to them, as when they are someone's private property).

In response to this kind of argument the point needs to be made that while artefacts can be destroyed, only organisms can be killed. This reveals the key difference between the non-sentient organism and the artefact—namely that an organism, however simple, is a self-preserving, self-maintaining entity which seeks to reproduce itself. This, as we have seen, grounds its possession of welfare interests, and the possession of those interests in turn is what underpins the case for its moral considerability. What the latter amounts to requires a great deal of further careful elaboration, in the course of which it will undoubtedly be necessary to distinguish different moral weights for different kinds of organism. This, however, will take us too far afield at this juncture.

However, even if this argument fails, and we were to restrict moral considerability to organisms possessing sentience, this would, I suggest, put the onus upon political liberalism to find a way of integrating the recognition of such non-

human interests into the creation of liberal constitutions. It is this case which will be elaborated shortly.

The important point at this stage is that this ‘interests-recognition’ starting point leads me to doubt the defensibility of two of Simon Hailwood’s claims. The first of these claims is that it is coherent to entertain the possibility of the instrumental political liberal’s commitment to the belief that the natural universe is in effect simply one vast (potential) human landscape—existing solely to be made over in human interests. The second is the claim that the recognition of nature’s otherness—one’s acceptance of ‘ecological liberalism’ to use Simon’s term—commits one, on pain of inconsistency, to the acceptance of something like the moral considerability of the abiotic aspects of non-human nature. The ‘letting be’ which is required by the recognition of nature’s otherness involves a form of respect for the abiotic—for mountains, the land, rivers and so on—which supports the view that “we shouldn’t just unthinkingly assimilate it to our own purposes, even if no interests are harmed”. Although I am very sympathetic to the idea of ‘letting be’ the abiotic forms of nature, I am not sure that it serves the case of ecological liberalism to assimilate this thought too closely to the interest-based project of embodying moral concern for the non-human biotic in liberal constitutionalism. Let us consider these two points more fully.

## **1. Instrumental Liberalism and the ‘Nothing but Landscape’ View**

Simon Hailwood takes the view that there is nothing self-contradictory in the instrumental political liberal’s holding that the natural world is no more than actual or potential landscape. It is, however, arbitrary to hold this view, he suggests, provided we prescind from the possibility of the adoption of some ‘comprehensive doctrine’ (inevitably one which will fail to command universal assent) from which the ‘nothing but landscape’ view (as we may call it) can be shown to follow. Political liberalism, of course, has, since Rawls first formulated the notion, sought to avoid commitment to all such views. The arbitrariness of holding such a view means, of course, that the instrumental political liberal has no good reason to hold it. This is a weighty objection, in its way, but has the unfortunate implication that there seems to be no way of using the claim to oblige instrumental political liberals, on pain of betraying their liberalism, to abandon this view. Arbitrary they may be, and thus worthy of designation as human chauvinists, but apparently they remain coherent liberals.

If I have understood Hailwood’s argument correctly, he argues that the most we appear to be able say in response to such an instrumental political liberal position is that the demonstrable congruence between the thesis of ‘nature as other’ and the thesis of liberal neutrality, with the associated virtues of toleration and integrity (the same virtues applied to different subjects) gives the political liberal in general a reason not to accept the ‘nothing but landscape’ view. But not, I take it, a compelling reason. For that we would need to demonstrate

internal incoherence in the position of the instrumental liberal. Can this be done? Let us try.

First, we may note an important point which Hailwood makes, namely that one further position is simply not available to the political liberal, which is to accept the 'nature as other position', but go on to assert that this does not commit one to the view that nature is non-instrumentally *valuable*. One would then be attempting to hold to a value-neutral position—that is, to the claim that nature as other (independent of human-created landscape, physical and mental) is neither instrumentally nor non-instrumentally valuable. It simply exists, in a value-neutral limbo, as it were. This is not a tenable position, as Hailwood notes, because we must see nature as instrumentally valuable—"Nature must be viewed, in addition to something which 'just exists' as something at least potentially useful (if not useless)." The only real issue between the instrumental and the ecological political liberal is not over whether or not nature is instrumentally valuable, for both are bound to accept that claim, but whether, in addition, it is non-instrumentally valuable.

Let us, then, ponder further the implications of the unavoidable idea that nature is instrumentally valuable. The following series of considerations appears to be involved in this idea. If we have to view nature instrumentally, then to employ it with any degree of instrumental effectiveness we have to find out how it works. To take up an attitude of instrumentality commits one to finding out how to use one's instrument. Instruments are, by definition, to be used aptly. To be content not to use instruments aptly is not to accept fully the concept of instrumentality in the first place.

In the case of nature, understanding how to deploy it effectively as an instrument to achieve human ends requires us to gain the appropriate kinds of causal knowledge about it. This unavoidably means that we have to understand how it works independently of human desires, needs and interests, for it is factually undeniable that it does this. In the case of non-human life-forms, this means that we must achieve some empirically adequate grasp of how such forms operate in the light of their own desires, needs and interests. Farmers, for example, have to understand the needs of their livestock, what they desire at different points of their life-cycle and what it is in their welfare interests that they should have. Failure to acknowledge the need for such knowledge, and/or to take effective steps to secure it, leads to poor husbandry, an unsuccessful farmer and consequent deleterious effects on the well-being of those humans who depend on the successful outcome of the farmer's efforts.

Hence, an effectively instrumental attitude to non-human nature cannot consistently involve the factual belief that such nature is nothing more than a vast (potential) human landscape, in Hailwood's sense of the term. This is because the instrumental attitude has to recognise the fact that the non-human world has its own interests, needs and desires and this entails the recognition that it would pursue them even if human beings did not exist. It is correct, of course, that the acceptance of this factual claim does not appear in itself to commit human beings to attaching any non-instrumental value to such human-independent interests, needs and desires. We might continue to value them solely because

their existence, once understood and analysed, enables us to make effective use of the non-human for our own purposes. But the question that next has to be raised is whether the *political liberal* can consistently adopt this purely instrumental valuing of the interests, needs and desires of the non-human, the existence of which has to be acknowledged in virtue of holding the (unavoidable) instrumental attitude itself. Can the political liberal consistently refuse to attach non-instrumental value to the needs, interests and desires of other beings just because they are non-humans?

To do this is to claim that human interests, needs and desires are for some reason to be valued non-instrumentally, whereas the interests, needs and desires of non-humans are to be valued only instrumentally. It is, of course, unexceptionable to claim that at least some human interests, needs and desires are properly regarded as more important, morally-speaking, than some or all of the non-human interests needs and desires with which they may clash. This claim, which amounts to a qualified form of anthropocentrism, can be justified provided we find a principled way of allocating differential moral weights to the interests, needs and desires in question. As mentioned earlier, this differential moral weighting is something which is an essential part of developing a defensible version of any moral theory which accepts the moral considerability of all life-forms, and forms a central part of my case for ecological justice (Baxter 2005, 69).

But to argue for differential moral weighting of the interests, needs and desires of humans (or, more precisely, of actual and potential moral persons, whether human or not) is not the same as to deny the interests, needs and desires of the non-human any non-instrumental value at all. To do the latter without the provision of supporting reasons is, of course, the human chauvinism which Hailwood correctly labels as such. However, it is not correct to say that the adoption of the human chauvinism is an arbitrary matter, and that the most of which we can accuse the political liberal who goes in for it is arbitrariness.

A decision which is purely arbitrary could properly be made by a random process, such as tossing a coin. Human chauvinism is arbitrary in the sense that that the proponent of it has no good reason to adopt it, but it is not arbitrary in the sense that the decision whether or not to be chauvinist may properly be decided by tossing a coin. All forms of chauvinism are examples of prejudice, rather than arbitrariness. It is thus appropriate to ask chauvinists for the reasons for their specific value judgement that takes the view that the interests, needs and desires of some beings have a purely instrumental value, while those of others have a non-instrumental value also. It is not an adequate reply to say that this is not a question that needs to be answered, since the choice of whether or not to endorse such a valuation may properly be decided by the spin of a coin.

Political liberals are placed in a particularly delicate position here by the fact that their general position is one in which a close attention to the needs, interests and desires of those who are to be governed by the terms of a liberal constitution is essential to the conception of justice which is supposed to be embodied in the constitution and make its acceptance reasonable to all the participants. It thus becomes a particularly sensitive matter to attend to needs, interest and desires

of all who may be affected by the outcome of such constitution making, and to have good reasons for granting moral recognition to the interests, needs and desires of some and not those of others.

Instrumental political liberals may still be able to refute the non-instrumental valuation of the interests, needs and desires of the non-human, of course, if they can develop good reasons for doing so. But they cannot avoid the attempt to do so, for they are committed to it by the presuppositions of their theoretical position. Hence, the refusal to make the attempt, the acceptance that their position is arbitrary (that is, they have no good reason for it), is inconsistent with their general theoretical commitment to making sure that they have good reasons for making distinctions between the needs, interests and desires of beings who are to be affected by the political liberal constitution towards the creation of which they are committed.

It is at this point that we need to turn to a consideration of the position of political liberalism with respect to such constitution-making. The way in which this tradition of liberalism has developed, out of the Rawlsian precursor, has been largely responsible for shielding political liberals from what I would argue is the full logic of their position. For that tradition has focused on the question of what good reasons adult, intelligent human beings might have for agreeing to a set of constitutional arrangements to govern their lives together in the face of their differing, and perhaps opposed, value commitments. But this way of setting up the problem has led to the exclusive focus on the needs, interests and desires of such human beings, rather than to the needs, interests and desires of human beings who, for whatever reason, do not satisfy the description 'adult and intelligent', or to the needs, interests and desires of those beings whose lives are strongly affected by the activities of such polities, but which are not human beings at all.

To an extent it is defensible to give this first group, what I have elsewhere called the 'primary group' (Baxter 2005, 115), some prominence, for it is on this group that the creation and implementation of the liberal constitution must depend. But it is much less defensible to suggest that it is thus only the interests, desires and interests of this group which are to be consulted when the drawing up of the basic constitutional arrangements is at issue. Once one has a moral orientation which takes it that the point of moral requirements, including those of justice, is *prima facie* to attend to interests, needs and desires, the onus falls upon the theorist to explain why it is only some needs, interests and desires that are to be attended to, and not others. And once one notes that human beings straddle a range of cases, from the highly intelligent and capable to the unintelligent and incapable, the liberal commitment to the equality of moral status of all human beings inevitably requires that the needs, interests and desires of human beings who are not in the primary group have to be taken account of in constitutional deliberation. Then it transpires that the reasons which have to be offered for doing so (for, as we have seen, reasons have to be given here) turn out to justify the encompassing of all beings with wants, desires and interests whose lives can be affected by the workings of the society established by the constitution of political liberalism. Let us consider this case a little more fully.

## 2. Political Liberalism and Ecological Justice<sup>1</sup>

The version of political liberalism that is the most defensible is, I would claim, that presented by Brian Barry in his work *Justice as Impartiality* (Barry 1995). This focuses on the key idea of the Rawlsian political liberalism, namely that the basic rules which a society should accept as just are those which have been arrived at fairly, while avoiding the more problematic aspects of Rawls' device of the original position to secure a theoretically robust version of fairness. In Barry's formulation, which derives from the work of Thomas Scanlon, the fairness of a set of proposed constitutional rules derives from the stipulation that no-one who is invited to accept them can find reasonable grounds for rejecting them, even when they are aware that they are likely to fare the least well in the society which operates by them (Barry 1995, 67–72).

If we ask the question of what a group of intelligent humans concerned to live peacefully together, even in the face of their acknowledged differences over the nature of the good, and each possessing a veto over any proposed rules, would be led to agree to as a set of constitutional arrangements, then the following characterisation emerges. The crucial, Rawlsian, point is that the rules which are accepted must not be ones which only seem reasonable from the point of view of some substantive view of the good. This has various further implications, such as that the participants must be prepared to bracket their own view of the good, to avoid any claim of the infallible possession of the 'one true view', and that they are prepared to take part in a constitutional debate in the first place, which means that they are prepared to make the effort to offer justifications of proposed rules to other would-be fellow citizens, rather than seek to impose those views on others (Weale 1998, 25)

This also means, of course, that this very theory of justice in constitutional arrangements—the theory of justice as impartiality—must not itself only be derivable from a substantive theory of the good. This is obviously crucial, in order for the theory to avoid self-refutation. But it immediately raises the issue of whether any substantive views of the good are being smuggled into the formulation of the hypothetical discussion. One of the key issues in this connection is what we are to say about possible disagreements between the intelligent, adult members of the primary group postulated by the theory over the issue of whose interests are to count in the consideration of the reasonableness of proposed constitutional arrangements.

That the interests of the members of the primary group are to count is a given. But what of the interests of those beings of which it may intelligibly be said that they have interests, that those interests may be adversely affected by the activities of the society constituted by the basic rules arrived at, and that those beings cannot intelligibly be supposed to be participants in any constitutional convention of the type we are considering? Should their interests be consulted at all? If so, how far does the net of consideration extend—beyond the human? And, crucially, is it possible to answer these questions without appeal to some

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<sup>1</sup> The arguments of this section are a version of those presented in Baxter 2005, 110–125.

substantive theory of the good? If the latter cannot be done, then it would appear that the theory of justice as impartiality cannot finally be vindicated.

For our present purposes the crucial version of this issue is whether or not a well-constituted society constructed on political liberal lines should produce constitutionally-entrenched protection of the vital interests of non-human beings affected by the workings of the society. If it can be shown that such forms of constitutional protection can only be justified by appeal to some substantive theory of the good, then the answer will be negative. If it can be shown that at least some members of the primary group will have reasonable grounds, on the basis of considerations other than a substantive theory of the good, to veto any constitutional arrangements which do not offer such protection, then the answer may be positive. Whether or not it *has* to be positive depends upon the grounds for believing that such constitutional arrangements are reasonable for members of the primary group.

Barry's own assessment of this issue is that those who would seek to provide constitutional protection for the interests of non-humans can only do so on the basis of some substantive conception of the good which cannot reasonably be expected to command universal support, and thus will fail the test set for constitutional rules by the theory of justice as impartiality. This would still allow for devotees of such a substantive view to seek to convince their fellow-citizens of the desirability of offering legal and other forms of protection for non-human interests once the society has become established. But such protection will always be a matter of specific public policy, subject to the vagaries of public policy-making within liberal societies, rather than based on the rather more durable basis of constitutional protection, which offers at least the prospect of protection of interests in the face of transient public moods and whims (Barry 1995, 145–151).

It is, however, arguable that this is not the appropriate way to think of the issue of whose interest gets counted within the constitutional discussions hypothesised by the theory of justice as impartiality. To see this, we need first to note that even if we restrict the interests to be considered in the constitutional debate to those of human beings alone, there will inevitably be human beings within the putative society whose interests cannot be supposed to have been articulated and considered by those humans themselves in the course of a constitutional debate. I have proposed calling such people the 'inarticulate', for they are incapable—either temporarily or permanently—of formulating and presenting to others a clear statement of their vital interests and of considering proposed constitutional rules from the point of view of how those interests may be affected (Baxter 2005, 117).

Such human inarticulates are those such as infants and children, those suffering from various mental handicaps and problems, the very senile and brain-damaged and so forth. The key points to be made about such cases is that human beings in these categories cannot be supposed to put forward and defend their own case in a constitutional debate; that it will be necessary, therefore, if their interests are to be defended at all, that such interests be articulated and defended on their behalf by members of the primary group; that the fact that

some of their vital interests may be harmed by some proposed constitutional arrangements provides good reason for members of the primary group to veto such arrangements, and that when this is done there is no reason to suppose that this can only be done from within some substantive theory of the good.

It might be thought possible to capture what is needed here by the device of suggesting that the interests of human inarticulates can be protected via what is needed to protect the vital interests of members of the primary group. Thus, it might be shown to be in the vital interests of at least some members of any supposed primary group to defend the interests of those in any of the human inarticulate groups. But it will be a contingent matter that there are such connections of interest, and there is always the risk that some vital interests of human inarticulates will be neglected or attacked because a connection cannot be established with some vital interests of some or all members of the primary group.

The issue of whether or not the interests of human inarticulates should be considered in the contract situation, and of where certain lines should be drawn (should, for example, fertilised human ova be granted certain constitutional protections?) if they are to be considered is clearly a matter upon which different views might be taken. But it would be a mistake to suppose that the disagreements which arise over such matters must derive from a clash of views over substantive theories of the good, although it is certainly possible that that is their source.

Rather, such disagreements are likely also to derive from a different kind of moral issue—that of how we are correctly to delimit the community of justice. This is a matter of determining which beings are to be covered by constitutional provisions for the protection of interests. The existence of this issue with respect to the human case cannot simply be ignored, for it is part of the logic of the contract situation that vital interests are to be defended by constitutional provisions. This establishes in the human case a *prima facie* obligation, with respect to all human beings whose vital interests may be affected by the constitutional arrangements agreed to, to determine which ones are to be considered, which ones are not, and how due consideration is to be secured for them in the constitutional debate. The device of the proxy speaking on behalf of the interests of human inarticulates is the obvious device to turn to here.

But then this lets in another set of possibilities. For, if it is an issue which requires consideration by the very logic of the contract situation to determine how to extend consideration of interests to human interests beyond the primary group, it also becomes a matter of concern to determine how to extend such consideration to vital interests beyond the human group. If only the interests of the members of the primary group were to be allowable, then this issue would not arise, for no non-human can be part of the primary group. But, as we have noted, this will not provide adequate cover for the interests of human inarticulates.

Plainly, defenders of the contract device have to allow for the possibility of some member of the primary group viewing it as unreasonable to exclude the interests of human inarticulates from the constitutional debate. They will also then have to accept that such people will have to be regarded as having

good reason to veto any constitutional arrangements which do so. Such a veto could not be overridden as improperly deriving from a substantive view of the good, and so will have to stand. In fact, it is likely that most human beings would be inclined to the view that human beings in the human inarticulate group should have their vital interests taken account of during the constitutional debate. However, it is only necessary for the possibility to exist that some people should take this view, for the defenders of justice as impartiality, and political liberalism in general, to accept that a proper veto could be exercised by its defenders.

If it could be shown that those who demurred from such a view in the primary group could demonstrate that constitutional provisions to protect the interests of the inarticulate would be bound to attack their vital interests, then we would have to postulate a stalemate. For such individuals would have the permissible basis for the wielding of a veto in turn. It would have to be shown how defending by constitutional provision the vital interests of human inarticulates would inevitably attack the vital interests of some or other typical members of primary groups, and to do so without appealing to some substantive theory of the good. Plainly, it is perfectly possible that this could happen, for the debate over abortion and the right of women to decide whether or not to carry a developing human being to term focuses precisely on such an issue. Different positions are clearly adoptable over the fraught issue of whether or not to grant a fertilised human ovum certain constitutional protections or not, and over whether or not it is a vital interest of a woman to decide whether or not to terminate her pregnancy, at least up to a certain limit.

Over such matters the defender of justice as impartiality, and political liberalism, has to accept that there are certain kinds of issues concerning whose interests are to be counted, even when we restrict the debate to the purely human case, which cannot satisfactorily be resolved within the limits of the theory. It will not be a way out to claim that such matters should be resolved in the context of political debate within the liberal polity once it has become established, on the basis that it is a dispute between those who hold competing substantive views of the good. For such a view is incorrect. People who share the same substantive view of the good—secular humanists, say—may decide the matter very differently, depending upon how they interpret the application of the key concepts which they share, and this may turn on rival interpretations of the facts.

This is a crucial point in many ways for the project of political liberalism. Plainly, it cannot allow that the decision concerning who are to be encompassed in the community of justice—whose interests are to be attended to—can only derive from a substantive theory of the good, for if it accepted this as a valid claim then the theory would necessarily fail in its attempt to find the basis for agreement on constitutional matters between devotees of rival conceptions of the good. It might be argued that the very idea of interests implies a view about what is for the good for those beings possessing those interests, and that we cannot therefore ever properly prescind from such issues. But this does not work as an argument. It fails to note the crucial distinction between the

determinable forms of interest, such as health or well-being, and the determinate forms of these, which are what have to be elucidated in a substantive (rather than purely formal) theory of the good—such as the view that human health requires that human beings regularly experience certain kinds of affection from their intimates. A recognition that a being has interests does no more than accept the intelligibility of categorising the being in terms of the determinable, not the determinate, categories, and does not, therefore, commit one to a substantive theory of the good.

Having said this much, it is then possible to repeat the argument, substituting non-human inarticulates for human ones. For here, too, we only have to entertain the possibility that some members of the primary group will take the view that, since inarticulates' interests have to be taken into account in any case by the primary group, there is no good reason to omit consideration of the vital interests of non-human inarticulates whose interests sufficiently resemble those of the humans, articulate and non-articulate. Plainly, this claim of resemblance will require argument to establish, but there are abundant arguments of this kind, some of which I review and give further argumentative support for in my book (Baxter 2005, 45–73). This means at the very least that those who wish to demur from this view will have to find conclusive reasons for rejecting these arguments. No such conclusive reasons have yet been found. Hence, the members of the primary group who consider this issue will have to accept that those who wish to extend constitutional provision to the interests of non-human inarticulates will have a permissible right of veto to any constitutional arrangement which fails to do so.

Is there a parallel in this case with the possible clash of vital interests between articulate and inarticulate human beings? Could some members of the primary group have a permissible veto in turn over constitutional protection of the vital interests of those non-humans affected by the society in question? If so, we would have another stalemate which would show the limits of the approach of political liberalism in general and justice as impartiality in particular.

The only parallels which are apparent concern those occasions when humans and non-humans are in competition for the same resource, or when non-humans have evolved into organisms which only thrive when they attack human beings directly, such as various viruses, bacteria and parasites. In the latter case the clash of interests seems insurmountable, and there seems to be no *modus vivendi* possible between humans and non-humans. The basic right to self-defence is triggered in such cases, and extermination of the non-human may in certain circumstances be the only real option if any attention at all is to be given to the protection of vital human interests. This consideration also applies, of course, to those members of the primary group whom we are supposing to be contemplating the constitutional protection of the interests of the non-human. Hence in this instance they will have the same conclusive permissible reason as everyone else to veto the constitutional protection of such non-human interests.

In other cases, the potential clash of interests may be avertable by human measures to allow non-humans the scope to pursue their vital interests without much or any damage to human vital interests. Those members of the primary

group who insist on some constitutional protection for such interests will then have arguments available to persuade potential veto-wielders that the human interests apparently under threat may not be so after all.

How successful such arguments can be is a contingent matter, of course, and is in large measure dependent on the concern of at least some human beings to develop them. Such arguments are becoming increasingly available, but have to fight against the lazy, and indefensible, assumption that if human beings and non-humans compete over anything, the only solution is to eradicate the non-human.

The upshot of this, then, is that there may well not be such an acute clash of interests between humans and non-humans as to give rise to a potential stalemate of vetoes in this case of the kind we witnessed in the abortion case above. Another interesting result emerges from these considerations. This is, in effect, a view of where the onus lies in those disputes over the extent of the community of justice that we have seen to lurk within the political liberal approach. For it is now clear that it is those who wish to make the borders of the community of justice the most extensive possible whose views should be accepted, unless good cause can be shown otherwise. This ‘good cause’ will be a matter of showing that some members of the primary group, and/or those in that group who are acting as proxies for inarticulates, have a permissible veto to wield over the proposal to extend constitutional protection beyond the primary group members. Such vetoes, to repeat the main point, are only permissible if they do not emanate from some substantive conception of the good.

To return to the point from which this all began, we now have a reason for asserting that political liberals who arbitrarily decide to take the view that all of the non-human is solely an actual or potential human ‘landscape’ are holding a view which is incompatible with their political liberalism. They ought rather to accept the most extensive view of moral considerability they can, given their focus on the protection of interests, provided that no human vital interests are under threat. In other words, political liberals should be ecological liberals.

It remains, of course, possible for a political liberal to conclude, after careful consideration of the arguments, that there is insufficient similarity between the interests of non-human and human inarticulates to justify the extension of the membership of the community of justice to the latter. But then this will mean that the decision to exclude them is not after all being conceived of as an arbitrary one, but one for which good reasons can be found. Yet, even the citing of good reasons will be insufficient to effect that exclusion in a principled way for the political liberal, for, as we have seen, the onus is on the political liberal to accept the widest extension possible of the community of justice. Only if a clear harm to the vital interests of human beings—articulate or inarticulate—can be shown by such an extension of the community of justice can political liberals wield a justifiable veto against the constitutional protection of the vital interests of non-humans affected by the activities of the political community which is being established.

### 3. Formal Summary of the Argument<sup>2</sup>

1) Human beings have to accept that nature has at least instrumental value (that is, it is not possible to hold that nature has no value whatsoever).

2) The point of view of instrumentality, in virtue of the very meaning of the term, commits human beings to finding out how nature works.

3) This means that human beings have to understand how nature works independently of human purposes, which means in turn that when they consider non-human organisms they grasp their interests, needs and desires (IND).

Conclusion 1: Human beings cannot consistently regard nature merely as a vast human landscape, even if they view it purely empirically (although this in itself does not imply that human beings have to regard nature as having non-instrumental value).

4) To attribute non-instrumental value solely to human IND without good reason is human chauvinism.

5) All distinctions in the value of beings need to be justified— there is a presumption of the non-instrumental value of the IND of different species.

6) All forms of chauvinism are arbitrary in the sense of lacking reasons for their exclusionary value-judgements.

7) Political liberals have to justify constitutional arrangements to all beings affected by them.

Conclusion 2: If political liberals wish to adopt a purely instrumental valuation of non-human beings, they have to justify it—they cannot properly claim that this is a matter of arbitrary decision.

8) The best version of political liberalism (PL) is Barry's: it applies a criterion of fairness by requiring that any set of proposed constitutional rules should not be reasonably rejectable by those who are to live under them.

9) Reasonable pluralism in the Rawlsian tradition in which Barry's theory is located commits us to justification of constitutional rules in independence of specific substantive theories of the good (comprehensive doctrines).

10) PL itself must not rely on such a comprehensive doctrine.

11) Even if we restrict the IND to be considered in the constitutional debate to humans, there will be 'inarticulates', whose IND are articulated and defended by the primary group on their behalf.

12) If the IND of the inarticulate group are violated by proposed constitutional arrangements, then they may be reasonably rejected by members of the primary group on their behalf.

13) The interests of the inarticulate can be taken into account without relying on a substantive theory of the good.

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<sup>2</sup> I am greatly indebted to Thomas Schramme for the suggestion that I provide this summary, and for providing most of it himself!

14) To establish that any human beings fall outside the scope (community) of justice, needs positively to be justified (i. e. there is a presumption for inclusion of all human beings affected by a constitutional arrangement).

Conclusion 3: The IND of inarticulates cannot be disregarded in the contract situation without further ado.

15) If members of the primary group reject (veto) a proposed constitutional arrangement on behalf of the IND of inarticulates, and (probably other) members of the primary group can show that their own vital interests are attacked by the very rejection of the proposed constitutional arrangement, then there might be a stalemate (cf. the example of abortion).

16) The stalemate might not be surmountable within the limits of PL itself.

17) The argument so far presented works for non-human inarticulates as well.

18) Whether there may also be unresolvable stalemates in case of conflict of basic interests between human and non-humans depends on several conditions, but it seems less likely.

Conclusion 4: The onus is on those who wish to restrict the community of justice to humans only to justify their position.

Conclusion 5: Liberals who regard non-human organisms solely as potential landscape hold an incoherent viewpoint, i. e. political liberals ought to be ‘ecological’ liberals.

Conclusion 6: The only reason which can be provided on liberal grounds for excluding non-humans from the community of justice is a clear and unavoidable harm to the vital interests of human beings which would follow from their inclusion.

Conclusion 7: Hailwood’s claim that liberals might coherently hold that the natural universe is nothing more than a vast human landscape (as having only instrumental value) should be rejected.

#### **4. Does the Ecological Liberal Have to Grant More than Instrumental Value to Abiotic Nature?**

What of Hailwood’s other claim, that the recognition of nature’s otherness—one’s acceptance of ecological liberalism—commits one, on pain of inconsistency, to the acceptance of something like the moral considerability of the abiotic aspects of non-human nature?

It will be apparent that the case just made for denying that an instrumental political liberal can be consistent, if arbitrary, in denying the non-instrumental value of the non-human relies entirely on the idea that biotic non-human nature, inarticulate though it is, possesses interests—welfare interests and, in some cases, preference interests—which political liberalism ought to respect, unless good cause can be shown (in the sense of what would justify participants in a contract situation wielding a veto) not to. The appeal to welfare or preference interests essential to this case cannot, however, be used to justify the recognition of respect

for abiotic nature, such as mountains and rivers. There is no conception of ‘interest’, or development of the idea, which allows one meaningfully to speak of the interests of abiotic nature. Nothing counts as harming or benefiting a mountain or river, even though such things can clearly be destroyed and radically altered by human and non-human forces.

The obvious way for a political liberal to find a reason for respecting the abiotic elements of non-human nature is to appeal to the interests—welfare and preference—that human and non-human biota have in the continued existence and character of the abiotic elements. This, however, is not a mode of defence of which Hailwood wishes to make use, for it amounts to granting only instrumental value, albeit often of an elevated (spiritual, aesthetic, and so on) kind, to the abiotic.

The recognition of nature’s existence as beyond landscape, broadly conceived, certainly applies to abiotic elements of nature. But the problem is that recognition of this fact does not in itself justify the granting of a moral status to all the elements encompassed by this recognition. It is certainly correct that one can find reasons for talking about many abiotic features of the natural world in ways similar to those which we employ for biotic elements. We can speak of the birth, continued presence and identity of mountains and rivers, for example. We may speak of the ‘life-cycles’ of stars and planets, mountain ranges and glaciers. This is a way of talking which at least begins to make intelligible the belief shared by many human beings, that such things have a presence which demands some respect. They are produced by forces beyond the human and seem to follow a destiny completely independent of human desires or actions. In this sense they exist entirely beyond ‘landscape’.

The idea that they should be ‘let alone’, to follow their own destiny, is certainly intelligible from this standpoint. But it is better regarded as an expression of the negative point—that not everything exists only for human use, and it is arrogant to think otherwise—rather than an expression of the positive point, that the abiotic has a moral claim on moral agents, such as human beings. The problem comes from the fact that human beings and other living things may well have vital interests which can only be adequately met if some destruction or character-changing of elements of the abiotic are undertaken. In such situations it is not easy to see how one could defend the abiotic against the activities of the biotic, for the latter do have interests which establish a *prima facie* moral claim, whereas the abiotic does not. It seems that the morally-considerable features of the biotic should rather easily trump any claim for respect which we could generate for the abiotic on the basis of the considerations of the ‘career independent of human (or other) life-forms’ argument just alluded to. An ecological liberal would find this conclusion impossible to resist just as much as would a non-ecological liberal.

For these reasons, then, which interconnect with the arguments given for rejecting the consistency claim put forward by Hailwood with respect to the instrumental liberal chauvinist, even ecological liberals should resist the idea that abiotic nature has a quasi-moral status. The argument against human arrogance which underpins this idea certainly appears to be entirely compatible with po-

litical liberalism, but is—regrettably—not something to which even ecological liberals are committed to by the premises of their own theory. What would be needed to sustain this is some basis of moral considerability which goes entirely beyond the interests-based approach of liberalism. It is interesting to speculate how much of what we understand as liberalism, especially the political liberalism we have been considering, could be sustained on such a basis.<sup>3</sup>

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