



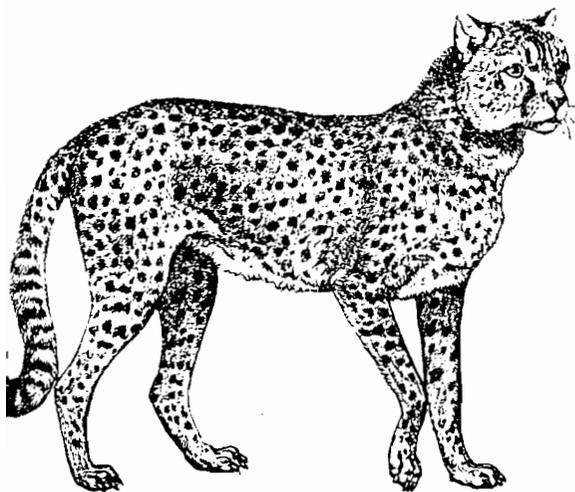
"ENVIRONMENTAL JUSTICE"

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A review of Peter S. Wenz's *Environmental Justice*, (Albany: State University of New York Press, 1988). 368 pages. \$52.50 hardbound, \$19.95 paper.

Environmental Justice is a welcome addition to the rapidly growing literature in environmental ethics. Two dozen titles are currently in print or in press, and this book will hold its own in that vigorous discussion. Peter S. Wenz is Associate Professor of Philosophy and Legal Studies at Sangamon State University, Springfield, Illinois. His background in law as well as philosophy shapes his approach, which is from the perspective of justice. "*Environmental Justice* is primarily about theories of distributive justice, theories concerning the manner in which benefits and burdens should be allocated when there is a scarcity of benefits (relative to people's wants or needs) and a surfeit of burdens" (pp. xi-xii). "The present book is largely devoted to examining competing principles of distributive justice as they are, or may be used to make environmentally focused decisions" (p. 24).

Wenz finds environmental justice of critical importance, both practically and theoretically. "I have argued that we live in an extremely unjust world" (p. 338). "From the environmental justice perspective, the world is a mess" (p. 339). In his



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search for justice, Wenz surveys available theories and tests them against cases real and imagined. He particularly dislikes "the virtue theory" (Chapter 3), more cause than cure of injustice. Justice requires that persons get what they deserve, and this theory holds that this is regularly now happening. The rich are getting what they deserve, the poor what they deserve. The virtue theory "is not rationally defensible" (p. 126), and Wenz is perplexed that nevertheless many persons hold it.

Certainly no one will argue that this theory is the whole truth. Many of the rich are dishonest, or live on inherited wealth (assuming inherited wealth is undeserved), or have their fortunes by luck. Poverty sometimes is, and sometimes is not, the fault of those who are poor. The determinants of both wealth and poverty are complex. No one is an island, every laborer builds on the labors of others and suffers misfortunes at the hands of still others. But Wenz cannot seem to find even a half truth in the virtue theory, though he later agrees with Rawls that persons in the original position will agree that "the inequality of wealth in society is required as a spur to productivity" (p. 241). Wenz holds that "people (in Western societies, at any rate) are largely motivated by the prospect of personal material gain. Their hard work can be more reliably solicited by the prospect of personal ownership of property than by most other rewards" (p. 331). So far as that works, it would seem the virtue theory is partially true; those with property have it as a reward of work. What follows about whether and how far the deservedly (or undeservedly) wealthy ought by duty of justice or benevolence to share their wealth with the poor, whether faulty or innocent, is a question that requires more analysis.

Continuing his critique of theories of justice, Wenz in successive chapters moves through libertarian theory, laissez faire economics, efficiency theory, human rights, animal rights, utilitarian theory, cost-benefit analysis, and Rawls' theory of justice. Most are found promising at points; all are found wanting as comprehensive theory.

Following Tom Regan, Wenz defends animal rights, holding "that all subjects-of-a-life, human and nonhuman alike, have rights, or at least that we have obligations toward them" (p. 147). But there is asymmetry between human rights and

animal rights. Humans have a right to be rescued from wolves; wild sheep do not; humans have a right to decent housing; wolves do not. Humans with broken legs have a right to medical treatment; ducks with broken wings do not. Positive rights are rights to be helped; negative rights are rights to noninterference, rights to be left alone (p. 110). When humans deal with other humans, all humans have both negative and positive rights of equal strength (though see later). Animals do not have any negative (much less positive) rights when dealing with each other; animals do not have any positive rights when humans deal with them. "The rights of wild animals are entirely negative" (p. 152).

All the theories explored can in combination to some extent repair each other's defects, but they are all simultaneously defective in what they are able to count morally — only humans and higher sentient animals. The theories are "insufficient even in combination with one another because none justifies direct concern for plants..., plant species, animal species, mountain streams, oceans, and wilderness areas" (p. 271). Before venturing into the more difficult territory of theories that have such focus, Wenz pauses to regather perspective. In a chapter about methods in ethical inquiry, he softens the objectivity in science and insists on hard ethical argument, thereby to conclude that "the basic structure of ethical inquiry is identical to that in science." "Conclusions about environmental justice can be as objective and certain as conclusions in any other area of environmental studies" (p. 254).

Reassured, Wenz presses on to appraise ethical theories that are more distinctively environmental: biocentric individualism and ecocentric holism. Although an ethic concerning the environment has been at issue since the start, not until Chapter 13, four-fifths of the way through the book, do we directly ask questions of environmental ethics. Earlier, the questions have been about how to distribute among humans the benefits and burdens associated with the environment, or about the rights and goods of higher animals in their environments, but not about flora, fauna, and natural history *in toto*.

Biocentric individualism comes in two forms. Egalitarian individualism holds that every living

thing has the *same* inherent worth. Nonegalitarian individualism holds that every living thing has *some*, though not necessarily the *same* inherent worth (p. 273). The first form requires too much of us; if all living organisms have equal inherent worth, I cannot take antibiotics to kill millions of bacteria to speed my recovery from pneumonia (p. 284). "Biocentric egalitarianism is so confining that even [Paul] Taylor, its foremost proponent, refuses to apply it consistently" (p. 287). The nonegalitarian form requires too little. It posits infinitesimal amounts of inherent worth in microorganisms and mosquitoes; this worth, though present, is easily overridden by human interests (pp. 291-92). Wenz's critique of Taylor's principle of restitution (pp. 287-292) is a fine example of the many careful arguments throughout these sections.

Wenz finds that ecocentric holism has much more merit than biocentric individualism, though it too fails as comprehensive theory. "The processes of biological evolution which result in increasing biotic diversity are among the good things of which we must take account" (p. 304). These processes do not have value inherently, for what they are in themselves, they have value instrumentally (for what they produce), but this is no ordinary instrumental value. One important difference is that these instrumental processes are nonanthropocentric; they are instrumental to every living organism. A still more significant difference is that with evolutionary processes "means and ends are connected essentially, not accidentally" (p. 306). In human affairs the same end can be reached by various means, but in natural history the processes are essential for creating the products. The products result from the outplay of the processes, and value is smeared across the process-product distinction; it can no longer be parceled into instrumental-inherent sectors. "Logic alone dictates that these processes be viewed to some extent as ends-in-themselves" (p. 307). Wenz approaches here what I have tried to call "systemic value."

At the close of the book Wenz presents his own theory, which, he claims, integrates — or at least plurally arranges — all the preceding theories: the "Concentric Circle Theory of Environmental Justice" (p. 311). This theory does include everything that counts morally, from humans through sentient animals, plants, and ecosystems, and it also

includes what is worthwhile in the various theories of what and how to count morally, arranging both objects and theories of moral concern in concentric circles.

En route, Wenz distinguishes between a theory of ethics and a theory of justice. A theory of ethics asks what is of direct moral concern and how it is of concern. A theory of justice asks what is a fair allocation of benefits and burdens among those beings who are of direct moral concern (p. 272). A theory of justice is a subset of a theory of ethics, since some moral questions are not about distributing benefits and costs. Nearing his conclusion, Wenz might better have passed from the subdomain of justice to the comprehensive territory of ethics; nevertheless he wants to call the global theory the "Concentric Circle of Environmental Justice." I would have called it a theory of Environmental Ethics. Much of the behavior enjoined cannot be adequately thought of as distributing costs and benefits fairly. Wenz's background in law, which often serves him well, may also tempt him to stretch the concept of justice into regions where it ceases to be the best category. Even in interhuman ethics the question of "getting fair shares of what is scarce" (p. 22) is not always the root moral question, for example in censuring adultery.

When humans deal with plants, endangered species, ecosystems, wildernesses, mountains, rivers, or wildlife, justice is not the most useful category. If one presses the etymology of the term far enough, justice is doing what is right, and so the term could be insisted upon. Nevertheless, justice in current use is so entwined with courts of law, with issues of fair distribution of benefits and burdens among humans (as Wenz rightly claims), that one is better advised to employ the more comprehensive term, ethics, and to speak of protecting values and goods, of appropriate respect and behavior.

Another legacy is that Wenz sees, at first at least, everything through a distributive justice filter. He characteristically pictures actors desiring to maximize their benefits and minimize their costs, interacting with others who are doing the same. Nothing is said of benevolence or of love as springs of ethical action. Love might be the better category for dealing with adultery, for instance. And humans can love nature as well as other humans. Appropriate respect for the lives of jumping spiders

or coyotes is a matter of delighting in alien forms of life, recognizing what Wenz calls their inherent value — not an issue of fair distribution of benefits and burdens.

Morality is not finally a matter of each agent's seeking to enjoy as much benefit as possible and to avoid as much cost as possible, being fair in so doing. We do want to do that, of course, but that is only enlightened prudence. Wenz begins with and often returns to an episode when in childhood he shared a pizza with a friend. One cut it in half and the other chose first. The moral model reached in that childish outlook is only the early stages of moral development. As Wenz admits (p. 6), when humans negotiate each to protect his or her own self-interest with a fair distribution of benefits and burdens, we are only being prudential and not yet moral. It is not until the later portions of the book, after the category of justice ceases to be central, that we reach deeper moral territory.

Hiking a wildland trail, I leave the flowers for others to enjoy, hoping that they will do the same for me. I think this is fair, and we can all enjoy the flowers. It is a fair distribution of benefits. Later, shifting my ethical focus, I let the flowers live out of respect for what they inherently are — whether or not any humans should ever again pass that way. Love, not justice, seems the richer category for the maturing ethic. If one insists, the term justice can again be forced to serve. "Justice is done when people get what they deserve or what is due to them" (p. 22). Adapting the term to flowers, non-humans, having no merit, have no just desserts, but possibly flowers have something due: appropriate respect. Flowers get their poetic justice! But this is forcing words to do unfamiliar work.

In Wenz's discussion of development versus the preservation of parklands, one side wants to develop and thereby "to maximize recreation in the stunningly beautiful settings." The other side prefers preservation, so that they and persons in the future may "enjoy the lands ... in their natural state" (p. 25). The issue is treated as a fair distribution of scarce recreation benefits. No doubt these elements are present in such decisions, but there is a deeper environmental ethics nowhere reached in such discussion, one that Wenz himself reaches only late in the book. The preservationist may further be seeking appropriate respect for

natural systems, especially relict wildlands, which humans can learn to enjoy but should respect whether or not they are maximizing recreation benefits.

An environmental ethics needs a theory for people — influential people like David Brower, Aldo Leopold, Rachel Carson, or those who forged the Wilderness and Endangered Species Acts — who act on behalf of plants, animals, and places and are not driven to maximize their personal benefits, or even humanistic benefits. When Peter Singer or Tom Regan defend the rights of animals, they are driven by love as well as by a sense of the just distribution of costs and benefits. Much environmental concern, often that on the cutting edge, is distorted when seen through the filter of distributive justice.

Wenz's analytical work evaluating the insights and inadequacies of various ethical theories occupies most of his book (Chapters 1-13). But this is preface to his synthetic model, the concentric circle theory (Chapter 14), which is the most creative part of the book. Richard Sylvan, Val Plumwood, Baird Callicott, and perhaps Peter Singer have earlier suggested models of this kind, but Wenz's model is the most elaborated.¹ It is more self-consciously "pluralist" (p. xii). While Sylvan, Plumwood, and Callicott do not much dwell on their pluralism, being more interested in integrated theory, this is the third recent book especially to advocate pluralism in environmental ethics. Christopher Stone's *Earth and Other Ethics*² makes moral pluralism his central theme, inveighing against moral monism. Andrew Brennan's *Thinking About Nature: An Investigation of Nature, Value and Ecology*³ insists on ethical polymorphism. Wenz is more alert than are Stone and Brennan to the danger of pluralism: an "unprincipled alternation between theories." "We need a principled justification for preferring the dictates of one theory in one situation and the dictates of another theory in a different situation" (p. 313). It is too much to expect that the various theories can be derived from a single master principle, but we will need — if we can find one — some theory that decides executive control when theories compete.

Even while we yet grope for executive theory, Wenz encourages us to proceed undaunted. We can operate with "good judgment" (p. 315), analo-

gously to the way scientists must evaluate competing theories without a calculus for doing so. Stone and Brennan likewise hope to give general guidance for alternating between theories, trusting the rest to rational argument in local contexts. I am not sure that any of the three yet have the needed principled justifications for what theory to prefer when. If no standards can be formulated for what Wenz calls "good judgment," this will often be little more than a euphemism for "muddling through."

Where it celebrates richness, pluralism can be a virtue. Environmentalists often want to be holists. They soon discover more complex levels of ethical concern than in interhuman ethics. One will need different theories, or subtheories, for dealing with humans, future generations, animals, plants, species, ecosystems. But pluralism can be extolled as a virtue when it is tacitly a confession of ignorance and failure of nerve. One is confused by the theories with all their pros and cons and can find no way to decide among them. So one becomes a pluralist and calls it riches — when in truth one lacks what is most needed: an integrated theory.



I turn now to the content of the synthetic theory. Who is at the center of the series of circles? The individual moral agent. Others of moral concern are located on radiating circles by their "closeness" to the moral agent at the focus. "Closeness is defined as the strength and number of one's obligations to others" (p. 316). Who is in the circles? In the innermost circles are humans, who have rights, positive and negative, and who have preferences they wish satisfied, who have environmental goods to be defended and costs they must bear. "People are thought of as existing in concentric circles around me" (p. 317). They are distributed near and far through moral ties, linked with me by geography, family, employment, or community. "As people are more remote from us (our interactions with them are less involved) we have diminished responsibilities for their welfare" (p. 326). "Our obligations to people concerning their positive human rights diminish as those people are more remote from us" (p. 328).

However, rights at a distance have more pull than mere preference satisfactions close by (p. 322). Location on the circles is related to positive human rights but not to negative human rights (p. 325), which have the same strength throughout the circles. This, I suppose, is consistent with Wenz's earlier claim that "the reasons for believing in the existence of positive and negative human rights are of equal strength" (p. 123), if one understands that the reasons but not the rights are of equal strength.

The outmost human-inhabited circle is that of future generations (p. 332). This seems partly right, although I might feel stronger ties to grandchildren yet unborn than to persons now living on the other side of the world.

Still further out are circles inhabited by sentient animals. Domestic animals may have positive rights, but wild animals do not have any positive rights at all. Again, negative rights keep their strength. "The rule ... is that all subjects-of-a-life are equally entitled to relevant negative rights" (p. 328). This rule, however, is overridden more easily with animals than with humans. Chimps and humans have an equal right to life, but in a bind I should rescue humans rather than chimps (p. 328). Humans and seals have an equal right to life; still, Eskimos can hunt seals but not other humans

(p. 327). It seems then, in effect, that animals do have reduced negative rights in these circles further out.

One problem is that there is little guidance for what animals get located where in the circles of sentient life. Since the capacity for experience (the degree to which an animal is a subject-of-a-life) varies widely, one might expect this to affect their locations. If fish are less intensively subjects-of-a-life than are seals, fishing might be recommended to the Eskimos over seal hunting. Or, other things being equal, one might prefer an experiment on rodents over one on chimpanzees. The strengths of obligations within the human circles is determined by biographical details; one has obligations to a brother that he does not to a distant Ethiopian. Is there any analogue with animals? Does one have more obligations to endangered grizzlies in one's home state than to elephants in Kenya? If there are graded strengths of obligation in these areas, we hear nothing about it.

One might have expected plants to show up next in the widening circles, perhaps species after that, and last ecosystems. But Wenz jumps from circles of sentient animals to ecosystems in the outmost circle. Earlier, he has generally been careful to say that inherent value attaches to plants and species, and he does not think plants or species unimportant (Chapter 13). His trouble, apparently, is that he finds no available theories about how to handle either. Individualist biocentrism is of little practical use in dealing with plants. Although "we have direct duties to protect and preserve species" (p. 296), Wenz has no theory that locates them appropriately in the concentric circles. As a result, the model inadequately addresses endangered species.

Rarity might make more difference in an environmental ethic than "closeness." We might prefer plants at the species level to sentient animals at the individual level. On San Clemente Island, the U.S. Fish and Wildlife Service and the California Department of Fish and Game asked the U.S. Navy to shoot 2000 feral goats to save three endangered plant species. In the resulting dispute, including a lawsuit on behalf of the goats by The Fund for Animals, the Court ordered the goats removed from the island. Some goats were trapped and removed, others killed. Concern for the plants

overrode concern for the goats. It is hard to see how Wenz's circles would handle this case. Since the goats were degrading the ecosystem, as well as endangering rare plant species, perhaps Wenz would remove them on this account.

Wenz embraces all with an ecological holism. At the outermost concentric circle, we would think of "evolutionary processes as 'inhabiting' a relatively remote circle of moral concern" (p. 329). In this circle we operate with the "principle of process-harm" (p. 300), which forbids us to harm evolutionary and ecosystemic processes. Although this is the most remote circle from the moral agent, Wenz assures us that this does not mean that human or animal goods routinely override these system-wide processes.

Much of Wenz's analysis turns on the varying strengths of rights over the domains of the inner concentric circles that persons and sentient animals occupy. These circles are the domain of rights theory, as well as domains inhabited by persons and sentient animals. Where does utilitarian theory operate? Presumably over the same domain, coming into play after rights theory has done its job. Once we have satisfied rights criteria, we thereafter invoke utilitarian theory for further decision-making. Remembering all the theories surveyed in earlier chapters, now promised to be integrated into the concentric circle theory, we will sometimes need efficiency theory or cost benefit analysis, or Rawls's concept of justice. Wenz has a discussion of how efficiency limits property rights, but we are not told much further about when and how to use which theories. That is a matter of what Wenz terms "good judgment" (p. 315), which is what we use when we have no theory to help us choose.

Since my Self is at the center of my concentric circles, your Self at your center, and his Self at his, and since we have different careers, locations in the world, family ties, and so on, the strengths of our ties will differ. Each carries about a personal set of concentric circles — so far as humans are placed therein at least, and perhaps animal ties, too, differ in strength with the biographies of the central agents. My judgments will not be your judgments. Could this mean that at the same event in Earth history, intersected differently by our concentric frameworks, I operate pulled by positive rights theory while you feel no such pull but operate with

utilitarian theory? Sam operates on the basis of negative rights; Susan, located so that the countervailing rights claims are in equilibrium, operates with cost/benefit analysis. Could this be like the politician in Christopher Stone's *Earth and Other Ethics*, who operates with his family using rights theory and with his constituency as a utilitarian?

Wenz is right that the strengths of our personal ethical obligations (though perhaps not our ethical criteria) differ with our biographies. But when the concentric circles are simultaneously biographically and biologically formed, some boundaries determined by natural kinds, some boundaries determined by personal histories, the result is no clear decision rules for persons jointly making contested decisions. Environmental ethics mostly reverts to muddling through, alternately known as good judgment.

Wenz argues well. His book is clear and engagingly written, reminding me of the style of John Hospers. He successfully illustrates the good judgment in which he trusts, even when we grope for arguments. One important feature is his use of legal examples, which add relevance. Philosophers will enjoy the debate even when others may think Wenz has become irrelevant, e.g., thought experiments computing utility on a metric system of win-somes (1000 = one wholesome) and irksomes (1000 = 1 gruesome) (p. 156, p. 182), applied in imagination to .5 billion possible people (distinct from future people) in India in generations to come — only to conclude that no such calculations can really be performed anyway. So what was accomplished by thinking through what is actually quite impossible? Wenz can have a strong sense of urgency and relevance, but, in other moods, sometimes one gets the impression that Wenz just enjoys argument. He "likes clever paradoxes" (p. 227). In result, the reader has to be prepared for full-scale, detailed argument, mixed with concrete ethical injunctions. There is little here that is terse or compact, though often in the midst of heavy argument, there is comic relief. He first greets utilitarian theory as the "best thing since indoor plumbing" (p. 181).

In sum, this is a major work in the field, and the criticisms I register are evidence that I found it thought-provoking. Environmental philosophy is alive and well.

Notes

¹ Richard Sylvan and Val Plumwood develop "an annular picture ... with nested zones." Richard and Val Routley (now Sylvan and Plumwood), "Human Chauvinism and Environmental Ethics," in *Environmental Philosophy*, eds. D.S. Mannison, M.A. McRobbie, and R. Routley (Canberra: Department of Philosophy, Research School of Social Sciences, Australian National University, 1980), pp. 96-189 (on pp. 107-108). Callicott integrates classical ethics and environmental ethics with a "tree ring" model with "inner social circles" and animals, plants, and a "land ethic" in circles further out. J. Baird Callicott, "The Conceptual Foundations of the Land Ethic," in *Companion to a Sand County Almanac*, ed. Callicott (Madison: University of Wisconsin Press, 1987), pp. 186-217 (on pp. 207-208). He uses "the image of annular tree rings in which social structures and their correlative ethics are nested in a graded, differential system" with the "land ethic" the most comprehensive circle. J. Baird Callicott, "The Search for an Environmental Ethic," in *Matters of Life and Death*, 2nd ed., ed. Tom Regan (New York: Random House, 1986), pp. 381-424 (on pp. 410-411). Peter Singer pictures ethics as "an expanding circle." Peter Singer, *The Expanding Circle: Ethics and Sociobiology* (New York: Farrar, Straus & Giroux, 1982). Unfortunately, Wenz does not relate his work to these previous efforts.

² Christopher Stone, *Earth and Other Ethics* (New York: Harper and Row, 1987).

³ Andrew Brennan, *Thinking About Nature: An Investigation of Nature, Value and Ecology* (London: Routledge, 1988).

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