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Environmental Law and Ethics

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Published by
MACMILLAN PRESS LTD
Houndmills, Basingstoke, Hampshire RG21 6XS
and London
Companies and representatives
throughout the world

ISBN 978-0-333-67491-8 ISBN 978-1-349-14271-2 (eBook)
DOI 10.1007/978-1-349-14271-2

A catalogue record for this book is available
from the British Library.

This book is printed on paper suitable for recycling
and made from fully managed and sustained forest sources.

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Preface

In recent years there has been a huge increase in interest in general principles of environmental law and in the field of environmental ethics. In its initial stages, environmental law was primarily a pragmatic mix of property law, tort, planning law, public health regulation and other established areas of law applied to environmental problems. As the subject has matured, general principles have emerged and environmental law has taken on a respectable identity of its own. At the same time, environmental ethics has developed from a fringe area of philosophical exotica to a subject of fundamental and practical importance in determining the proper relationship between humans and nature.

This book discusses the main competing perspectives on environmental ethics and attempts to identify some of their legal implications. It is not intended to be a primary environmental law textbook. There are several excellent texts available which perform that function. Rather, this book is meant to complement the standard texts by placing environmental law in its ethical context.

Ethical theories focus upon notions of 'moral status'. Whom or what should we respect as having moral value? Our starting point is to look at what people actually value. Most people accept that human beings have moral status but there is no agreement as to why this should be so. A strong element of our culture is the belief that has profoundly influenced human thought since ancient times, that human beings have superior moral status to the rest of nature and that the rest of nature is a resource which we are free to plunder and treat as a life-support machine.

Some environmentalists argue that humans are rightly the proper focus for morality because morality is based on communication between equals. Others argue that it is arbitrary, if not obnoxious, to confine moral status to human beings. Their difficulty lies in deciding where to draw the line. Diverse criteria, for example rationality, ability to suffer, sense of purpose, life itself and order, are deployed. This extends moral concern ever wider into nature but leads to incoherence and sometimes favours beings with which we have emotional affinity such as attractive or intelligent animals. Different ethical perspectives may be useful in different contexts and there is no overarching guide as to which is the right one.

The most general ethical issue is how far we are entitled to 'harm' nature for our own benefit. There is also the question of whether we owe duties to future generations and of social justice between rich and poor. Poverty leads to environmental degradation and the poor bear a disproportionate share of the costs of environmental protection. How do we balance economic values such as free trade, environmental values and social values – the problem of sustainable development? Different kinds of environmental interest also conflict, for example the culling of animals in the interests of ecological balance against animal rights? Are we entitled to enhance nature by 'improving' natural landscapes or the genetic engineering of species or should we leave nature alone? These are the kinds of questions that we shall examine in this book using the law as our medium.

We do not attempt to suggest any 'right' ethical solution. The law is not a transmission belt for any particular ethical theory. Indeed given the controversial nature of environmental ethics this would be unrealistic. In terms of their legal implications the various ethical perspectives sometimes conflict and sometimes coincide but we hope that any legal decision can be justified by at least one of them. Each of the competing perspectives may be valid on its own terms so that a political choice may have to be made between them. Environmental ethics offers us a tool which helps us to identify common ground or irreconcilable differences.

Furthermore, as the Royal Commission on Environmental Pollution recently pointed out (1998), it is important to distinguish between arguments that are scientific or economic and arguments that are social and political to which we would add ethical arguments. The danger of confusing these types of argument arises particularly in the contexts of risk analysis and economic cost-benefit analysis. Much of English environmental law gives wide discretion to officials the law itself being consistent with a number of ethical perspectives. Questions therefore arise as to how far officials have common ethical values (regulatory culture) and whether the courts play a part in shaping the ethical element of discretionary power law through the law of judicial review.

We have not covered all legal topics in equal depth. We have selected areas of law which we think have particular significance in bringing out ethical dilemmas; within these the treatment of the substantive law varies according to the ethical issues involved. Nevertheless, we have tried to include sufficient legal material to provide a map of the main areas of environmental law. We have concentrated mainly on English law but have included important international and European law principles which are the driving forces of much of UK environmental law.

We do not assume that the typical reader will have any pre-existing knowledge of environmental philosophy and have tried to explain and

evaluate the general perspectives offered by the main writers on the subject. We hope the book will be suitable for students of law, environmental studies, political science and philosophy. A substantial bibliography has been provided as an aid to further research. A more selective guide to further reading is provided at the end of each chapter. The references in the text provide detailed sources but are not intended to distract the reader from the flow of the narrative which we hope is self-contained.

The scheme of the book is to start with a general discussion of different perspectives (ethical, economic, political, cultural) followed by a more detailed examination of the main ethical theories. We then move to a discussion of the international, European and UK institutional/policy framework. After a chapter outlining the main legal devices that are available for environmental control including such matters as integrated pollution control and 'market instruments' we single out specific areas of law for more detailed discussion. These are property law, animal rights and nature conservation, waste, and international trade. Waste is given a fuller substantive treatment due to the complexity of the law. We finish the book with a discussion of environmental rights.

We would like to acknowledge the help and assistance of the following, whose patient answers to our queries and willingness to engage in discussions has been of great benefit and encouragement: Ian Dawson, Alf Ellis, Agustin Garcia-Ureta, David Harte, Patsy Healey, Chris Miller, Richard Mullender, Carl Muller, Patricia Park, John Proops, Sandrine Simon. We owe a particular debt of gratitude to Ilona Cheyne for contributing the chapter on international trade law. We would also like to thank Ian Mabbutt and David Milroy for helping to compile the bibliography under Newcastle Law School's student research assistantship scheme.

We have tried to include the law as it stood on 7 October 1998.

JOHN ALDER, DAVID WILKINSON
Newcastle/Keele 7 October 1998

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