Consequentialism and Environmental Ethics

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9 Can We RemEDIATE Wrongs?
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1. INTRODUCTION

Of the 4.9 million barrels of crude oil discharged into the Gulf of Mexico during and immediately after the Deepwater Horizon disaster, an impressive 41% of the oil was removed through human intervention. Such interventions included not only chemical dispersion (accounting for approximately 16% of the discharge), in situ burning (5%), and skimming (3%), but also a significant portion was captured directly from the well (17%). Researchers estimate that another 37% of the oil disappeared naturally, either through natural dispersion (13%) or through evaporation or dissolution (24%). As the remaining 22% of the oil continues to float in the gulf and threaten wildlife, the cost of the cleanup is expected to pass $41 billion (Hagerty and Ramseur 2010).

Notwithstanding these economic costs, many lives, human and non-human, have been affected by the spill. Countless sea critters, including fish and marine mammals, died gruesome deaths or ended up with genetically abnormal offspring. Fish, shrimp, and oyster stocks were decimated (in the literal sense of the term). More than 3,000 miles of beach and wetland areas were bathed in oil. Recreation in the area took an incredible hit. The devastation is tremendous, and those responsible for the event—British oil giant BP, primarily—are on the hook to clean it all up.

Many people want to say this: that pollution is wrong. Typically, they say this on harm grounds: Pollution is wrong because it is harmful to other people, to animals, or to nature more generally. This seems about right. Environmental damage is a serious consequence of polluting and it would seem wrong to impose it unjustifiably. These same people may have similar views about elephant poaching and rampant suburban expansion, to take just two examples, though such cases are not instances of pollution. That is, they may think that what makes poaching and rampant expansion wrong is also that it destroys the environment. In this way, pollution is just one of several forms of environmental wronging.

In this chapter, I examine the relation between the assignment of moral responsibility and the technologies that aim to remediate pollution. I argue,
contrary to the view that environmental wrongs consist primarily of harm caused, that remediation technologies are not alone sufficient to undo the environmental wrong of pollution. I argue instead that pollution is better understood as wrong on non-consequentialist grounds and that this wrong is irremediable. If my claim is accurate, then we can conclude (a) that the reason that we ought not to pollute is that it engenders a kind of trespass, (b) that we can be held accountable for doing wrong even if we prevent harm from coming to others by employing remediation technologies, and (c) that we ought to clean up our pollution through remediation programs on restitution grounds. I think this argument is in line with the common view, but that the argument from harms is not.

I have argued a similar case before. In an article co-authored with William Grundy, I suggested that the moral implications of remediation technologies are underdetermined by accounts of environmental wrongdoing that rely on consequentialist assessments of damages (Hale and Grundy 2009). There and elsewhere I suggested that pollution and environmental degradation is more aptly characterized as a kind of unwarranted disrespect or trespass (Hale and Dilling 2011; Hale 2013). That was a relatively broad position, suggesting primarily that wrongs from pollution cannot be limited to harm alone. The argument I offer in this chapter, by contrast, is considerably narrower and stronger than the earlier argument about the nature of the wrong. I ask here whether there are any conditions under which remediation can ever right the wrong of environmental degradation. Specifically, I want to know what it would take to right wrongs from environmental degradation if our only clear options are to return the world to its original state or to a saliently equivalent state.

More recently, I have sought to flesh out this trespass argument in justificatory terms. That is, it is my position that what really constitutes environmental wrongdoing is unwarranted or unjustified trespass, where such trespass involves the neglect of acting parties to consider or respect the concerns or validity claims of affected parties. In rough contour, this view draws its conceptual basis from the justificatory liberalism of theorists such as Jurgen Habermas, Rainer Forst, and T.M. Scanlon, among others (Forst 2012; Habermas 1991, 1994; Scanlon 1999). It places a heavy burden on the agent—and as such is an agent-centered account—to justify her actions, as opposed to other prominent patient-centered accounts that place a heavy burden on the patient to establish moral standing. In this chapter, I would like to return to a worry that one may have about environmental wrongdoing and demonstrate how environmental degradation maintains similarities to more familiar forms of trespass.

To do so, I examine three cases of harmlessly wrongdoing, each of which is designed to call attention to an incidence of trespass. These cases, I hope to show, can be satisfactorily accounted for by appeal to the claims of justificatory liberalism, broadly construed. For reasons of space, I remain agnostic on the various instantiations of and internal disputes about justificatory liberalism. In the first section, I offer a few caveats regarding harms and wrongs. In the second section, I introduce the idea of trespass. In the third and fourth sections, I explore reversal cases in which harmed parties have their harm undone, examining in turn rights, preferences, and intentions. And in the fifth and sixth sections, I introduce the idea that trespass and disrespect can be characterized in justificatory terms.

2. PRELIMINARY CAVEATS: HARMs AND WRONGs

The prevailing view about environmental wrongs is most obviously the consequentialist view. Roughly speaking the idea is the following: that the wrongmaking feature of pollution rests with the damage done to persons, to entities within the environment, or to the environment itself. Let's call this the “Harms View”:

Harms View: that pollution devalues the environment, either intrinsically or extrinsically.

The idea is that pollution causes some damage either to the environment itself or to some valuable resources upon which others depend. I do not have the space in this chapter to address differing conceptions of harm, though the literature in this area is vast (see, for instance, recent important work, among other material, by these authors: Bradley 2012; Feinberg 1984; Hanser 2008; Shiffman 2012; Thomson 2011). For my purposes here, it will suffice to think of harm broadly, as damage or as degradation, and to allow that damage involves a sort of disvalue.

Having offered this caveat regarding the complications associated with thinking about harm, a second caveat is in order. There are of course many different kinds of pollution, and little agreement about what makes pollution wrong (Hale 2013). Air, water, and soil pollution are those that typically dominate the environmental discussion, but it is common to encounter concerns about noise and light pollution as well. Indeed, in more extreme circumstances one may even speak intelligently about “getting polluted” in reference to alcohol or drug abuse.

Not only should I offer a caveat regarding kinds of pollution, but it is also important to emphasize that there are many mechanisms through which pollution enters our environment: through accidental spills or leaks, deliberate actions like midnight dumping, planned or anticipated outflows as with expected emissions, or just plain intractably, as there are many emissions that are a function of life itself. This variety of mechanisms is important in many respects, as simply through the process of living, or even in improving our world, we often degrade our environment by emitting. The question we want to answer here is not simply what pollution or environmental degradation is, but when and why it may be permissible in some circumstances to degrade our environment.
To add further icing to my caveat cake, in this chapter, I speak primarily about pollution, though my intent is really to address a broader range of environmentally deleterious acts. Pollution serves as one of several kinds of acts that do damage to our environment. Other such acts include the varieties of resource extraction—mining, logging, fishing, animal harvesting, poaching, and so on—as well as various forms of encroachment—urban development, road construction, watershed and park management, agricultural terraforming, and so on. Of course, pollution, extraction, and encroachment are all categories of action that carry with them somewhat different ethical implications, but in this chapter, I would like to focus primarily on accounts that construe all three as morally problematic for roughly the same reasons—that they degrade the environment. Thus, I use the terms pollution and environmental degradation not synonymously, or necessarily even interchangeably, but with environmental degradation in mind.

The non-consequentialist position I defend has limited support in the philosophical establishment. Rather, the loudest non-consequentialist voices come from the environmental virtue ethics literature, where environmental harms are reframed as indicators of poor character. I prefer instead to approach environmental questions not from a virtue position, but rather from a more deontological position. There is no space to cover the reasons for preferring the deontological approach to the virtue approach here, but suffice it to say that at minimum, the deontological approach is an act-oriented view, which in my opinion makes it better suited to address questions about how our actions ought to impact the environment.

3. ENVIRONMENTAL WRONGS AS A PROBLEM OF TRESPASS AND DISRESPECT

In the earlier papers I mention above I used several scenarios of tea drinking to make the case that pollution is problematic not on harm grounds, but on trespass grounds. I do not cover those arguments here, but the basic gist was that if I add a poison to your tea, say, this would seem a clear instance of harmful pollution. Looking at a case of tea poisoning more closely, however, and slowly peeling back the harmful aspects of poisoning a person’s tea—removing risks, uncertainties, and even the poison itself from the configuration—it begins to appear that poisoning a person’s tea is not wrong by virtue of the damages done to the victim, nor even by risks to them, but rather by virtue of the unauthorized tampering with the person’s tea. Indeed, I would not be permitted to add health potion to your tea, even if it will be quite good for you. In rough contour, this is the intuition behind the “Trespass View”:

Trespass View: that pollution disrespects and/or trespasses on others.

One of the simplest devices for quickly seeing the shortcomings of the Harms View involves employing reversal cases—that is, cases that aim to make the world whole again. Here I will lean heavily on remediation technologies, which are technologies that remediate or clean up polluting messes. Such an approach takes its stepping off point from a position advanced by Robert Elliot (1982), in which he argues that environmental restoration projects are akin to faking nature. Elliot uses the analogous case of an art forgery to suggest that there is some ineffable, intrinsic value, probably related to the artwork’s origin, that leads us to value the original artwork over the forgery. Elliot’s article spawned a raft of responses, but the basic orientation of those articles was much the same: raising a question about intrinsic value in either art or nature.

Returning momentarily to the poisoning of a person’s tea, consider that even if one has a very effective antidote to the poison that has been administered to a victim’s tea, simply having the antidote, and thus repairing the victim, does not undo the wrong. For Elliot, restoration and its remainder offered a clear indication that something important and valuable is lost in the faking of nature. I have argued instead that remediation demonstrates not that something important and valuable is being lost, but rather that some important principles are being violated. Reversal cases offer a way to think about wrongs without the attendant harms.

To illustrate with a crude parallel, the idea is the following: that one cannot un-murder the murdered and that one cannot un-rape the raped. Reparation for these crimes is not possible simply by compensating for damages or restituting for gains and thereby “making the victim whole again.” One, of course, may argue over whether reparation for one’s crimes is a possibility: whether one can recompense the suffering victims of the murdered or whether one may even compensate a rape victim for rape. So too may one argue, as many often do, that one can make amends for environmental degradation by paying to restore the environment. I am dubious of such claims, and while I do not have the space to argue the full extent of my objection here, it is important to see that there are at least two possible objections to the idea that restoration or restitution can work to compensate victims.

One objection is that even if, say, a rape victim is handed a hefty settlement, there will always be some remainder that cannot be undone and/or accounted for. In other words, one need not deny that compensation or restitution to a victim offsets some substantial harm that that victim has suffered. One only need acknowledge that compensation or restitution alone will never be enough to make the victim whole again. Call this the “Remainder Argument.” Another objection, however, is that if this same rape victim is handed a hefty settlement, it is not simply that there is some remainder that cannot be undone and/or accounted for, but rather that this settlement does not in any morally relevant sense make up for the wrong. Reparation must be pursued through another channel entirely. It is this thesis that I argue below.
Rape and murder are obviously high crimes, complicated considerably by the irreversibility of human life and experience. Matters grow far less clear cut, however, when we consider questions about environmental wrongdoing. It would appear, on first appraisal, that one can in fact undo environmental degradation. What difference does it make whether a stream veers to the left or the right, whether an oyster bed is natural or artificial, whether one tree is identical with its replacement? In so restoring the environment, it would appear that, unlike cases of rape or murder, one can undo the wrong. If one destroys a watershed, for instance, it is very easy to believe that all it would take to right such a wrong would be to restore the watershed.

Thus, one line of argument for the Trespass View can be gotten at by looking to reversal cases, which I have used before to reveal an ineffable remainder when harms are restitutioned or remediated. It’s precisely this strategy that I employ here. I look at other cases of harmless wrongdoing and ask what it would take to right the wrongs. I reason by analogy, showing how many non-consequentialist accounts of harmless wrongdoing fall subject to remediation (or reversal) objections, just as consequentialist accounts do. At the end, I nod at a solution as to how harmless wrongs can be undone.

The reason for this strategy is that harmless wrongdoings challenge pervasive consequentialist ideas about wrongings. Though it is probably not the case that there are any environmental wrongs that are in fact harmless—most all cases of environmental wronging involve some harm or damage—it is my contention that this feature of environmental action is deceptive. Looking at harms wrongly doing as regarding persons opens the door to think more clearly not only about what would rectify a wrong, but also what may be the source of the wrong in the first place. If the source of the wrong is primarily patient centered—as would be the case with violations of rights, disrespect of personal preferences, or even perverse intentions—then there is yet more work to do to argue the non-consequentialist case for environmental wrongs. If, on the other hand, the wrongs are describable independently of harms to others or damages to the environment, this adds at least prima facie support to the notion that wrongs can be located elsewhere and that reparation for environmental wrongs cannot be accomplished through restoration or remediation alone.

4. UNDOING HARMLESS WRONGS: TRESPASS, RESPECT, AND PATIENT-CENTERED ACCOUNTS

If you’re on board with the idea that pollution is more aptly an incidence of trespass than an incidence of harm causing, then it is but a short leap from here to arrive at the conclusion that there are no “state of the world” conditions that alone can undo the wrong. In fact, it would appear that such a claim jives with common intuitions about a fair number of cases of harmless wrongdoing. When construed this way, we are then immediately left with an important question: If undoing damage will not right the wrong, what sorts of responses are required?

Consider the various non-consequentialist positions on offer, whether patient centered or agent centered. Many of the most prominent non-consequentialist positions propose that environmental wrongdoing consists, roughly, of concerns about (a) rights, (b) preferences, or (c) intentions. These are fairly broad-brush non-consequentialist approaches, and I have only selected three of the most common, but they should serve well enough as a representative sample.

Take first a patient-centered view:

(a) Rights

One very common patient-centered response centers on the rights of victims. Maybe, for instance, a victim’s (defeasible) rights are violated by the polluting act. Joel Feinberg has gone some way in addressing this position with his famous Log Cabin example (Feinberg 1978; Thomson 1980). Consider a slight variation:

Log Cabin (LC): Lou is hiking in the backcountry. A blizzard sets in. In need of a place to take shelter, he stumbles upon a log cabin. He must either break in or die. For warmth, he burns the tables and furniture, finding no other firewood around.

On first reflection, one might be inclined to assume that Lou is within his rights to break into the cabin and burn the furniture. In particular, one might assume that, even though clearly the cabin belongs to somebody, he has done what he needed to do. Indeed, this was Feinberg’s assertion. But the property owner is made materially worse off by Lou, and Lou has arguably wronged Gretchen, the property owner. Is there a way for Lou to right his wrong? Consider a reversal scenario:

LCa. Upon returning home, Lou compensates the owner, Gretchen, for her losses.

Most would likely agree that in compensating Gretchen, Lou has discharged his responsibility to the owner. Some might even suggest that Lou has done more than is required of him. Though Gretchen may feel violated by Lou’s breaking and entering, she has little claim against him. Lou has made Gretchen whole by compensating her for her losses. He has trespassed, yes, but he has undone the wrong by making Gretchen whole again. There are thus channels through which such wrongs can be reversed. But consider a slight variation on this theme:

LCb. Before setting out on his hike, Lou decides not to pack necessities, neglecting to bring a sleeping bag, a tent, some food, and winter gear.
On the nightly news he hears that a nasty storm is coming. “No matter,” he thinks; he can just crash in one of the many cabins peppered across backcountry.

These extra details change—or at least ought to change—our assessment of whether Lou was within his rights, or whether Gretchen has a claim against Lou, regarding the break-in. Certainly Lou does have good reason to act in his own interests and protect his life, but in the β case, Lou’s was an act of blatant disregard for others. Is remuneration and repair enough to resolve this disregard? I suspect it is not. Even a more robust offer, perhaps to compensate Gretchen for her troubles, seems somehow insufficient to amend for the violation. Lou has wronged Gretchen not by harming her, but by acting without regard for her or others.

To shift back briefly to our opening example, were the rights of parties affected by the Deepwater Horizon disaster violated? Not clearly, as the rights holders also include BP and other extractors, who maintain a right to pursue a livelihood. Certainly they do not maintain a right to destroy livelihoods, but their actions were not direct violations of the rights of other affected parties. In this way, the rights angle seems unpromising. One would consider the extraordinary profits unique to the oil industry, one is left feeling that the arrangement is more than a bit unfair. One might propose the same of polluting and/or using resources more generally—certainly, one is within one’s rights to use resources that one needs to survive, even to add effluent to the environment in a way congruent with living—but unconsidered (wanton and reckless) use of resources leaves us to evaluate the actions more harshly. What we need, clearly, is a method for determining when and how actions are wanton and reckless.

(b) Preferences

Another common patient-centered view about the source of harmless wrongs regards the preferences of the victim and whether the actor has respected these preferences. Perhaps what has gone wrong is that the victim does not want to, or would prefer not to, ingest or inhale some pollutant. Or perhaps the other way around: many people desire the products of industry, and in wanting the products of industry, they must also accept the consequences of the production of those products.

But preferences are notoriously slippery and unreliable when it comes to specifying harm. Consider a related case:

**Peeping Tom (PT):** An old man, Tom, discovers that a young, female neighbor, Sue, showers and changes her clothing at 9:30 every night. Tom finds this exciting and makes it a practice to sneak behind her house and peer in her window to watch.

On first reflection, one may be inclined to assess the violation here as one that places Sue under threat of harm. If Sue were to learn of Tom’s antics, it is no stretch to suggest that she would likely be affronted and perhaps feel violated. This peeping is not what she would prefer. The damage here, ostensibly, is to Sue’s security and sense of self. A turn to preferences would appear to overcome some of the objections to rigid state-of-affairs consequentialist accounts. One can account for trespass without invoking spooky notions like rights. But suppose some variations on this theme:

**PTa.** This continues nightly for years. Tom tells no one. Sue is none the wiser. Eventually, Tom passes away, taking his secret fascination with her to the grave. Having no heirs, he anonymously leaves a large sum of money to Sue upon his death. This money is more than enough to compensate Sue for any woe or harm that may have befallen her as a consequence of Tom’s peeping.

**PTa** suggests that there are some circumstances in which such damages to security and self-esteem might readily be avoided. It therefore poses a complication for the consequentialist variation on the preferences position, but it leaves space for a non-consequentialist interpretation that proposes that the preferences of patients must be respected. (Naturally, one could argue that the damage to Sue is not in the actual discovery, but in the risk of discovery. I’d like to set concerns about risk aside for this chapter. I address risk more directly elsewhere (2009).) Consider that the outcome needn’t necessarily be damaging to Sue in order to be salacious and morally problematic. Indeed, it would appear in **PTa** that what grounds the moral disapprobation is that it flies in the face of Sue’s preferences. In this instance, however, Tom makes the world whole again by leaving a large sum of money to Sue. But consider now the following variation:

**PTB.** Sue is a professional stripper who very much enjoys showing off her body. She regularly accepts payment to do just that. Tom knows this. He peeps on her, in effect, without paying. Having no heirs, he anonymously leaves a large sum of money to Sue on his death.

Here it would seem, by supposition, that Sue enjoys being seen, has preferences to show herself off in this way, routinely accepts payment for doing just that, and even has been compensated by Tom. Indeed, Tom, by way of peeping on Sue, is in a way respecting her preferences. But still, something is amiss. Tom oughtn’t to peep, even if Sue would normally accept payment for him to do so, even if he were to remunerate her.

The internal contradiction here is that Tom cannot possibly pay Sue to peep on her, for his peeping is contingent on not being discovered. If he pays, he’s not peeping. In this instance, there’s an internal conflict that entails disregarding Sue’s preferences. Throwing money on the bedside table after
the fact does not overwrite Tom’s disregard for Sue, even if she is the type of person who would otherwise accept money on her bedside table. Rather, one might argue that Sue’s stripping behavior is limited to her place of work, an area over which she has moral jurisdiction. At home, she is “off duty,” so to speak, and is entitled to secure a safe space where she does not consent to being seen.

Similarly so, people need and want oil. Almost everyone living in the modern age is guilty of consuming energy and thus creating deleterious emissions. One could easily interpret this ongoing demand as the complicity of the masses in condoning or endorsing the dangers of deep water drilling. But most consumers of oil are not in the business of examining the life-cycle effects of their oil consumption, even if economists believe that they ought to be. Indeed, these consumers are consuming a fungible good—energy—and the sources of this energy are virtually invisible to them. (So too for the eventual repository of their emissions, e.g., the atmosphere, though a consumer’s output is more causally connectable to that consumer.) Simply because oil consumers effectively endorse the consumption of oil does not commit those consumers to the acceptance of risks associated with extracting that oil. It is difficult to near impossible for the consuming public to fully understand the risks and costs associated with oil extraction. BP’s actions were, to a certain extent, contingent on and facilitated by significant information asymmetries.

5. UNDOING HARMLESS WRONGS: INTENTION AND THE AGENT-CENTERED ACCOUNT

Consider now the most common agent-centered variation: the view that proposes that intentions or motivations matter. Suppose, for instance, that the wrongmaking feature of pollution rests in the intentions of the agent. Consider this case:

Sandlot (SL): Some children are playing baseball on a sandlot in their neighborhood. Their neighbor, Frank, is at work. Their ball smashes Frank’s lamppost.

What is wrong here? Obviously again damage and in a direct way trespass. But kids will be kids. In many circumstances, they sometimes make silly decisions. SLa quickly dispenses with the consequentialist variation and helps us identify a remainder:

SLa. Being resourceful and responsible, the kids decide that they will immediately clean it up. They clean up the glass, run to the hardware store, and purchase and install an identical lamp, restoring the house to the state in which Frank had left it. Frank returns to his house and is none the wiser.

In this case, it would appear that the kids have recognized the error of their ways and have made Frank whole again. Still, one may believe that Frank has been wronged. How so? The kids ought to have alerted him to the damage. Not doing so was, as we say, disrespectful. Indeed, if alerted to their mistake, Frank may forgive them for their carelessness—maybe he likes baseball—but some would argue that it is critical that Frank be involved in the un-wrongs. Now consider a complicating variation:

SLb. There is another baseball diamond and a playground at the other end of the street. This particular sandlot is sandwiched between many houses. To make matters worse, Frank has asked the kids for weeks to not play ball near the houses.

Looking at the traditional agent-centered non-consequentialist view—
that is, that intentions and motivations matter—it would appear that the kids have done nothing wrong. They did not have any ill intentions toward Frank and were not motivated by dark objectives. Nevertheless, the β case suggests that there may indeed be something wrong with their actions. They were negligent. They disregarded Frank’s earlier advice.

In the β instance, Frank may not forgive the kids and may require more assurance to right the wrong. What will make the difference here is the extent to which Frank does or could assent to the reasons that they offer him. That is, what matters is whether he deems their actions to be justifiable, whether they are reasonable. So it is not, in fact, the intentions or motivations of the kids that matter so much as the claims that best explain or describe the action.

In the Deepwater Horizon case, many argued that while terrible, such accidents happen, and if we are to live in a world in which oil is in such high demand, we must expect that periodically there will be negative outcomes. Indeed, it would appear that oil spills of the Deepwater Horizon sort fall into the category of what Charles Perrow (1984) once famously called “normal accidents.” But there is something still unnerving about such excursions of BP, Halliburton, and others. Normal accidents occur, to be certain, but when there are other options available, as was the case here—with other sources of oil and alternative energies—these factors ought to change our evaluation of BP and complicit actors.

There are other variations on such cases, of course, and I do not mean the above set of cases to be exhaustive. Rather, these are but a representative sample of the kind of arguments that one might offer in reply to the idea of trespass. We can imagine cases where the polluter violates the rights of patients, disregards their preferences, or pollutes by accident, perhaps remedying for these reasons, but is still wrong.

What then could possibly be wrong with Tom’s or Lou’s or the sandlot kids’ behavior in the β cases? It must be something other than rights, preferences, or intentions—something, perhaps, more public. If any of the three
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Indeed, consent would go a long way in avoiding complications of trespass and disrespect—if the perpetrators had just asked permission, much of this could be avoided—but it is not always necessary to get explicit consent. Rather, what matters in instances in which consent cannot be gotten—and this is fairly often the case in environmental matters—is that actions be of the sort to which parties could or would consent if given the opportunity. What is necessary is that actions be at minimum reasonable—where a test for reasonableness can be met by using a criterion such as that offered by Scanlon or Habermas or Forst or any one of several other authors (Forst 2012; Habermas 1991, 1995; Scanlon 1999). I do not aim to offer a precise reasonableness criterion here.

In all three of these cases, the outcomes remain the same, but as we learn more of the circumstances that explain the action, we understand that the justification for each and what it would take to right the wrong, changes slightly. In some cases, actors can give good reasons for their actions; in other cases not. Paul is disrespectful of Gretchen. Tom is literally trespassing on Sue. The Sandlot kids act recklessly. Do any of these actions have good reasons for doing what they’ve done? Can they offer up genuine apologies for their wrongs? As we get further into their cases and learn more—that is, as we make our way from the α reversal to the β variation, the remainder pops into stark relief.

What concerns me here is the reasonableness of actions, and specifically, with whether or not the reasons that actors have for acting can withstand the scrutiny of other affected parties. Many times when we have an objection to how something is done, whether in a person-to-person context or in a more environmental context, the objection is seated in concerns that some important or salient reasons were not taken into consideration. Often these objections manifest as prompts to acknowledge an overlooked loss or value or damage or harm. But it is enough not the case that these appeals to harm and damages do all of the work that one might hope. As reversal cases show, what will really make a victim whole again is whether the actor can offer up an explanation and/or an apology that is reasonable. And since it is virtually impossible to assess the reasonableness of an explanation or apology independent of the feedback of others, we must instead rely on reasonable evaluators to agree that it is reasonable.

Trespass and respect essentially fall in the same category. When one chooses to act in a way that trespasses on or disrespects another, this effectively amounts to not taking them—they as persons, they as ends in themselves—into account. This is not a mere matter of rights, preferences, or intentions, but rather a question of whether one has acted considerately. What I think is that we’re tied to one another through our justifications, which ultimately derive from obligations under which we bind ourselves by virtue of our peculiar rationality.

So here we have the start of a solution to the problem of environmental wrongdoing. Environmental wrongdoing, like many other instances of wrongdoing, harmless or otherwise, is characterizable as a sort of trespass. What distinguishes a wrong action from a right action is not necessarily whether the action trespasses on rights, disrespects preferences, or is made with the right intentions, but whether the reasons that best explain that action can be justified. In this case, being justified means being undertaken for reasons that would be acceptable to all. Thus, the trespass is primarily justificatory—a trespass on the reasons of others.

The source of our responsibility not to do damage to the environment is not that the damages will necessarily fail to promote important values, but rather that many of our damaging actions proceed without fully taking into consideration the extent of their impacts. It is the “failure to take into consideration,” not the “extent of the impacts,” where the wrongdoing occurs. When environmentalists object that such-and-such an action is unjust or unfair or wrong or awful, more often than not, they are objecting that the bad actors have neglected to address some important moral consideration. To be sure, sometimes what is neglected are the damages of the actions, but equally many times, objections concern unauthorized encroachment or tampering or disrespect or trespass. This is why it is more apt to characterize environmental wrongdoing as justificatory trespass: because the violations stem fundamentally from an objection to the offending action as one worth endorsing. We must justify our actions by appeal to our duties to one another.

Casting environmental wrongdoing in terms of justificatory trespass comes with multiple implications. For one thing, it places a heavy burden on actors. It insistence that actors act have good reasons for taking action. Before undertaking to act, actors must ask themselves whether their reasons would be acceptable by all affected. Where possible, they should seek countervailing arguments against their position. Actors must ensure that the reasons guiding their actions are justified, meaning that those reasons are acceptable (and are accepted) to all affected. I do not have the space to address the full extent of this position here.
actors' responsibilities hang very much on the reasonability of their actions, not necessarily on whether some state of the world has come to pass.

Similarly, after taking an action, we can only seek reconciliation through reasoned appeal to the affected. We can't take back what we've done. As such, our actions can be rectified only through communicative validation, through reconciliation with the wronged.

Consider again the sandlot case. In order to make amends for the wronging, or even to determine whether the act as wrong, the children must share their reasons for acting with the affected party. "We didn't mean any ill," they may appeal to Frank. And supposing that Frank believes as much, and has no other reason to be upset with them, he may accept their claim. There are other such responses that the kids might offer up as well:

- "It was an accident; we just wanted to play."
- "There are bullies at the other diamond."
- "Honestly, sir, we don't mean any disrespect. That's why we returned your lamp to its original condition."
- "The grass is too high at the other ballpark.

Any of these may work for Frank. He can accept or reject any, some, or all of these claims; and he may do so on truth, truthfulness, or rights grounds (Habermas 1987). Reciprocally, the kids will (and must) look for a reason that Frank can accept. If they find one, and Frank accepts it, then they will have reconciled. Importantly, their reconciliation seems to hang on the condition that Frank accept the speech-act offer. If Frank is unreasonable, of course—suppose he irrationally hates children and refuses to accept all apologies—a slightly different reasonableness test can be applied. That is, one can ask whether any reasonable person in Frank's position would accept such an offer.

This is the only way to establish the appropriate moral response to wrongdoing. Because victims are intimately caught up in the actions taken against them, they are in the best position to accept or reject the claims of those who have acted inconsiderately.

The same is true for the other cases as well:

- Log Cabin: "I made a gross miscalculation, I apologize . . . ."
- Peeping Tom: "I was lonely; I have a disorder; I didn't think you'd mind . . . ."
- Sandlot: "As a token of our concern for you."

Apologies won't always do the work we need them to do, of course, but they can go a long way in repairing wrongs, and quite a bit further than mere restitution.

Since our only apparent method of redressing wrongs is through reconciliation with the wronged, which is virtually impossible in the case of environmental wrongs—one cannot appeal to the fish and the oysters—we must instead ensure that our actions as individuals and collectively pass a test of justification such that those actions could be reconciled with the wronged. It is therefore through communicative validation, not through redressing harms, that one can overcome harmless wrongs. Inasmuch as this is true more traditional reversal cases, communicative validation is a natural place to look for environmental wrongs as well.

It may be more helpful to put it this way: pollution is wrong, but it is wrong because it is a wrongdoing, not because it involves creating disvalue in the environment. One wrongs not by harming, but by disrespecting, trespassing, and acting inconsiderately—by acting without good reasons. Respect for persons involves not taking persons, but taking reasons—basically all reasons, whether articulated or unarticulated—seriously. What it is to disrespect others, to trespass on others, is to disregard good reasons, reasons that count in favor of. This is as much the concern of justificatory liberals as it is the basic environmental concern. What concerns environmental ethicists and advocates is not straightforwardly that the world is being destroyed in every corner everywhere, but that so many of the actions that we take, individually and collectively, appear to be taken haphazardly and without good reason.

7. CONCLUSION

All actions in the world involve material tradeoffs. Every expenditure of energy, every act of creation, involves also the consumption of the material world and conversion of the world into waste or value. There is harm and damage all around. It is an inescapable feature of human industriousness, of life itself.

There are at least two ways to navigate this landscape of consumption and degradation. One way—the way that has been advanced most thoroughly in this volume—is to weigh values, to promote the better world, and to ensure that benefits outweigh costs. But this process leaves us with an ineffable remainder and opens the door to egregious violations of others. If, however, we seek to understand what it might take to overcome the remainder, as I have done above, then we see that there is in fact an alternative to weighing goods and bads. We can seek independent validation of our reasons to ensure that they are "justified," where this means that the reasons pass tests of wide deliberative scrutiny.

Such an approach, of course, includes consideration of goods and bads and of costs and benefits, but rather than collapsing all other moral notions into a single metric of good and bad (which is the best we can do to account for the remainder), it accounts for the remainder by keeping incommensurable principles and values in play and subjecting the range of principles and values instead to the scrutiny of affected parties.
One implication of this conclusion is that while it may be right and required to try to remediate environmental degradation, remediation alone cannot undo the wrong. This position thus leaves open the possibility that end states of the world matter quite significantly—requirements, for instance, that one restore the world to its prior state or to some saliently equivalent state—but that these end states are not and cannot be the determining factor in reparation for wrongs.

My claim in this chapter therefore isn’t that there are no harms associated with environmental degradation—obviously there are—but that the harms themselves, or the diminution of value, isn’t alone the source of the wrong. Polluting an environment wrongs those who are affected by the pollution. It does so not necessarily by harming them—indeed, many are not made materially worse off by destruction of environments—but rather by unauthorized trespass on the world. In this case, what I mean by “unauthorized trespass” is that the alteration of the universe is not the sort of alteration to which affected parties would agree. For the sake of this chapter, I remain agnostic on whether such agreement is hypothetical or actual, ideal or real.

To crystallize this point in the context of environmental degradation: when BP punched a hole in the ocean floor to extract the oil upon which we all depend, its actions didn’t neatly fall into the category of those that readily bespeak wrongs. Sure, there was a lot of damage. Yes, it was costly. But much of the damage can be cleaned up, and those who have been affected can be compensated for losses. Even still, one is rightly left to ask why, when we have so many other sources of energy, we were drilling for oil a mile below the surface of the gulf in the first place. Doing so was not a trespass on rights or preferences, per se, nor was it accomplished by people with bad intentions. It was, above all, ill considered—an action taken by lone actors in the pursuit of self-interest, in a world in which many safer and newer energy technologies are just coming online.

How do we know these things? We know these things because our deliberative discourse unveils them for us. Much has been written about impacts and implications since the Deepwater Horizon disaster. Most of what has been written after the fact should’ve been written before the disaster. Monday-morning quarterbacking this may well be, but if there’s one thing we should learn from our retrospective assessments of these and other disasters, it’s that if we’re going to keep doing this, everyone had better be a part of the game plan.

WORKS CITED


