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ARTICLE

HUMILITY AND ENVIRONMENTAL LAW

John Copeland Nagle[†]

It has been 742 years since Thomas Aquinas proclaimed that humility was the greatest virtue.¹ The fortunes of humility have waxed and waned since then, but we still seek the mantle of humility. President Barack Obama and Chief Justice John Roberts may not agree on much besides the constitutionality of the Affordable Care Act, but they have each been prominent exponents of the value of humility. President Obama began his first inaugural address “humbled by the task before us” and proclaiming that power grows through “the tempering qualities of humility and restraint.”² Speaking at Notre Dame’s commencement in May 2009, Obama expounded that “the ultimate irony of faith is that it necessarily admits doubt” and that such doubt “should humble us” and “compel us to remain open and curious and eager to continue the spiritual and moral debate”³ Likewise, during

† John N. Matthews Professor, Notre Dame Law School. It was my privilege to present this article at the Liberty University Law Review Eighth Annual Symposium. I am grateful for comments offered by Bruce Huber and the environmental law professor list serve. I am also grateful to Elizabeth Pfenson for excellent research assistance.

1. 4 ST. THOMAS AQUINAS, *SUMMA THEOLOGICA* 1791, 1845 (Fathers of the English Dominican Province trans., Christian Classics 1948).

2. President Barack Obama, Inaugural Address (Jan. 20, 2009), *in* 1 PUB. PAPERS 1.

3. President Barack Obama, Commencement Address at the University of Notre Dame in South Bend, Indiana (May 17, 2009), *in* 1 PUB. PAPERS 658, 662. *See also* Remarks at the National Prayer Breakfast (Feb. 5, 2015), *in* 82 WEEKLY COMP. PRES. DOC. 1 (calling for “some basic humility” and “not being so full of yourself and so confident that you are right and that God speaks only to us and doesn’t speak to others, that God only cares about us and doesn’t care about others, that somehow we alone are in possession of the truth.”); Proclamation No. 8410, 74 Fed. Reg. 46,301 (Sept. 3, 2009) (asking for humility in the effort to combat terrorism at the National Days of Prayer and Remembrance in 2009); Remarks During a Meeting with Opposition Leaders in Moscow, Russia (July 7, 2009), *in* 2 PUB. PAPERS 1068-69 (telling Russian leaders that “it’s very important that I come before you with some humility. I think in the past there’s been a tendency for the United States to lecture rather than to listen.”); Interview With ITAR-TASS/Rossiya TV (July 2, 2009), *in* 2 PUB. PAPERS 1037, 1039 (explaining that he has “to have humility and to understand that you are just one man and that nobody is perfect.”); Proclamation No. 8374, 74 Fed. Reg. 22,087 (May 7, 2009) (stating at the National Day of Prayer in 2009 that “[t]hroughout our Nation’s history, Americans have come together in moments of great challenge and uncertainty to humble themselves in prayer.”); The President’s News Conference (Apr. 29, 2009), *in* 1 PUB. PAPERS 584, 591 (stating that he is “[h]umbled by the fact that the Presidency is extraordinarily powerful” yet “I can’t just press a button and suddenly have the bankers do exactly what I want or turn on a switch and suddenly

his confirmation hearings, Roberts testified that “[j]udges have to have the humility to recognize that they operate within a system of precedent shaped by other judges equally striving to live up to the judicial oath, and judges have to have the modesty to be open in the decisional process to the considered views of their colleagues on the bench.”⁴ Roberts later explained that his “view of the role of a judge . . . focuses on the appropriate modesty and humility.”⁵

Humility may seem like an especially odd characteristic of environmental law. Identifying and mandating the ideal natural environment is hardly a humble task. Yet appeals for humility are common both with respect to the natural environment and with respect to law. The mysteries of the world and our stumbling efforts to control it provoke environmental humility; the legacy of failed efforts to employ the law to achieve contested social goals counsels legal humility. We think about humility as a necessary response to the wonders of the natural environment. We also think about humility as important in crafting and enforcing legal rules. But we rarely think about both types of humility together. Humility has gained increased attention in popular discourse and scholarly study alike.

My thesis is that humility can achieve much more than it has been asked to do so far. Humility offers seemingly contradictory lessons for environmental law. Humility toward the *environment* emphasizes the need for restraint and for care in light of our lack of knowledge about the environmental impacts of our actions. Humility toward the *law* cautions against exaggerated understandings of our ability to create and implement legal tools that will achieve our intended results. Taken together, these two understandings of humility could ensure that we are equally careful in how

Congress falls in line. And so what you do is to make your best arguments, listen hard to what other people have to say, and coax folks in the right direction.”); Remarks at the National Academy of Sciences (Apr. 27, 2009), in 1 PUB. PAPERS 555, 562 (asserting that “[s]cience can’t answer every question, and indeed, it seems at times the more we plumb the mysteries of the physical world, the more humble we must be.”); The President’s News Conference in London (Apr. 2, 2009), in 1 PUB. PAPERS 399, 403 (explaining that America “exercise[s] our leadership best when we are listening” and “when we show some element of humility and recognize that we may not always have the best answer”).

4. Confirmation Hearing on the Nomination of John G. Roberts, Jr. To Be Chief Justice of the United States: Hearing Before the Comm. On the Judiciary, United States Senate, 109th Cong., 1st Sess. 55 (2005) (testimony of Judge Roberts) [hereinafter Roberts Confirmation Hearing].

5. *Id.* at 251. Numerous senators and witnesses also remarked on the importance of humility to Judge Roberts. *See id.* at 26 (statement of Sen. DeWine); *id.* at 54 (statement of Sen. Warner); *id.* at 141 (statement of Sen. Specter); *id.* at 222 (statement of Sen. Feinstein); *id.* at 272 (statement of Sen. Cornyn); *id.* at 520 (testimony of Vanderbilt Professor Christopher Yoo).

we approach both the effects of our actions on the natural environment and the effects of our laws. That is what I seek to do in this article: explain the meaning of humility, describe environmental humility and legal humility, and then begin to sketch the implications of humility for the project of environmental law.

I. THE MEANING OF HUMILITY

The word “humility” derives from “humus,” the Latin word for earth or soil. But neither the Romans nor the Greeks made humility a central part of their beliefs.⁶ Instead, humility was “a quintessentially Christian discovery.”⁷ The Old Testament scriptures repeatedly extol humility. Proverbs instructs that “humility comes before honor” and “with humility comes wisdom.”⁸ Moses was praised as “more humble than anyone else on the face of the earth.”⁹ Humility takes on an even more central role in the New Testament scriptures. Jesus taught, “Whoever exalts himself shall be humbled; and whoever humbles himself shall be exalted.”¹⁰ Perhaps the most dramatic discussion of humility occurs in Paul’s letter to the Philippians, which commands to “in humility value others above yourselves, not looking to your own interests but each of you to the interests of the others” and asserts that Jesus did not take His rightful position with God but instead humbled Himself, even by dying on a cross.¹¹ The leaders of the early church reminded the first Christians of the centrality of humility. Paul urged the Corinthians not to boast and not to “be puffed up in being a follower of one of us over against the other.”¹² Peter told them to “clothe yourselves with humility toward one another” and to “[h]umble yourselves, therefore, under God’s

6. See John P. Dickson & Brian S. Rosner, *Humility as a Social Virtue in the Hebrew Bible?*, 54 *VETUS TESTAMENTUM* 459, 459 n.3 (2004) (observing that humility was “conspicuous by its absence” in ancient Greece and Rome).

7. Kari Konkola, *Have We Lost Humility?*, 18 *HUMANITAS* 182, 182 (2005). See also AQUINAS, *supra* note 1, at 1842 (quoting Augustine’s claim that “almost the whole of Christian teaching is humility”); Vance G. Morgan, 18 *FAITH AND PHIL.* 307 (2001) (observing that “humility is a distinctively Christian virtue”). That is not to say that humility is a uniquely Christian virtue. Writers in other religious traditions or from secular perspectives have championed the value of humility. For examples of humility discussed as a secular virtue, see, e.g., Joseph Kupfer, *The Moral Perspective of Humility*, 84 *PAC. PHIL. Q.* 249 (2003).

8. *Proverbs* 15:33, 11:2 (NIV).

9. *Numbers* 12:3.

10. *Matthew* 23:12.

11. *Philippians* 2:3-4 (NIV).

12. 1 *Corinthians* 3:21, 4:6 (NIV); see TIMOTHY KELLER, *THE FREEDOM OF SELF-FORGETFULNESS* 8-9 (2012).

might hand[.]”¹³ James warned that “God is opposed to the proud, but gives grace to the humble.”¹⁴

Christian writers developed the idea of humility throughout the first millennium and into the Middle Ages. Augustine wrote that “almost the whole of Christian teaching is humility.”¹⁵ He warned that “unless humility precede, accompany, and follow every good action which we perform, being at once the object which we keep before our eyes, the support to which we cling, and the monitor by which we are restrained, pride wrests wholly from our hand any good work on which we are congratulating ourselves.”¹⁶ Saint Bernard of Clairvaux insisted that the four cardinal virtues are “[h]umility, humility, humility, and humility.”¹⁷ Thomas Aquinas amplified the twelve degrees of humility that were originally described by Benedict.¹⁸ A long list of other medieval writers expounded on the virtues of humility.¹⁹ They were followed by an equally lengthy list of Protestants who championed humility, too. Thomas Watson wrote that “[i]t is better to lack anything, rather than humility.”²⁰ Jonathan Edwards, still celebrated as America’s greatest theologian, advised that “[n]othing sets a Christian so much out of the devil’s reach than humility.”²¹ English parliamentarian and abolitionist William Wilberforce remarked that “[h]umility is the vital principle of Christianity: that principle by which, from first to last, she lives and thrives: and in proportion to the growth or decline of which, she must decay or flourish.”²²

But the Christian understanding of humility provoked a backlash. David Hume seized upon the monastery setting of much writing about humility in dismissing humility as a “monkish virtues” which is “everywhere rejected by men of sense.”²³ Niccolo Machiavelli criticized Christian teaching for

13. 1 Peter 5:5-6.

14. James 4:6.

15. AQUINAS, *supra* note 1, at 1842 (quoting AUGUSTINE, DE VIRGINIT, xxxi).

16. Letter from Augustine to Dioscorus (A.D. 410).

17. DAVID J. BOBB, HUMILITY: AN UNLIKELY BIOGRAPHY OF AMERICA’S GREATEST VIRTUE 6 (2013).

18. See AQUINAS, *supra* note 1, at 1842 (quoting Augustine); AQUINAS, *supra* note 1, at 1846 (discussing Benedict).

19. Rushing, for example, lists eighteen writers. See Sara Rushing, *Comparative Humilities: Christian, Contemporary, and Confucian Conceptions of a Political Virtue*, 45 POLITY 198, 203-05 (2013).

20. THOMAS WATSON, THE GODLY MAN’S PICTURE 63 (Edinburgh: Banner of Truth Trust 1992).

21. Jonathan Edwards, *Undetected Spiritual Pride*, KNOWING & DOING, Spring 2008, at 2.

22. Quoted in SATURDAY MAGAZINE, Feb. 27, 1836, at 76.

23. DAVID HUME, AN ENQUIRY CONCERNING THE PRINCIPLES OF MORALS para. 219 (1777).

praising “humble and contemplative men, rather than men of action” and for assigning “as man’s highest good humility, abnegation, and contempt for mundane things.”²⁴ Baruch Spinoza dismissed humility as an emotion that accompanies our “weakness of body or mind.”²⁵ Most recently, Judge Richard Posner dismissed humility as “[a] slavish trait” and “one of the least attractive of the so-called virtues” because “[i]t overlaps with fatalism, passivity, and otherworldliness.”²⁶ Other writers add to the bill of particulars by charging humility with promoting a false understanding of our condition, jeopardizing magnanimity, endorsing humiliation, passivity toward human wrongs, and paralyzing valuable actions.²⁷

Such attacks brought humility into disrepute and caused many observers to dismiss it as archaic. Then humility staged a comeback. An eclectic group of writers—ranging from popular authors to political scientists to pastors—has sought to reconceive humility and to champion its importance for contemporary life. David Brooks, for example, begins his book *The Road to Character* with a reflection on a radio broadcast featuring Hollywood stars celebrating the end of World War II in August 1945. For Brooks, “the most striking feature of the show was its tone of self-effacement and humility.”²⁸ Bing Crosby summarized their view that “our deep-down feeling is . . . humility.”²⁹ Brooks reflected “that there was perhaps a strain of humility that was more common then than now, that there was a moral ecology, stretching back centuries but less prominent now, encouraging people to be more skeptical of their desires, more aware of their own weaknesses, more intent on combatting the flaws in their own natures and turning weakness into strength.”³⁰ Humility even surfaced in those who denied it. When Bob Hope received an award from President Kennedy, Hope quipped that he felt

24. MACHIAVELLI, *II. 2*, in *THE DISCOURSES* 278 (2003).

25. See Mark Button, “A Monkish Kind of Virtue”? *For and Against Humility*, 33 *POLITICAL THEORY* 840, 846 (2005) (quoting BARUCH SPINOZA, 3 *THE ETHICS* 178 (R.H.M. Elwes trans. 1955)).

26. Richard A. Posner, *In Defense of Prometheus: Some Ethical, Economic, and Regulatory Issues of Sports Doping*, 57 *DUKE L.J.* 1725, 1740 (2008).

27. See, e.g., Stephen Hare, *The Paradox of Moral Humility*, 33 *AM. PHIL. Q.* 235, 235 (1996); Konkola, *supra* note 7, at 203; Kupfer, *supra* note 7, at 263-64; Robert B. Loudon, *Kantian Moral Humility: Between Aristotle and Paul*, 75 *PHIL. & PHENOMENOLOGY RES.* 632, 634 (2007) (citing Kant); Morgan, *supra* note 7, at 307; Mary M. Keys, *A “Monkish Virtue” Outside the Monastery: On the Social and Civic Value of Humility 2* (working paper, 2004).

28. DAVID BROOKS, *THE ROAD TO CHARACTER* 3 (2015).

29. *Id.* at 3.

30. *Id.* at 5.

very humble, but “I think I have the strength of character to fight it.”³¹ Humility has also been credited with “enabling large companies to make the transition ‘from good to great.’”³² Most recently, and most dramatically, Pope Francis has made humility the center of his words and deeds.³³

The contemporary defenders of humility assert that humility’s critics rely on a caricature. The lesson of these competing claims is that whether humility is a virtue or a vice depends upon how one conceives of it. Much of the disagreement centers on contested understandings of our place in the world. The early Christian writers about humility emphasized that humility required having “a low regard for oneself,” especially compared to God.³⁴ The opposite view is that people are genuinely good, so an unjustly low opinion is as problematic as an unjustly high opinion.³⁵ Or humility may be regarded as the “mean between [two] undesirable extremes” of pride and servility.³⁶

My understanding, rooted in Christian teaching, is that humility is appropriate because of the vast distinction between the holiness of God and the sinfulness of humanity. Humility reminds us that we are not God and that we lack many of the attributes of God, such as omniscience and omnipotence. But humility also instructs us regarding our relationship to

31. *Hope Gets Medal From a White House Straight Man*, N.Y. TIMES, Sept. 12, 1963, at 34 (quoting Hope).

32. WILLIAM DAMON & ANNE COLBY, *THE POWER OF IDEALS: THE REAL STORY OF MORAL CHOICE* 127 (2015) (citing JAMES C. COLLINS, *GOOD TO GREAT: WHY SOME COMPANIES MAKE THE LEAP, AND OTHERS DON’T* 304 (2001)).

33. See H.R. 15, 114th Cong. (1st Sess. 2015) (finding that Francis “took the papal name of Francis, becoming the first pope to take the name of St. Francis of Assisi, who was known for his devotion to humility and the poor;” “he has demonstrated his humility by choosing not to live in the lavish Apostolic Palace, living instead with the clergy and lay people in the Vatican guesthouse;” and “his humility, his commitment to economic justice and improving the lives of the poor, and his outreach to individuals from all walks of life have been universally praised and are living examples of Jesus Christ’s message.”); Remarks at a Welcoming Ceremony for Pope Francis (Sept. 23, 2015), in 51 WEEKLY COMP. PRES. DOC. 638 (telling Pope Francis that “[i]n your humility, your embrace of simplicity, in the gentleness of your words, [and] the generosity of your spirit, we see a living example of Jesus’ teachings, a leader whose moral authority comes not just through words but also through deeds.”).

34. See, e.g., C.J. MAHANEY, *HUMILITY: TRUE GREATNESS* 22 xii-xiii (2005) (contending that “[h]umility is honestly assessing ourselves in light of God’s holiness and our sinfulness.”); see also Dickson & Rosner, *supra* note 6, at 459 (asserting that the idea of “lowering oneself before an equal of lesser” was the common understanding of humility in early Christianity).

35. See NORVIN RICHARDS, *HUMILITY* (1992); Michael Nava, *The Servant of All: Humility, Humanity, and Judicial Diversity*, 38 GOLDEN GATE L. REV. 175, 178 (2008) (contending that “[t]he opposite of humility is not only arrogance, but also self-abasement.”).

36. Brett Scharffs, *The Role of Humility in Exercising Practical Wisdom*, 32 U.C. DAVIS L. REV. 127, 161 (1998).

others. Humility calls for a proper estimate of ourselves and of others that avoids both exaggeration and underestimation.

So conceived, humility has two reciprocal aspects. First, humility emphasizes human limits. We have limited knowledge of ourselves, of others, and of the world around us. We are willing to learn new things and to change our minds. We have limited skills and limited abilities to affect the results that we desire. We make mistakes. We can honestly assess ourselves and recognize the value of others. We are not impressed with social rank. We understand our place in the world and recognize that we are not the most important thing in it. We are dependent both on other people and on the natural resources that this world provides. We value things apart from their value for us.³⁷

The flip side of humility looks at others. Humility respects the knowledge that others possess. It acknowledges their skills, their experiences, and their achievements. It realizes that others may hold different opinions and value things differently than we do. It recognizes the helpfulness of others to us and to the community of which we both are a part. It enjoins us to listen to others. And it recognizes the importance of others rather than focusing on ourselves.

Humility thus affects our understanding of our knowledge, our importance, our abilities, and our role.³⁸ We exaggerate our knowledge. “Humility is the awareness that there’s a lot you don’t know and that a lot of what you think you know is distorted or wrong.”³⁹ We are not omniscient; we do not know everything. We are constantly learning, but we cannot keep pace with all of the knowledge out there. Indeed, the more we learn, the more

37. For descriptions of the meaning of humility, see, e.g., DAMON & COLBY, *supra* note 32, at 132-37; BROOKS, *supra* note 28, at 261-70 (offering a “humility code” containing fifteen propositions); AQUINAS, *supra* note 1, at 1841-48; Dickson & Rosner, *supra* note 6, at 459 n.3; Kupfer, *supra* note 7, at 249; Loudon, *supra* note 27, at 632; Deirdre McCloskey, *Humility and Truth*, 88 *ANGLICAN THEOLOGICAL REV.* 181, 188-89 (2006); Rushing, *supra* note 19, at 198.

38. I am grateful to Holly Doremus for suggesting this way of understanding humility.

39. DANIEL KAHNEMAN, *THINKING, FAST AND SLOW* 201 (2011). See also REV. G. HODSON, M. A., *TWELVE SERMONS, ILLUSTRATIVE OF SOME OF THE LEADING DOCTRINES OF THE GOSPEL IN CONNECTION WITH CHRISTIAN TEMPER AND EXPERIENCE* 245 (1825) (preaching that one’s “habitual humility keeps him also from being hasty and dogmatical in expressing his opinions. He distrusts his own judgment—is sensible of difficulties—weighs opposite opinions with candour and impartiality—is not prone to condemn those who differ from himself—is willing to be convinced of error, and to alter and retract his sentiments when convinced. Pride is positive and peremptory—humility diffident and cautious.”); Patrick J. Connolly, *Lockean Superaddition and Lockean Humility*, *STUD. IN HIST. AND PHIL. OF SCI.* 51, 56 (2015) (explaining that “Locke enjoins us to recognize our cognitive limits because he wants us to recognize that while we do not have as much knowledge as we *want*, we have as much as we *need*,” and “[t]he second component of Lockean humility is the idea that we err greatly when we attempt to extend our knowledge beyond its severe limits.”).

we have yet to learn. The idea of “learned ignorance,” traced back to Socrates, reminds us that “the inability to understand something fully does not necessarily mean understanding nothing at all, nor does a limitation of knowledge give grounds for intellectual laziness.”⁴⁰

Humility about our importance acknowledges the value of other people, creatures, and God. We are not at the center of the universe. We are incredibly valuable, but we are not the most important thing in the world. We are skilled and gifted, but we are imperfect and make lots of mistakes. The people with whom we interact are just the same: valuable and gifted, but imperfect and mistaken. Humility thus cautions us against acting in our self-interest. As Paul wrote to the church in Philippi, “Do nothing out of selfish ambition or vain conceit. Rather, in humility value others above yourselves.”⁴¹

Humility reminds us that we cannot do everything. Indeed, we cannot do everything that others can do. We have specific abilities and gifts but lack other abilities and gifts. Sometimes we are powerful; other times we are powerless. Our abilities are especially obvious when we compare them to God’s omnipotence,⁴² but we also see the limits of our abilities when we compare them to others who possess skills that we do not.

Humility about one’s role counsels respect for the place in which we are embedded. Much of the historic writing about humility focused on personal relationships, while more recent scholarship has emphasized the social dimension of humility. Political scientist Sara Rushing’s reconception of humility as inspired by Confucian teaching posits “a cultivated inner disposition toward ourselves and others, which supports our acceptance of vulnerability and interdependence, our propensity for social empathy and solidarity, our commitment to the dignity of self and other, and, importantly, our capacity for political engagement” and which thus “has much to offer

40. James L. Heft, *Learned Ignorance*, in *LEARNED IGNORANCE: INTELLECTUAL HUMILITY AMONG JEWS, CHRISTIANS, AND MUSLIMS* 3 (James L. Heft, *et al.* eds., 2011).

41. *Philippians* 2:3 (NIV). See also DONALD MARVIN BORCHERT, *EMBRACING EPISTEMIC HUMILITY: CONFRONTING TRIUMPHALISM IN THREE ABRAHAMIC RELIGIONS* xiii (2013) (calling for an epistemic humility that is “open to the possibilities that (a) one’s “worldview might not contain the whole truth and nothing but the truth,” (b) “alternative worldviews might contain important valid insights, and” (c) one’s “worldview might need enrichment and even modification because of new insights either generated by their fellow adherents or borrowed from advocates of alternative worldviews.”); BROOKS, *supra* note 28, at 205 (“Humility relieves you of the awful stress of trying to be superior all the time.”).

42. See DAMON & COLBY, *supra* note 32, at 124 (observing that “[t]he recognition of the limited, transitory, and ultimately powerless nature of human activity in relation to God (or some other transcendent reality) is one of the core messages shared by spiritual teachings.”).

contemporary political theory and practice.”⁴³ “Far from promoting passivity and obstructing political reform,” she adds, “humility actually enables proper protest and remonstrance. This is because humility facilitates (even necessitates) a critical engagement with others and with our conditions that is neither submissive nor self-righteous.”⁴⁴

Humility thus stands in opposition to pride, arrogance, and hubris.⁴⁵ Those qualities presume that we understand ourselves, others, and the world around us. They presume that we always possess the necessary skills to accomplish what we desire. Humility is also contrary to exaggerated self-esteem. The contemporary preoccupation with self-esteem has prompted several champions of humility to refer to the tension between the high view of one’s self promoted by modern culture and the limited view of one’s self suggested by humility. The Christian attempt to reconcile those positions refers to “our status as creatures who, though nothing *in themselves*, are created and maintained in their being by God’s love, and thus are of *inestimable worth*.”⁴⁶

Yet humility cautions against the opposite error as well. We need not deny our own knowledge and skills and values. That is the false humility that Aquinas warned about. Indeed, such false humility can actually be pride. Or it could be “the ‘Academy Awards’ conception of humility”—the understanding of “humility as affective modesty among high achievers”—that Sara Rushing describes.⁴⁷ As New York City pastor Tim Keller put it, “gospel-humility is not thinking less of myself, it is thinking of myself less.”⁴⁸

Nor does humility require humiliation and self-abasement before others. The confusion here is between properly understanding our relationship to other people and properly understanding our relationship to God. Early Christian writers who described humility as demanding self-abasement were

43. Rushing, *supra* note 19, at 200.

44. *Id.* at 201.

45. AQUINAS, *supra* note 1, at 1841; RICHARDS, *supra* note 35, at 119.

46. Norman Wirzba, *The Touch of Humility: An Invitation to Creatureliness*, 24 MOD. THEOLOGY 225, 230 (2008). For similar views, see MARK S. MCLEOD-HARRISON, REPAIRING EDEN: HUMILITY, MYSTICISM, AND THE EXISTENTIAL PROBLEM OF RELIGIOUS DIVERSITY 71 (2005) (contending, *contra* Richards, that having a low opinion of one’s self is not the same as having low self-esteem).

47. Rushing, *supra* note 19, at 200.

48. KELLER, *supra* note 12, at 32. See also C.S. LEWIS, MERE CHRISTIANITY 128 (1952) (“He will not be thinking about humility: he will not be thinking about himself at all.”).

referring to our posture before God.⁴⁹ That is appropriate according to Christian teaching because God is infinitely more powerful, knowledgeable, and holy than any of us are. But a much different posture results from our interaction with people who are both of incredible value and are often badly mistaken—just like us.

II. ENVIRONMENTAL HUMILITY

Humility is a recurrent theme in environmental writings. An editorial written at the dawn of the twenty-first century identified humility as the best guiding principle for the human relationship with the environment.⁵⁰ Theologian Celia Drummond and philosophers Lisa Gerber and Norman Wirzba are among those who have written eloquently about the need for environmental humility.⁵¹ Perhaps most strikingly, at the end of *The End of Nature*, environmental activist Bill McKibben reflects on the humbler world that could emerge now that every part of the natural world has been shaped by human hands. He is not sure what it will look like. He doubts that it would be “one big happy Pennsylvania Dutch colony,” though he allows that it might be best if we were “crammed into a few huge cities like so many ants.”⁵² But McKibben is more interested in humility as an attitude than humility as a predictor. He worries about the burdens that our desires place on the natural world. He laments that “our helplessness is a problem of affluence” and “our sense of entitlement is almost impossible to shake.”⁵³ He is “pessimistic about the chances that we will dramatically alter our ways of thinking and living, that we will turn humble in the face of our troubles.”⁵⁴ For McKibben, humility may be the only way out of the environmental predicament that we have fashioned for ourselves.

49. See, e.g., JENNIFER CLEMENT, *READING HUMILITY IN EARLY MODERN ENGLAND* 57-77 (2015) (discussing the relationship between humility and humiliation in John Donne’s writings).

50. Nicholas Polunin, *Humility and the Environment*, 26 *ENVTL. CONSERVATION* 243 (1999).

51. See Celia Deane-Drummond & David Clough, *Introduction*, in *CREATURELY THEOLOGY: ON GOD, HUMANS AND OTHER ANIMALS* 1 (Celia Deane-Drummond & David Clough eds., 2009); NORMAN WIRZBA, *THE PARADISE OF GOD: RENEWING RELIGION IN AN ECOLOGICAL AGE* 31 (2003); Lisa Gerber, *Standing Humbly Before Nature*, 7 *ETHICS & ENV’T* 39 (2002).

52. BILL MCKIBBEN, *THE END OF NATURE* 162 (2006).

53. *Id.* at 168.

54. *Id.* at 173.

There are three ways in which we are humbled when we encounter the natural world. First, we realize how little we actually know about it. Second, we gain a proper understanding of our place in the world. Third, we appreciate the limits on our abilities to transform the natural world.

A. *Humility as Lack of Environmental Knowledge*

“The humility of the environmentalist comes from an appreciation of the limits of our own knowledge,” observes Lisa Heinzerling.⁵⁵ “We cannot understand all the complexities of the universe, nor can we create the beauty of the sunrise on the Tetons,” observes Lisa Gerber.⁵⁶ A supporter of what became the Marine Mammal Protection Act told Congress in 1972 that “[t]he relatively new field of ecology expresses a new humility, a willingness to admit that the interrelationships of all living things are so complex that we cannot possibly know how many of any given species is needed.”⁵⁷ We do not know how many fish live in the sea. We do not know how many trees are in a forest, and certainly we don’t know how many trees there are on the earth today. (I once tasked a research librarian with trying to answer that question for me, and the answers were so divergent that the information was essentially useless). We do not know if a species still exists; we keep rediscovering species that we presumed were extinct, while we continue to protect species that are already extinct. We struggle to identify the precise causes and effects of pollution. We know that the world’s climate changes naturally, we know that we are now changing the climate ourselves, and we struggle to identify the relationship between our actions, natural phenomena, and the effects that we experience. Reed Noss, one of the leading conservation biologists, insists that humility is necessary because “[e]cosystems are not only

55. Lisa Heinzerling, *Minnesota Wild*, in *THE JURISDYNAMICS OF ENVIRONMENTAL PROTECTION: CHANGE AND PRAGMATIC VOICE IN ENVIRONMENTAL LAW* 399, 401 (Jim Chen ed., 2003); Lisa Heinzerling, *Minnesota Wild*, 87 *MINN. L. REV.* 1139, 1142 (2003).

56. Lisa Gerber, *Standing Humbly Before Nature*, 7 *ETHICS & ENV’T* 39, 47 (2002). See also Ian Mason, *Earth Jurisprudence*, *RESURGENCE MAG.*, Mar./Apr. 2008, at 26 (extolling the humility “of the scholar who knows how little, not how much, we know of ourselves and this universe and contemplates their beauty and mystery in dumbfounded awe” and asserting that “[h]umility is [] the first lesson of Earth Jurisprudence”).

57. Ocean Mammal Protection: Hearings Before the Subcomm. on Oceans & Atmosphere of the Senate Commerce Comm., Pt. 1., 92d Cong., 2d Sess. 248 (1972) (statement of Alice Herrington, Comm. for Human Legislation, Inc.) (supporting federal legislation to protect ocean mammals). Accord Alice Herrington & Lewis Regenstein, *The Plight of Ocean Mammals*, 1 *ENVTL. AFFAIRS* 792, 795 (1972).

more complex than we think, but more complex than we can think.”⁵⁸ Just as God asked Job if he “comprehended the vast expanses of the earth,” our answer remains “no” with respect to many important environmental questions today.⁵⁹

Humility is especially warranted when we seek to explain the environmental past and predict the environmental future. The best efforts of a growing cadre of environmental historians have raised more questions than they have answered. We do not know a place’s “natural” conditions. The simplistic assumption that North America was a virgin wilderness populated by Native Americans with a small footprint on the land has given way to competing claims about the extraordinary efforts of those peoples to reshape the environment to fit their needs.⁶⁰ Turning to the future, our predictions are routinely proven false. We cannot anticipate natural changes to the world around us, and the task only gets harder when we factor our own actions into the equation. Our attempts to predict the environmental effects of our actions have a mixed record of success. The most systematic of such attempts, embodied in the environmental impact statements mandated by the National Environmental Policy Act (“NEPA”), prompted one legal scholar to simply conclude that “predictions often turn out to be wrong.”⁶¹

Actually, the idea of humility may see our lack of environmental understanding as a positive good rather than a necessary evil. That argument is best developed in *The Virtues of Ignorance*, a collection of essays edited by Bill Vitek and Wes Jackson.⁶² For Wendall Berry, the way of ignorance is a necessary antidote to the belief that we know all of the implications of our actions and that we can control them. Berry distinguished, though, between different kinds of ignorance. We must oppose “our old friend hubris, ungodly ignorance disguised as godly arrogance. Ignorance plus arrogance plus greed sponsors ‘better living with chemistry,’ and produces the ozone hole and the dead zone in the Gulf of Mexico.”⁶³ On the other hand, Berry sees ignorance that accepts human limitations is the solution to our environmental ills. He

58. Reed Noss, *Some Principles of Conservation Biology, As They Apply to Environmental Law*, 69 CHI.-KENT L. REV. 893, 898 (1994) (quoting FRANK E. EGLER, *THE NATURE OF VEGETATION: ITS MANAGEMENT AND MISMANAGEMENT* (1977)).

59. *Job* 38:18.

60. See generally CHARLES C. MANN, 1491: NEW REVELATIONS OF THE AMERICAS BEFORE COLUMBUS (2d ed. 2006) (reviewing the debate).

61. Bradley C. Karkkainen, *Toward a Smarter NEPA: Monitoring and Managing Government’s Environmental Performance*, 102 COLUM. L. REV. 903, 926 (2002).

62. *THE VIRTUES OF IGNORANCE* (Bill Vitek & Wes Jackson eds., 2008).

63. Wendell Berry, *The Way of Ignorance*, in *THE VIRTUES OF IGNORANCE*, *supra* note 62, at 37.

argues that “a conspicuous shortage of large-scale corrections for problems that have large-scale causes. Our damages to watersheds and ecosystems will have to be corrected one farm, one forest, one acre at a time.”⁶⁴ Berry recognizes that championing “personal humility, as the solution to a vast risk taken on our behalf . . . is not going to suit everybody. Some will find it an insult to their sense of proportion, others to their sense of drama. . . . But having looked about, I have been unable to convince myself that there is a better solution or one that has a better chance of working.”⁶⁵

Other contributors to *The Virtues of Ignorance* agree. Robert Perry refers to the “multiple disasters in the past century owing to enhanced, but very partial, knowledge: knowledge without the accompanying humility and reverence needed to interact with one another and whole-planet ecological systems.”⁶⁶ Former Governor Richard Lamm asserts that “we must better practice humility, better appreciate what we don’t know (ignorance), and develop a culture of limits.”⁶⁷ Anna Peterson suggests that “[a]n ethic grounded on knowledge that is partial, incomplete, and subject to change could be guided by humility and cooperation rather than arrogance and domination.”⁶⁸ Paul Heltne observes that “the larger public seems to have a much humbler sense of its relationship to nature, a sense that is not reduced to dollar values but, rather, is expressed in terms of concerns and commitments.”⁶⁹ Peter Brown claims that “knowledge will always be inadequate,” which “is an argument not for ignorance but for humility about our ‘knowledge.’ It should call into question our ability to master the world through the accumulation of knowledge and understanding.”⁷⁰ “Ignorance is another name for *humility*, humility before the mysteries of life and the universe. Humility is an ethic that can guide civilization as it charts its course through the waters of the future.”⁷¹

64. *Id.* at 45.

65. *Id.* at 48.

66. Robert Perry, *Ignorance – An Inner Perspective*, in *THE VIRTUES OF IGNORANCE*, *supra* note 62, at 53.

67. Richard D. Lamm, *Human Ignorance and the Limited Use of History*, in *THE VIRTUES OF IGNORANCE*, *supra* note 62, at 62.

68. Ann L. Peterson, *Ignorance and Ethics*, in *THE VIRTUES OF IGNORANCE*, *supra* note 62, at 131.

69. Paul G. Heltne, *Imposed Ignorance and Humble Ignorance – Two Worldviews*, in *THE VIRTUES OF IGNORANCE*, *supra* note 62, at 139.

70. Peter G. Brown, *Choosing Ignorance within a Learning Universe*, in *THE VIRTUES OF IGNORANCE*, *supra* note 62, at 175.

71. *Id.* at 185.

Humility thus serves as a cautionary reminder against our claims to environmental certainty. American attitudes toward climate change provide an especially dramatic illustration of the hazards of confidence. “Americans who do not believe global warming is happening are now about as certain as those who do,” according to a 2013 study.⁷²

B. *Humility and Our Place in the Natural World*

A second way in which we are humbled when we encounter the natural world is that we are reminded of our place in that world. The awesomeness—using the word in its literal sense—of the natural world defeats the inflated opinion that humanity is the center of the universe. Rachel Carson wrote that “[i]t is a wholesome and necessary thing for us to turn again to the earth and in the contemplation of her beauties to know the sense of wonder and humility.”⁷³ The late John Marks Templeton, benefactor of the annual Templeton prize for progress in religion and an advocate of “humility theology,” asserted that “[a] new kind of humility has begun to express itself as we recognize the vastness of God’s creation and our very small place in the cosmic scheme of things.”⁷⁴

Humility thus encourages us to recognize the value of the rest of the world’s creatures and its landscapes. A long list of writers emphasize such humility. It begins with the seventeenth century English social reformer Thomas Tryon, who is best remembered today as an early advocate of vegetarianism, and who also emphasized an understanding of human dominion over the rest of the earth that requires humility.⁷⁵ Susan Cooper’s 1850 book *Rural Hours* has been praised as an early example of ecological

72. GEORGE MASON UNIVERSITY CENTER FOR CLIMATE CHANGE COMMUNICATION, CLIMATE CHANGE IN THE AMERICAN MIND: AMERICANS’ GLOBAL WARMING BELIEFS AND ATTITUDES IN NOVEMBER, 2013 9, <http://environment.yale.edu/climate-communication/files/Climate-Beliefs-November-2013.pdf>.

73. RACHEL CARSON, *THE SENSE OF WONDER* (1956).

74. John Marks Templeton, *Foreword*, in *GOD, SCIENCE, AND HUMILITY: TEN SCIENTISTS CONSIDER HUMILITY THEOLOGY* vii (Robert L. Herrman ed., 2000). 160 Cong. Rec. (daily ed. July 16, 2014) (Senate Chaplain Dr. Barry C. Black praying “[m]ay their humility bring them that reverential awe”).

75. See CLEMENT, *supra* note 49, at 107-26 (chapter discussing Tryon). One of Tryon’s essays bears the evocative title “The Complaints of the Birds and Fowls of Heaven to Their Creator, for the Oppression and Violences Most National son the Earth Do Offer Them, Particularly the People Called Christians, Lately Settled in Several Provinces in America.” See *id.* (citing the essay that appeared in THOMAS TRYON, *A COUNTRY-MAN’S COMPANION* (1684)).

humility.⁷⁶ More recent writers have identified other aspects of a humble relationship between humanity and the other members of the natural world. The etymology of humility as “ground” or “earth” connotes “a very literal connection to the land,” Eduardo Penalver explains: “[t]he humble person, then, is the one who is close to the earth.”⁷⁷ As one philosopher asked, “[C]ould one who had a broad and deep understanding of his place in nature really be indifferent to the destruction of the natural environment?”⁷⁸ Hill explains that such people lack “a proper humility,” which he describes as “an attitude which measures the importance of things independently of their relation to oneself or to some narrow group with which one identifies.”⁷⁹ For theologian Steven Bouma-Prediger, humility “is the fitting acknowledgment that we humans are earth creatures.”⁸⁰ Another writer explains that ecological humility “recognizes the ultimate interdependence . . . of each ecosystem with all others and ultimately with the whole earth system.”⁸¹ Humility teaches us that we are dependent on the rest of the world around us. “God’s exuberant desire for a world made whole will be, at last, extremely humbling to human beings tempted to overrate their importance in the larger scheme of the cosmos.”⁸² At the same time, “environmental humility does not mean that we have to adopt a self-effacing subservience to nature. That would require returning to a life of bare subsistence which would be neither comfortable nor desirable even if the world’s population could be convinced that it was necessary for their spiritual well-being.”⁸³

The other effect of such encounters with the natural world is to inspire an appreciation of our insignificance relative to God. Lots of writers have exclaimed that their experience in nature taught them about the

76. See Josh A. Weinstein, *Susan Cooper’s Humble Ecology: Humility and Christian Stewardship in Rural Hours*, 35 J. AM. CULTURE 65 (2012).

77. Eduardo Peñalver, *Land Virtues*, 94 CORNELL L. REV. 821, 884 (2009).

78. Thomas E. Hill, *Ideals of Human Excellence and Preserving Natural Environments*, 5 ENVTL. ETHICS 211, 217 (1983).

79. *Id.* See also Geoffrey B. Frasz, *Environmental Virtue Ethics: A New Direction for Environmental Ethics*, 15 ENVTL. ETHICS 259, 271 (1993), https://www.pdcnet.org/collection/enviroethics_1993_0015_0003_0259_0274 (asserting that “Hill’s notion of humility should be expanded so that it takes into account an honest picture not only of who we are in relation to nature, but also of what nature is.”).

80. STEVEN BOUMA-PREDIGER, *FOR THE BEAUTY OF THE EARTH: A CHRISTIAN VISION FOR CREATION CARE* 147 (2001).

81. ANNE PRIMAVESI, *MAKING GOD LAUGH: HUMAN ARROGANCE AND ECOLOGICAL HUMILITY* 122 (2004).

82. BELDEN C. LANE, *RAVISHED BY BEAUTY: THE SURPRISING LEGACY OF REFORMED SPIRITUALITY* 226-27 (2011).

83. EDWARD RELPH, *RATIONAL LANDSCAPES AND HUMANISTIC GEOGRAPHY* 164 (1981).

awesomeness of God. For these writers, humility in the face of the awesomeness of God's creation leads to humility before the awesomeness of God. Additionally, "Humility before God's word, Francis Bacon had said, demanded humility before His works."⁸⁴ One writer cautions, though, that "[e]ven though some people when beholding natural scenes are moved to states of awe, sublimity, and humility, other people are moved to despair, boredom, stoic resignation, and a 'live only for today' attitude."⁸⁵ Yet "[w]e are not humble as a species. We have been overcome by hubris."⁸⁶

This environmental humility, arising from our awareness of our limited knowledge and our understanding of our true place in the world, suggests that we will struggle to understand the effects of our actions on the environment. Put differently, the absence of environmental humility explains why we cause so many environmental problems. That is why Al Gore argues for humility because pride is the spiritual root of our environmental crisis.⁸⁷ It is why nature writer Ellen Meloy described the rapid growth of Las Vegas as "an ongoing reproof both to the desert landscape and to the ideas of restraint and humility that have marked much of American environmental writing."⁸⁸ Or why one theologian cited the *Exxon Valdez* oil spill as an example of "the sin of immodesty—that exaggerated confidence in human and technical reliability, and the failure to make due allowance for error and evil, the unpredictable and the unknown."⁸⁹ These examples, and many others like them, show the need for humility with respect to our imperfect knowledge of the environment and of environmental harm. They also show the need for humility about our ability to prevent or correct environmental

84. See John Hedley Brooke, *The History of Science and Religion: Some Evangelical Dimensions*, in *EVANGELICALS AND SCIENCE IN HISTORICAL PERSPECTIVE* 25 (David N. Livingstone, D.G. Hart & Mark A. Noll eds. 1999). See also ANDREW MURRAY, *HUMILITY: THE JOURNEY TOWARD HOLINESS* 16 (2001) ("Humility, the place of entire dependence upon God, is from the very nature of things the first duty and the highest virtue of His creatures."); Weinstein, *supra* note 76, at 73 ("In Cooper's *Rural Hours* we find interspersed within her journal entries expressions of these views on Christian humility and the proper place of human beings in the world.")

85. Frasz, *supra* note 79, at 266.

86. Max Oelschläger & F.B. McAllister, *Why Wilderness Matters Now More Than Ever*, 25 *J. LAND RESOURCES & ENVTL. L.* 21, 34 (2005).

87. See Al Gore, *Speech at the Kyoto Climate Change Conference*, in *AMERICAN EARTH: ENVIRONMENTAL WRITING SINCE THOREAU* 857 (Bill McKibben ed. 2008).

88. Ellen Meloy, *The Flora and Fauna of Las Vegas*, in *AMERICAN EARTH: ENVIRONMENTAL WRITING SINCE THOREAU* 793 (Bill McKibben ed. 2008).

89. JAMES A. NASH, *LOVING NATURE: ECOLOGICAL INTEGRITY AND CHRISTIAN RESPONSIBILITY* 157 (1991).

mistakes. They confirm Aldo Leopold's injunction to be "humbly aware that with each stroke" we are writing our signature "on the face of [the] land."⁹⁰

C. *Humility and the Limits of Our Abilities*

A third aspect of environmental humility recognizes the limits of our technological abilities. As Pope Francis recently explained, "Once we lose our humility, and become enthralled with the possibility of limitless mastery over everything, we inevitably end up harming society and the environment."⁹¹ Historically, our efforts to exploit the environment both achieved great success and caused great harm. A similar pattern can be seen in China today, where several decades of unprecedented economic growth have both produced dramatic increases in human wealth and dramatic amounts of deadly pollution. Our limited abilities are also demonstrated by our efforts to intervene on behalf of the natural world.

Nuclear energy offers the best illustration of the need for such humility. Once scientists learned how to employ nuclear reactions for military purposes, they soon began brainstorming how such an immense source of power could be put to peaceful uses. Thus the Atomic Energy Commission approved Project Plowshare, which took its name from the prophet Isaiah's call for nations to "beat their swords into plowshares" and war no more.⁹² Project Plowshare, in turn, birthed Project Chariot, which sought to employ nuclear explosives to create a harbor in northwestern Alaska. More specifically, it would explode six nuclear devices to remove 70 million cubic acres of earth at Cape Thompson, about thirty miles from the native Alaskan village of Point Hope. Chariot was the brainchild of Edward Teller, the father of the hydrogen bomb and the director of the Lawrence Livermore National Laboratory, who announced the project in Juneau in July 1958. Teller encouraged Alaskans "to engage in the great art of geographic engineering, to reshape the earth to your pleasure."⁹³ "If your mountain is not in the right

90. ALDO LEOPOLD, *A SAND COUNTY ALMANAC AND SKETCHES HERE AND THERE* 68 (1987).

91. Pope Francis, *Laudato Si': On Care For Our Common Home*, para. 224, available at http://w2.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si.html. See also NASH, *supra* note 89, at 157 ("Humility, as modesty, therefore, cautions us not to be confident, let alone overconfident, in 'technological fixes.'"); ELLEN BERNSTEIN, *THE SPLENDOR OF CREATION: A BIBLICAL ECOLOGY* 21 (2005) ("The Bible is really a manual of stories, laws, and rituals designed to teach humanity the power of limits.").

92. *Isaiah* 2:4.

93. Dan O'Neill, *Project Chariot: How Alaska Escaped Nuclear Excavation*, *BULLETIN OF ATOMIC SCIENTISTS* 28, 33 (Dec. 1989).

place,” Teller continued, “just drop us a card.”⁹⁴ Teller dismissed concerns about the environmental effects of the project, telling the nationwide readership of *Popular Mechanics* that it may only take two weeks for the radioactivity to dissipate enough to allow “people to work safely in the immediate vicinity of the explosion.”⁹⁵ Teller suggested that nuclear explosions could also facilitate the development of the tar sands of Alberta, the recovery of oil from shale in western Colorado, and the underground production of heat for power in New Mexico.⁹⁶

But not everyone shared Teller’s faith in technology. Project Chariot became “possibly the first government project challenged on ecological grounds.”⁹⁷ Chariot’s leading supporter and its leading opponent were each leaders of the Episcopal Church in Alaska. Bishop William Gordon—the famed “flying bishop”—reassured “that similar explosions have been carried out in Nevada in proximity to people more cultured and civilized in the modern sense of the word than the people of the Arctic coast.”⁹⁸ But Keith Lawton, the Episcopal priest serving Point Hope, the native Alaskan community closest to the proposed explosions, challenged the confident environmental prediction of Gordon, Teller, and the Atomic Energy Commission.⁹⁹ Other native communities had shrugged their collective shoulders when informed of the plan, including coastal village of Kivalina, which has since gained fame as a potential victim of climate change.¹⁰⁰ At Point Hope, the Atomic Energy Commission told Lawton and the other villagers “that radioactive fallout from the Chariot blast would be too small to measure with radiation detection equipment” and that “the harmful constituents of fallout be so short that some would be gone . . . in a matter of hours.”¹⁰¹ Lawton shared his concerns with the Alaska Methodist women’s society, which spread the word to “the Methodist Church’s network of civic

94. *Id.*

95. Dr. Edward Teller, *We’re Going to Work Miracles*, 113 *POPULAR MECHANICS* 97, 100 (Mar. 1960).

96. *See id.* at 100-01.

97. O’Neill, *supra* note 93, at 28.

98. DAN O’NEILL, *THE FIRECRACKER BOYS* 221 (1994).

99. *Id.* at 219.

100. *See Native Village of Kivalina v. ExxonMobil Corp.*, 696 F.3d 849 (9th Cir. 2012) (rejecting the Village’s common law nuisance claim against leading greenhouse gas emitters).

101. O’Neill, *supra* note 93, at 34.

education programs, traditionally run by the women of the church.”¹⁰² The protests succeeded, and, Project Chariot was killed.¹⁰³

Instead, the peaceful use of nuclear power concentrated on the generation of electricity. Dozens of nuclear power plants were built in the United States during the 1960s and 1970s.¹⁰⁴ This time humility was a frequent part of the debate. As a British environmental expert explained:

Christian humility is needed in looking at the nuclear question. Man has begun to tap forces which in their power and complexity, go far beyond his present abilities to control them. . . . But it is easy to overestimate the abilities of man to control and regulate and to give a false picture of full knowledge and understanding of matters such as the effects of radiation. Too much of the present approach to nuclear power is humanistic and homocentric, arrogant and thrusting where it should be humble and cautious. An awareness of God’s power and man’s weakness is required.”¹⁰⁵

Others have invoked humility in the context of nuclear energy as well. A British report called for “more humility . . . in putting forward technical arguments to influence a wider, more political debate. It is not enough to argue the case that nuclear power can be operated safely; one must respect the doubts as to whether we will all be clever or honest enough to actually operate safely to the common weal.”¹⁰⁶ The commission investigating the 2011 accident at the Fukushima Daiichi nuclear power plant chastised the industry and the Japanese government “for an overly confident attitude that was entirely lacking in humility.”¹⁰⁷ The ongoing dilemma of the disposal of nuclear wastes has prompted similar calls for humility. A nuclear security expert told the U.S. Nuclear Waste Technical Review Board that “there needs to be a little more humility” when telling people “what’s going to happen in

102. O’NEILL, *supra* note 98, at 222.

103. See O’Neill, *supra* note 93, at 28.

104. See U.S. DEP’T OF ENERGY, THE HISTORY OF NUCLEAR ENERGY, http://www.energy.gov/sites/prod/files/The%20History%20of%20Nuclear%20Energy_0.pdf.

105. Stephan Tromans, *The Price of Power: Counting the Cost of Nuclear Energy*, THIRD WAY 18, 20 (July 1985).

106. THE WATT COMMITTEE ON ENERGY, NUCLEAR ENERGY: A PROFESSIONAL ASSESSMENT, Report No. 13 106 (1984).

107. THE INDEPENDENT INVESTIGATION COMMISSION ON THE FUKUSHIMA NUCLEAR ACCIDENT, THE FUKUSHIMA DAIICHI NUCLEAR POWER STATION DISASTER: INVESTIGATING THE MYTH AND REALITY 196 (Mindy Kay Bricker ed., 2014) (statement of Tetsuya Endo).

10,000 years.”¹⁰⁸ A witness at one congressional hearing cautioned that “a lot of the radioactivity in that fuel is going to be there for literally thousands of generations so we need to be very careful and humble as we start saying anything is going to solve the problem.”¹⁰⁹ The United Church of Canada advised, “Burdened with this problem, aware of its history, acknowledging our limitations, we approach the issue of nuclear wastes with humility.”¹¹⁰ And an individual commenting on the proposed storage of all of the U.S.’s nuclear wastes at Yucca Mountain, Nevada, asked, “Why not simply admit you made a mistake, and that it is sounder policy to retain the waste where it was/is generated and monitor it over time, praying always for the humility to succeed in that task.”¹¹¹

The same environmental humility that seeks to avoid environmental harm also questions our ability to remedy environmental harm. We are unlikely to ever restore the Everglades to the conditions that prevailed there until we began draining it, no matter how many billions of dollars we spend trying. One critic objected “to the hubristic range of human knowledge assumptions restorationists must implicitly make to support the claims habitually made for the practice, and the loss of the respectful sense of awe and mystery involved.”¹¹² Even preserving existing environmental conditions demands humility, too. “Sustaining complex ecosystems will require far greater humility toward the environment than has been demonstrated in the past,” a Wilderness Society representative advised Congress in 1994.¹¹³

108. UNITED STATES NUCLEAR WASTE TECHNICAL REVIEW BOARD, SPRING 2014 BOARD MEETING 16 (March 19, 2014) (testimony of Robert H. Neill, Professor in Nuclear Security in the Center for International Security and Cooperation at Stanford University and also a Professor in the Department of Geological and Environmental Sciences in the School of Earth Sciences at Stanford).

109. *High-Level Nuclear Waste Policy: Hearings Before the Subcomm. on Energy and Power of the H. Comm. on Commerce* 342 (1995) (testimony of Don Hancock, Director, Nuclear Waste Safety Project).

110. UNITED CHURCH OF CANADA, SUBMISSION 1: GENERAL COMMENTS ON NUCLEAR WASTES AND THE WORK OF THE NUCLEAR WASTE MANAGEMENT ORGANIZATION 13.

111. Comment EIS000021 / 0003 on Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Volume III, Comment-Response Document Part 2, U.S. Dep’t of Energy Office of Civilian Radioactive Waste Management February 2002, <http://energy.gov/nepa/downloads/eis-0250-final-environmental-impact-statement>.

112. Piers H.G. Stephens, *Hubris, Humility, History and Harmony: Human Belonging and the Uses of Nature*, 11 ENVTL. POLITICS 174, 175 (2002) (reviewing Kane).

113. *Ecosystem Management: Hearing Before the Subcomm. on Agric. Research, Conservation, Forestry, and Gen. Legislation of the S. Agric., Nutrition, and Forestry Comm.*, 103rd Cong., 61 (1994) (testimony of Gregory A. Aplet, Forest Ecologist, Wilderness Soc’y).

The lesson of environmental humility is that we need to restrain ourselves in order to minimize unacceptable impacts on the environment. We do not fully understand the world in which we live, which often causes us to underappreciate its value and to underestimate our impacts on it. The tremendous value of nature—in God’s eyes, for the Christian and people of other faiths; or intrinsically, from the perspective of numerous theories of animal rights and nature—should remind us not to act as if the rest of the world does not matter. We need to cultivate “the willingness to leave places alone and to allow them to be maintained and modified by the people who live in them.”¹¹⁴ Humility tells us “not to make excessive demands of any kind upon [nature], not only those to sustain ever-increasing consumption but even those which express our ‘love’ for it.”¹¹⁵ To be environmentally humble is to live knowing both our own limits and the value of the natural world.

III. LEGAL HUMILITY

Law is an unlikely arena to consider humility. The essence of the law is the invocation of government coercion to accomplish a desired end, which is not very humble at all. It presumes agreement both on the means and the ends of government action, when such agreement is often lacking.

Yet humility—or at least invocations of humility—makes numerous appearances in legal debates. Humility is a prized characteristic of judges. Justice Felix Frankfurter once described intellectual humility as “the indispensable judicial [pre]requisite,”¹¹⁶ while D.C. Circuit Judge Thomas Griffith recently echoed that humility is “an indispensable temperament.”¹¹⁷ Tributes to judges often recognize their humility. During his confirmation hearings, John Roberts praised Judge Henry Friendly, for whom he had clerked, as having “an essential humility about him.”¹¹⁸ One writer praised Oliver Wendell Holmes because “humility and skepticism” were the

114. RELPH, *supra* note 83, at 162.

115. Keekok Lee, *Awe and Humility: Intrinsic Value in Nature. Beyond an Earthbound Environmental Ethics*, in PHILOSOPHY AND THE NATURAL ENVIRONMENT 89, 94-95 (Robin Attfield & Andrew Belsey ed. 1994).

116. *Am. Fed’n of Labor v. Am. Sash & Door Co.*, 335 U.S. 538, 557 (1949) (Frankfurter, J., concurring).

117. Thomas B. Griffith, *Was Bork Right About Judges?*, 34 HARV. J. L. & PUB. POL’Y 157 (2011).

118. Roberts Confirmation Hearing, *supra* note 4, at 202 (testimony of Judge Roberts).

“bedrock foundation” of his jurisprudence.¹¹⁹ “It is this humility, this refusal to read his own experiences and beliefs . . . into the Constitution, and his alertness in opposing judicial associates who, often unconsciously, did so, that constitutes the genius of Holmes.”¹²⁰

Humility in judging takes several forms. Suzanna Sherry explains that the “[w]illingness to change one’s mind—to be persuaded—is one hallmark of a judge who is both humble and courageous.”¹²¹ Cass Sunstein sees humility in judicial minimalism.¹²² Justice Robert Jackson thought that “both wisdom and humility would be well served” by allowing lower federal courts to manage their own practices.¹²³ More generally, Brett Scharffs has cataloged five reasons why we should want humble judges: the need to respect sources of authority, a caution against revolutionary change, the avoidance of judicial activism, the corrupting nature of power, and a willingness to reassess previous positions.¹²⁴

Other writers invoke humility to support or oppose a certain substantive approach to judging. Justice Frankfurter argued for humility in exercising the power of judicial review of the constitutionality of legislation. “The nature of the duty,” wrote Frankfurter, “makes it especially important to be humble in exercising it. Humility in this context means an alert self-scrutiny so as to avoid infusing into the vagueness of a Constitutional command one’s merely private notions.”¹²⁵ Justice William Brennan famously disparaged originalist

119. Wallace Mendelson, *Mr. Justice Holmes—Humility, Skepticism and Democracy*, 36 MINN. L. REV. 343, 347, 359 (1952). *Accord* H. Jefferson Powell, *Constitutional Virtues*, 9 GREEN BAG 2d 369, 378 (2006).

120. Mendelson, *supra* note 119, at 378 (asserting that Holmes “was not a humble man in the ordinary sense of the adjective, but he consistently displayed the constitutional virtue of humility.”).

121. Suzanna Sherry, *Judges of Character*, 38 WAKE FOREST L. REV. 793, 811 (2003).

122. See Jeffrey Rosen, *Sunstein and Brandeis: The Minimalist and the Prophet*, 43 TULSA L. REV. 885, 885 (2008) (praising Sunstein’s humility).

123. *Western Pac. R.R. Corp. v. Western Pac. R.R. Co.*, 345 U.S. 247, 275 (1953) (Jackson, J., dissenting).

124. Scharffs, *supra* note 36, at 185-98.

125. *Haley v. Ohio*, 332 U.S. 596, 602 (1948) (Frankfurter, J., concurring). See also *West Virginia State Bd. of Ed. v. Barnette*, 319 U.S. 624, 667 (1943) (Frankfurter, J., dissenting) (describing “the accidental contingencies by which one man may determine constitutionality and thereby confine the political power of the Congress of the United States and the legislatures of forty-eight states. The attitude of judicial humility which these considerations enjoin is not an abdication of the judicial function. It is a due observance of its limits.”); *Bridges v. California*, 314 U.S. 252, 284 (1941) (Frankfurter, J., dissenting) (noting that courts “are without many influences ordinarily making for humor and humility, twin antidotes to the corrosion of power.”).

interpretive theories as “arrogance cloaked as humility.”¹²⁶ Michael McConnell explained that “[a]ll of the various constraints on judicial discretion can be understood as means of tempering judicial arrogance by forcing judges to confront, and take into account, the opinions of others . . . ,” including the Framers, the representatives of the people, contributors to traditions, and judges in earlier cases.¹²⁷

Humility does not, however, imply that a judge should be unwilling to make an unpopular decision when it is necessary to do so. Nor does it suggest that there is no right answer to a legal dispute. During his confirmation hearing, John Roberts insisted that humility and a commitment to right answers could coexist.¹²⁸ Ronald Dworkin faulted Learned Hand for apparently believing otherwise, accusing Hand of “a disabling uncertainty that he—or or anyone else—could discover which convictions were true.”¹²⁹ The correct approach, explains Suzanna Sherry, is “to live with both humility and courage.”¹³⁰ And Judge Learned Hand “captured this sense of humility by quoting Oliver Cromwell: ‘I beseech ye in the bowels of Christ, think ye may be mistaken.’”¹³¹

Judge Hand urged that Cromwell’s words be written “over the portals of . . . every legislative body in the United States.”¹³² But humility has received less attention in the context of legislation and regulation than in judging. Several presidents have spoken about or been praised for their humility.¹³³ And there are occasional references by and to certain legislators about

126. Justice William J. Brennan, Jr., Speech to the Text and Teaching Symposium at Georgetown University (Oct. 12, 1985), in *ORIGINALISM: A QUARTER-CENTURY OF DEBATE* 47 (Steven G. Calabresi ed., 2007).

127. Michael W. McConnell, *The Importance of Humility in Judicial Review: A Comment On Ronald Dworkin’s “Moral Reading” of the Constitution*, 65 *FORDHAM L. REV.* 1269, 1292 (1996-1997).

128. See Roberts Confirmation Hearing, *supra* note 4, at 158 (testimony of Judge Roberts).

129. RONALD DWORIN, *FREEDOM’S LAW: THE MORAL READING OF THE AMERICAN CONSTITUTION* 342 (1996).

130. Sherry, *supra* note 121, at 805.

131. Griffith, *supra* note 117, at 168 (quoting Judge Learned Hand, quoting Oliver Cromwell).

132. See *id.*

133. See BROOKS, *supra* note 28, at 40 (describing how Secretary of Labor Frances Perkins wrote “that Franklin Roosevelt began to approach the stature of humility and inner integrity which made him truly great.”); *id.* at 64 (quoting Dwight Eisenhower’s belief “that every leader should have enough humility to accept, publicly, the responsibility for the mistakes of the subordinates he has himself selected and, likewise, to give them credit, publicly, for their triumphs.”). For President Obama’s references to humility, see *supra* note 3.

humility.¹³⁴ One scholar has called for a “democratic humility” inspired by the work of the theologian Reinhold Niebuhr.¹³⁵ But it is surprising that humility has not received more attention for lawmaking, for the lessons of legal humility have much to teach legislators and regulators. And the reasons for environmental humility, as described in the previous section, support legal humility as well.

The limits of our knowledge are at the core of the case for environmental humility. The same limited knowledge justifies legal humility. Lawrence Lessig advised that “[h]umility should be our first principle when legislating about cyberspace: We should be honest how much we don’t yet know.”¹³⁶ Lessig’s counsel extends to many other fields of lawmaking where our knowledge of the problem and the effect of proposed solutions is limited. We are limited by what we don’t know about the law, the problems that it seeks to solve, and how the law actually works. The more ambitious the law, the greater the need for legal humility. As Madeline Kass observes, research shows that “as the difficulty of particular tasks increases so too does the overconfidence.”¹³⁷ From another political perspective, James Q. Wilson described “[t]he view that we know less than we thought we knew about how to change the human condition” as the essence of neoconservatism.¹³⁸

Legal humility also recognizes the value of perspectives that are the opposite of our own. John Inazu’s forthcoming book “Confident Pluralism” emphasizes the importance of humility in discussions of our most contested

134. See 161 CONG. REC. S38 (daily ed. Jan. 7, 2015) (statement of Sen. Cornyn) (stating that the new Republican Senate majority “approach[es] this opportunity with great humility”); Phil Taylor, *Bishop Brings “Humor and Candor” to Rancorous Resources Debate*, E&E REPORTER (Mar. 11, 2015), <http://www.eenews.net/stories/1060014818> (reporting that new House Natural Resources Committee Chair Rep. Rob Bishop “has brought a sense of humor and even humility to a committee that has fought bitter battles with the Obama administration and had more than its share of intramural brawls.”); see also 162 Cong. Rec. S3 (daily ed. Jan. 11, 2016) (prayer offered by Senate Chaplain Dr. Barry C. Black) (asking for “a humility that seeks first to understand instead of striving to be understood”). But see 141 CONG. REC. H7924 (daily ed. July 28, 1995) (statement of Rep. Roberts) (“It is obvious in this debate the high road of environmental humility and common sense is not bothered by heavy traffic on this floor.”).

135. See CHRISTOPHER BEEM, *DEMOCRATIC HUMILITY: REINHOLD NIEBUHR, NEUROSCIENCE, AND AMERICA’S POLITICAL CRISIS* (2015). See also DANIEL A. MORRIS, *VIRTUE AND IRON IN AMERICAN DEMOCRACY: REVISITING DEWEY AND NIEBUHR* 47 (2015) (suggesting “that humility, mutuality, and democratic tolerance are a network of virtues that are necessary for the success of democracy.”).

136. Lawrence Lessig, *Spin It and Weep*, *THE INDUSTRY STANDARD*, Nov. 20, 1998.

137. Madeline June Kass, *Hubris and Humility in Environmental Law*, 2 *GEO. WASH J. ENERGY & ENVTL. L.* 1, 11 (Summer 2011).

138. James Q. Wilson, *A Life in the Public Interest*, *WALL ST. J.*, Sept. 21, 2009, at A19.

values.¹³⁹ Inazu identifies the aspirations of tolerance, humility, and patience as key to the survival of a pluralistic society. According to Inazu, humility is “a reminder of the limits of translation, and the difficulty of proving our deeply held values to one another.”¹⁴⁰ He adds that “humility also recognizes that our human faculties are inherently limited—our ability to think, reason, and reflect is less than perfect, a limitation that leaves open the possibility that we are wrong.”¹⁴¹ Further, “[h]umility is based on the limits of what we can *prove*, not on claims about what is *true*.”¹⁴² And “[h]umility can also facilitate understanding across difference. Our ability to recognize that not everyone will comprehend our own beliefs and values can help us enter into someone else’s world through a greater attentiveness to listening.”¹⁴³

Similarly, just as our inability to always achieve our desired goals supports environmental humility, we have a limited ability to design and implement the best laws. Humility counters the tendency to believe that we can identify and craft the legal solution to every problem that we encounter. Conservative scholars have been especially insistent that “it’s very difficult for human beings, when they act as political creatures, to get matters right,”¹⁴⁴ and that we need “a basic humility about our hobbled abilities, as fallible beings, to bend the world to our will.”¹⁴⁵ But it is not just conservatives who recognize legal humility. President Obama has emphasized that we must “have some humility about what we can and can’t accomplish” overseas.¹⁴⁶ Madeline Kass has employed the term “regulatory hubris” to mean “sheer human arrogance, conceit, and unjustified certitude in governmental decision-making.”¹⁴⁷ And Frederick Schauer encourages “humility about one’s own decision-making capacities even on second and reflective impression.”¹⁴⁸ The reminder that our abilities are limited is a hallmark of humility.

139. JOHN D. INAZU, *CONFIDENT PLURALISM: SURVIVING AND THRIVING THROUGH DEEP DIFFERENCE* (forthcoming May 2016).

140. *Id.*

141. *Id.*

142. *Id.* “For this reason,” Inazu explains, humility “should not be mistaken for relativism. . . . Humility leaves open the possibility that there is right and wrong and good and evil.” *Id.*

143. *Id.*

144. Andrew Stark, *Conservative Humility, Liberal Irony*, HOOVER INST.: POL’Y REV. (Aug. 1, 2011), <http://www.hoover.org/research/conservative-humility-liberal-irony>.

145. *Id.*

146. Press Conference by the President, Aug. 1, 2014, <https://www.whitehouse.gov/the-press-office/2014/08/01/press-conference-president>.

147. Kass, *supra* note 137, at 2.

148. Frederick Schauer, *Must Virtue Be Particular?*, in *LAW, VIRTUE AND JUSTICE* (A. Amaya & H.L. Ho, eds., 2013).

That is precisely what animates the classical conservatism of Edmund Burke, the eighteenth century Parliamentarian and political theorist. Burke explained that “[t]rue humility, the basis of the Christian system, is the low, but deep and firm, foundation of all real virtue.”¹⁴⁹ He stressed intellectual humility as “a strong impression of the ignorance and fallibility of mankind.”¹⁵⁰ Burke further insisted that “prudence” is central to achieving the social order that is necessary for human flourishing.¹⁵¹ He lamented that “modern thought bears little trace of that ‘strong impression of the ignorance and fallibility of mankind’ that long served to suppress such rationalistic hubris.”¹⁵² He also contended that proposed new legislation should be “reconciled to all established, recognized morals, and to the general, ancient, known policy of the laws of England.”¹⁵³ Or, as one scholar described Burke’s thinking about lawmaking, “since mistakes could have disastrous effects, not mere utility but morality itself dictates caution and proper intellectual humility.”¹⁵⁴ Burke himself insisted that “[t]he true lawgiver” ought “to fear himself.”¹⁵⁵ In short, Burke contended that the respect for the opinions of others that is associated with humility counsels caution when changing the law. The absence of humility helps to explain why the law results in so many unintended consequences. “The idea that government policies have unintended consequences has become a fixture of political argument, indeed a cliché.”¹⁵⁶ Unintended consequences, for example, feature in the ongoing debate over the Affordable Care Act. The law’s purposes are “to increase the number of Americans covered by health insurance and decrease the cost of health care.”¹⁵⁷ It is too early to tell which of these purposes will be achieved, and the role of the law in achieving them. But much of the law’s early returns

149. Joseph Baldacchino, *The Value-Centered Historicism of Edmund Burke*, NAT’L HUMAN INST. (Mar. 27, 2012), <http://www.nhinet.org/burke.htm> (quoting EDMUND BURKE, LETTER TO A MEMBER OF THE NATIONAL ASSEMBLY, at 536).

150. *Id.* (quoting EDMUND BURKE, REFLECTIONS ON THE REVOLUTION IN FRANCE, at 376).

151. Linda C. Raeder, *The Liberalism/Conservatism of Edmund Burke and F.A. Hayek: A Critical Comparison*, 10 HUMANITAS 2 n.17 (1997).

152. *Id.*

153. *Id.* at n.70 (quoting Edmund Burke, *New to Old* at 134).

154. Baldacchino, *supra* note 149.

155. *Id.* (quoting EDMUND BURKE, REFLECTIONS ON THE REVOLUTION IN FRANCE, at 280-82).

156. Christopher DeMuth, *Unintended Consequences and Intended Non-Consequences*, AEI CENTER FOR REGULATORY & MARKET STUDIES 1 (June 2009), <http://www.aei.org/wp-content/uploads/2009/06/20090608-Bradley-June.pdf>.

157. Nat’l Fed’n of Indep. Bus. v. Sebelius, 132 S. Ct. 2566, 2580 (2012) (opinion of Roberts, C.J.).

have emphasized other results that the supporters of the law did not intend. People complain that they cannot keep their existing insurance coverage, despite President Obama's promise that such a result would not occur. Many part-time workers, such as adjunct faculty members, have suffered reductions in their hours (and thus reductions in their pay) instead of an increase in health coverage.¹⁵⁸ Such unintended consequences were predictable, insist the law's opponents. They further deplore the arrogance—the lack of humility—of “imagin[ing] that one hundred United States Senators . . . are wise enough to reform comprehensively a health care system that constitutes 17 percent of the world's largest economy and affects 300 million Americans of disparate backgrounds and circumstances.”¹⁵⁹ By contrast, Nancy Pelosi remains a steadfast supporter of the law even though she has called for “the humility to know that any bill, whatever our pride of involvement in it is, can be improved.”¹⁶⁰ The law's unintended consequences do not prove whether or not the Affordable Care Act was a mistake. But the law's rocky beginning does demonstrate that its success—like the success of all laws—must be judged both by its ability to achieve its goals and by the unintended and undesirable consequences that follow from a lawmaker's inability to predict the full effects of the law.

The same phenomenon is especially common in environmental law. The premise of environmental law is that the regulation of human action can produce a more desirable natural environment. There are innumerable examples of such regulation achieving that goal. But there are also instances where environmental regulation does not result in the desired natural environment. Sometimes regulation fails because we misunderstood the natural environment; sometimes regulation fails because we misunderstood the operation of the law. Both failures occur because we thought that we understood the relationship between the law and the natural environment better than what proved to be the case.

The unintended consequences of the law emerged as a common theme in my earlier study of how the law actually affects the natural environment in five specific places.¹⁶¹ The Endangered Species Act's protection of a rare fly

158. For more examples, one commentator has written an essay entitled *100 Unintended Consequences of Obamacare*. Andrew Johnson, *100 Unintended Consequences of Obamacare*, NAT'L REV. ONLINE (Oct. 1, 2013), <http://www.nationalreview.com/node/359861/print>.

159. Lamar Alexander, *Alexander Outlines “What Republicans Are For,”* YOUTUBE at 5:20 (Jan. 21, 2010), <https://www.youtube.com/watch?v=CVCbyP92BvM&noredirect=1>; see also 156 Cong. Rec. S63 (daily ed. Jan. 21, 2010).

160. 159 CONG. REC. H7115 (daily ed. Nov. 15, 2013) (statement of Rep. Pelosi).

161. See generally JOHN COPELAND NAGLE, *LAW'S ENVIRONMENT: HOW THE LAW SHAPES THE PLACES WE LIVE* (2010).

brought economic development in depressed California city to a standstill. The combination of the congressional establishment of Theodore Roosevelt National Park and the enactment of the Clean Air Act has limited energy development of western North Dakota while failing to deliver the promised ecotourism boom. The fur trade that President William Howard Taft sought to protect in his establishment of a wildlife refuge in the Aleutian Island helped to devastate the island's native seabirds, and consequently its native flora, and it took the refuge many years and substantial resources to eliminate the foxes that we once tried to keep on the island. A similar effort to undo the fruits of earlier laws is occurring along the Susquehanna River. The Clean Water Act provides funding to update sewer systems that were early efforts at environmental protection. The Federal Energy Regulatory Commission is using its legal authorities to aid fish whose historic route was blocked by the dams authorized by earlier federal laws. Federal and state agencies alike are relying upon a broad collection of legal powers to try to clean up the acidic pollution that endures long after the end of the mining that the law once eagerly encouraged along throughout the Susquehanna Basin in Pennsylvania. There are probably similar stories of the unintended consequences of the law on the environment anywhere one looks. Madeline's Kass's examples of "environmental mistakes of historic proportions" include the misuse of pesticides, suppressing wildfires, and draining swamps, each of which was facilitated by well-intentioned laws.¹⁶²

The existence of contested social values provides a third reason for legal humility. The members of our pluralist society hold many differing ideas about such fundamental questions as the meaning of life, the beginning and end of life, the proper balance between individual desires and community aspirations, the nature of the common good, and the role of the government in pursuing the common good. Despite these conflicting beliefs, the law often insists that there is a single correct answer to many of those questions. Or the law decides who gets to answer those questions. Either way, the law produces winners and losers whose values are either affirmed or condemned depending on the outcome of the political and legal process. The stakes of this process demand that those who are participating act with humility. As always, humility has two sides. On the one hand, it reminds us of our own limitations. Thus, amidst the polarized congressional shutdown that happened during the fall of 2013, a pastor prayed for "humility to let go of the ideological convictions when those convictions hinder the common good

162. Kass, *supra* note 137, at 2-9.

. . . .¹⁶³ On the other hand, humility reminds us of the value of others. That may seem an unlikely quality for a multinational corporation, but it was a Royal Dutch Shell official who insisted that “leaders need to be humble enough to want to see through the eyes of others, and understand what drives them. They need to be wise enough to recognize their success depends on accommodating the interests of others.”¹⁶⁴

The lesson of legal humility, then, is that we should not exaggerate our ability to identify and achieve our desired societal goals. We do not always know enough about a problem, its causes, and the effects of various solutions to produce the results that we seek. Even if we are able to design and implement a law that achieves our goals, that law may also produce unintended consequences that create distinct—and sometimes worse—problems than we sought to solve. Our values may conflict, which can cause unstable laws that depend on fleeting lawmaking majorities. On the other hand, sometimes we are able to employ the law to do exactly what we hoped. Legal humility reminds us to be alert for the possibility of either result.

IV. HUMILITY & ENVIRONMENTAL LAW

Humility also plays a central yet contradictory role in environmental law. Environmental humility counsels restraint lest our actions harm the natural environment out of ignorance or indifference. Environmental humility, in short, supports greater environmental regulation. Legal humility pushes in the opposite direction. Humility toward the law cautions against exaggerated understandings of our ability to create and implement legal tools that will achieve our intended results. In short, environmental humility favors human restraint and actions to address our impacts, while legal humility cautions against ambitious schemes to mandate the preservation or remediation of the environment. The two often collide when the environment is combined with law.

The current debates concerning the appropriate legal response to climate change offer an excellent illustration of the multiple ways in which humility can inform environmental lawmaking. Anne-Marie Slaughter advanced one view of humility and climate change in her book about American virtues.¹⁶⁵

163. 159 CONG. REC. H6325 (daily ed. Oct. 7, 2013) (prayer of Reverend Andrew Walton, Capitol Hill Presbyterian Church, Washington, D.C.).

164. Jorma Ollila, Chairman, Royal Dutch Shell, Address at Financial Times/Goldman Sachs Business Book of the Year Award Dinner: Facing Up to Our Global Challenges in a Volatile World (Nov. 1, 2012).

165. See ANNE-MARIE SLAUGHTER, *THE IDEA THAT IS AMERICA: KEEPING FAITH WITH OUR VALUES IN A DANGEROUS WORLD* (2007).

Slaughter argues that “we need a global good neighbor policy” which incorporates “the humility to accept that America does not have all the answers to national and international problems, that global leadership is earned rather than assumed, and that collective problems require genuinely collective solutions.”¹⁶⁶ She turned to climate change after decrying the history of American intervention in Latin America as a failure of humility. She then observed that climate change is a really big problem that the United States has an obligation to address. She faults humanity—and especially the Bush Administration—for becoming arrogant in the face of increasing evidence of climate change. Slaughter then praises the Kyoto Protocol, promotes American leadership in crafting the next international agreement to address climate change, and calls upon all Americans to be willing to make the sacrifices that are needed to arrest climate change. She concludes, though, with a reminder that humility is defined by the recognition of “our own limits in addressing all the world’s problems.”¹⁶⁷

Sheila Jasanoff, the director of Harvard’s Program on Science, Technology, & Society, articulated a similar argument in an essay published in the popular scientific journal *Nature* in 2007, entitled *Technologies of Humility*. Jasanoff wrote that “[t]he great mystery of modernity is that we think of certainty as an attainable state.”¹⁶⁸ Humility provided the answer to Jasanoff’s questions about the relationship between public policy and scientific ignorance. Jasanoff called for humility “about both the limits of scientific knowledge and about when to stop turning to science to solve problems,” and when to begin addressing the ethical dimensions of those problems.¹⁶⁹ Turning to climate change, Jasanoff suggests that “[p]olicies based on humility might: redress inequality before finding out how the poor are hurt by climate change; value greenhouse gases differently depending on the nature of the activities that give rise to them; and uncover the sources of vulnerability in fishing communities before installing expensive tsunami detection systems.”¹⁷⁰

Joe Marocco’s contribution to *The Virtues of Ignorance* contends that “[c]limate change presents us with an unusual combination of extraordinary complexity and the potential for far-reaching, dire consequences—characteristics that, I believe, give us ample reason to carefully question the

166. *Id.* at 189-90.

167. *Id.* at 196.

168. Sheila Jasanoff, *Technologies of Humility*, 450 *NATURE* 33 (2007).

169. *Id.*

170. *Id.*

basis for our confidence in scientific knowledge.”¹⁷¹ He dismisses “the antiquated notion of our ability to predict and control nature.”¹⁷² “Better knowledge is only a small part of change; it is clear that other factors trump its power in driving decisionmaking, actions, and activities.”¹⁷³ He recognizes “a need to respect mystery and the unknowable.”¹⁷⁴ “As a new perspective on climate change, the ignorance-based worldview holds great promise.”¹⁷⁵ That worldview counsels that “we should always maintain a position of precaution.”¹⁷⁶ And that worldview teaches that “action—technological, political, or otherwise—is supplemented with a humbling sense of the tenuousness of our knowledge.”¹⁷⁷ It also suggests that “no proposed ‘solution’ that relies solely on technology is complete or necessarily safe.”¹⁷⁸

Other writers have suggested that the unwillingness to recognize the dangers of climate change represents a lack of humility. Larry Lohmann, the co-founder of the Durban Group for Climate Justice, insists that “the only certainty is uncertainty itself,” yet policymakers, economists, and even scientists have succumbed to the traditional thinking that existing models can predict the climate’s future.¹⁷⁹ He faults a “mixture of escapism and arrogance about what can and cannot be calculated,” as well as “the hubris of much contemporary economic thinking [that] affects the way people think about climate.”¹⁸⁰ And he saves his greatest scorn for carbon trading proposals, which involve “some of the most unconsciously insolent claims to knowledge about the future ever made.”¹⁸¹ Lohmann contends that it is impossible to know how many emissions should be reduced in order to achieve the desired climate, or the emissions that will result from providing technological assistance to China, or the effect of reforestation projects in

171. Joe Marocco, *Climate Change and the Limits of Knowledge*, in *THE VIRTUES OF IGNORANCE* 307, 309 (Vitek & Jackson eds., 2008).

172. *Id.* at 312.

173. *Id.*

174. *Id.* at 316.

175. *Id.*

176. *Id.* at 317.

177. *Id.* at 318.

178. *Id.* at 317.

179. Larry Lohmann, *Relearning Humility in a Time of Climate Change*, 1400 *SAHITYA MAGAZINE* 1, 2 (July 2007), <http://www.thecornerhouse.org.uk/sites/thecornerhouse.org.uk/files/humility.pdf>.

180. *Id.* at 4.

181. *Id.* at 5.

India.¹⁸² There are just too many variables to know, and it is hubris to suggest otherwise.

It is even more common for humility to justify a more cautious approach to climate change. Under this view, uncertainty about the extent of climate change, its causes, and its future effects supports humility in deciding what we should do in response. “Global warming is still a controversial topic,” asserted one opinion writer in 2008, “and more humility is in order regarding both humanity’s impact on the climate and our ability to figure it out.”¹⁸³ Alaska Senator Lisa Murkowski added that “as we discuss the issues and the approaches to these issues, we have to do so with humility, keenly aware of the unintended consequences that could be worse than no action at all.”¹⁸⁴ More generally, one could turn to MIT philosopher Norvin Richards, author of a leading book with the decidedly non-humble title, *Humility*, who argues that humility disfavors actions that are designed to force others to change. “Humility,” says Richards, “inclines one toward less coercive measures, when the only question is what form of paternalism is to be employed.”¹⁸⁵ He adds that “a measure is more coercive the less room it leaves for the possibility that you are wrong about how this person should act or about your being entitled to ensure that he does.”¹⁸⁶ Richards also posits that “the distinction between acting paternalistically toward friends and acting paternalistically toward strangers is one a person of humility would find natural,” which would counsel against legislation and in favor of social norms to address environmental problems.¹⁸⁷

Suzanna Sherry argues that “[t]he most troubling lack of humility comes from the judge who takes it upon himself to save a nation in crisis.”¹⁸⁸ Sherry cites the Supreme Court’s efforts to save the nation from fights over slavery (in *Dred Scott*) and from a contested presidential election (in *Bush v. Gore*), but a judicial effort to save the world from climate change could fall in the

182. *Id.* at 4-6.

183. Raymond J. Keating, *Climate Shift: Rhetoric Distorts Reality*, NEWSDAY (N.Y.), Feb. 4, 2008, at A29. A British reviewer of Nigel Lawson’s skeptical account of climate change observed that his attack on the IPCC evidenced that Lawson did not “suffer from an excess of humility.” Richard Lambert, *Review: World Affairs: Fuelling the Debate on Climate Change*, THE GUARDIAN (London), Apr. 19, 2008, at 9 (reviewing NIGEL LAWSON, AN APPEAL TO REASON: A COOL LOOK AT GLOBAL WARMING (2008)).

184. 160 Cong. Rec. S1494 (daily ed. Mar. 11, 2014) (statement of Sen. Murkowski).

185. RICHARDS, *supra* note 35, at 139.

186. *Id.* at 130.

187. *Id.* at 138.

188. Sherry, *supra* note 121, at 800.

same category.¹⁸⁹ Some advocates have called for an especially aggressive judicial role in leading the response to climate change. One writer saw humility, as expressed in constitutional minimalism, at work in Chief Justice Roberts's dissent from the Supreme Court's decision in *Massachusetts v. EPA* holding that individual states possessed standing to challenge EPA's refusal to regulate greenhouse gases under the Clean Air Act.¹⁹⁰ Roberts would have deferred to the elected branches of government to address climate change, contending that resolving the problem was "not [the function of] the federal courts."¹⁹¹ Roberts offered "no judgment on whether global warming exists, what causes it, or the extent of the problem."¹⁹² At the same time, the majority in *Massachusetts v. EPA* asserted that it was deferring to Congress by heeding the plain meaning of the text of the Clean Air Act.¹⁹³ Lawrence Lessig's theory of humility and interpretation favors that result. Lessig sees humility as "a constraint on the translator's creativity" that "limits the range of translations that can be effected, . . ."¹⁹⁴ He values both "structural humility" that defers to the legislature's understanding of the law that it enacted, and "humility of capacity" that "limits the scope of presuppositions because the kind of judgment required would exceed the institution's ability."¹⁹⁵

This is the point at which I am supposed to explain which of these views is correct. But to do so, of course, would contradict everything that I have written about humility. Is humility what Dean Slaughter says? Yes. Is it what the advocates of more aggressive regulation of climate change say? Yes again. Is it what skeptics of expansive regulation claim? Yes once more. Humility is seen in each of those attitudes. That means, however, that humility cannot be deployed to favor a specific policy proposal, at least for an issue as complicated as the response to climate change. Instead, humility counsels an acceptance of the wisdom in each of the competing suggestions, and a realization that no single legal approach is likely to resolve all of the issues related to climate change. It would be hubris to think otherwise.

The combination of environmental humility and legal humility offers some boundaries for contemplating the problem of climate change and how

189. *Id.*

190. See *Massachusetts v. EPA*, 549 U.S. 497, 526 (2007); Damien Schiff, *Nothing New Under the Sun: The Minimalism of Chief Justice Roberts and the Supreme Court's Recent Environmental Law Jurisprudence*, 15 MO. ENVTL. L. & POL'Y REV. 1, 32-33 (2007-2008).

191. *Massachusetts*, 549 U.S. at 535 (Roberts, C.J., dissenting).

192. *Id.* (citation omitted).

193. See *id.* at 528-29.

194. Lawrence Lessig, *Fidelity in Translation*, 71 TEX. L. REV. 1165, 1251-52 (1992-1993).

195. *Id.* at 1252, 1261.

to respond to it. Several such boundaries flow from the idea of humility. Those who assert the certainty of future climate change scenarios don't know everything about the natural process of climate change or about how human activities affect it; they fail to show humility of knowledge. At the same time, those who deny the existence of climate change fail to show humility to others. We know less about science the further we go into the future, and we know less about the effect of particular regulations as we go further into the future. We must recognize that we may regulate too little, too much, or simply in a misdirected fashion.

Finally, humility does not preclude courage, which may be necessary to challenge received wisdom or to overcome vested interests. So far, all that I have written argues that humility is the sole virtue to be considered when fashioning and applying environmental law. Of course, that is not the case. Courage is an especially common virtue advocated in environmental debates. Lawmakers are courageous when they act in "the national interest, rather than private or political gain," as Senator John F. Kennedy explained in his "Profiles of Courage" of eight senators who adhered to their convictions despite powerful opposition.¹⁹⁶ According to Kennedy,

[I]t was precisely because they did *love themselves*—because each one's need to maintain his own respect for himself was more important to him than his popularity with others—because his desire to win or maintain a reputation for integrity and courage was stronger than his desire to maintain his office—because his conscience, his personal standard of ethics, his integrity or morality, call it what you will—was stronger than the pressures of public disapproval—because his faith that *his* course was the best one, and would ultimately be vindicated, outweighed his fear of public reprisal.¹⁹⁷

Similarly, in the environmental context, politicians and activists are praised for their courage when they fight large corporations, expose evidence of wrongdoing, and fight against seemingly irresistible government plans that would destroy the environment. Such actions are undoubtedly virtuous. But one can just as easily fight courageously for a mistaken cause. Perhaps the most courageous thing that one could do today is deny that climate change is occurring. Such a position will provoke the nearly uniform scorn of the media, academics, and government officials. It would also be wrong. But it would be courageous.

196. JOHN F. KENNEDY, PROFILES IN COURAGE 238 (1955).

197. *Id.* at 238-39.

V. CONCLUSION

My insistence that humility is the virtue most needed by environmental law rests on two claims. First, as was written nearly four centuries ago, humility “is the foundation and root[] of all [virtue].”¹⁹⁸ The proper understanding of one’s self and of others facilitates courage, perseverance, compassion, and a host of other virtues. Without humility’s foundation, and instead with misplaced hubris, the correct diagnosis and solution to societal ills is likely to be wanting.

The second reason humility is so valuable for environmental law is because of the tension created between the pursuit of the ideal environment and the reliance on law. We claim to know the ideal world and how the law can achieve it. All law struggles to be humble, but environmental law’s ambitions make it especially susceptible. It is only once we acknowledge the limits of our knowledge and actions both with respect to the natural environment and with respect to law that we can understand how we can best intervene in environmental decision-making.

198. ALFONSO RODRIGUEZ, *A TREATISE OF HUMILITY* 11 (D. M. Rogers ed., The Scholar Press 1977) (1632).

