



“Summary of article by P.S. Elder: Legal Rights for Nature: The Wrong Answer to the Right(s) Question” in Frontier Issues in Economic Thought, Volume 1: A Survey of Ecological Economics. Island Press: Washington DC, 1995. pp. 351-353

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“Summary of article by P.S. Elder: Legal Rights for Nature: The Wrong Answer to the Right(s) Question”

The argument put forth by Christopher Stone in his article "Should Trees Have Standing?"¹ is rejected. This paper argues that the "deep" ecology view put forward by Stone does not go any further in solving environmental disputes than conventional ethics and law.²

CRITICISM OF STONE

Stone argues that since we have improved morally by extending rights to blacks, women, children and some animals, we can progress further by giving rights to natural objects. However, this is a non-sequitur, since people and plants belong to different categories. Natural objects do not have any of the characteristics that bestow moral importance on a thing, including "awareness, self-consciousness, the ability to formulate goals, act to attain them and to appreciate their attainment." (110) Nor does Stone give any reasons for why the environment should have a moral claim. There is no reason to believe that objects in the environment "want" to survive or to remain undisturbed; objects without sentience cannot care or suffer. Moreover, we cannot know what trees want, so guardians of the environment can only argue on behalf of natural objects by imposing their own values. Deep ecologists are themselves being anthropocentric when they claim that they know what is good for the environment. Finally, how are we to handle situations in which the government, industry and public interest groups compete to be the guardians of the environment?

Even if Stone is correct that humans are a part of the biosphere, and not separate from it, conclusions radically different from his could be drawn. For example, we can claim that humans, as a part of nature, have an equal right to compete, even if we prove to be better suited for survival than other species and cause the extinction of some. The deep ecologists might then argue that humans have moral duties to natural objects, but these duties arise precisely because we are different. Thus we are both a "part of nature" but at the same time different from it, and "it is the essence of being human which leads to respecting the rights of morally important beings." (111)

ORDINARY ETHICS GET US THERE TOO

This essay simply argues that Stone has not made his case that we owe rights to natural objects. Who then does have rights? The following categories are suggested:

- 1) Any self-conscious being who has hopes and wishes, and who can weigh and choose among alternatives, is an object of moral concern.
- 2) Even if a creature does not fall into the first category, if it can feel pain then it has a right not to have unnecessary pain inflicted on it.

For example, if whales or dolphins meet the definition of the first category, then they should not be murdered or enslaved for any reason. On the other hand, if they can feel pain but cannot conceptualize, then they can be used for food and experiments as long as they are not made to suffer unduly. Deep ecologists may not be satisfied with this approach, but they should recognize that many shallow ecologists are also distressed by the destruction of the wilderness and are in favor of environmental protection. The shallow ecologists' position is based on human reasons, but it can still lead to rigorous environmental protection.

CONVENTIONAL LAW CAN DO IT

Since laws are a human construct, we can legislate about any concern that we choose. Thus, rather than create rights for non-humans, the environment can be protected by giving humans more rights. Stone calls for assessment procedures that give a greater weight to the environment in policy making. However, a number of policy and legal techniques for doing this already exist, and these can be extended to deal with environmental concerns like energy conservation or the effects of industrial chemicals on health and the environment. Environmental protection reforms are not hampered by the existing anthropocentric theories of rights; the real problem is a lack of political will.

The degradation of the environment has led to serious problems, including toxic and carcinogenic pollutants, human starvation, and the threat of a nuclear holocaust, from which our present economic and political system has failed to protect us. In light of these serious problems, the deep ecology argument for rights for natural objects seems trivial.

Notes

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1. See previous summary.
 2. To avoid repetition, the discussion of Stone's position in this paper has not been summarized.