



“Summary of article by Christopher D. Stone: Should Trees have Standing? Toward Legal Rights for Natural Objects” in Frontier Issues in Economic Thought, Volume 1: A Survey of Ecological Economics. Island Press: Washington DC, 1995. pp. 347-351

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## **“Summary of article by Christopher D. Stone: Should Trees have Standing? Toward Legal Rights for Natural Objects”**

In the past, the child was considered less than a person from a legal perspective, but legal rights for children are now recognized and are, in fact, expanding. Legal rights have similarly been bestowed at different times upon a number of different groups, including prisoners, aliens and women. The legal system has even bestowed rights on inanimate entities such as trusts, corporations, joint ventures, etc. At one time, bestowing such rights on these groups was unthinkable; until rights are actually bestowed, the "rightless" are considered mere things for our use. The time has come to bestow rights on "natural objects" in the environment, including forests, oceans, rivers, etc., as well as on the natural environment as a whole. This is not to say, however, that the environment should have the same rights as those conferred on humans, or that each environmental entity should have the same rights as every other. There are two sides to the discussion about granting rights: the legal-operational aspect, and the psychic and socio-psychic aspect.

### **THE LEGAL-OPERATIONAL ASPECTS**

#### **What it Means to be a Holder of Legal Rights**

"An entity cannot be said to hold a legal right unless and until *some public authoritative body* is prepared to give *some amount of review* to actions that are colorably inconsistent with that right."(11) In addition, for a thing to count jurally three other criteria must be met:

- 1) the thing should be able to institute legal action at its own behest;
- 2) in granting legal relief, the court must take injury to the thing into account; and
- 3) the relief must run to the benefit of the thing.

#### **The Rightlessness of Natural Objects at Common Law**

Consider the status under common law of a stream being polluted. The stream itself has no standing and does not have rights. The pollution can only be challenged by a human being who can show that polluting the stream challenges his rights. However, this may not happen for a number of reasons: the human may not care about the pollution; he may be economically dependent on the polluter; or it may not be economically worthwhile for him to pursue the action to prevent pollution.

A second sense in which natural objects are denied rights has to do with how cases are decided. The fact that they are decided based on the economic interests of identifiable humans further denies any "rights" to natural objects. Courts compare the costs to the polluter of pollution abatement and the costs of pollution to others to determine whether pollution is permissible. Damage to the stream and the life forms it cultivates are not considered.

The third way in which the common law renders natural objects rightless is by conferring the benefits of a favorable ruling on the person who brings suit against the pollution, rather than on the natural object itself. For example, the damages awarded in a water pollution suit will go to the plaintiff, not towards the repair of the body of water.

### **Toward Having Standing in Its Own Right**

The fact that streams and forests cannot speak is no reason why they should not have legal standing. Corporations, states, estates, infants, etc., do not speak, but they do have legal rights. A guardian (either a conservator or a committee) can be appointed to represent the legal interests of natural objects. A number of existing organizations could play the role of conservator, including the Sierra Club, the Environmental Defense Fund, and Friends of the Earth, among others. The law should also allow the conservator to protect the interest of the natural object without first having to prove that the rights of the conservator's members are being violated.

There are two possible objections to the guardianship approach outlined above. The first is that the guardian cannot judge the needs of the natural object in its charge. However, the counter argument to this objection is that natural objects do communicate their needs in rather unambiguous ways. We know, for example, when the lawn needs water. Moreover, every day we make decisions on behalf of "others," and the needs and wants of these others are often less clear and verifiable than the wants of rivers, trees and land. The second objection is that the federal Department of the Interior and the states' Attorney Generals are already guardians. However, the Department of the Interior is only the guardian of federal public lands, not local public lands or private lands. Furthermore, the actions of the Department of the Interior are often questioned by environmentalists, who consider them detrimental to the environment. In addition, the states' attorney generals are political and must attempt to meet a wide range of goals, so their actions may not be in the best interests of the environment.

### **Toward Recognition of Its Own Injuries**

Suits involving the environment have been decided based on the economic hardships of human beings, but we must question why these decisions should be based on profits to humans, rather than on costs to the environment. While it is well recognized in economic analysis that ideally every individual should bear the full costs that his or her activities impose on society, the legal-economic system fails to impose these costs in the case of pollution. This may occur, for example, because the costs of pollution of a river may be spread out, making coordination and redress difficult. By conferring jural standing on natural objects, the natural object itself, through its guardian, can coordinate the fragmented groups and press claims against a polluter. The guardian can also go further and represent other interests that are not presently recognized,

such as those of endangered species. The cost of cleaning up the damage done to the natural object could be used in the courts as a measure of monetary worth.

### **Toward Being a Beneficiary in Its Own Right**

Another advantage of making the environment a jural entity is that this approach prevents private litigants from selling out the environment in negotiations by making natural objects the beneficiaries of money awards. These awards can be put into a trust fund that can be used for guardians' and legal fees. We must also recognize that if "rights" are granted to the environment, then it may also bear "liabilities." Money in trust funds can be used to meet liabilities, such as crop destruction due to floods, and damages can be paid to those affected.

### **Toward Rights in Substance**

For the environment to have rights in a meaningful way, it must be granted a significant body of rights that it can invoke in a court of law. This implies that there must be a process of review to determine whether the rights have been violated. The government should also mandate a set of procedures that must be undertaken to protect the interests of the environment before a project can be executed by corporations or individuals. While some forms of damage to the environment may be permitted, irreparable damage could be banned.

## **THE PSYCHIC AND SOCIO-PSYCHIC ASPECTS**

There have been changes in laws and procedures that are favorable to the environment, but they seem to result from the realization that a better environment is good for mankind, rather than from a fundamental change in consciousness. It is still man, not the environment, that is taken into account.

Conferring rights on the environment will have costs, leading many to question why such rights should be granted. But this question is odd, as "it asks for me to justify my position in the very anthropocentric hedonist terms that I am proposing we modify."<sup>(44)</sup> It is analogous to asking why Whites compromised their preferred rights-status with respect to Blacks, or why men compromised their preferred rights-status with respect to women. Yet many people assume that an appeal must be made to self-interest in order to persuade humans to act.

Scientists have been warning us that the earth will face a crisis if we do not change our ways. The solution to the problems confronting us will require a reduction both in our living standards and in the growth of the economy, and they will also necessitate a serious reconsideration of our consciousness toward the environment. We will have to identify what our present consciousness and its consequences are, how to change this consciousness (if at all), and what sort of institutional reforms will be required. A new relationship between man and nature is necessary. We must stop viewing nature as a set of useless objects, and instead see ourselves as part of nature. This attitude will free us of the need for supportive illusions.