Foreword

On being 40: a celebration of ‘Should Trees Have Standing?’

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Few law review articles can be said to be provocative, challenging and joyously readable. Fewer still will have that effect forty years after they were written. Professor Christopher Stone’s ‘Should Trees Have Standing?’ is therefore a rare creature, an article that is as fresh and relevant as the occasion on which it first appeared in 1972. It dealt with an issue that is of even greater importance today than when Professor Stone first put pen to paper: the ability of an existing, anthropocentric legal order fully to protect and conserve our planet’s natural objects. Whilst Professor Stone was concerned with local needs, the ideas resonated for those like me who were concerned with matters international, and with whether a legal order constructed around the fiction of the state could truly safeguard a planet whose natural being pays no regard to the concept of a national boundary.

The article was a rare treasure. No other has been recommended more often – to law students, academic colleagues or acquaintances unconnected to the law – or with greater enthusiasm. Nor is there any article that I have ever referred to in class that provokes a greater (or more passionate) range of reactions, across a wider spectrum of views, from disparagement to adulation. It is not that one necessarily agrees with the thesis or the ideas and assumptions around which it is wrapped, in particular the view that allowing natural objects to have legal rights *of their own* would necessarily (or even possibly) bring about a greater degree of ecological consciousness and well-being. Mary Warnock makes the point with characteristic force, inviting Professor Stone to ‘prove’ his arguments and assumptions (a tall order, it should be said, for any new or revolutionary legal idea). ‘Paths in the Lake District, the very origin of our romantic love of wilderness, are becoming eroded and ruined by the numbers of those who tramp their way up and down them’, she writes. ‘I would truly like Professor Stone to prove to me that granting standing to the mountains would give a way out of this dilemma.’

What is it about the piece that leaves a mark, causing such excitement or irritation in so many of its readers? Four characteristics are prominent.

First, ‘Should Trees Have Standing?’ recognises and states the dilemma identified by Warnock, and does so early in the emergence of eco-legal consciousness. That alone justifies a high degree of interest.

Second, ‘Should Trees Have Standing?’ provokes. It causes the reader to challenge the unstated (and usually unchallenged) assumption that the human person is necessarily and naturally at the centre of any legal order, be it national or international. That we are forced to reflect on the existing order is surely a useful thing.

Third, ‘Should Trees Have Standing?’ sets a benchmark. It provides a means of measuring the extent to which nature and natural objects have achieved some degree of respect and protection, in particular in circumstances in which the losses and the threats to nature are greater today than at any point in human history. Lorraine Code implicitly

makes the point, noting that 'trees in diverse parts of the world in the early twenty-first are not the same trees Christopher Stone was writing about, in large part owing to the effects of ecological thinking in its various, and variously situated, modalities'. 'Should Trees Have Standing?' is surely first among equals as a law review article that has contributed to a change of consciousness. It has caused a great many of its readers to begin to reflect in an ecological manner, by imagining what it means to conceive of the interests of a natural object from a non-human perspective. It has established a space between the legal order that *is*, and the one that *might be*, a space within which our imaginations can reflect on alternative approaches to conserving nature for the sake of nature – radical perhaps – but certainly a necessary contribution.

And finally, it must be said that 'Should Trees Have Standing?' is a pleasure to read. In this way it is a singular creature: an original law review article that is beautifully written and accessible in its ability to generate reactions.

Forty years have passed since the article first appeared. Chris Stone has lost none of his energy or edge, as his contribution to this volume demonstrates. In the intervening years since the article's first appearance, much has changed, not least in respect of the formalities whereby the law and legal process engage with the natural world. Norms of environmental protection are reasonably well established in almost every country in the world, although not always as well respected. They also exist, to an emerging extent, in the international legal order. Let us not forget that in the world of 1972 there were no rules of European Community environmental law; not a single textbook on public international law had a chapter on the environment; and the only country to have an Environmental Protection Agency (or its equivalent) was the United States. The courts were usually not the kinds of places in which decent professionals would always feel comfortable raising full-scale environmental claims.

All of this has changed. But to note Ngaire Naffine, it has not changed because 'those who held the levers of legal power might be persuaded to dispense rights differently'. Environmental claims are invariably made through the lens of the human person. Nowhere is this more apparent than in the field of human rights protections. Human rights courts have taken important steps to protect the environment, but always so as to protect the rights of the human. This leads some to identify a fundamental contradiction: by placing environmental claims in a human rights framework, the system reinforces the very conditions that give rise to natural harms in the first place, by shackling the protection of the natural object to the (short-term) interests of the human individual or human community espousing the claim.

Current challenges make it clear that the important changes that have occurred are not enough: 'Growth now, the protection of nature tomorrow!' The call is even louder today than in the 1970s, even in the face of our current economic travails.

Would it be so hard to say that 'nature has "rights" on its own account?', Chris Stone asked in 1972. 'Would it be so hard to do?', he asks at the end of his iconic article.

It seems the answer to his question is 'yes'. It is that hard. Our human-centred legal order has provided occasional successes, but generally has been a dismal failure in conserving the natural order. That is why Stone's article resonates as powerfully today as it did in 1972. He provides an alternative vision. Whether or not we share that particular vision, its existence is a continuing matter for celebration, and, perhaps, for some small hope.