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Should Trees Have Standing? Toward Legal Rights for Natural Objects

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BOOK REVIEW

SHOULD TREES HAVE STANDING? TOWARD LEGAL RIGHTS FOR NATURAL OBJECTS. By Christopher D. Stone.² Los Altos, California: William Kaufman, Inc. 1974. Pp. xvii, 102. \$6.95.

Reviewed by Tom R. Moore³

A private citizen's inability to control the quality of his own and his children's lives is a matter of serious, growing concern today. The same mechanisms that government creates to serve its citizens often frustrate the efforts of citizens to protect the public interest.⁴ Too often, the public's interest in the vigilant protection of the environment or in other substantial public rights is represented by officials too isolated from citizen action and too close to the parties they are supposed to control.⁴ Legal scholars have watched the continued frustration of citizens' efforts in Florida (and elsewhere) to obtain redress of injuries to public interests in the environment.⁵ Now Professor Christopher D. Stone has offered an entirely new approach to the question of standing to sue. Perhaps the frustration of citizen movements to protect environmental amenities can best be assuaged by an affirmative answer to his question: "Should trees have standing?"

Whether one accepts or rejects the proposition that trees or other inanimate objects should have legal standing in the courts of this land,

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3. See, e.g., *Office of Communication of the United Church of Christ v. FCC*, 425 F.2d 543 (D.C. Cir. 1969). In this case Circuit Judge (now Chief Justice) Burger observed: "The Public Intervenors, who were performing a public service under the mandate of this court, were entitled to a more hospitable reception in the performance of that function. As we view the record the Examiner tended to impede the exploration of the very issues which we would reasonably expect the Commission itself would have initiated; an ally was regarded as an opponent."

Id. at 548-49.

4. In *Save Sand Key, Inc. v. United States Steel Corp.*, 281 So. 2d 572 (Fla. 2d Dist. Ct. App. 1973), *rev'd*, No. 44,402 (Fla. June 12, 1974), the district court noted that "[t]he duty to abate [public] nuisances rested overly long in the bosom of the appointed officials, and relief was indeed ultimately never attained by the public or anyone else. Moreover, with more than passing frequency, a public injury was created, encouraged or perpetuated by public officials themselves"

Id. at 574. See also Comment, *Standing on the Side of the Environment: A Statutory Prescription for Citizen Participation*, 1 *ECOLOGY L.Q.* 561 (1971).

5. See, e.g., Cornwell, *From Whence Cometh Our Help? Conservationists' Search for a Judicial Forum for Environmental Relief*, 23 *U. FLA. L. REV.* 451 (1971); Little, *New Attitudes About Legal Protection for Remains of Florida's Natural Environment*, 23 *U. FLA. L. REV.* 459 (1971).

he must admit that the tremendous impact of Professor Stone's essay, now in book form, undeniably is already an accomplished fact. Stone's essay first appeared⁶ while *Sierra Club v. Morton*⁷ was pending in the United States Supreme Court. Stone admittedly hoped to influence the Court's consideration of the standing issues in that case, brought to prevent the Disney development of the Mineral King Valley in Sequoia National Park. His success is evident; Justice Douglas, dissenting from that landmark decision, rewarded the Professor's efforts by citing the essay after the statement: "Contemporary public concern for protecting nature's ecological equilibrium should lead to the conferral of standing upon environmental objects to sue for their own preservation."⁸

At the very least, one Justice (and perhaps three) sitting in the *Sierra Club* case had no conceptual problem with an affirmative answer to the question posed by the title of the essay. With only a four-man majority in a seven-Justice decision, two swing votes still exist.

In this reviewer's opinion, the essay (the book is a combination of the original essay and the full text of the majority and minority opinions in *Sierra Club v. Morton*) merits the description given it by Garrett Hardin in his foreword to the book; indeed, it "bids fair to become a classic" (p. xii).

One must be impressed by Stone's thorough research and particularly by his rational discussion of his analogies. Stone recognizes and discusses three serious conceptual and procedural problems that arise if standing is granted to inanimate natural objects. First, the analogy between trees and corporations or ships is not as persuasive as it first appears. True, natural persons possess and own natural objects, just as they do corporations and ships. Private ownership of either a corporate entity or a ship, however, is quite different from ownership of a natural object. Dissolution of a corporation or destruction of a ship rarely, if ever, affects broad public interests that conflict with the interests of the owners. In contrast, destruction of natural objects is often of great concern to many persons other than owners. Recognition of legal status that permits a corporation or ship to sue or to be sued in its own name is for the benefit of its owners; it limits liabilities and simplifies legal procedures that otherwise would involve numerous persons (the owners). On the other hand, recognition of a similar legal status for inanimate natural objects would benefit those persons whose interests oppose those of the natural objects' owners. If stand-

6. Stone, *Should Trees Have Standing—Toward Legal Rights for Natural Objects*, 45 S. CAL. L. REV. 450 (1972).

7. 405 U.S. 727 (1972).

8. *Id.* at 741-42.

ing to sue is granted to natural objects in their own right, then one must acknowledge that this is not merely an extension of present legal theories. It is a very different proposition. Stone seems to agree, but he suggests that the new approach is nevertheless no more revolutionary than the original recognition of the corporation as a legal entity.

Secondly, vesting standing in a natural object presumes that the courts must strike a balance between the object's interests and rights and the human interests or rights pertaining to the object. This is desirable according to Stone, but it seems inconsistent with the nature of adversary proceeding in our courts (even with respect to ships and corporations). In any litigation concerning the natural object, it is really competing human interests that are balanced; Stone, however, seeks protection of the object. Under the guardianship approach suggested by Stone, the duty would still devolve upon the guardian of the natural object to describe the benefits to the object in terms of ultimate benefits to human interests in protecting the object. If this is so, then one returns full circle to the criteria for standing, because the most appropriate "guardian" is that party (group or individual) who can show injury in fact and can assure the judiciary that he can adequately represent in an adversary fashion the interests asserted.⁹ Persons (or groups) with such human interests would be the only proper guardians of natural objects. Thus, as a practical matter, the guardians' interests would be balanced against other human interests (for example, the owners' interest in turning a profit by using the natural object in a manner that also benefits the public).

The third problem Stone recognizes is that granting standing to natural objects does not assure the protection of public rights and interests in using and enjoying those objects. The frustrated effort

9. At the outset of its opinion in *Sierra Club v. Morton*, 405 U.S. 727 (1972), the United States Supreme Court restated the fundamental requirements for standing to sue to be:

Whether a party has a sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy is what has traditionally been referred to as the question of standing to sue. . . . [T]he question of standing depends upon whether the party has alleged such a "personal stake in the outcome of the controversy," *Baker v. Carr*, 369 U.S. 186, 204, as to ensure that "the dispute sought to be adjudicated will be presented in an adversary context and in a form historically viewed as capable of judicial resolution." *Flast v. Cohen*, 392 U.S. 83, 101,

405 U.S. at 731-32.

Within this over-simplified definition of a citizen's standing to sue when he relies upon no federal statute, there is agreement that three essential conditions must be satisfied: (1) a genuine dispute must exist; (2) an adversary proceeding must be assured; and (3) the court must be convinced that the party whose standing is challenged will adequately represent the interests he asserts. In his dissent, Justice Blackmun called these requirements the "customary criteria" for standing. 405 U.S. at 758.

of citizens to protect public rights in the recent *Save Sand Key* case¹⁰ offers a good example of this. In *Save Sand Key* the Florida Supreme Court, ignoring the district court's scholarly criticism and rejection of the "special injury" rule,¹¹ threw the citizens out of court in deference to that old, arguably obsolete doctrine.

Conferring standing on the dry sand beach itself (*Sand Key*) would accomplish nothing in terms of assuring the availability of a litigant to protect the public right to use the beach. The citizens' group in the *Save Sand Key* case tried to protect and confirm an existing public right to use the dry sand area. The beach itself remains, for the most part, unchanged. *Sand Key*, as a potential litigant, has no interest in assuring that the pleasure it brings to humans reaches not only its private owners but also the general public that has long enjoyed it (in fact, the private property owners no doubt assert that they will take better care of the beach than the messy, uncaring public would).

Stone's proposition that inanimate natural objects should have legal rights deserves the serious consideration given to it by Justice Douglas in *Sierra Club*. Lawyers, judges and environmentalists in particular will find Stone's book well worth reading and pondering.

In the not-so-distant future, the words of Justice Blackmun's dissent in *Sierra Club* may reappear in a judicial opinion on the challenge by an inanimate natural object to an infringement of "its" rights: "Are we to be rendered helpless to consider and evaluate allegations and challenges of this kind because of procedural limitations rooted in traditional concepts of standing?"¹² Recognition of the rights of the object itself, presented in an adversary fashion by its guardian, may well be superior to our present traditional approaches to standing and to the "rightslessness" of natural objects. If our legal system fails to evolve some new approach, then the environment upon which humankind depends for existence may be so deleteriously affected that there will be no need for a legal system.

10. *United States Steel Corp. v. Save Sand Key, Inc.*, No. 44,402 (Fla. June 12, 1974).

11. *Save Sand Key, Inc. v. United States Steel Corp.*, 281 So. 2d 572 (Fla. 2d Dist. Ct. App. 1973), *rev'd*, No. 44,402 (Fla. June 12, 1974).

12. 405 U.S. at 759.