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Should Trees Have Standing by Christopher Stone is an article that first appeared in a special issue of the Southern California Law Review in the Spring of 1972. It was prepared specifically in the hope that it would have some influence on a case then pending before the Supreme Court. That case involved a suit by The Sierra Club for an injunction preventing Walt Disney Enterprises from building an extensive recreation complex in Mineral King Valley, a wilderness area in California's Sierra Nevada mountains. The district court granted the injunction which was subsequently reversed by the Ninth Circuit Court of Appeals. The reversal was not based on a belief that the Forest Service had been right in granting Disney the permit but was based on the opinion that the Sierra Club did not have "standing" to bring the question before the courts. "The Sierra Club does not allege that it is aggrieved or that it is "adversely affected" within the meaning of the rules of standing. Nor does the fact that no one else appears on the scene who is in fact aggrieved and is willing or desirous of taking up the cudgels create a right in appellee. The right to sue does not inure to one who does not possess it, simply because there is no one else willing and able to assert it." Stone saw that the case provided a vehicle to bring to the Court's attention a theory he was developing. If the injury to the Sierra Club could not be established to the extent that it would justify "standing" for that organization, the injury to the park itself could be established. If the Supreme Court could be brought to think of the park as a jural person as for instance a corporation is a jural person, then the notion of nature having rights might make the difference between the case being heard and being thrown out. Mr. Stone did in fact write the article and get it included in the issue of the Law Review that Justice Douglas was scheduled to write a preface for. Therefore Justice Douglas was familiar with the piece before he reviewed the case.

The Ninth Court decision that the Sierra Club did not have "standing" was upheld by the Supreme Court in a majority opinion written by Justice Potter Stewart - but - with a significant footnote, "Our decision does not, of course, bar the Sierra Club from seeking in the District Court to amend its complaint by a motion" invoking some other theory of jurisdiction. That footnote gives greater weight to a dissent by Justice Douglas supported by Justices Blackmun and Brennan. "The critical question of "standing" would be simplified and also put neatly in focus if we fashioned a federal rule that allowed environmental issues to be litigated before federal agencies or federal courts in the name of inanimate object about to be despoiled, defaced, or invaded by roads and bulldozers and where injury is the subject of public outrage. 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." Justice Douglas made reference to Stone's article.

Garrett Hardin who wrote the Foreword to the book Should Trees Have Standing, out of which the above has been extracted finishes the foreword with the following:

"Poets," said John Keats, "are the unacknowledged legislators of the world." During the last two centuries the works of William Blake, William Wordsworth, Henry David Thoreau, John Muir, John Burroughs, Rachel Carson, Aldo Leopold and a host of others have been giving form to the statute books of our unconscious minds. But that which is unconscious is seldom precise and in any case is not suited for action in a world of differing opinions. The statute law of the moment that is

precise enough for action does not adequately take into account what many of us see as our responsibilities as trustees of the earth. Surely it is time now to make explicit the implications of the poets' insights and rebuild the written law "nearer to the hearts desire".

Marvin Schiller spent a good deal of his time discussing how to make explicit the poets' insights and to build a written law that would give trees standing in their own right; the ability to seek redress of injury or to plead for injunctions preventing injury. There is the precedent of making legal persons out of corporations, of appointing guardians for the incompetent. In Justice Douglas' language, "Inanimate objects are sometimes parties in litigation. A ship has a legal personality, a fiction found useful for maritime purposes. The corporation sole - a creature of ecclesiastical law - is an acceptable adversary and large fortunes ride on its cases. The ordinary corporation is a 'person' for purposes of the adjudicatory processes, whether it represents proprietary, spiritual, aesthetic, or charitable causes. So it should be as respects valleys, alpine meadows, rivers, lakes, estuaries, beaches, ridges, groves of trees, swampland, or even air that feels the destructive pressures of modern technology and modern life."

Suppose, says attorney Schiller, some agent were to be appointed by legislative action to be spokesman for the rights of natural objects. Understand that if an already legally recognized "person" is damaged in a measurable way by an injury to a natural object then that individual can establish "standing" and pursue legal redress. But what we are talking about is where no such condition exists, where there is no aggrieved and already legally established "person", but that injury is done, for example, to a stream then a suit can be brought in the cause of the stream itself by the appointed agent. The agent named should have the kind of expert and proved qualifications that make him able to say when injury has occurred and he should be capable of pursuing the suit, that is, he should have a "deep enough pocketbook". (It happens far too often that someone who has a legitimate interest is unable to sue for lack of the resources to see an action through to an conclusion.) Schiller said that in the case of the Nantahala National Forest the agent could be the Sierra Club, or some other group dedicated to environmental health and having established a record of concern and competence, as well as the financial resources to get the job of advocacy done.

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This treatment has been very brief, but the cause is very important. We wonder if there is enough interest to prepare and submit draft legislation to the North Carolina Legislature aimed at insuring that the rights of natural objects in this state can be represented? (In this connection a draft Charter for Nature has been proposed to the United Nations by the country of Zaire. Copies can be reproduced for interested parties.)

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July 28th - Professor Thomas Regan will lead a discussion on the subject of animal rights and human obligations. This is closely related to the "Trees" issue and there will be more attention to the theological aspects controlling the extent to which humans can "use" nature, and the extent to which the human must restrain his activity in the interests of preserving the health of the natural world.

August 25th - Professor Leslie Real will lead a discussion of Evolution using Dobzhansky's The Biology of Ultimate Concern as reference.