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ARTICLE

Can trees have standing?: An argument against conferring legal rights upon natural objects on the basis of guardianship

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ABSTRACT

In *Should trees have standing*?, Christopher Stone argues that there are sufficient grounds to confer legal rights upon natural objects such as forests, rivers, and oceans. These rights would enable them to sue corporations and other third parties in court for inflicting environmental damage as a consequence of business operations, thereby granting them the same legal powers that are accorded to human plaintiffs who sue other humans for inflicting injury upon them. Recognizing natural objects as rightsholders would require the court to appoint legal guardians to stand on their behalf, in much the same way that relatives of disabled and incapacitated persons are allowed to represent their interests against parties that have allegedly injured them. Stone provides three arguments to support his claims: an argument from increasing historical inclusivity, another from the compositionality of interests, and one from the knowledge of nature.

This paper raises a series of objections to the philosophical premises underlying these arguments. They may be rejected on political, ontological, and epistemological grounds, and can be shown to be incompatible with widely accepted philosophical theories and legal practices. These objections will partly explain why environmental legislation has been met with staunch resistance by various public sectors on many occasions. Philosophers, lawyers, and judges alike frequently reject the soundness of arguments of this character.

As an alternative, this paper shall outline a framework for the legal protection of natural objects. Such a framework shall be contrasted with Stone's on three grounds: it emphasizes duties rather than rights as grounds of legislation, it favors humanistic over naturalistic reasoning, and it argues that there is strategic value in appointing legal custodians for natural objects instead of legal guardians. The framework is then applied to analyzing Joel Feinberg's argument on the rights of future generations of persons as an alternative basis for lobbying for environmental legislation. This work concludes by suggesting that Feinberg's argument, with some modifications introduced by the author, provides a sounder philosophical basis for protecting natural objects than what Stone has provided.

KEYWORDS

guardianship, legal standing, custodianship, legal rights, duties

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Introduction

In a book and an essay both entitled *Should trees have standing?,* Christopher Stone (1972, 2010) argues that legal rights ought to be conferred upon natural objects, such as forests, oceans, and rivers. He proposes to expand the legal definition of guardianship, which is a legal status awarded by the court to an individual who will subsequently be authorized to make decisions on behalf of a ward. In the same way that family members are appointed as legal guardians of mentally handicapped relatives, Stone claims, so should they appoint "friends of the environment" (e.g., the Environmental Defense Fund) as guardians of natural objects. As guardians, they will be authorized to initiate legal proceedings against third parties (e.g., corporations that commit environmental damage) in which natural objects will be officially recognized as the plaintiffs of a case. By doing so, guardians would no longer be burdened with the task of proving that human lives or properties of persons were directly damaged by the defendant. Instead, they will simply have to prove that the "interests" of natural objects were violated. Furthermore, legal relief will be computed based on the injuries that were inflicted upon these natural objects, resulting in a financial remedy that may be independent of monetary compensation which may be awarded to the affected human parties. Finally, like any legal person, objects will be entitled to become "beneficiaries" of financial compensation for sustaining injuries resulting from extractive business operations (Stone 2010).

The idea of conferring legal standing upon natural objects first gained traction when Justice William O. Douglas wrote his dissenting opinion on *Sierra Club v. Morton* (1972), a case fought in the Supreme Court of the United States in which the Sierra Club petitioned to prevent the development of a resort in the Sierra Nevada mountains:

> 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 the inanimate object about to be despoiled, defaced, or invaded by roads and bulldozers and where injury is the subject of public outrage.

Some legal systems have enforced similar legal rules in their jurisdictions throughout the last decade. New Zealand granted legal personhood to its Te Uruwea Forest in 2014, India granted the same to the Ganges and Yamuna Rivers in 2017, and Colombia awarded rights to the Atrato River (Gleeson-White 2018). The problem is that these legal breakthroughs remain the exception rather than the rule, and several hurdles against adopting legislation of this character remain. There are several reasons why this is so.

First, much depends on the tests of legal standing that judges customarily apply in environmental litigation. Until fifty years ago, legal standing was narrowly defined to apply only to entities that had legally protected interests, primarily economic ones, thereby disqualifying natural objects from being recognized as injured parties. As a matter of fact, the Sierra Club lost its lawsuit for this very reason. Even when some landmark decisions of the United States Supreme Court liberalized these tests by incorporating non-economic criteria (e.g., aesthetic, conservational, and recreational interests of persons), they only continued to benefit human litigants rather than natural objects (Heiser 1972). Second, laws that protect the environment at the cost of human interests have generated considerable political backlash. For example, the National Environmental Policy Act of 1969, which caused federal projects of the United States government to be suspended until its proponents provide comprehensive environmental impact statements, was criticized for delaying the completion of urgently needed power plants for years. Unfortunately, this only led politicians to distance themselves from pro-environment legislation even more to appease their displeased constituents (Gillette 1972). Third, there have been economic objections against Stone's proposal to name natural objects as beneficiaries of financial compensation. For example, it has been asked, rather sarcastically, whether taxpayers were willing to allocate millions of dollars in tax money annually to benefit sea urchins (Hughes 1974). The answer for many was clearly a "no."

The current article shall focus on the underlying philosophical issue of whether natural objects can be rightsholders in the first place. The question of whether they can have legal rights must first be settled before they can pass tests of legal standing, have interests that override those of humans, or be of such great value that it justifies the allocation of large sums of money each year for their legal protection. It appears that Stone jumped the gun by asking if trees should have standing when he has not yet established whether they can have standing. This is not to deny that environmental protection should be a top priority. However, this article maintains that it is important to provide a solid philosophical foundation for the legal claims that are made, without which the environmental agenda will only continue to draw resistance similar to what has been described above.

The objective of this paper is two-fold. First, it aims to explicate the philosophical assumptions that underlie Stone's arguments and to examine whether these are logically sound. Second, this work aims to develop an alternative framework for the legal protection of natural objects, without attempting to prove that they have any kinds of rights. In the second, third, and fourth sections, I shall raise some political, ontological, and epistemological objections against Stone's conceptual analysis. In the fifth and final section, I shall apply the framework to analyze Joel Feinberg's argument on the rights of future generations of persons. The article shall conclude that, with some modifications introduced by the proposed framework, Feinberg's argument makes a philosophically stronger case for passing the desired legislation that environmental advocates lobby for.

Political objections and the concept of rights

The argument from increasing historical inclusivity

Stone's first argument is that the law of standing has historically been fluid, developing over time to become more cognizant and inclusive of different entities. Centuries ago, society realized that children were not objects that could be sold into slavery as Ancient Roman families did; hence, they were consequently granted legal standing. Over time, Blacks, prisoners, aliens, women, mentally insane patients, and fetuses were gradually afforded the same legal recognition. Finally, the trend went a step further when legal personhood was extended unto non-human entities:

> Nor is it only matter in human form that has come to be recognized as the possessor of rights. The world of the lawyer is peopled with inanimate rights-holders: trusts, corporations, joint ventures, municipalities, Subchapter R partnerships, and nation-states, to mention just a few…We have become so accustomed to the idea of a corporation having "its" own rights, and being a "person" and "citizen" for so many statutory and constitutional purposes, that we forget how jarring the notion was to early jurists. (Stone 1972, 451–452)

Stone (1972) concludes that the next logical step would be to extend legal standing to natural objects. While he correctly describes the growing inclusivity within the boundaries of legal personhood, he is guilty of committing two logical fallacies in his inference, one of which I shall discuss in this section. The first fallacy is that he deploys a variation of *petitio principii* or a kind of circular reasoning. Such a fallacy proceeds in the following manner: "There is a trend of conferring legal rights upon inanimate objects. Hence, it ought to be extended to natural objects as well (452)." In this manner, the conclusion is taken for granted without proof; it does not justify why the existence of a trend alone is a sufficient basis for widening the scope of legal personality. There is a large gulf between humans and agglomerations thereof and non-human entities, such as natural objects. Corporations comprise individual humans, whereas natural objects are not. Hence, such a distinction begs the question of what rights really are and why objects are conceptually disqualified from having them.

Three conceptions of rights

The word "right" has been used in many senses in legal and political philosophy and is often a source of linguistic confusion. One sense of "right" is introduced by H.L.A. Hart (1955), who argues that to have a legal or moral right means that a rational human being has a positive liberty to perform any action that does not coerce, restrain, or injure other persons. Positive liberty has been defined as a capacity to act autonomously. It means that one's decisions are determined by one's

own desires, reasons, and will, while one's actions are performed in accordance with these faculties instead of external forces and influences (Berlin 2002). Therefore, this first sense of "right" means "to have a right to" or more specifically, "to have a right to act as one pleases." However, such a conception of a right cannot apply to objects because they lack the internal resources and faculties that are necessary to produce desires and reasons for action. They cannot have a right to act as they please if they do not have the capacity to be autonomous to begin with.

While philosophers have not unanimously settled on a single definition of rights, noticeable resemblances have emerged among some leading theories and conceptions. Wesley Hohfeld (1923), who developed one of the most comprehensive theories of rights to date, interprets a right as "a right against." To have a right means for others to have a correlative negative duty to not impede them from accessing it (1923). For example, for Smith to have a right against Jones intruding on his private property is for Jones to have a duty to stay off it. A related conception is provided by Ronald Dworkin (1985), who likens rights to trumps over policies that put forward a socially desirable goal. Whereas rights are associated with principles of justice, fairness, or rightness, goals are associated with public utilitarian interests. Thus, according to this conception, to have a right is to have a claim that overrides state actions intended to promote certain social goods. For example, even if developing a free trade market zone in the countryside will bring greater economic prosperity to its communities, private landowners who will be forcibly displaced have a right to protest it. What both definitions espouse is a negative conception of rights as either a claim against the interests of another person, or a veto power over the choices they make. Neither conception insists that rights must necessarily possess absolute weights. There may be occasions where they are overridden or defeated by other reasons. However, they do, as a rule, add moral and legal force to the interests of rightsholders. Specifically, they pull the law towards certain ideals even though the desired outcome is not always guaranteed. In doing so, they impose obligations upon officials to take them into account whenever a dispute arises. It appears that these senses of "right" are what Stone has in mind; hence, his proposal must be understood as conferring negative rights upon natural objects.

Given this conception of rights, what would it mean for natural objects to become rightsholders? Stone identified actual court cases wherein natural objects were treated almost as if they were juridical entities, sometimes resulting in the termination of human activities that would have otherwise benefitted society. In *Scenic Hudson Preservation Conference v. FPC* (1966), a public group of citizens sued government bodies for setting up power lines to complete a hydroelectric project for making it "unsightly." The argument was eventually accepted, making *Scenic Hudson* the first case in which the incurrence of aesthetic harm was recognized as a ground to give a complainant standing in court. However, it was also controversial because it entailed recognizing aesthetic harm as an "injury-in-fact," thereby expanding the scope of legal standing. By doing so, it set a precedent that eventually led to conservational and recreational harms being accepted under

the test for standing as well. In turn, this broadened the range of environmental rights that litigants could claim were being violated to prevent the completion of legitimate economic activities.

The limits of this test were pushed even further in *Sierra Club v. Morton* (1972) when the Sierra Club challenged the license of the Walt Disney Corporation to build a resort complex on uninhabited federal land. Ultimately, the Supreme Court sided with the defendant because the Sierra Club had failed to establish that the "irreparable public harm" that would arise satisfied the requirements for standing. The majority explained that the test required plaintiffs to prove that harm would be directly inflicted upon them, not upon the public's general "zone of interests" in preserving natural beauty. However, as mentioned in the introductory portion of this article, it was Justice Douglas' dissenting opinion that rose to greater prominence among legal circles, paving the way for future cases in which the alleged interests of natural objects legally overrode human aspirations. Since then, environmentalists who have advocated the ascription of legal rights unto natural objects have generally been understood to be speaking of rights in the Hohfeldian or Dworkinian sense instead of the Hartian one.

The definition of a rightsholder

These problems are magnified when legal rights are operationalized through a model of guardianship. Stone (1972) makes the strong claim that guardians should exercise discretion in determining whether the rights of their natural wards have been violated:

> If…the Environmental Defense Fund should have reason to believe that some company's strip-mining operations might be irreparably destroying the ecological balance of large tracts of land, it could, under this procedure, apply to the court in which the lands were situated to be appointed guardian…(or) representing their "wards" at legislative and administrative hearings on such matters as the setting of state water quality standards. (1972, 466)

This means, for instance, that a guardian who attends a legislative hearing and demands higher water quality standards for the state is not really advocating human interests so much as he is fulfilling his private function as a guardian by declaring that a river is "entitled" to a higher level of purity. An analysis of what it means to be a rightsholder elucidates why this is a bizarre claim. According to H. J. McCloskey (1965), a rightsholder is either a rational being who can appreciate and claim his own interests, or someone whose interests are represented by another. Based on this definition, natural objects are disqualified as prospective rightsholders by virtue of failing to have any interests. However, this is an ontological issue that shall be discussed in Part III. The question now is what it means to be a rightsholder whose interests are legally appreciated or represented, and whether this can apply to natural objects.

In one sense, the guardian who represents the rights of a river is an agent whose vicarious actions represent the alleged interests of the principal. However, this legal relation cannot hold. The interpretation that representation means that the guardian is a mouthpiece of the river in the same way that a telephone is a mouthpiece through which humans communicate is untenable. Natural objects cannot "use" humans any more than they can use technological gadgets. A second sense of representation suggests that the guardian is like an expert who is hired to exercise professional judgment in its name. However, this presumes that the agent can enter into an agreement or contract with the principal, who says that within carefully drawn boundaries, "You may speak for me," but no natural object can do this either (Feinberg 1974, 47–48).

Therefore, the political objection insists that not only is it unjust for the rights of humans to be "rejected" by inanimate objects, but that talk of them as rightsholders is little more than political rhetoric. Natural objects cannot have rights in the relevant sense as much as artificial or manufactured commodities can. However, before proceeding further, a more fundamental issue at hand must be resolved: given that the possession of interests is a precondition for having rights, are natural objects capable of having any interests at all?

Ontological objections and the concept of interests

The argument from the compositionality of interests

It was previously pointed out that the Argument from Increasing Historical Inclusivity commits two logical fallacies, the first of which is its deployment of circular reasoning. The second is its reliance on a false analogy that compares corporations to natural objects. Stone claims that because collective entities, such as trusts and partnerships, can be given legal standing, then forests and oceans can be granted the same status as entire ecosystems. However, this attempt overlooks a crucial distinction. For instance, corporations—while not themselves human—are aggregations of persons who possess individual interests. Their constituent parts, unlike forests or rivers, are human beings. Moreover, the concept of "corporate personhood" is based on a principle of compositionality, which states that the interests of a collective consist of those of its individual parts. Corporations can enter into legal contracts, sue other parties, or donate to political campaigns as legal entities by virtue of the fact that its employees have corresponding interests. There is no analogue principle for natural objects for the simple reason that their constituent parts cannot have interests of their own. However, assuming that they did, it appears misleading to claim that the merged "interests" of a forest's trees, flora, and soil comprise its "interests." It does not follow that the interests of the parts and the whole are compatible just because some entities may be parts of the same whole. For example, slash and burn agriculture is opposed to the interests of forests because it results in their fiery destruction. However, the same method benefits the soil and vegetation in that forest by creating a new layer of nutrient-rich ash. Thus, there is no general rule that the divergent interests of distinct organisms can be meshed into a single whole.

The relation between interests and law

The inability to have interests constitutes another reason why natural objects cannot be accorded legal rights. John Finnis (2011) argues that humans possess distinct capacities, such as feeling, willing, observing, remembering, understanding, and other complex capacities, that no other entity has. The reason why only humans possess them is because only humans have souls, which is a faculty that makes us unique and distinguished from all other entities. However, it also makes us equally dignified and worthy of respect (2011). Thus, to protect our inherent dignity and equality, the state must create legal rights that prevent us from harming, deceiving, or degrading one another. On this view, the very purpose of law is distinctly human. It is intended to guide behavior to create an environment wherein we can develop and exercise our unique faculties and achieve human flourishing. As natural objects do not possess any of these capacities, they do not possess the level of dignity to qualify for the special protection afforded by legal rights.

Stone replies that the lack of higher-level faculties should not be a barrier to extending rights to less sophisticated entities, a fact that is already recognized by laws that authorize guardians to act on behalf of the mentally incompetent:

> On a parity of reasoning, we should have a system in which, when a friend of a natural object perceives it to be endangered, he can apply to a court for the creation of a guardianship. Perhaps we already have the machinery to do so. California law, for example, defines an incompetent as 'any person, whether insane or not, who by reason of old age, disease, weakness of mind, or other cause, is unable, unassisted, properly to manage and take care of himself or his property, and by reason thereof is likely to be deceived or imposed upon by artful or designing persons. (Stone 1972, 464–465)

This reply overlooks two important distinctions. First, guardianship over incompetents is ordinarily awarded to family members who have had pre-existing relationships with their wards. The existence of such a relation justifies the assumption that their interests are aligned, or at least, the assumption that the appointed guardian is in a position to communicate the interests of his ward on his behalf. Second, the reason why rights are awarded to the mentally incompetent can be arguably attributed to the fact that they remain to be members of a species with the innate potential to possess them despite the lack of higher-level faculties. Rights are awarded to entire species based on their general characteristics rather than to individual entities based on their unique abilities. This explains why babies, who are born mentally disabled with no chance of improvement, are still recognized to have rights equal to those of any other person. This is also why an individual born with a severe cognitive handicap would be ascribed more rights than a higher-level primate that may possess a greater degree of intelligence and functionality.

Neither of these applies to natural objects. First, no "friend of the environment"—regardless of how familiar he is with a natural object—can claim to have a relationship of the same character as those between humans. A member of the Natural Resources Defense Council, for instance, cannot claim to be acquainted with the "interests" of the water in the Mississippi, even if he grew up by its banks and bathed in it during his childhood. He may presume or even imagine what its interests would have been if it had them, but this would still be different from the way in which legal guardians represent the interests of relatives they have personally known and interacted with for years. The former kind of presumption is purely speculative, whereas the latter can often be verified as a matter of fact. Second, no natural object has actually possessed or even demonstrated the potential to hold advanced interests that equal those of human beings. This condition already sets the bar for the conferment of rights relatively low, for all it takes to establish potential is even just one instance in which a single natural object demonstrated these capacities. The problem, however, is that no single object has met this standard either.

The computation of damages

Stone seems to anticipate these responses and thus shifts to the weaker claim that the interests of natural objects can be "represented" as the sum of the scattered and fragmented interests of parties affected by human activity. There is precedence for this in law, he claims, because if the activities of a paper mill, for example, result in the pollution of a lake, then the obvious plaintiff who could bring his complaints to court might be a riparian owner. Yet, Stone points out that the well-being of other affected parties can be represented by the plaintiff: owners of summer homes and motels, merchants who sell fish bait, men who rent rowboats, and even wildlife such as fish. For Stone, it would be justified, by way of analogy, to extend this arrangement to natural objects. Thus, he believes that the river—as the summative aggregation of various smaller natural objects—can hypothetically represent their collective claims for financial compensation:

> But many other interests—and I am speaking for the moment of recognized homocentric interests—are too fragmented and perhaps 'too remote' causally to warrant securing representation and pressing for recovery…There is no reason not to allow the lake to prove damages to them as the prima facie measure of damages to it. By doing so, we in effect make the natural object, through its guardian, a jural entity competent to gather up these fragmented and otherwise unrepresented damage claims, and press them before the court even where… they are not going to be pressed by traditional class action plaintiffs...By making the lake itself the focus of these damages, and 'incorporating' it so to speak, the legal system can effectively take proof upon and confront the mill with, a larger and more representative measure of the damages its pollution causes. (1972, 475)

This paragraph is ontologically confusing because it is unclear on the extension of the word "lake." It seems to conflate the welfare of the affected persons, animals, and natural objects and presents them as the merged "interests" of the lake. However, these entities belong to different ontological categories and suffer different kinds of damages, and treating them as if they are all part of a larger pantheistic entity blurs what should be well-defined boundaries. Judges consider these boundaries to ensure that the distribution of compensation accurately reflects the nature and extent of the injuries incurred by various plaintiffs. However, the problem with lumping their disparate injuries together is that it fails to take their morally relevant differences into account. For example, it would be unfair to subsume the harms inflicted upon animals and natural objects under the collective injuries of the lake. Animals can suffer whereas natural objects cannot, which means that it would be fair to award them a larger portion of the damages, for instance, through an animal conservation group that specializes in the rehabilitation of their habitats. The challenge of consolidating their interests that are "too fragmented and perhaps 'too remote' causally" is a reason to improve the efficiency of legal procedure, not to treat natural objects as jural entities just to provide a convenient and catch-all solution.

Stone counters that the existence of laws such as the National Environmental Policy Act indicates that natural objects must have interests that are somehow analogous to human ones (1972). The inference made here underdetermines the conclusion; the existence of such laws does not amount to a concession that natural objects have interests or rights. It is equally plausible that the activities of a paper mill, for example, may disrupt human activities that are dependent on the river. In this scenario, human interests still prevail, whereas environmental considerations are still taken to serve the former.

However, for the sake of argument, let it be granted that in some way, natural objects do possess such interests. It may further be assumed that the limits of natural science and human reason that prevent us from discerning what they might actually be. Even if this were the case, there would still be the issue of how a guardian can be said to know what the interests of a natural object are and the legal implications that this carries.

Epistemological objections and teleological language

The argument from the knowledge of natural objects

Stone anticipates the objection that guardians cannot accurately gauge the needs of a river or forest under their charge. Stone's reply is that it does not take much to know what a natural object needs, because it is simply a matter of direct observation and intuition:

> [N]atural objects can communicate their wants (needs) to us, and in ways that are not terribly ambiguous, I am sure I can judge with some certainty and meaningfulness whether and when my lawn wants (needs) water…(it) tells me that it wants water by a certain dryness of the blades and soil—immediately obvious to the touch—the appearance of bald spots, yellowing, and a lack of springiness after being walked on. (1972, 471)

The language deployed is rather misleading. The use of nouns, such as "wants" and "needs" carries the connotation that grass must have some kind of agency and can experience some form of suffering. Moreover, to claim that the lawn can "communicate" or "tell" a person that it wants water implies that it can will itself to act upon intrinsic motivations. It has already been argued that natural objects are incapable of acts of willing, but there are two ways to respond to this argument. The first is to test its scientific soundness, and the second is to explicate the teleological view it espouses.

The scientific merits of Stone's claim can better be appreciated when compared to Peter Singer's analysis of how it is known that animals can suffer. In *Animal liberation* (2009), Singer provides two reasons to believe that they do. The first is that it can be inferred that animals feel pain when they exhibit behavioral signs, such as writhing, contorting, moaning, yelping, or avoiding contact, for example, when they are beaten with a stick. Humans behave in remarkably similar ways under identical conditions, and thus, it is reasonable to infer that certain forms of animal behavior are reliable indicators of suffering. The second is that the nervous systems of animals have evolved in ways similar to how the human nervous system has evolved. Like humans, they possess spinal cords, neurons, and chemical transmitters that trigger and send impulses to the brain when exposed to various stimuli, such as pain-like sensations. There is widespread consensus within the scientific community that the best way of explaining this similarity is to assume that they developed physiological mechanisms to improve their adaptability and chances for survival (Singer 2009). On these two grounds, Singer concludes that animals can suffer and therefore have interests.

If these two criteria are applied to natural objects, then they would fail on both counts. First, rivers and forests do not exhibit any behavior from which one can meaningfully infer that they are suffering. Perhaps a river would emit a foul stench if enough commercial garbage were carelessly dumped in, but that would be caused by the mixing of alien elements, such as sulfur, detergent, and toxic chemicals in the water—not because the river is "suffering" through a process of decay as a human or animal with rotting flesh might due to flesh-eating bacteria. Trees and vegetation are admittedly different, because as Stone points out, it is obvious that when they shrivel up and turn brown, they are literally dying. However, they would fail the second test of lacking a complex nervous system, rendering them incapable of feeling pain. Thus, it is scientifically misleading to say that natural objects can "tell" their guardians about their "interests," or that they "want" water lest they suffer.

On teleological language

To say that natural objects have "needs" is to imply that they have ideal natural states. Stone tends to deploy language that is reminiscent of the teleological views of reality proposed by Aristotle and Aquinas. They believed that all beings—

natural objects included—have a purpose, meaning, and ultimate good towards which they strive. The more that they work towards this good, the more real and whole they become. As Aristotle (2014, 3) wrote, "Every skill and every inquiry, and similarly every action and rational choice is thought to aim at some good; and so the good has been aptly described as that at which everything aims."

Similarly, in describing how to compute the compensation that is "owed" to a natural object, Stone writes (1972, 476), "One possible measure of damages… would be the cost of making the environment whole, just as, when a man is injured in an automobile accident, we impose upon the responsible party the injured man's medical expenses."

The example of covering an injured man's medical expenses does not give much guidance in determining when the environment has been made whole again, because it is clear that a man has recovered when he has returned to his normal state of physical health. In contrast, the standards for the wholeness of forests and rivers are more nebulous and indeterminate. Stone replies that precision is not an absolute virtue in law, given that judges are often content with estimating the damages that are owed to plaintiffs. While his reply may be legally correct, it skirts the philosophical issue by taking for granted what it means for guardians to have the power to speak on behalf of a natural object that is not even "aware" of its own "wholeness." Tom Regan's criticism of holistic environmental ethics, which was to dub it as "environmental fascism" (1983, 362), comes to mind; Stone is willing for humans to sacrifice their interests in favor of collective non-human entities.

Teleological language in everyday conversations can be misleading due to its figurative character. For example, imagine two friends named Smith and Jones who walk around the neighborhood and notice a garden that has been neglected by its owner. The lawn has been overrun by weeds, the plants have been covered in vines, and the trees have been littered with the droppings of birds, cats, and dogs. Smith turns to Jones and says, "That jungle needs a gardener to be a garden again." Jones agrees that enough work could make it respectable again, but he does not actually think that it ever became a jungle because it ceased to be a garden. Nor does he believe that it possesses an interest of its own in becoming "whole," as if there are settled criteria for assessing when a "jungle" can become a garden again. Smith walks up to the owner of the house to offer some unsolicited advice. He recommends hiring a gardener whom he knows to clear the garden of weeds, vines, and manure for the fee of a hundred dollars. Jones, who spends more for the upkeep of his own garden on average, gives the business card of a gardening company he does business with. The company not only supplies manpower but also provides new grass, plants, fertilizer, and tools for a package worth five hundred dollars. The owner understands that his garden will look more beautiful if he contacts the company recommended by Jones, but at the same time, he would not think that his would be less of a garden if he accepted Smith's simpler but more affordable alternative. He might even decline both offers without ever doubting that his garden—regardless of its appearance—has always remained a garden.

In a sense, he would be correct; the aesthetic appeal of a garden in no way makes it more or less of a garden. Consider, then, how strange it would be if the garden were assigned a guardian who could ascribe economic value to its "wholeness" and petition the owner to hire the company that Jones recommended, arguing that it would be less of a garden if its owner were only compelled by law to spend a hundred dollars for its tending.

Furthermore, neither Smith nor Jones would tell the owner of the garden to attend to it for "its own sake" or "its own true welfare." A garden is only instrumentally valuable to persons and has no teleological or ultimate good of its own. Similarly, natural objects are not loci of value in their own right. Talk of their "needs" is part and parcel of ordinary language, but it can also be misleading for it implies that the needs that are spoken of belong to the objects themselves. When one says that the grass needs trimming, for instance, he directs the imputation of necessity to persons who benefit from the aesthetic value of a well-manicured lawn. Hence, the sense of the word "needs," as Stone uses it, is value-neutral in the same way that a car may need gas and oil to function, but without which there would be no retardation of its alleged interests.

Thus, the main objection is not only that it would be morally unfair for a guardian to override determinate human interests by quantifying the inherently unknowable needs of natural objects, it is that he would be allowed to legally proclaim that such a good exists in the first place and present it as a *fait accompli* that others are bound to satisfy.

A basis for the legal protection of natural objects

In the previous three sections, I have argued that the concept of guardianship is susceptible to a variety of objections as a basis for conferring legal standing upon natural objects. In this section, I shall outline an alternative framework for justifying their legal protection in two parts. First, I shall clarify how it differs from Stone's in three respects, and second, I shall apply it to Feinberg's argument concerning the rights of future generations of persons. The framework shall be used to introduce some modifications to the argument to explain how it provides a more favorable basis for the legal protection of natural objects than conferring them with standing.

A. The components of the framework for the legal protection of natural objects

The framework that shall be presented differs from Stone's in three respects: it emphasizes duties instead of rights, it promotes more humanistic reasons for protecting the environment, and it favors the appointment of legal custodians rather than legal guardians.

A.1. An emphasis on duties instead of rights

The first component of the framework is an emphasis on the concept of duty and what it logically entails. Whereas Hohfeld (1923) thought that the existence of a duty is necessarily accompanied by the existence of a corresponding right or liability, it is my contention that no such relation exists. To be clear, in many situations, a person who harms another is morally liable and subject to certain remedial duties. This correlation, however, does not always follow. There are several cases wherein duties and responsibilities are said to exist without any party having a right to their discharge. Hart (2008 [1967], 227), for instance, argues that responsibilities arise from certain innate human capacities: "[T]he expression 'he is responsible for his actions' is used to assert that a person has certain normal capacities…[e.g.] understanding, reasoning, and control of conduct." Joseph Raz (2011) similarly thinks that duties are grounded in rational agency rather than any external liability or claim:

> The powers of reasoning and understanding are among our rational capacities, whereas the capacity to control our conduct enables us to express our rational capacities in action. We are responsible for our conduct because we are rational agents, and as rational agents. (255)

For example, it is often said that citizens in democracies have a duty to be informed, that is, they have a general responsibility to be aware of current events so that they can exercise their right to vote as prudent and knowledgeable citizens. However, it does not follow that any party has a right for his fellow citizens to be informed, nor does anybody have a claim over how another person uses his vote. It is my contention that a similar line of reasoning justifies the existence of moral duties unto the environment. It is not necessary to prove that natural objects have rights to claim that humans have duties to protect them. For instance, it is said that humans have duties to conserve highly endangered flora. This is because, as rational agents, humans understand that biodiversity is a good, and that human activities that push them to the brink of extinction ought to be regulated. This duty is said to exist independently of any "right" of an endangered species to survive.

Having shown that moral duties may exist independently of moral rights, the next step is to extend this claim unto legal duties and legal rights. Lawmakers, by means of legislation, can simply create legal duties provided that there are strong reasons for doing so. For example, creating a legal duty for consumers to pay a value-added tax on goods may be justified by the general background need to raise government revenues. While these funds are expected to be diverted towards various social programs, the legal duty itself is not assumed to be the logical correlative of any specific right of recipients who stand to benefit from these programs. Judges, by virtue of adjudication, can create legal duties in the form of judicial precedents by deciding cases in favor of environmental protection.

The created duties, in particular, are commonly referred to as the legal principles or *ratio decidendi* of cases that, henceforth, become binding upon judges who will preside over future cases that are similar in the relevant respects (Goodhart 1930). Thus, the normative force of precedent does not rest on the existence of any rights but on the authority of the courts.

There are famous cases in which environmental legislation was passed without its proponents relying primarily on rights-based claims. John Muir (1894), for instance, published several articles about the Sierra Nevada mountains of California in mainstream newspapers in the late nineteenth century. His objective in doing so was to call the public's attention to what was then a relatively unknown natural area (Armstrong and Botzler 2004). He used the political momentum he generated to lobby the US Congress to eventually recognize Yosemite Valley as a national park. Muir (1894, 110) justified its preservation by appealing to the moral duty to preserve an aesthetic and spiritually uplifting wilderness for the American public to appreciate, describing his travels as almost profound religious experiences: "Standing here in the deep, brooding silence all the wilderness seems motionless, as if the work of creation were done."

This constitutes a good example of how environmental legislation may be justified in the language of duties rather than of rights. It suggests that humans have duties unto each other to protect natural objects of profound aesthetic value without going so far as to claim these objects have rights that impose obligations upon humans. Admittedly, there are many instances wherein duties and rights come hand in hand. For example, the US Supreme Court recently ruled in *Juliana v. United States* (2018)—a climate-related lawsuit wherein youth organizations sued the federal government for permitting fossil fuel corporations to emit dangerous levels of greenhouse gas emissions—that the state had neglected its duty to safeguard the fundamental human rights to life and liberty. It should be noted, however, that there is no necessity for every duty to have a correlative right, and that the rights that were legally affirmed in cases that they did were those of humans rather than those of natural objects.

The previous examples are supported by the "interest principle," the claim that the only kinds of beings that can have rights are those that can have interests (Feinberg 1974). Based on this principle, legal duties can be created on the bases of human interests, and not just human rights. A familiar example is the legal duty of a lawyer to execute the contents of a will after the testator has died, which arises from the interest of a person while he was alive that his wishes be honored after he passes away (1974). Legal duties unto the environment can be created on the same grounds. Environmental advocates can argue that there are many interests that can be protected by the appropriate legislation. If this is correct, then the bar for the creation of duties to the environment is lower than what has been previously believed. Proving that humans have general interests to be upheld is more feasible and less likely to meet resistance than claiming that natural objects have *prima facie* legal claims upon our resources and liberties.

A.2. A humanistic rather than a naturalistic approach

The second component of the framework is its emphasis on humanistic over naturalistic reasoning in promoting environmental agenda; that is to say, it gives reasons for action that promote human interests rather than those of natural objects. While it is true that people generally embrace environmental legislation, it has been seen that they often grow wary when it competes with certain human interests. Thus, this component is intended to explicate and be guided by the underlying rationale behind their hesitation.

It is a recurring principle of moral reasoning that humans alone have intrinsic worth. This view has often been attributed to Immanuel Kant, who distinguished humans from objects on two grounds. The first is that only humans possess the one thing with absolute and unconditional value in the world, which is the good will (Kant 2018 [1785]). Whereas objects are valuable only insofar as they serve their intended purposes, the good will is uniquely capable of conferring value upon everything else. On this view, the importance of objects is merely secondary and derivative; they are only valuable and desirable because the good will makes them so. Hence, it must be considered as the primary source of value. The second is that only humans can act in accordance with reason. This means that, unlike animals, let alone inanimate objects, they are capable of resisting their base instincts and external influences as reasons for action. They may choose to be guided by moral principles that are held to be universally binding. This means that they have the capacity to be autonomous—a characteristic that gives them moral worth and makes them worthy of respect. Thus, Kant (2018 [1785]) states that humans ought to be treated as ends rather than means. They must be as ends-in-themselves rather than as instruments that can be used to obtain some other goal. Given these distinctions, it is clear why conferring legal standing upon natural objects is said to be objectionable: to do so would be to subordinate some human interests unto theirs, assuming they even existed.

Moreover, Kant (1997 [1930]) claimed that duties can only be directed towards other persons and that any duties unto nature are really indirect duties to humanity. On this view, actions that damage natural objects do not fail to uphold any direct duties that are owed to natural objects. However, they do fail to uphold duties that are owed to other human beings who benefit from their aesthetic, cultural, scientific, and economic uses (Kant 1997 [1930]). Thus, the moral worth of our actions is ultimately dependent on how it promotes human ends. Consequently, the interests of natural objects cannot be elevated to the same level to the extent that they directly compete or even override human ones.

Therefore, it is an essential component of the proposed framework that it gives humanistic rather than naturalistic reasons. Not only does it systematize the distinctions that are made between the values of persons and objects, but it seeks to place the environmental agenda in a light that makes it consistent with rather than opposed to human interests.

A.3. Legal custodianship rather than legal guardianship

The third component of the framework distinguishes between legal custodians and legal guardians, and the nature of the obligations they have. A legal custodian is a person who is responsible for safely returning some article to its original owner pursuant to a contract. For instance, storage companies are custodians that are entrusted with the temporary safekeeping of the belongings of their clients, while banks are custodias that are entrusted to hold on to some bonds. In these examples, custodians are assigned to protect an inanimate object without doing so for its "own sake," "well-being," or "welfare" (Feinberg 1974, 49). Legal guardians, on the other hand, are persons who speak on behalf of another. This distinction is reflected in legal parlance, and most lawyers would agree that guardianship applies uniquely to humans in most cases. Hence, if a redwood tree forest must be protected for instance, it seems far more appropriate for the court to designate a custodian rather than a guardian. Furthermore, custodians enjoy virtually the same privileges that guardians are entitled to. They can exercise wide discretion over the administration of funds, decide how to preserve a piece of furniture, or instruct employees on how to maintain a historical landmark. In other words, the duties of a legal custodian subsume those of a legal guardian in an analogous sense.

B. The framework applied to Feinberg's argument on the rights of future generations

This paper shall conclude by applying this framework to Feinberg's argument on the rights of future generations. It shall also recommend how the argument can be modified to provide a stronger basis for compelling lawmakers to enact environmental policies with teeth. Very briefly, Feinberg (1974) argued that humans have duties to preserve forests, rivers, and other natural objects to ensure that future generations of persons will be born into a healthy and sustainable environment. The strongest objection against this claim is that it relies on some obscure metaphysics: persons who do not exist yet cannot possibly have any rights that impose duties upon those who are currently alive. Feinberg replies, however, that inasmuch as future generations are faceless, nameless, and temporally remote, the fact remains that barring any global catastrophes, and in the normal course of events, they are certain to be born as human beings with interests, rights, and claims akin to already living humans. In order to survive and to live meaningfully, they will need fresh air to breathe, fertile soil to plant on, potent water to drink, and lush forests to cultivate (1974). Surely, this makes a moral difference to those who are currently alive. The fact that the future is distant and uncertain does not enfeeble the duties that arise from our knowledge. In other words, it would be immoral to act without concern for the future simply because we will not personally figure into it.

Interestingly enough, the Supreme Court of the Philippines adopted a similar doctrine of intergenerational responsibility in *Oposa v. Factoran* (1993). In this case, the petitioners sought to prevent the Department of Environmental and Natural Resources (DENR) from issuing licenses to corporations that permitted them to exploit over three million hectares of land for commercial logging purposes. The petitioners claimed to represent their interests as well as those of generations unborn that would be denied a well-preserved environment. The justices accepted the doctrine as a basis to give future generations legal personality and representation through existing litigants. The fact that a variation of Feinberg's argument has been accepted and applied as a judicial precedent illustrates its potential to have legal applications. Hence, it is our objective to recommend how it can be improved further.

It would be instructive to analyze the argument in the light of the proposed framework. First, it should be noted that the soundness of the argument is not dependent on any metaphysical speculations about whether natural objects have rights. It simply claims that future humans will have interests in inheriting a well-preserved environment. This point is uncontroversial. The more pressing question is whether the potential to have future interests translates to the existence of actual rights in the present. Feinberg (1974) thinks that it does, although he maintains they are only "contingent" rights at best.

It is unclear, however, whether entities such as "contingent rights" exist. Even the sense in which they are contingent is rather ambiguous. In my interpretation, to say that they are contingent simply means that the human interests on which they will eventually be predicated call out for protection from the present generation. In this sense, the interests of future generations are also contingent insofar as their ability to access the natural resources that they will need substantially depends on the choices that are made today. The fact that this will be so imposes certain duties upon us. Thus, as free and rational beings, we must act responsibly unto the environment as reason demands. We cannot escape the knowledge that we are part of a long causal chain of events that have inter-generational repercussions.

Feinberg's (1974) argument is largely correct, though it need not assume that the "contingent rights" of future generations exist at present. In my opinion, making this assumption imposes moral obligations upon us, an implication which many may not be ready to accept and still find to be too strong. The duty to protect natural objects would still exist regardless and constitute a moral reason to protect the environment. In other words, to claim that future generations have existing rights is superfluous. Instead, it is sufficient to assert that they will have interests that are identical to ours and that we know this as a matter of scientific fact. It is this knowledge that creates duties upon us as rational beings—obligations that we would fail to honor if we do not act accordingly. Herein lies what I think is the true foundation of his argument: not the rights of future persons, but the duties of present ones. The discourse of Feinberg's argument, I believe, should focus on

the demands that rationality and morality make upon us. It does not need to make any further metaphysical speculations lest it fall into the same traps that Stone's arguments have fallen into.

Second, Feinberg's (1974) argument is consistent with Kant's humanistic approach of treating people as ends-in-themselves, not as means to an end. It does not claim that natural objects are valuable *per se*. Instead, it asserts that they are only good insofar as they can supply future generations with necessities. Stone (1972) would plausibly object to Feinberg's argument because, like many others, it overlooks the fact that natural objects have "interests" of their own. He might add, however, that its temporal element adds a new dimension. Stone might object that this argument only extends highly anthropocentric practices indefinitely into the future, for it can be used and abused without ever losing its relevance. Five hundred years from now, people will still be able to cite future generations as ends-in-themselves and as reasons against conferring rights on natural objects. The cycle will never end. It is a cheap and easy way out of a moral duty that we turn blind eyes to.

Perhaps this rejoinder can be met if it can be shown that the cycle is justified. The difficulty with terms such as "ends-in-themselves" and "means to an end" is that it is not obvious why the former is of greater moral worth. There needs to be a common baseline from which these categories can be compared. One solution is to recast Kant's language in terms of value. The term "value" is used in a broad sense to mean any standard by which something is said to be good. Raz (2003) distinguishes between objects that are intrinsically and instrumentally valuable, that is, an object is intrinsically valuable when it is seen to be good in and of itself, whereas it is instrumentally valuable when it is measured in terms of the other values that it may bring about. By juxtaposition, humans as ends-in-themselves are intrinsically valuable, whereas natural objects as means to ends are instrumentally valuable.

The comparison makes two kinds of values commensurate. First, can an object of intrinsic value ever enhance an object of instrumental value? It is difficult to see how this can be so without arguing in a circle. In one sense, a blacksmith can improve his tools to make them sharper, stronger, and more durable. However, his purpose in doing so would not be for the sake of the tools themselves. He only improves them to make human labor more efficient and productive, which means that his ultimate purpose would still be directed towards furthering human interests. Conversely, can an object of instrumental value improve the well-being of entities with intrinsic value? This proposition is true by way of definition, that is, objects of instrumental value are good only insofar as they further the interests of entities with intrinsic value. This renders the comparison neither trivial nor tautological, for it reveals an important logical relation between the two kinds of value: whereas intrinsic value can exist in and of itself, instrumental value cannot exist without intrinsic value. The former exists only because the latter existed first. Hence, the relation between the two is asymmetrical, that is, the instrumental

value of an object is empty unless it is taken to serve an intrinsic value that gives it purpose and meaning.

This explains why Feinberg's argument is justified even if it can be used indefinitely as a reason against conferring rights on natural objects. It is justified because it sustains the underlying rationale of our moral judgments: that there is a greater moral duty to preserve the interests of humans who are intrinsically valuable than of objects that are instrumentally valuable. In this sense, human beings will always have greater moral worth than natural objects, however economically, culturally, or aesthetically important the latter may be. Hence, the duty to prioritize humans as ends-in-themselves is absolute. The interests of objects that are only means to an end cannot be prioritized without undervaluing their human sources.

Finally, Feinberg's argument—were the proposed framework sharpen its focus—should emphasize the role of the present generation as legal custodians of the environment rather than legal guardians of future generations. As it has been argued, the claim that unborn persons have existing rights is dubious and unwarranted. Humans of the present generation cannot be the guardians of persons who do not yet exist and, therefore, do not have any rights at present. We can, however, think of ourselves as legal custodians of the natural objects that already exist. Forests and rivers will be as valuable to future generations as they currently are to ours. They will far outlast our own humble lifetimes and will continue to inhabit the earth for hundreds of years. Thus, there is a duty for us to preserve them to ensure that they will be around to provide our descendants with the resources that they will need.

Such a framework, I believe, has an important psychological dimension: it is easier to think of ourselves as custodians of objects that can be seen, smelled, or touched, than it is to think of ourselves as guardians for unborn persons who are so faceless, nameless, and temporally remote that we can never hope to forge any meaningful or direct connection with them. The fact that natural objects can be perceived by our senses reminds us that there is something already before us that demands our urgent attention and concern. It activates our moral sensibilities to preserve sources of value in the world in a way that abstract notions of the future cannot. This claim is not inconsistent with our emphasis on humanistic rather than naturalistic reasons; in fact, it is compatible with the view that it is good to care for natural objects because of the different kinds of value they bring into our lives. Hence, it is concluded that one may shift the focus of Feinberg's argument to the custodianship of objects rather than the guardianship of unborn persons.

Conclusion

This paper has argued that there are political, ontological, and epistemological objections that cast substantial doubt on the viability of conferring legal rights and standing upon natural objects. Doing so has achieved only limited success and is likely to incur more harm unto the environmental agenda than the possible

benefits it may produce. As an alternative, this work has presented a different philosophical framework for arguing in favor of environmental legislation. The framework emphasizes duties rather than rights, humanistic rather than naturalistic reasons for the protection of natural objects, and legal custodianship in place of legal guardianship. It was also used to analyze Feinberg's argument on the rights of future generations to a well-preserved environment. This resulted in the insight that it is unnecessary to go as far as to argue that future generations have existing rights. It is sufficient to claim that we, as rational beings who are aware of the consequences of our actions, are bound by duty to care for natural objects through law and to preserve the values that they constitute.

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