

Do Trees have Rights?

The idea of human rights supports action on climate change

I did my PhD in environmental law, many years ago. I was much taken with an article by the aptly named Professor Stone about the rights of trees. Reflecting the need to give the environment the chance to sue for the damage we did to it, Professor Stone gave his article the title 'Do trees have standing'. His ideas have been hugely influential in law and a book he worked up from the article is now in its [third edition](#).

The plug for the book on the web site makes this pitch, a neat summary of much of what Professor Stone has to say:

'This enduring work continues to serve as the definitive statement as to why trees, oceans, animals, and the environment as a whole should be bestowed with legal rights, so that the voiceless elements in nature are protected for future generations.'

Why not?

Much of this project is about defending the defenceless. Why stop at humans? My guest contributor this week Alasdair Cochrane makes the cases for a limited range of animal rights [[HYPER LINK TRACK 15](#)].

But why stop at animals? The environment that we use and abuse is surely even more defenceless than the animals we needlessly destroy and act cruelly towards for fun or through simple neglect.

Well possibly I hear you say – but what has this to do with *human* rights? A very great deal I'd say.

But first we must face a criticism and deal directly with it.

ARE NOT HUMAN RIGHTS THE ENEMY OF THE ENVIRONMENT?

The subject of human rights is, as it declares for all to see, a field that is concerned not only with humans but also with the rights that flow from being human.

Rather than from being anything else.

Indeed the subject of human rights is so focused on the singular human that it has historically had a great deal of trouble even with the fact of there being more than one human around: I talk about this a bit more in a forthcoming track on libertarianism. But even today our discussion is invariably about the self-fulfilment of the individual, his or her ability to set goals for leading a full life and then being free to go on to achieve those targets: [track three](#) and also [four](#) as well as books like James Griffin's [On Human Rights](#)

- The debate *is about* what are the necessary building blocks of such a successful life; it *is not about* what that life can or ought to do to make the world around it a better place, even for others to live in, much less simply for the planet's sake.
- The right to property, to the ownership and free use of non-human things, has often stood in the way of proper regulation in the public (environmental) interest. And as we saw in [track eight](#) the right to property has had a destructive impact on rights discourse generally, so this disregard of the environment is yet something else we must now add to our critique of it
- International law has been far more interested in the rights of peoples (see for example article 1 of both of the [1966 covenants](#)) and in the right of peoples [to develop](#) economically than it has ever been in the impact of such rights (and such untrammelled exploitation) on the world around us. (I deal with this issue of the right of peoples directly in a later track.)

It is clear, therefore, that – to put it mildly – human rights have baggage so far as the natural environment is concerned.

In saying this though, we should not forget one of the key strengths of this language: its open texture and flexibility, the capacity it has to adapt to new circumstances. Human rights would have been long forgotten if they had ever stood still long enough to have had their meaning fixed for all time.

HELP AT HAND

The environmentalists have not allowed any doubts they might have about human rights to stop them deploying the term in the pursuit of their goals.

The link was first made as long ago as 1972, at the [Stockholm Conference on the Human Environment](#). This was in the first phase of the environmental movement, which was largely dissipated by the economic recession that began in 1973 and continued through much of the 1970s. It was not until the 1992 Earth Summit in Rio de Janeiro that a framework for environmental and human rights emerged, in the form of the [Rio Declaration](#) and in the [Agenda 21 Plan of Action](#). Buoyed by this new interest, in 1994 the UN Special Rapporteur on Human Rights and the Environment released an important [account](#) of the relationship between human rights and the environment, making the link between human rights abuses and environmental damage more explicitly than had ever previously been done at an official level.

The major breakthrough was not at the UN but in the world of civil society.

This was the publication of [Our Environment Our Rights](#), by Friends of the Earth International in 2004. This report shows us a way of 'doing human rights' that works from an environmental point of view.

- The authors cleverly link the delivery of human rights to environmental protection: it is ‘access to ... unspoiled natural resources that enable survival, including land, shelter, food, water and air’ – our human rights in other words. As the report says, ‘Environmental rights are human rights, as people’s livelihoods, their health, and sometimes their very existence depend upon the quality of and their access to the surrounding environment as well as the recognition of their rights to information, participation, security and redress.’
- The report is clear that ‘Environmental rights go hand-in-hand with civil and political rights.’ Access to courts, the ability to protest, and the capacity to obtain information are all central features of the struggle to achieve better environmental protection.
- In a way that echoes earlier [tracks](#) of this project, the Friends of the Earth document shows that environmental activists see human rights as fluid and (in a good way) volatile and unstable. Thus having rehearsed the litany of standard rights, the report continues, ‘We also believe in the right to claim reparations for violated rights, including rights for climate refugees and others displaced by environmental destruction, the right to claim ecological debt, and the right to environmental justice.’

Taking this lead from the environmentalists, human rights activists can see immediately that they share much in common with them: a desire to make the world a better place; a mistrust of capitalism as the means of achieving this; an energetic commitment to achieving change and not just talking about it; and a deep feeling of compassion and empathy towards the defenceless.

Sure, human rights remains focused on the human but it is a human not just embedded in society but also in the world around him or her. And the environmentalists’ use of the language of rights

has helped them to stop seeing humanity as such as a 'problem' and humankind as some kind of enemy that needs to be defeated.

Today far more unites environmentalist and human rights activists than divides them.

MAKING THE PARTNERSHIP WORK

There is a lot that we in the human rights arena can do.

- Strengthen the human rights tools (civil and political rights) that the environmental activist needs to allow his or her message to be communicated. A great deal remains to be done here: [track two](#). (And see also an [article](#) I have written on this where the precise point about the limitations of our rights law in relation to environmental protest is discussed in much more detail.)
- Build on the UN initiatives I have already mentioned to work towards the achievement of an international right to environmental protection. The momentum of past years needs to be rediscovered. There are already mentions of the need for environmental quality in some rights' charters (article 24 of the [African Charter](#) for example) but much more can be done. The [UN Declaration on the Rights of Indigenous Peoples](#) provides us with some good precedents to work on.
- Extend the hand of friendship and solidarity to those social movements who are expressing their resistance to the destruction of their environment in human rights terms. The Zapatistas in Mexico for example have long articulated the claims of their people (the

indigenous people of Chiapas) in rights' terms. Their [declarations](#) have spoken of the 'inalienable right' of the people 'to alter or modify their form of government' and their actions have been justified on account of the 'impossibility of struggling peacefully for our elemental rights as human beings'. The [World Social Forum](#) is a useful resource in this regard.

AND MOST IMPORTANT OF ALL

- Be vigilant that proposed solutions to environmental challenges do not disproportionately damage the interests of the poor and the vulnerable. The rich world must not ransom off the less affluent as a price they have decided to pay for continuing to over-exploit the world's resources. It will not be the rich North but the Maldives that disappears, the Bangladeshi millions who will find their homes inundated, and the Inuit whose habitats will be destroyed.

It is the human rights people who must be the guardians of [climate justice](#).

The human rights approach insists on equality and respect for individual dignity. This demand to have regard to human rights has the effect of forcing all decision-makers to look outside their own circle, to see the human as well as the global consequences of their actions. It is an essential ethical component of a proper response to climate change: the [International Council on Human Rights](#) is already on to this.

RETURNING THE FAVOUR

And what can environmentalist offer human rights in return?

Well maybe something of vital importance ...

They can help in the search for foundations that has preoccupied us in many of the tracks on this project, especially [three](#) and [four](#)

- Why are we all equal?
- What is wrong with favouring one over the other?
- Where does our morality come from, if not from God and His representatives on earth?
- What is so wrong about abusing power if you are lucky enough to have it?

Human rights thinkers are far from being able to answer these questions effectively, but thinking hard about the embedded nature of humans in the world around them at least points the enquiry in the right direction. It is only through reflecting upon our species as a part of the natural world that we can come to a renewed sense of the wonder of our existence and the beauty (as well as the immense productivity) of our seemingly innate propensity to think about others as well as solely about ourselves and our kin.

And if we can expand our horizons to include an imaginative leap beyond the living into the realm of the billions of as yet unborn (indeed not-yet-conceived) humans of the future, we will be able to see that here is a vast category of the powerless who demand our attention. Our empathy with the other is one of our finest features and it is through the language of human rights that it finds a highly effective because universal form of contemporary expression. But its innateness does not mean that its manifestation cannot be greatly reduced by the social situation in which it finds itself.

The survival of our species without the loss of our precarious commitment to goodness is surely enough of a foundation for human rights today.

AND BACK TO TREES

And we should not forget that theory without practice is words without deeds, a hobby not a vocation.

There is a great deal we can do to rethink our legal framework to make it more sympathetic to the environment. Here are some thoughts and a few final questions.

- Trees and other natural objects should certainly have standing to sue – through representatives of course, but then that is what lawyers are for. If I am injured I sue for all that I am worth; if a river is polluted to destruction, there might or might not be a fine. What there should be is an insistence on damages that meet the gravity of the harm done. Can there be any downside to this?
- The idea of trusteeship is already in our law – we should adapt it to the environment, create new obligations to pass the world on as we have found it, backed by proper enforcement. My colleague Phillippe Sands has written about this in his book on [environmental law](#) – a Trustee Council whose job it is to protect the globe from the selfish depredations of the nation states. But could this be achieved?
- And how about a bill of rights for nature? Look at what the Ecuadorians have done in [2008](#) and learn from it. What would such a bill of rights look like? Should it be national, regional or truly international?

