

NATURE'S RIGHTS – by Godofredo Stutzin

Article published in Resurgence Magazine No.210, Jan/Feb 2002.

<http://www.resurgence.org.uk>

Justice requires that Nature be recognized as a legal entity

THE LAW HAS NOT marched at the vanguard of the processes of change: it has rather been part of the rearguard. By acting in this belated way the law fails to fulfil appropriately one of its basic functions: to give guidance to the community.

This task of using the tool of the law for guidance turns into an urgent challenge when the problems society faces surpass the managing capacity of the law in force. This requires the development of law in response to the situation facing our time.

According to its original meaning, development consists in unfolding a thing; in uncovering, revealing and performing what is contained in it. This is true of material things, of ideas, of persons and of institutions. Development is a process of organic character, identical with the growth of a plant that develops all that was potentially contained in its seed.

What is the seed that produced the law and must govern its growth? Undoubtedly, it is the notion of justice. The extension of the principles of justice must continue representing the development of law.

Today the realm of law comprises theoretically all individuals of the human species but members of the other species still remain outside, without being admitted to the privileges of the state of law.

It is this situation that has served as an argument in favour of the inclusion of non-human subjects within the legal community.

The development of law has reached a crucial moment: the idea and the ideal of justice have to acquire a new universality which comprises the entire biosphere, adding not only new objects, but also new subjects to the legal establishment.

Justice is equitableness: the just equilibrium or balance between diverging interests. To establish justice means to create and maintain this balance, pondering the values in question in order to "tribute to everybody its own" and "not damage the other one". Being in charge of this mission, the law represents the visible expression of this equitableness. The state of law is the state in which the complex powers and interests that act in a community have come to find themselves in a condition of harmonious equilibrium. In its development the law should widen and deepen this state of balanced coexistence.

In the world of nature the principle of equilibrium or balance constitutes the supreme law. Nature has been able to develop and maintain from its beginning an infinity of life forms and complex ecosystems, permanently correcting any loss of balance. Thus the biosphere has been and still continues to be the example of perfect coexistence between all its parts. Unfortunately, humans, instead of guiding ourselves by this example, have chosen the opposite path. Creating our own artificial world, the technosphere, we have placed it under the sign of unlimited economic growth at the expense and to the detriment of the natural world.

The scientific-technological revolution of our age has produced a situation that has no precedent in the history of planet Earth. For the first time nature, which has managed the

destinies of this world since its birth, is being displaced by one of its creatures, the species self-named "homo sapiens", which is bent on imposing its own models and methods on the management of nature's affairs. The technosphere is being placed upon the biosphere, impeding the latter's free functioning and development. In contrast to what happened in previous stages of Earth's evolution, in which the dominant species submitted themselves to nature's rules, the human species has made a show of altering and suppressing these rules. What has thus been created is a clearly unbalanced ecological situation in which the relationship between one species with all the others has ceased to develop along the lines of relative equality and is instead unilaterally determined by the aspirations and fancies of the dominating species.

THE LACK OF ecological equilibrium is both the cause and effect of the absence of equilibrium in legal matters. The fact that the defence of nature carries little weight in the realm of law reflects the virtual defencelessness of nature in today's world; and this defencelessness, in its turn, reflects the absence of adequate defence provided by law. The possibilities of defending nature in the present legal establishment are very limited, because only human interests are being taken into consideration; and among these interests the ones that predominate are nearly always those that favour the depredation of the natural world. The interests of those who promote actions that affect nature belong to persons who exist and are known; the same is true of the contents of these interests; of their motivation and objective. On the contrary, the subject of the interests on which the defence of nature is based very often lacks precise definition. The result is an evident lack of legal equilibrium between the aggressors and the defenders of nature, which means that the former come out as winners from nearly all the situations.

This 'inferiority' that affects the defenders of nature is the consequence of their not being able to plead their cause in a straightforward way: they cannot speak in the name of nature and on behalf of its own interests, but are forced to resort to the aid of human interests and persons supposedly affected by the acts in question.

There is an obvious remedy for the legal inequality, amounting to a lack of equitableness or justice: it is the recognition of nature as a legal entity possessing autonomous interests that deserve to be protected by law as rights.

The acceptance of the rights of nature among legal persons does not pose a problem from the point of view of legal doctrine. A great percentage of the legal persons nowadays existing belong to the category of artificial persons recognized by law with full capacity to hold and exercise rights. Many of them constitute fortunes dedicated to certain aims quite different from natural persons. Nature could be classified in this group; being both creator and creation. Nature is essentially the whole of the natural world; a vast fortune dedicated to the aim of the development of life and its environment.

Although the law is free to create completely artificial legal persons as a means of furthering justice, it must be stressed that nature, far from being a fictitious entity, possesses real existence as a universal manufacturing body that is firmly structured and organized, essentially dynamic and productive, having functioned without interruption for billions of years. Its recognition constitutes an act of justice by which the law, advancing in its process of development, confirms the distinctive values inherent in the natural world, leaving behind the indefensible anthropocentric vision of Earth according to which the planet and all that exists upon it are but the environment of humankind, having no other value than its usefulness for the human species.

The defence of nature comprises the defence of all and each of its components; nature itself as a universal entity. In ecological matters it is not possible to recognize as legal persons

the units of different levels that make up the natural world; the close linkage and the dynamic interrelationship that exist between all of them does not permit their legal isolation. Their defence must necessarily be based on the fact that they are integral parts of an organic whole and that the damage inflicted on any of them in some way affects all nature; only thus the defence will have its proper force. In this respect, John Donne's words are applicable: "no man is an island, entire in itself", but "a piece of the continent, a part of the Earth", and "if the sea carries away a portion of the land, all Europe will be diminished."

ONLY FROM AN extremely limited viewpoint can it be maintained that the defence of the interests of nature is contrary to human interests. Since humankind is part of nature in a wide sense, human fate is indissolubly linked to that of the entire natural world. The conservation of a complete and healthy nature is, consequently, in the interest of humankind, which means that the defenders of nature are also the defenders of humanity; on the contrary, those who attack nature, moved by short-sighted human interests, in the end attack humankind itself, threatening its future together with the future of all nature.

Such are the considerations that move people to undertake the defence of nature, assuming its representation. Those who act in this capacity should be duly qualified or officially appointed legal entities or natural persons. The official appointees would be a kind of 'ombudsman' of nature who take charge of the complaints or petitions made to them in defence of the natural world.

It must be stressed that the legal recognition of nature only aims at giving it a voice in matters affecting it, so that its interests are taken into account and duly pondered in relation with the opposing human interests. The question is not that nature should always come out on top, but that it should be heard as a party whose interests are recognized by law in conditions equal to those of human interests.

The scope of nature's interests comprises the conservation of all that exists in the natural world, from the tiniest beings to the largest ecosystems.

The recognition of nature as a legal person pursues the establishment of a balanced situation between the parties of all conflicts that in some way affect the natural world, in order to arrive at equitable solutions. This premise leads to numerous advantageous consequences.

To begin with, there is a psychological effect of great importance: by obtaining the backing of the law as a holder of legally protected interests and rights, nature comes to occupy a position that tends to grant it the respectful consideration of the community; as a rule those who own rights are respected, while those who lack them are despised.

From the properly legal point of view, several weighty advantages must be mentioned:

a) The presence of nature as a party in matters corresponding to Ecological Law allows the due identification of this branch of law as the one that deals specifically with the problems arising from the relations between people and nature.

b) The fact that acts damaging the natural world can be judged directly as acts of violation, without need to find and determine persons affected by them, means a considerable simplification of the tasks of the law and of those who apply it in ecological matters

c) The admission of nature into the legal establishment produces a vigourization of the provisions protecting the natural world. By accepting that this world is not just an accumulation of goods serving as resources for people, but constitutes nature's universal property which has its own value per se, independent from any possible human use, it has to

be concluded that the onus probandi in the matter must be inverted: instead of starting out from the presumption that the components of the natural world as such are not good for anything and may be freely altered or destroyed, except if the usefulness of their conservation is proven, judgments have to be based on the contrary presumption that all that exists in nature is good for something in the context of this 'life business' and must therefore be preserved, unless it can be proved that there is a superior interest that justifies an alteration or destruction. Likewise, the recognition of nature as holder of a universal property of vital importance for the planet leads to the conclusion that human rights of property on natural objects are limited in their use by the 'natural function' they have to comply with, in the same way in which the rights of property on any object are subject to the demands of their 'social function'.

d) Finally, the legal recognition of nature favours the unification of Ecological Law throughout the different legislations by providing the rules protecting the natural world with a common denominator, based on the needs of the biosphere and not on the subjective and fragmented interests of human groups.

Facing the difficult and urgent task of endeavouring to re-establish the ecological balance on our planet, the law-makers and lawyers form one of the groups that have greater possibilities as well as greater responsibilities of assuming that task. By decidedly promoting the development of law beyond its present limits through the admission of nature as a legal person, they are in a position to establish a situation of legal equilibrium which, thanks to the force of law as a guide of human conduct, may powerfully influence the efforts to re-establish the lost ecological equilibrium. As men and women dedicated to bringing about justice, the jurists are, at the same time, under special responsibility with regard to the task of ensuring justice in human relationships with nature. There is little doubt that the majority of them are conscious of this challenge and willing to assume it to the best of their abilities.