Legal Personality

‘If we can give legal personality to non-living entities such as corporations, why not also give personality to living things like animals and trees?’

The thought that trees and animals should have legal personality at first seems implausible. Only once the requirements and diverse degrees of legal personality have been explored in this new complexity, does the idea of flora and fauna personality appear to be reasonable. Legal personality enables one to have power and rights within the law, it gives the entity the right to sue and be sued. The law measures legal personality by the entities capacity to exercise their legal rights knowingly and competently and to take responsibility for legal duties and liability. Capacity is based on the entities competency to understand the consequences of an act or omission, foresee outcomes and to make rational choices.¹ If an entity does lack the competency to exercise their capacity then the law restricts the degree of capacity presumed by their competency, it does not deprive them of personality.²

Although trees and animals have little to no form of communication, there are limited factors that support the opposing argument that denies these rights to natural objects.

A full grown horse or dog is beyond comparison a more rational, as well as a more conversable animal, than an infant of a day, or a week, or even [a] month, old. But suppose the case were otherwise, what

² Ibid.
would it avail? The question is not, can they reason? Nor, Can they talk? But, Can they suffer?³

This statement clarifies the nature of the question, it is a question of moral standing not one of rational or legal thought. Legal personality is nothing more than a fictitious instrument created by man, easily construed to protect himself and his property.⁴ It is flexible so there is no reason other than a persons' exploitable interest that could deny animals and trees of legal personality. This paper will seek to explain why it is important that trees and animals should be entitled to legal personality and will explore how man has manipulated the tool of legal personality to maintain his status and power over time. It will also assess current legislation that protects natural objects to a degree and evaluates why these laws are unsatisfactory and how legal personality could positively benefit the well-being of both humans and natural objects.

There is a distinct parallel between humans' treatment of animals and trees and how man treated females and children throughout history. The wide use of infanticide, especially with girls and children with deformities, is a good example of the lack of legal status children had.⁵ Back in the time of the Roman empire it was the man's right to grant his children life or death, he had the 'uncontrolled corporal chastisement; he can modify their personal condition at pleasure; he can give a wife to his son; he can give his daughter in marriage; he can divorce his children of either sex; he can transfer them to another family by adoption; and he can sell them.'⁶ Rape of women used to be considered a violation against the property owner, being the husband or father. Strict penalties were imposed on the convicted rapist, due to the violation, to marry his victim whom would have been considered a worthless

⁴ Nosworthy, above n 1, 1-2.
⁵ Christopher Stone, Should trees have standing? And other Essays on the Law, Morals and the Environment (25th ed, 1996) ch 1, 2.
⁶ Ibid 1-3.
possession. Today the rights of women and children have been recognised and have improved significantly, whether this is because of our moral maturation as a society or whether the achievement can rest solely on the rightless group itself. Either way, groups that have been denied legal personality in the past have not accumulated it with ease. Movements for the protection of legal personality have taken great strength and persuasion, and 'this is partly because until the rightless thing receives its rights, we can not see it as anything but a thing for the use of "us"- those who are holding rights at the time.'

At first glance it would appear that slaves and women are far too different to trees and animals to propose any parallel significance in their deprived status of legal rights. The only difference that inhibits distinction between the two is the degree of competency to communicate. However this does not deem to be a significant problem within the construct of the law. The law has granted legal personality to other non-human entities such as corporations, universities and municipalities, which being artificial and fictional entities, can not communicate at all. They express their legal rights like most people, through a lawyer. This therefore reinforces the argument that non-human entities can play a constructive roll within the law and though it may sound obtuse to start with, these ideas and feelings will eventually be displaced with natural acceptance, just like the acceptance of corporations.

If the law was to delegate rights to natural objects it would not be realistic or practical to grant all existing rights to these entities. As explained, different entities have different capacities. Children have rights similar to adults, however they do not have the right to vote nor to drink or drive. It is presumed that these restrictions protect them as well as society. This same principle should be embedded within the construct of legal personality for natural objects. It would not be reasonable to propose that by cutting down

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7 Patricia Easteal, Balancing the scales (1st ed, 1998) ch 1, 3.
8 Stone, above n 5, 5.
9 Ibid.
10 Ibid 7.
any tree would lead to a conviction of murder; therefore the law would need to adapt a discriminatory system where some natural objects receive more capacity than others. These limitations would ensure that human development and progression could still continue, yet in a way that it does not pose any significant risk to the health of natural objects. The importance of co-existing is essential for both parties; the sophisticated interconnectedness of our planet is fragile, and by eliminating one species, a domino effect could occur, leading to irreversible damage.¹¹

If natural objects were granted legal personality questions then arise as to how, and who, would take legal action and delegate compensation. Stone proposes, like any other incompetent entity natural objects should have guardians, such as ‘Friends of the Earth’, ‘The Wilderness Society’ and ‘The RSPCA’, working on their behalf. This would require an application to the courts followed by procedural administration to ensure there was no conflict of interests. Once an environment or animal is placed with a guardian the process is to monitor the area or animal by recording effluents, and general health to seek out what is in the best interest of the natural object. Any compensation given to the entity would be placed in a trust fund which could be used solely for the area or animals benefit, minus legal and administration fees. However, we can not forget that with these rights come a particular amount of responsibility with liabilities and duties. Would it be reasonable to ask for compensation from the environment for damage done by bush fires, avalanches or tidal waves? The answer is yes, why not be able to extract money from environmental trusts to compensate people that have been subjected to natural disasters.¹² By doing this we are including natural objects into our system of law.

If the law developed in the favour of natural objects, thus granting legal rights, the entity would be able to take legal action, be granted legal relief

¹²Stone above n 5, 26 -27.
and benefit personally from the relief.\textsuperscript{13} Natural objects would benefit more from the status of legal personality than what the current legislation is seemingly doing. Australian law has implemented some legislation to protect animals, however there is evidence in much statute within Australian law that illustrates there is such a thing as ‘justifiable pain’ when concerning animal welfare. In the \textit{Animal Welfare Act 1993} (Tas) under the sub-heading ‘Cruelty to Animals’, ‘A person must not do any act or omit to do any duty, which causes or likely to cause unjustifiable pain or suffering.’\textsuperscript{14} This legislation clarifies that statute is not protecting animals to the degree of acceptability and therefore does not give enough reasons to eradicate the proposal of legal personality for natural objects.

Legislation only protects natural objects as a by product of protecting human interest. For example, there is a huge difference between a women being raped and her father claiming liability for the loss of his daughters' virginity, or the women taking her attacker to court in her own right for the mental and physical anguish she experienced. A current environmental issue in Australia is the Murray Darling Basin which has been suffering from pollution and drought for many years. Only when this river started to run dry and was unable to deliver a sustainable amount of fresh water to farmers and towns was its well-being considered a national crisis resulting in the implementation of the ‘Integrated Catchments’ Management Policy’.\textsuperscript{15} A moral element manifests itself within these laws, for why should the environment only benefit as an indirect response to saving the profits or interest of the plaintiff? This same notion can be seen in many current issues concerning the environment such as the ineffective stance against global warming. The proposal of nuclear technology reinforces how our government and world leaders view the importance of technological and economic growth at the expense of

\textsuperscript{13} Stone above n 5, 8.
\textsuperscript{14} \textit{Animal Welfare Act 1993} (Tas) s8.
ecological stability. Nuclear can not last more than 40 years and the waste of nuclear is pollution on a mass scale. 16

Previously in this paper, there was a proposed structure where natural objects are included as legal entities within our community. The truth being; although this notion is realistic and has moral grounds, State and Corporate actors would no doubt take issue with the proposal. In this new complexity the rise of multinational corporations has lead to companies becoming more powerful than States. ‘[T]he reach and influence of multinationals, large and small, is far greater than the official statistics suggest [and] the relationship between governments and multinationals is characterised by a complex distribution of benefits.’ 17 The economic relationship between States and multinational corporations is far stronger and sustainable than the States relationship with natural objects. A current issue concerning a dispute between Tasmania’s native forests and a multimillion dollar corporation Gunns Ltd, is a fight that the trees will find hard to win. Not only can Gunns promote a wealthier Tasmania, it has also financially contributed to the government’s election campaign. 18 Multinational corporations seek to influence State policy and are effective in doing so. The product of this relationship is a higher level of accessibility to natural resources for the corporations and a wealthy and more prosperous State.

Individualistic minds, in this new complexity, struggle to disentangle themselves from actions they see as inhumane or morally wrong. This is a consequence of our increased population and consumer habits which are continually feeding corporations. 19 Animals are tortured everyday in the name of science and discovery, most of this is paid for with the tax payers’

money. Battery hens and broiler chickens are just a couple of examples that pay through suffering to meet the needs of higher production at lower prices for the demand from fast food outlets and general poultry consumption. The European Union itself produces sixty billion meat chickens a year through factory farming. These chickens are put in extremely inhumane conditions to cut costs and to meet the ever growing targets. Peter Singer, a famous Australian philosopher, suggests that the ignorance of animal cruelty and the reality of their deprived rights are due to the unquestionable acceptance of speciesism. The idea that we can tolerate cruelty committed against other species but become outraged if it happens to our own. This theory, most would consider arguable, yet it does give us a possible answer to some of the most horrific events of our time and our continuing abuse of power against natural objects.

The proposal of trees having legal personality at first seems ‘unthinkable’, however each time in history when rights were extended to other entities it always seemed a little ‘unthinkable’. It has been established that the law could view natural objects as legal entities; society just has to want to. The law has begun to open up its doors to natural objects but the strong presence of anthropocentric perspectives grip many individuals in this debate. The strong hold of consumerism is a mitigating factor that has shaped human-beings in to becoming unwilling to act against many avoidable practices. If the nature of humans is based around Singers idea of speciesism, then maybe there is little hope of changing. However, if we can stop justifying our actions, through our need to have it all, then maybe we can change the legal status of natural objects by changing ourselves.

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22 Ibid.
23 Singer, above n 17, 1, 1-3.
24 Stone above n 5, 8.
Bibliography

Articles/Books/Reports


Legislation

- *Animal Welfare Act 1993*(Tas)