



Your Next Lawsuit – Coming From A River Or Forest Near You

Professor Stewart Motha, Professor of Law, Birkbeck, University of London

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A Word From Today's Chairwoman

Charlotte Dawber-Ashley
FS Club Manager
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Today's Agenda

- 15:00 – 15:05 Chairwoman's Introduction
- 15:05 – 15:25 Keynote Presentation – Professor Stewart Motha
- 15:25 – 15:45 Question & Answer



Today's Speaker

Professor Stewart Motha
Professor of Law
Birkbeck, University of London




YOUR NEXT LAW SUIT – COMING FROM A RIVER OR FOREST NEAR YOU

Prof. Stewart Motha, Birkbeck School of Law, University of London.

Lake Mary Jane, Orange County, Florida





“In an effort to protect herself, Mary Jane is suing. The lake has filed a case in Florida state court, together with Lake Hart, the Crosby Island Marsh, and two boggy streams. According to legal papers submitted in February, the development would “adversely impact the lakes and marsh who are parties to this action,” causing injuries that are “concrete, distinct, and palpable.””

Elizabeth Kolbert, *The New Yorker*, 11th April, 2022

Quiz

- What is 'nature':
 - A. Everything on the planet that is not 'human'.
 - B. Land and other plant/animal/mineral resources that can be owned and traded.
 - C. All physical matter in existence in the universe.

Concepts and Questions

- Origins of legal personality: *prosopon* (Greek) & *persona* (Latin)
- Persons: legal form bearing rights and duties
- Expanding personhood and consequent rights as a mode of 'recognition' – **what are the implications of this for social, economic, and political organization?**
- Broader concern: Who matters and how in the context of discussions on sustainability, climate change, and mass extinctions?

Wanganui River, New Zealand



Who or what is a person? Why does it matter?

- A stretch of land, Te Urewera, and a river, the Wanganui River in New Zealand, have been recognised as legal persons in law.
 - ▣ *Te Uwa Tapua (Whanganui River Claims Settlement) Act 2017*
- Christopher Stone, “Should Trees have Standing? Towards Legal Rights for Natural Objects” (1972) 45 *Southern California Law Review* 450.
- What kind of person?
- The slave as person and thing at the same time

Sierra Club v. Morton, 405 U.S. 727 (1972) (Supreme Court)

Standing in U.S Fed Law:

§ 10 of the Administrative Procedure Act, accords judicial review to a: "*person suffering legal wrong because of agency action, or [who is] adversely affected or aggrieved by agency action within the meaning of a relevant statute.*"

Sierra Club argued that the area's "aesthetics and ecology" would be altered by the proposed development.

Stewart J for the majority

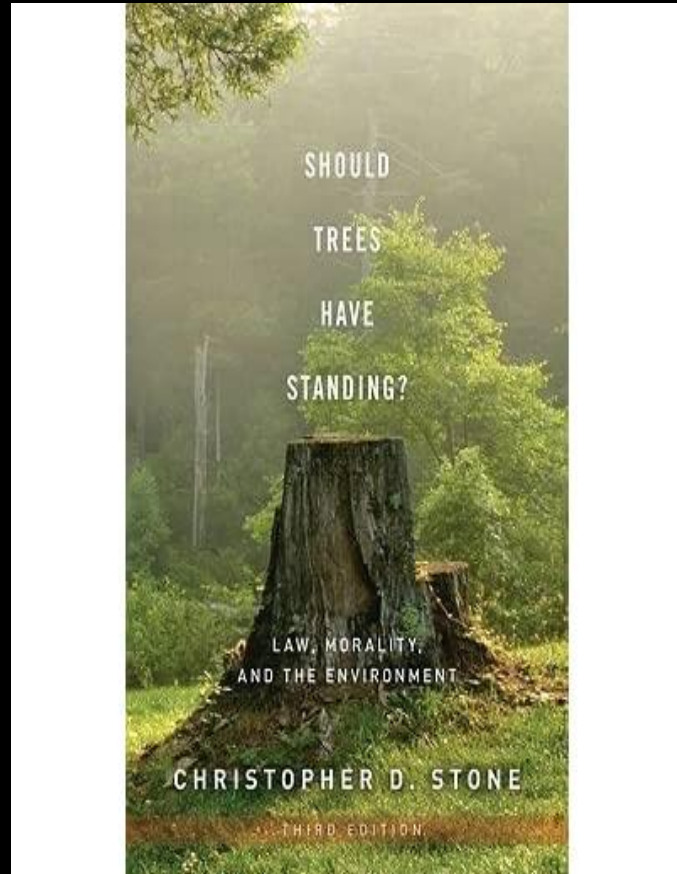
“We do not question that this type of harm may amount to an “injury in fact” sufficient to lay the basis for standing under § 10 of the APA. Aesthetic and environmental wellbeing, like economic wellbeing, are important ingredients of the quality of life in our society. [...] But the “injury in fact,” test requires more than an injury to a cognizable interest. It requires that the party seeking review be himself among the injured.” (my emphasis) (734-5)

In other words, an injured person would be needed.


Douglas J, in dissent

“... these environmental issues should be tendered by the inanimate object itself. Then there will be assurances that all of the forms of life which it represents will stand before the court -- the pileated woodpecker as well as the coyote and bear, the lemmings as well as the trout in the streams. Those inarticulate members of the ecological group cannot speak. But those people who have so frequented the place as to know its values and wonders will be able to speak for the entire ecological community.” (Douglas J, 752)

Christopher D. Stone, "Should Trees Have Standing?" (1972) *Southern California Law Review* 450-501



“The critical question of "standing" would be simplified [...] 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. Contemporary public concern for protecting nature's ecological equilibrium should lead to the conferral of standing upon environmental objects to sue for their own preservation. See Stone, *Should Trees Have Standing? -- Toward Legal Rights for Natural Objects*, 45 S.Cal.L.Rev. 450 (1972). This suit would therefore be more properly labeled as *Mineral King v. Morton*.”



Inanimate objects are sometimes parties in litigation. A ship has a legal personality, a fiction found useful for maritime purposes. [...] The ordinary corporation is a "person" for purposes of the adjudicatory processes, whether it represents proprietary, spiritual, aesthetic, or charitable causes." (741-43)

Sellafield, Cumbria



Representative standing in the UK – Greenpeace (1994)

- ***R v Inspectorate of Pollution and Ministry of Agriculture, Ex parte Greenpeace [1994]***
 - *The case from the perspective of classic ‘rule of law’*
 - *The case from a governmental perspective:*
 - Representative body
 - Efficiency of courts and administration of government
 - Expert, technical decision-making – so need for a responsible objector
- Ultimately a vindication of the rule of law without environmental justice.



Urgenda v Netherlands (Ministry of Infrastructure and Environment) (2015) (affirmed by Supreme Court in 2020)

- ❑ Reduction of greenhouse gas emissions by 25% by 2020.
- ❑ Art 162, *Dutch Civil Code*: Duty of care to current and future generations of citizens
- ❑ Duty to currently residing cross-border citizens (trans-border nuisance);
- ❑ Municipal courts and supranational issues; 'no harm' jurisprudence in international customary law (*Pontash Mines* precedent)
- ❑ Horizontal application of ECHR
- ❑ Separation of powers



Climate Litigation at the ECtHR

- *KlimaSeniorinnen v Switzerland* (ECtHR)
- Article 2, Right to Life
- Article 8, Right to Private and Family Life.
- State's obligations



Ecocide as a Crime in International Law

Draft Legal Definition (2021) - [Stop Ecocide Foundation](#)

Ecocide:

- “For the purpose of this Statute, “ecocide” means unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts.”
- “Wanton” means with reckless disregard for damage which would be clearly excessive in relation to the social and economic benefits anticipated;

Quiz

- What does sustainability of current economic and social models mean?
 - A. Sustain current levels of economic production & growth but offset climate impact.
 - B. Reduce production & growth to levels that sustain all human and non-human life and ecosystems.
 - C. Only develop products (including financial) and production processes that sustain ecosystems and life on the planet.

If you would like to hear more ...

- Countersign Podcast with Stewart Motha streaming wherever you get podcasts; current series on ecology and climate change.





Comments, Questions & Answers





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Forthcoming Events

- Tue, 08 Nov (12:00-12:45) The EU AI Act: State Of Play
- Wed, 09 Nov (16:00-16:45) Stablecoins: Crypto's Killer App? Or Killer Of Crypto's Investors?
- Mon, 14 Nov (16:00-16:45) Chile Issues The Worlds First Sustainability-Linked Policy Performance Bond
- Tue, 15 Nov (11:00-11:45) Education In A Time Of Emergency: A Curriculum For The Anthropocene

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