

Law As If Nature Mattered

by Tzeporah Berman

*Woe to him who creeps through the serpent windings
of utilitarianism.*

Kant¹

This quotation, taken out of context, seems to reveal an understanding or recognition of the worth of objects (animate or inanimate) apart from human use. Ironically, Kant goes on to promote an essentially anthropocentric ideal of moral worth. This paradox, characterised by the recognition of the inherent worth of nature and wildlife, and yet an inability to allow these values to be manifest in human communities, continues today and is apparent throughout various disciplines: law, philosophy, literary criticism, cultural geography and others. In legal theory and environmental ethics this controversy has centred around the question of 'rights,' essentially illustrated by two questions: 1) Does the 'environment' have inherent worth or intrinsic value and, if so, 2) Could it be a legal rights holder?

Ultimately, these questions address criticisms of 'deep ecology,' a philosophy which promotes an ecocentric or holistic viewpoint, but which many people feel cannot be translated from metaphysics into 'action.' This paper attempts to address these questions through a discussion of rights, environmental ethics and deep ecology, and an effort to reveal how and why these values could, and should be manifest in Canadian law. The proposed Environmental Bill of Rights for Ontario will be used as a concrete example of how law can be used as a mechanism for proactive social change.

Deep Ecology

One of the major critiques of contemporary environmentalism and environmental law has been their 'piecemeal' and reactive approach to pollution and environmental degradation. In contrast, the deep ecology approach promotes a recognition of the interdependence of humans and the biotic system, and through this recognition and increased ecological consciousness, a preventative approach to environmental issues.² As such, deep ecologists ask 'deeper' questions than conventional environmentalists or environmental policy-makers and through this questioning attempt to foster an ecological

consciousness which rejects the prominent assumption of human self-importance.

The term 'deep ecology' was coined in 1972 by Norwegian philosopher Arne Naess who has developed several fundamental principles of the philosophy.³ Essentially, Naess believes that deep ecology reflects a "democracy of the biosphere," a metaphysical account of the world which places humans in the greater scheme of things and recognizes the inherent value of nature independent of its usefulness to humans.⁴ This contrasts directly with the polemic, even adversarial world view which regards humans as "isolated from the rest of Nature, as superior to, and in charge of, the rest of creation."⁵ The underlying assumption then, is that the non-human world, wildlife, wilderness, ecosystems and the continuing healthy functioning of the environment are all intrinsically significant. This point has been the focus of many debates because it is essentially a spiritual and internal understanding making it difficult to relate through conventional discourse due to its intangible and unquantifiable nature. Consequently, many deep ecologists have unintentionally fallen back on a utilitarian argument by asserting that without a functioning ecosystem there will be no life and therefore no people. For our purposes we will assume that nature possesses a value apart from that conferred by humans and what is being argued is whether or not the acknowledgment of these values means that nature can be given moral standing equivalent to that of humans.

Bill Devall and George Sessions, in their book *Deep Ecology: Living as if Nature Mattered*, posit that "deep ecology goes beyond a limited piecemeal shallow approach to environmental problems and attempts to articulate a comprehensive religious and philosophical world view."⁶ They also note that although the philosophy should be internal and spiritual, "it should focus on ways of cultivating ecological consciousness and on principles for public environmental policy."⁷ And further that, "certain outlooks on politics and public policy flow naturally from this consciousness."⁸ This may be so, but the question arises as to how we are to foster this type of dialogue in politics and policy decisions. And, in addition, do we not need some type of vehicle to promote this deeper questioning of our world view, and a medium to express the results? Furthermore, if law can be used as a

medium, what are the legal implications of ecocentric values?

The prescription for change and the inclusion of ecological rights proposed within this paper are not representative of deep ecological viewpoints. Deep ecologists do not support the 'sacred' individualism prevalent in Western society, to which rights-based theories are linked. Instead, they put forward the notions of interdependence and interconnectedness. They propose that if we identify with nature, indeed with all life, to the extent that we cannot separate it from the notion of self, then we would not need to assign rights. Rather, such internalization of ecology would motivate us to defend the earth as our very selves. "I am that part of the rainforest protecting myself."⁹ Thus deep ecologists do not necessarily agree with the widespread idea that by attending to individual rights (whether they be human, animal or natural rights) we can build a sane ecological society.

Deep ecology has been introduced in an effort to reveal the need for a 'deeper' questioning than can be seen in conventional environmentalism or current environmental policy. Ultimately, the dialogue created through this questioning and the introduction of an ecocentric value system akin to that presented by deep ecologists, represents the initial shift away from conventional value systems. It is possible that our systems of law can be used as a transitional medium towards the true recognition of the inherent worth of nature and wildlife in human communities.

Law As a Medium

Contemporary environmental legislation reflects a utilitarian viewpoint--the protection of nature not for its own sake but for the sake of human use.¹⁰ This structure evolves from the anthropocentric nature of law: "law exists for the ordering of human societies" and is fundamentally composed of social contracts between human beings.¹¹ The paradoxical question that surfaces, is again quite clear: if law is inherently anthropocentric, is it possible to incorporate non-anthropocentric values into this system? Some argue that it is not only possible but it is indeed necessary.

Law is the product of an evolving process...[and as such]...reflects issues important to society and a selection among alternatives with ideology the screening mechanism. As belief systems change political goals change, and therewith laws are recast to conform to new realities. Environment is such a one.¹²

If law is the product of an evolving process, and it is recognized that environmental degradation is an issue that is important to contemporary society,¹³ it would follow then that the new realities to which law must be

cast are a recognition of ecocentric values. However, the question as to whether this is possible in an anthropocentric system still remains.

Philip Elder argues that, "since all of law is human construct, it follows that we can identify any matter of concern and legislate about it, if we want to."¹⁴ However, Elder also argues that legislation through conventional law and ethics can achieve sufficient environmental protection, and furthermore, that law will always reflect a utilitarian and anthropocentric bias. Conversely Goldstein and Giagnocavot argue that while previous environmental legislation has seemed progressive, "in practice it has become nothing more than costly legitimization projects."¹⁵ They go on to note that in policy development and in the courts, environmental concerns are not considered equally with economic or development considerations. In addition, Paul Emond points out that, "The [current] legislation is utilitarian...it lacks vision...pollution is rationalized and...legalized."¹⁶ Does it not follow then that what is needed is *proactive* legislation which attempts to move away from the narrow anthropocentric bias inherent in our legal system rather than *reactive* short-term and costly negligible remedies? By couching environmental protection in utilitarian terms, are we legitimizing a system of discourse which in turn structures human thought, and may impede protective efforts and personal realization of deep ecological values?

Goldstein and Giagnocavot propose that what is actually needed is a rethinking of our value systems and not legal remedies. They go on to note that the only way deep ecology can be integrated into our society is through an internal, metaphysical process which leads to spiritual enlightenment and local actions.¹⁷ However, if we inject ecocentric values into the law, is it not a catalyst for a re-evaluation of our values, and decision-making processes? A recognition of other values may lead the way to a more progressive common law even if it is inevitable that these values be assessed through an anthropocentric veil.

In a sense, law could play a transitional role, cultivating a relationship between traditionally polemic interests, until a greater understanding and ecological consciousness surfaces. The extension of 'rights' to nature and the



assigning of intrinsic value to all elements of the biosphere will create a dialogue which will quite literally make policy makers and the courts ask 'deeper' questions. This questioning represents the first step towards a recognition of ecological ethics in decision-making.

Christopher Tribe concurs with this view when he notes that,

As those conceptions, experiences and ends evolve through the processes made possible by a legal and constitutional framework for choice, the framework itself...may be expected to change as well.

And further that,

...to make commitments without destroying freedom is to live by principles that are capable of evolution as we change in the process of pursuing them.¹⁸

Tribe goes on to note that an attempt to integrate ecological values into law would lead to a better decision-making process. He notes that in the contemporary legal system we have very little 'freedom of choice' as the decision-making process is restricted by the values it includes. In order to have a full choice and a balancing of interests we need to balance ecological rights with human rights, wants and needs. In short, what is being argued is that the ends are shaped by the questions that are asked, and that the inclusion of ecological values into the law will affect the people involved in the process through a development of new attitudes which may lead to personal enlightenment. This concept differs greatly from deep ecology, as deep ecological theorists would not argue for rights based prescriptions for change within contemporary society or the present legal system.

One of the most prominent arguments against the inclusion of ecological values into the legal system is that our decision-making mechanisms are not set up to incorporate these 'soft' concerns.

[V]ariously described as fragile, intangible or unquantifiable, these values have been widely thought to possess peculiar features making them intrinsically resistant to inclusion along with such allegedly "hard" concerns as technical feasibility and economic efficiency.¹⁹

Although it is true that (what Tribe refers to as) "soft" data (ecological values) are harder for decision-makers to justify in strict and 'objective' legal terms, it can be seen that it is not the nature of the data that is at fault but the structure of the decision-making system itself. For example, in legal, political and economic decision-making, ecological concerns are generally considered under the term "externalities"--something that is outside of and separate from the 'core' or tangible concerns. Further, the arduous and somewhat daunting task that the in-

clusion of these values represents does not reflect an inability of non-monetarized values to be applied to an analytical methodology but the, "universal difficulty of choosing among incommensurables, a difficulty that can be obscured but never wholly eliminated by any method of decision-making."²⁰ Without an incorporation of these values into the law, economic concerns may continue to play a very large role as the conflicts continue to be illustrated by human to human grievances. Generally, the environment itself is lost sight of in "a quantitative compromise between two conflicting interests."²¹ In order for the environment to be considered equally with other values, it must given the status and respect that other interest generate. What is needed, is a vehicle in which these values are to be manifest and which will spurn progressive dialogue and respect. Many authors (though not deep ecologists) have argued that extending legal "rights" to nature will serve this purpose.

Rights for Nature

A comprehensive discussion of the 'rights' continuum, from moral and practical rights through to legal rights, is beyond the scope of this paper. For this reason the following discussion will be limited to a deliberation on the meaning and use of *legal* rights.

Humans confer legal rights by virtue of a decision made by the courts or those who have the authority to make laws.²² Generally, rights have some connection to a moral or ethical code and command respect for the rights holder. Ronald Dworkin notes that

Rights are important moral principles which lead to decisions which enhance the dignity and independence of the right-holder even when these decisions may be contrary to political or economic expediency.²³

Furthermore, rights may also create a balance between competing interests as well as initiate dialogue and discussion.²⁴ Many 'neo-rights' advocates see 'rights' as a process which allows debate, conversation and a re-evaluation of our value system. In addition, feminist authors have noted from the experience of the women's rights movement that rights discourse and rights claims can help develop a political consciousness and play a powerful role in social reform.²⁵ Essentially, advocates of legal rights for social reform see rights as a means to articulate new values and political visions.

Christopher Stone, an early proponent of the 'rights to nature' argument, notes that the context governs how values and ideas will be understood; law has respect and rights incur responsibility, therefore it is necessary to place ecocentric values in the law to encourage new ways of thinking and evaluating.²⁶ Douglas Fisher concurs with this view when he argues that, "[I]t is the conception

of the environment itself that governs the nature of an environmental legal system."²⁷

Subsequently, it is argued that if the environment had a 'right,' which necessitated human responsibility and recognition of the intrinsic value of ecosystems, this would provide an incontrovertible basis for protecting it.²⁸ Stone has argued that this extension of rights to the environment is a natural step in the evolution of morality and law. He cites Darwin's *Descent of Man* in which the observation is made that "man's [sic] moral development has been a progressive extension of the objects of his social instincts and sympathies."²⁹ He argues that the extension of rights to all races, women, children and those thought to be 'disabled' depicts the evolution of law in our society. At one point, all of these groups were thought of as "objects" for man's³⁰ use. Slowly society has come to confer rights to these groups, and from these rights a new respect has evolved which was previously "unthinkable."³¹ Until the rightless thing receives its rights, we cannot see it as anything but a thing for use by "us"--those who are holding the

rights at the time. Consequently there is resistance to the idea of extending rights to nature as it is "unthinkable" to the mainstream. This resistance will remain until the environment can be valued for itself. This again raises the question as to why we should recognize the intrinsic value of nature. The Canadian Environmental Law Research Foundation has argued that, "without an environment capable of supporting the human race, all other rights are useless."³² Notwithstanding the anthropocentric nature of this argument, it is nevertheless compelling.

Presently, systems of law confirm rights on beings who are not capable of understanding themselves to be bearers of rights--small children, the severely retarded and insane.³³ There are also currently many inanimate rights-holders: corporations, municipalities, joint ventures and trusts.³⁴ These right holders are not capable of



making claims against others or demanding to be granted what they are entitled to: guardians or agents do this for them. Stone has argued that this concept can be equally applied to the environment and that there already exist numerous agencies in a position to act as 'guardians,' for example: Friends of the Earth, Pollution Probe, Sierra Club, and the Canadian Environmental Law Association.³⁵ The guardian would be able to raise the environment's rights in its name (i.e. to have legal standing) without having to prove that their members (or personal) rights were violated. Stone also notes that,

The guardian concept too would provide the endangered natural object with what the trustee in bankruptcy provides the endangered corporation: a continuous supervision over a period of time, with a consequent deeper understanding of a broad range

of the ward's problems, not just the problems present in one particular piece of litigation.³⁶

Essentially Stone is suggesting that by allowing the natural environment to have rights, the realization of these rights through guardians could effectuate class actions. Class actions are, "brought on by an individual on behalf of a substantial number of others with similar claims -- settled in a single court proceeding."³⁷

Stone notes that there are many interests represented in environmental problems. For example, in the case of a contaminated lake there could be cottagers, anglers, tourists, natives and those dependent on drinking water. In the contemporary legal structure these riparian interests would be weighed with the cost to the polluter. However, if we allow the natural object, the lake, to prove damages,

...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, for legal or practical reasons, they are not going to be pressed by traditional class action plaintiffs.³⁸

It is possible that the extension of rights to the environment may reflect many of the perceived benefits of class actions--alleviating funding problems, allowing communities to organize and alleviating the "floodgates" problem.³⁹ Simon Chester notes that it is important to have substantive rights before initiating a class action. In addition, it has been noted that class action reform in the United States has resulted in a modest record of success for environmentalists.⁴⁰ It appears as though the utility of class actions is limited if the underlying values inherent in the decision-making process remain the same. By changing the decision criteria, the introduction of environmental rights into the legal system will enable class actions to be successful.

One of the fundamental criticisms of Stone and indeed of deep ecology lies in the application of the guardian concept. Who decides what is right for the environment? How can a guardian judge the needs of an ecosystem? Stone posits that natural objects can visibly communicate their needs--if a plant turns brown and withers it needs to be watered.⁴¹ However, others have noted that the definition of what is good for the environment still comes from the body largely responsible for its degradation.⁴² It is therefore obvious that we cannot fully remove ourselves from our own anthropocentric bias, it is essentially anthropocentric for deep ecologists to believe that they know what is best for the environment, even if it is cloaked in ecocentric terms. Given present societal conditions, recognizing the rights of nature will not free us from our own anthropocentric entrapment nor will it guarantee the protection of the environment. However, does this mean we should not attempt to recognize other values and incorporate them into a more progressive

body of environmental legislation? If rights do indeed create dialogue, environmental rights will force us to consider giving nature moral worth and to regard the earth as something with value which is separate from our utilization of it. Through this dialogue, it is possible to attain a better spiritual understanding of ourselves in nature.

Further criticisms of the application of this concept stem from the ambiguity of the exact nature of environmental interests which are to be protected. If we are taking ecocentric values into account does this mean that nothing can be done to alter the environment in any way? In an extreme example, does this mean a community could not drain swamp land for agriculture because it would be affecting mosquito habitat? The crux of the problem is readily apparent: *the line must be drawn somewhere*. Humans are going to have an effect on their environment and the guardian concept does essentially involve a projection of human values onto the ecosystem. Stone proposes that "to say the environment should have rights is not to say that it should have every right we can imagine...."⁴³ Tribe also notes that recognizing rights does not mean that they have absolute priority over conflicting human claims.⁴⁴ Clearly, it would be necessary to have a ranking of values and interests on a case by case basis. However, it is conceivable that a heavier weighting of environmental criteria would ensue from a recognition of ecocentric values and a balance of interests may be found.

Current Approaches

Aldo Leopold has argued for the extension of a land ethic which realizes the inherent value of nature and humanity's place in it; it is an ecological necessity and in turn reflects individual responsibility for the health of the land.⁴⁵ This theory depicts a guardian concept similar to that fostered by Stone. Many authors have made reference to the proposed Environmental Bill of Rights for Ontario (hereinafter called the bill) on similar grounds. The current draft bill gives "the people of Ontario the right to a healthy and sustainable environment...."⁴⁶ Swaigen and Woods have noted that it is possible that what is needed is not "rights," but a duty to avoid harming the environment.⁴⁷ If the environment were to have rights which necessitate human responsibilities, all costs would be considered equally. Ecological rights and human responsibilities put the issue of environmental quality on the table to be considered equally with other values now crowding the agenda: economic prosperity, civil liberties and property rights.

In the proposed bill, rights are given to *humans* for environmental quality, therefore treating the environment as an object. The question arises as to whether the bill will --as the Environment Minister, the Honourable Ruth Grier proposes, "grant every individual in the

province specific environmental rights and provide a framework within which individuals can act in a responsible manner to protect their environment."⁴⁸ Will it instead essentially legitimize environmental exploitation? Given that the bill will enable the public to participate much more easily through legal "standing" in the courts, it seems as though this will increase environmental protection. However, if the underlying value system remains the same, will the decisions that are made be different? And in addition, does the right to enter the legal forum mean that the public will affect the decisions that are made?

Swaigen and Woods have concluded from the United States experience that the "judicial utilization of environmental rights legislation has not, to date, met the expectations of its proponents."⁴⁹ This is in part due to the fact that the right to environmental quality has not been taken as a substantive right, which necessitates equal consideration with other rights or ensures a balanced decision-making process. Having the right to sue does not necessarily mean that one has the right to an advantageous decision. However, a heavier weighting of environmental criteria cannot necessarily be given within our existing value system. In addition, even if a favourable decision is reached, who is regarded as a beneficiary? Under legislation which only allows for human to human grievances, the environment will not necessarily be made the beneficiary of legal awards.⁵⁰ Under the

proposed bill the human plaintiff may be paid damages but the full cost of legal damage to the natural object may not be considered. If the bill were to include ecological values this might ensure a more balanced decision-making and a preferable measure of damages applied to a purpose related to the suit. For example, a developer who is found guilty of destroying a wetland could be required to ensure the preservation of another wetland elsewhere.

Under the bill a human could have "standing" (without having to prove personal injury) and show an invasion of their right to "environmental quality."⁵¹ However, if a human could gain standing to argue that the activity was injurious to the environment and not their "environmental quality," a more thorough and preventative approach to environmental quality might be achieved.

In short, the proposed Environmental Bill of Rights for Ontario has been used here as an example of how the concept of intrinsic value and environmental rights could be applied within the Canadian legal system and of the benefits that would ensue.

Due to the ambiguous nature of the Constitution Act, 1982, and its predecessor the British North America Act, 1867, the division of powers between the provincial and federal governments is unclear. As such, similar provisions could also be enacted by the federal legislatures.⁵² In some situations, where environmental infraction crosses provincial boundaries, it is necessary to



have a Federal Bill. Indeed, in New Zealand, similar legislation has already been enacted which recognizes the intrinsic values of ecosystems under the **Environment Act, 1986** and the **Conservation Act, 1987**.⁵³ On evaluating the success of the New Zealand legislation, Caldwell notes that although the meaning of 'intrinsic value' is unclear and contentious, the emergence of this term in the mainstream represents a fundamental paradigm shift and has enabled specific reference to be made to explicitly ecological ideas.⁵⁴

The New Zealand application of ecological values may be seen as a more preferable avenue than an Environmental Bill of Rights as it overcomes the limitations and difficulties of anthropocentric "rights" discourse while instigating dialogue and a recognition of environmental worth. In a similar vein, non-governmental working groups loosely affiliated with the United Nations Association, are currently working on a global "Earth Charter" to be discussed at the Earth Summit in Brazil in June 1992. The Charter is to be a document similar to the Canadian Charter of Rights and Freedoms although its ratification process and utility remain to be seen. Similarly, it is currently unknown whether this document will contain an anthropocentric or ecocentric bias.⁵⁵ What is interesting however, is the idea of an 'Earth Charter' similar to the Canadian Charter of Rights and Freedoms. It is possible that this concept could be enacted on a federal level as an amendment to the Canadian Constitution.

The enactment of a binding charter on the federal level which explicitly stated the character of our relationship with the environment and the responsibility which that relationship entails, would have far reaching ramifications for environmental quality. Succinctly put, an Environmental Charter within the Canadian Constitution would affect every Canadian statute and impact all federal and provincial Governmental action.⁵⁶ Constitutional provisions give permanency to an idea, as well as "bear a mantle of authority and legitimacy uncommon to ordinary legislation." In addition, environmental provisions in the Constitution "transcend prevailing social conditions to govern the decisions of generations to come."⁵⁷ However, the extremely complex procedure for amendment makes this initiative seem unlikely in the near future. An amendment must not only be passed by the House of Commons and the Senate, but must also be agreed upon in the Legislatures of two-thirds of the provinces.⁵⁸ In light of the Meech Lake fiasco and the current Constitutional negotiations, this process is anything but alluring.

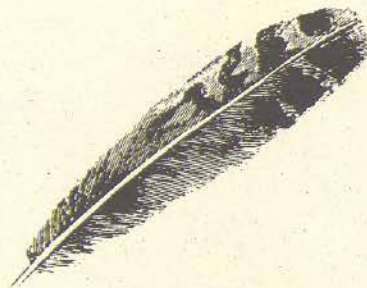
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Our society has moved from local garbage and contamination problems to global warming, acid rain, and ozone depletion. For problems of this magnitude does it

not make more sense to evaluate our ethics, values and our legal system in an ecocentric way and to realize that we are only one component of the biosphere? Can 'piecemeal' anthropocentric environmental "solutions" ameliorate global problems?

Many have criticized this piecemeal "environmentalist" approach to contemporary problems while praising environmental ethics for addressing the systemic roots of our current environmental situation. However, won't these two areas—ecological theory and proactive social change, remain polemic without an attempt to integrate them?

In summary, this paper has attempted to illustrate the inherent conflict between environmental philosophy and traditional legal structures. Alternately, an effort has been made to reflect on the possibility of, and indeed the need for, the integration of these concepts. Currently the environment itself is a legal non-entity, and policy is developed in an arena devoid of independently represented environmental interests. In addition, legislation for protection of the environment is drafted through a utilitarian and inherently anthropocentric veil. The type of legislative change proposed in this paper will instill a more accurate view of reality into our social contracts—a recognition of the interdependence of humans and the natural world.



Notes

1. Immanuel Kant, *The Metaphysical Principles of Virtue*, quoted in Christopher Tribe, "Ways Not to Think About Plastic Trees: New Foundations for Environmental Law," *The Yale Law Journal* 83:7 (1974) p.1342.
2. Bill Devall and George Sessions, *Deep Ecology: Living as if Nature Mattered* (Salt Lake City: Peregrine Smith Books, 1985).
3. *Ibid.*, p.70.
4. Arne Naess, "Intuition, Intrinsic Value and Deep Ecology," *The Ecologist* 14:5-6 (1984), pp.210-203; and Devall and Sessions, pp.75-80.
5. Devall and Sessions, pp.65.

6. Ibid.
7. Ibid., pp.61.
8. Ibid., pp.65.
9. John Seed, quoted in Warwick Fox, p.239.
10. Tribe, p. 1315. For example, neither the Canadian Environmental Protection Act nor the proposed Environmental Bill of Rights for Ontario attempt to address the intrinsic value of nature or address the need for human responsibilities. Both pieces of legislation give *humans* the rights to environmental quality and protect the environment for human use.
11. Tribe, p.1329.
12. J. Stan Rowe, "Crimes Against the Ecosphere," in *Environmental Ethics: Philosophical and Policy Perspectives*, Vol.2, Raymond Bradley and Stephen Duguid, eds. (Burnaby, B.C.: Simon Fraser University, 1986), p. 89.
13. Recent polls show that Canadians care more about the environment than any other issue. Martin Mittelstaedt, "All Worry Over Ecology Fails to Stem Consumption," *The Globe and Mail*, June 4, 1991.
14. Philip Elder, "Legal Rights for Nature: The Wrong Answer to the Right(s) Question," in Bradley and Duguid, p.105.
15. Cynthia Giagnocavot and Howard Goldstein, "Law Reform or World Reform?" *McGill Law Journal* 32:2 (March 1990), p.350.
16. Paul Emond, "Co-operation in Nature: A New Foundation for Environmental Law," in *Osgoode Hall Law Journal*, Vol. 22, No.2 1984 p.340.
17. Giagnocavot and Goldstein, p. 380.
18. Tribe, p. 1338.
19. Ibid., p. 1318.
20. Ibid., p. 1320.
21. Christopher Stone, "Should Trees Have Standing?--Toward Legal Rights For Natural Objects," in *Southern California Law Review* 45:450, p.461.
22. Paul Taylor, *Respect For Nature* (New Jersey: Princeton, 1986), p.219.
23. Ronald Dworkin, *Taking Rights Seriously* (Cambridge, Mass.: Harvard University Press, 1978), cited in John Swaigen and Richard Woods, "A Substantive Right to Environmental Quality," in *Environmental Rights in Canada*, John Swaigen, ed. (Toronto: Butterworths, 1981), p. 200.
24. Swaigen, p. 199.
25. For further discussion on the utility of rights in social movements see, Elizabeth M. Schneider, "The Dialectic of Rights and Politics: Perspectives from the Women's Movement," 61 *New York University Law Review* 589 (1986), pp. 610-23.
26. Stone, p. 488.
27. Douglas Fisher, quoted in Jennifer Caldwell, *An Ecological Approach to Environmental Law* (New Zealand: Legal Research Foundation Inc., 1988), p. 4.
28. Rowe, p. 90.
29. Stone, p. 451.
30. The use of the gender specific term 'man' in this context is done deliberately and is not meant to represent 'humanity.'
31. Stone, p. 451.
32. Quoted in Rowe, p. 92.
33. Taylor, p. 221.
34. Stone, p. 452.
35. Ibid., p. 464.
36. Ibid., p.471.
37. Simon Chester, "Class Actions to Protect the Environment: A Real Weapon or Another Lawyer's Word Game?" in *Environmental Rights in Canada*, John Swaigen, ed. (Toronto: Butterworths, 1981), p. 60.
38. Stone, p. 475.
39. The "floodgates" problem refers to the theory presented by those who argue against environmental rights who propose that the extension of rights will create a massive flooding of the courts with nuisance cases.
40. Chester, p. 64-78.
41. Stone, p. 471.
42. Emond, p. 328.
43. Stone, p. 437.
44. Tribe, p. 1342.
45. Quoted in Caldwell, p. 17.
46. Ministry of the Attorney General, Bill 23 (1989).
47. Swaigen, p. 199.
48. Ruth Grier, "Guest Column," *Hazardous Materials Management* (April 1991), p.70.
49. Swaigen, p. 232.
50. Stone, p. 462-476.
51. Swaigen, p.203.
52. For a complete listing of jurisdictional powers which are applied to environmental law see David Estrin and John Swaigen, *Environment on Trial* (Toronto: Canadian Environmental Law Research Foundation, 1978), pp. 11-16.
53. Caldwell, p. 1.
54. Ibid., p. 2 and p. 123.
55. Personal communication with, Peter Timmerman, The International Federation of Institutes For Advanced Study, Co-Convenor for the Earth Charter. November 25, 1991.
56. Paul Muldoon, "The Fight for an Environmental Bill of Rights," in *Alternatives* 15:2 (1988), p. 37.
57. Oliver Pollard, "A Promise Unfulfilled: Environmental Provisions in State Constitutions and the Self-Execution Question," *Virginia Journal of Resources Law* 5:323 (1986), p. 351.
58. Frank Rotering, *Empowering the Public: An Environmental Bill of Rights* (Vancouver: Society for the Promotion of Environmental Conservation (SPEC), 1989), p. 3.

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