

On giving legal personality to Ben Nevis

Colin Robertson suggested the idea of giving Ben Nevis legal personality as UKELA Wild Law members joined members of the John Muir Trust for an evening at the Nevis Centre on Saturday 27 May 2017. It was followed by articles he wrote for the JMT Magazine and UKELA e-law publication (July / August, Issue 101, page 30).

The JMT article has attracted the attention of the Scotsman with a publication in [Scotland on Sunday on 5 November 2017](#). The next day BBC Scotland presented the issue in their [Kaye Adams Programme](#) (scroll to 2:38:00 , it ends at 2:45:35).

If the topic has spurred interest, it has also attracted criticism, tongue in cheek sometimes. What sex would Ben Nevis be? We might as well ask what sex corporations or NGOs are. A body of law has been drafted to suit the needs of such legal persons, and the same could be done to suit the needs of Nature. By giving legal standing to animals, plants, rivers, mountains, and more generally ecosystems, we acknowledge them as subjects whereas now they are considered as objects to be used and abused by whoever owns them. By giving them rights, we acknowledge their intrinsic value in the same way as we acknowledge the intrinsic value of humans and their unalienable rights.

We know that the other, the non-human, is made of the same elements as ourselves, the same atoms, the same molecules, similar cells and organs too for many creatures. We realise that we constantly exchange elements and a lot of information with other non-human beings as we breathe, eat, walk, smell, hear, look and touch. Our body processes molecules and sensations that come from the other, the other is in us. We absorb the air we breathe and the food we eat, we feel the firmness of the ground, the lightness of a breeze, the brightness of colours, the sweet smell of flowers, the murmur of the wind, the softness of grass running through our fingers. We could not survive without the help of tiny organisms helping us digest our food nor could we grow our food in the soil. We are constantly connected to the other. We are not disembodied minds that rule over Nature, Nature is in us and all around us. Each of us is a biological being like many others, and yet we have specific needs and therefore specific rights. In the same way, other beings have specific needs and therefore specific rights. As we acknowledge the duality of being, both different and specific, it becomes possible to embrace the other in our legal system.

I suggested how this could be done in the Nature Man Declaration Project I drafted in June 2016)

6.2. Amicus curiae: all adult human beings who are sane in mind and body have a right and duty to stand in court, wherever that court might be, in order to represent the interest of any other living being or ecosystem.

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Giving Nature the right to stand in court puts non-human beings on an equal footing. The idea is to give a voice to Nature in Human Courts, a voice in human language that translates the suffering Nature goes through and expresses in many different Nature languages, the intelligence of which we are only starting to understand and appreciate from a scientific point of view. For centuries we have been deluding ourselves, thinking that we, Humans, were the only intelligent creatures, but now science reveals that both plants and animals, and eco-systems, have an intelligence and a language of their own, specific to their species and surroundings. Of course, some of us had understood this from our hearts before science comforted us in our sensitive understanding of the world. As scientific knowledge is partial (meaning both incomplete and sometimes biased) it is important to include people who have first hand experience of Nature's suffering, as well as scientists and lawyers, to represent Nature in Human Courts.

This should be one of the priorities of the Law, as well as to make sure that Ecological Law prevails upon and orchestrates other domains of Human Law. Our duty as Wild Lawyers is to promote this view, a view I assume more and more people share and want to translate into action. Ecological Law and Governance should be the backbone of all legal systems. It is urgent for humans to change their ways, yet, in spite of recently acknowledging the dangers we are facing, humankind still carries on with business as usual. So we are facing a huge challenge: **urgently** changing human habits, as well as battling against greed and corruption.

The notion of property as it is conceived in Western civilisation has been widely criticised by campaigning organisations. Use and abuse is strongly attached to the concept of property, reifying all beings who are not human. Yet the notion of property is not all bad. In so far as it guarantees the human right to habitat, or as far as it protects farmers from being landless peasants, and applies the principle of use without abuse (*user en bon père de famille* as it goes in French Law, which in modern terms implies the idea of caring for one's property and preserving it for future generations) it is in fact quite good. I therefore suggested the following in the Nature Man Declaration Project I wrote in June 2016:

Article 2

This Article specifies the meaning of the notion of property (Article 17 of the Universal Declaration of Human Rights).

2.1. The right to property is understood as a means to guarantee the right to life and wellbeing, in terms of housing (habitat), health or livelihood.

2.2. Whatever it might be, the right to property should not under any circumstances deprive other human beings of their right to life and well-being, or of their right to derive reasonable benefits from their talents according to Article

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27 of the Universal Declaration of Human Rights.

2.3. The right to property is limited by the duty of human beings to protect Nature. It should under no circumstances result in the appropriation of living organisms, or in a right to exploit.

2.4. Ownership should first and foremost be understood as a particular type of guardianship, as human beings must act as guardians of Nature and mankind, whose duty it is to preserve the Earth and its treasures for future generations.

It is high time for mankind to wake up and be both individually and collectively responsible for our actions. We now become aware with awe of the extent of both biodiversity loss and climate change, phenomena on such a scale that planet earth may well become a hostile environment for human life much sooner than we had anticipated. We are facing a state of emergency for the survival of many species, including our own. We are not asking questions about the sex of angels, or Ben Nevis, we are asking questions about the survival of many natural beings, including ourselves. If we are to respect ourselves, we have to respect the other, because we depend on the other, and the other is in us, whether we like the idea or not. Granting legal personality to Ben Nevis is just a small step, even giving rights to Nature in our constitutions would not suffice. What we need is laws, and lawyers and judges who apply these laws while being fully aware that our survival is at stake. Action is needed now or there won't be a tomorrow.

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