

BILL RODGERS: ENVIRONMENTAL LAW'S CAPTAIN PLANET

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Captain Planet is, of course, nature's own superhero, albeit in the limited confines of network television.¹ Together with the Planeteers, five youngsters each possessing one of nature's powers (earth, fire, wind, water, and heart),² Captain Planet seeks no less than to save the earth from environmental pollution and natural resource destruction. He combines each of the Planeteers' powers, while also blending their imaginations and personalities. Notwithstanding his extraordinary powers, encyclopedic knowledge of the workings of the ecosystem, and personal charisma, Captain Planet remains strikingly humble. He empathizes with the plight of other species and is demonstrably weakened upon witnessing humankind's destructive activities. He also ends each episode by declaring to the viewing audience that "*The Power is Yours*," making clear that no one superhero's powers can ever be an

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1. See Welcome to Captain Planet, <http://www.turner.com/planet/static/> (last visited April 16, 2007).

2. The five planetees are *Kwame*, who possesses the power of "earth"; *Wheeler*, who possesses the power of "fire"; *Linka*, the power of "wind"; *Gi*, the power of "water"; and, quite interestingly, *Ma-Ti*, who possesses the power of "heart." *Id.*

effective, long-term substitute for the power of humankind itself to preserve the planet.³

I have long thought of Bill Rodgers as environmental law's own "Captain Planet." There is, at the outset, the striking physical resemblance, which is well nigh conclusive.⁴ The square jaw and shoulders. The strong, confident look. And, of course, the hair, complete with the signature flip down onto the forehead. Sheer coincidence? I think not.

But the proof of identity is far more extensive than mere similarity in outward physical appearances. For four decades, Bill Rodgers has been environmental law's oracle and steward. His encyclopedic knowledge of the substance of environmental law is legendary. This year marks the thirtieth anniversary of the publication of his celebrated treatise on environmental law.⁵ Upon initial publication in 1977 and still today in 2007,⁶ it is without peer. No other environmental law scholar has yet even tried to proffer a competing treatise of comparable breadth and depth.

It is, however, Bill Rodgers's distinctive voice that has been the most compelling. There is nothing remotely dry or detached about his writings. More than anyone else, Bill's makes clear what is "environmental" about environmental law: by his obvious compassion for its purposes; by his explanation of its sum and substance in terms of the nature of the problems that it seeks to redress, as well as the laws of nature themselves; and, by his endlessly imaginative and enlightening analogies to environmental law's evolution to nature's own, ranging from the "the lesson of the owl and the crows,"⁷ "the lesson of the red squirrel,"⁸ "guerilla decisionmaking,"⁹ "the porcupine's dilemma,"¹⁰ "of

3. *Id.*

4. Compare pictures at outset of article.

5. WILLIAM H. RODGERS, JR., ENVIRONMENTAL LAW (1977).

6. WILLIAM H. RODGERS, JR., ENVIRONMENTAL LAW (2d ed. 1994) (Pocket Part 1999).

7. William H. Rodgers, Jr., *The Lesson of the Owl and the Crows: The Role of Deception in the Evolution of the Environmental Statutes*, 4 J. LAND USE & ENVT'L L. 377 (1989).

8. William H. Rodgers, Jr., *The Lesson of the Red Squirrel: Consensus and Betrayal in the Environmental Statutes*, 5 J. CONTEMP. HEALTH L. & POL'Y 161 (1988).

9. William H. Rodgers, Jr., *Guerilla Decisionmaking: Judicial Review of Risk Assessments*, 15 J. HAZARDOUS MATERIALS 205 (1987).

10. William H. Rodgers, Jr., *The Porcupine's Dilemma: Strategic and Psychological Uncertainty in the Face of Global Warming*, 9 ARIZ. J. INT'L & COMP. L. 267 (1992).

panda's thumbs,"¹¹ "the fox and the chickens,"¹² "mimicry and recruitment,"¹³ and the "geology of legal advantage."¹⁴

Nor has Bill Rodgers ever neglected the central relationship of human nature and human culture to the laws of nature in environmental law's emergence and evolution. He literally brought "people back" into the environmental law equation in his scholarship.¹⁵ His early books on energy and natural resources law anticipated by decades today's preoccupation with the relationship of legal rules to theories of human cognition.¹⁶ They explain how natural resources laws reflect human biological preferences for "reciprocal altruism" and "territoriality" and the "ecology of micromotives."¹⁷ His scholarship persistently examines the role of human intuition, altruism, and spite,¹⁸ differing notions of justice, and, of course, the distinctive human culture reflected in Native American tribal attitudes toward the natural environment.¹⁹

11. William H. Rodgers, Jr., *Where Environmental Law and Biology Meet: Of Pandas' Thumbs, Statutory Sleepers, and Effective Law*, 65 U. COLO. L. REV. 25 (1993).

12. William H. Rodgers, Jr., *The Fox and the Chickens: Mr. Justice Douglas and Environmental Law*, in *HE SHALL NOT PASS THIS WAY AGAIN: THE LEGACY OF WILLIAM O. DOUGLAS* (S.L. Wasby ed., U. Pitt. 1991).

13. William H. Rodgers, Jr., *NEPA at 20: Mimicry and Recruitment in Environmental Law*, 20 ENVTL. L. 485 (1990).

14. William H. Rodgers, Jr., *Defeating Environmental Law: The Geology of Legal Advantage*, 15 PACE ENVTL. L. REV. 1 (1997).

15. William H. Rodgers, Jr., *Bringing People Back: Toward A Comprehensive Theory of Taking in Natural Resources Law*, 10 ECOLOGY L.Q. 205 (1982).

16. WILLIAM H. RODGERS, JR., *ENERGY AND NATURAL RESOURCES LAW: CASES AND MATERIALS* (1979); WILLIAM H. RODGERS, JR., *ENERGY AND NATURAL RESOURCES LAW: CASES AND MATERIALS* (1983 2d ed.); see, e.g., Cass Sunstein, *Cognition and Cost-Benefit Analysis*, 20 J. LEGAL STUD. 1059 (2000); William N. Eskridge, Jr. & John Ferejohn, *Structuring Lawmaking to Reduce Cognitive Bias: A Critical View*, 87 CORNELL L. REV. 616 (2002).

17. WILLIAM H. RODGERS, JR., *ENERGY AND NATURAL RESOURCES LAW: CASES AND MATERIALS*, 37-58 (1983 2d ed.).

18. William H. Rodgers, Jr., *Intuition, Altruism, and Spite: Justice as Justification*, in *THE SENSE OF JUSTICE: THE BIOLOGICAL FOUNDATIONS OF LAW* 163 (Roger D. Masters & Margaret Gruter eds., 1992).

19. William H. Rodgers, Jr., *Treatment as Tribe, Treatment as State Getting the Treatment: The Penobscot Indians and the Clean Water Act*, 55 ALA. L. REV. 815 (2004); William H. Rodgers, Jr., *Atlantic Salmon, Pacific Bound: Initiative, Defiance, Courage, and Indian Tribes in Environmental Law*, 8 OCEAN & COASTAL L.J. 1 (2002); William H. Rodgers, Jr., *Growth and Form: Indian Tribes, Terrorism, and the Durability of Environmental Law*, 26 VT. L. REV. 865 (2002).

Scholar, teacher, and litigator,²⁰ Bill has led us all by example. During the past four decades, he has launched hundreds of former students, ranging from those formally in his classroom to acolytes of his scholarship, all inspired by his high expectations and personal example. The strong empathy he feels for nature's preservation is palpable and constant. He never lets us forget environmental law's essential mission for environmental protection, the enormity of the stakes, and the compelling nature of our corresponding responsibilities as scholars, teachers, and lawyers. The closing of his very first law review article, published in the *Columbia Law Review* 1970, could have been written today:

Certainly, no goal surpasses in importance the need to prevent man from harming, abusing, or destroying himself and his environment. No one is immune from the challenge nor secure from the consequences of failure.²¹

Bill masks neither the depth of concern that he has for the environment's future nor his disappointment with those of us who fall short of his aspirations. Even this celebration of his work was not long immune from his characteristic effort to convert the moment into an occasion for academic talks on topics he viewed more constructive and meaningful than his own contributions.

Finally, Bill has famously written about "*The Whats*"²² and "*The Who's*" of environmental law.²³ This pair of articles purports to describe the most creative moments in the history of environmental law by exploring what happened, why it happened, and which individuals played central roles in its happening. In most every respect, his scholarship is noteworthy for its stunning breadth and completeness. These articles, however, are just as stunning for their omission. They forgot environmental law's own superhero: Bill Rodgers.

20. See *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass'n*, 443 U.S. 658 (1979).

21. William H. Rodgers, Jr., *The Persistent of the Persistent Pesticides: A Lesson in Environmental Law*, 70 COLUM. L. REV. 567, 611 (1970).

22. William H. Rodgers, Jr., *The Most Creative Moments in the History of Environmental Law: "The Whats,"* 2000 U. ILL. L. REV. 1 (2000).

23. William H. Rodgers, Jr., *The Most Creative Moments in the History of Environmental Law: "The Who's,"* 39 WASHBURN L. J. 1 (1999).