What role can the practice of law in the 21st century play in achieving sustainability for the common good and how could a Charter for Trees, Woods and People support this?

The following discussion examines how the practice of law can achieve sustainability for a common good in light of the Charter for Trees, Woods and People. The common good is not a static concept and has changed over time. We believe that the common good requires us to recognise our role as custodians of the earth for our future generations. In examining this topic, we believe that law can offer sustainability from the following three points:

1. Establishing standards of good practice
2. Encouraging society to do what is right
3. Through the State acting as an environmental trustee

We believe that the Tree Charter will serve as a soft law to propel these legal agendas through solidarity and community engagement.

Establishing standards of good practice.

Legislation establishes environmental standards through two mechanisms; firstly, it sets out the minimum threshold and secondly, it establishes goals for the foreseeable future.

Legislation sets out the minimum threshold by imposing a strict liability offence on those that fall beneath that standard. Environmental standards can be breached by positive acts or omissions, both arising from the failure to meet the requisite standards. The following environmental legislations demonstrate this point.

Firstly, the emission of dark smoke from industrial premises is a criminal offence under Section 2 of the Clean Air Act 1993, that imposes a maximum fine up to £20,000. Secondly, the discharge of pollutants into waterways is a criminal offence governed by the Environmental Permitting (England and Wales) Regulations 2010. Thirdly, the protection of wild birds in the natural environment is provided by section 1 of the Wildlife and Countryside Act 1981.

The second mechanism in establishing environmental standards is through goals set by the law. For instance, the Climate Change Act 2008 aim is to reduce the carbon emissions by 80% by 2050 from the 1990 baseline. In order to achieve its aim, the statute imposes a positive duty on the government to prepare and report on proposals and policies concerning carbon budgeting.

In summary, in establishing standards, the law sets out the minimum threshold of good practice and it sets a target of which institutions, public or private may strive to achieve. In this sense, the law acts as guiding hand to point us in the direction to head towards and at the same strike us down should we turn the other cheek.
The Tree Charter would serve as a policy and practice guide in supporting new environmental legislation. The Charter would provide legal principles that promote environmental norms to be entrenched in legislation.

Encouraging society to do what is right

Legislation may nudge members of the society to make better judgments and choice, without any coercive force. This is highlighted through the following three examples.

Firstly, the imposition of 5 pence charge on single use plastic bag was enabled through section 77 of the Climate Change Act 2008. It is estimated that the 5 pence charge will bring carbon savings of £13 million over the next 10 years.

Secondly, legislation also empowers the State to take proactive measures in implementing good practices among society. This is reflected through a duty place on local authorities to provide arrangements for separate collection of recyclables as required by section 1 of the Household Waste Recycling Act 2003. Such arrangements include providing households with recycling bins to encourage recycling.

Thirdly, the imposition of environmental taxes, reliefs and schemes on businesses encourage companies to operate in more environmental friendly way.

We have developed a tendency to view law as a discrete body of regulations governing conduct, ensuring justice and enhance our morality. We turn increasingly to law for solutions to environmental problems as guide to conduct. But this is detrimental for two reasons. Firstly, it tends to relieve individuals from responsibility of personal values and conduct beyond as standards prescribed by law. Secondly, it places a burden on the governmental process to deal with issues that can be resolved effectively by the public.

The Tree Charter is a departure from conventional regulations in encouraging society to adopt good environmental practice. It shifts the burden of doing right from mere abiding with legislation to encouraging individual responsibilities over our environment. The cooperation and mutual respect by every individual to care for our environment allow us to stand in solidarity for the common good.

Through the State acting as an environmental trustee

In examining the role of the State as an environmental trustee, we need to ask the question who owns the earth in legal property terms. From a legal perspective, only land can be owned as a legal property, not our environment. The environment is a natural common and is regarded as jus nullius, the Latin for not owned by anyone. Hence, the State should act as an environmental trustee on the following two grounds.

Firstly, every country is sovereign and are owners of their territory. States can exploit their land in any manner but States can also externalise any waste or pollution from their respective
country. There is nothing that can legally prevent States from completely destroying their land and harming our environment. Of course, States do not intentionally do so, but they do allow this to happen.

Secondly, consider this proposition, what if the public has property right over the environment through domestic laws as citizens and international law as humanity. Every individual would have a case against anyone that threatens the integrity of our environment. Similarly, what if mother earth has the right to defend herself.

The notion of the State acting as an environmental trustee places a positive obligation on the State to protect the environment. The State will have a fiduciary duty towards citizens and future generations to ensure a clean and sustainable environment.

The Supreme Court has begun to recognised the role of the State in protecting the environment. Last year, the Supreme Court has held the government accountable for the failure to limit the level of nitrogen dioxide in London (ClientEarth v the Secretary of State for the Environment, Food and Rural Affairs [2015] UKSC 28)

The Tree Charter would nurture and push forward the role of State in taking initiatives to protect the environment. The Tree Charter would help to create societal pre-conditions for the State to act as an environment trustee. These pre-conditions exist and must flourish in our society. Such pre-conditions include:

1. A society that appreciates our environment
2. A society that seeks to sustainability for the future
3. A society that understands our role as environmental custodians for our future generations

Conclusion

The above discussion analysed three points on how law can achieve sustainability for the common good. However, there is a limit on what law can offer. The legal structure cannot provide the philosophy we need as the answer lies beyond law.

The Tree Charter would provide a sense of responsibility, values and morality that transcend those articulated by law. The Charter encourages us to stand in solidarity for our environment as law is not a panacea for all our environmental problems.