

Corporate Power and Environmental Justice

How Corporate Law Exacerbates
Environmental Harm and its Inequitable
Distribution

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About the Critical Corporate Theory Collection

The Critical Corporate Theory Collection is part of the *Systemic Justice Journal*, published by the Systemic Justice Project at Harvard Law School. The Collection is comprised of papers that analyze the role of corporate law in systemic injustices. The authors are Harvard Law students who were enrolled in Professor Jon Hanson's Corporations course in the spring of 2021.

The Collection addresses the premise that corporate law is a core underlying cause of most systemic injustices and social problems we face today. Each article explores how corporate law facilitates the creation and maintenance of institutions with tremendous wealth and power and provides those institutions a shared, single interest in capturing institutions, policies, lawmakers, and norms, which in turn further enhance that power and legitimates its unjust effects in producing systems of oppression and exploitation.

For more information about the *Systemic Justice Journal* or to read other articles in the Critical Corporate Theory Collection, please visit the website at www.systemicjustice.org.

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ABSTRACT

Corporate power and corporate law are core underlying causes of both environmental degradation and environmental injustice. This paper investigates how corporate law encourages corporations to pursue shareholder profit, no matter the cost to people or the planet. Relying on profit as justification, corporations have entrenched and exacerbated environmental inequity. And the harm they cause falls disproportionately on communities of color, especially Black, Latinx, and Indigenous communities.

This paper uses the example of Peabody Energy, the largest private sector coal company in the world, to illustrate how corporations can evade accountability for the harm they cause to the environment and to human health. In Peabody's case, even the profit motive has failed—after using profit to justify the negative impacts of its mining operations in Black Mesa, Arizona, Peabody declared bankruptcy in 2016. Black Mesa's Navajo and Hopi residents were left with water shortages and lackluster cleanup efforts, while Peabody's shareholders gained nothing.

Despite the deep entrenchment of inequitable distribution of environmental harm within corporate law, individuals are not without recourse. Awareness of environmental justice organizing has grown in recent years, and immense energy and expertise exists among organizers and some legislators to push for meaningful change to the status quo. This paper briefly envisions changes to the corporate regime that could decentralize profit and enable individuals to take power back from corporations when it comes to making decisions that impact the planet and human health.

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INTRODUCTION

Environmental justice advocates have been sounding the alarm for decades about the inequitable impact of pollution and climate change on Black, Brown, Indigenous, and low-income communities. Robert Bullard, nicknamed the “father of environmental justice,” writes that ecological inequities work together “to give rise to what can be called ‘environmental racism’: practices that place African Americans, Latinos, and Native Americans at greater health and environmental risk than the rest of society.”¹ Due to factors such as inequitable wealth distribution and the legacy of discrimination in housing and land use planning, “[r]ace is a powerful predictor of many environmental hazards.”² This paper will focus on some of the environmental hazards most directly connected to large corporations, such as coal mining and the location of toxic waste sites, leaving aside other major environmental justice issues such as equitable transit and healthy housing.

Until relatively recently, environmental justice issues were largely left out of mainstream media. The COVID-19 pandemic has led to somewhat more attention to issues such as poor air quality exacerbating health concerns and leaving predominantly people of color especially vulnerable to COVID-19 infections.³ While this recent shift in coverage carries potential to raise awareness of environmental justice issues, advocates continue to face immense barriers to addressing the inequitable distribution of environmental degradation and the health consequences it brings. Many of these barriers were erected and later

sustained by corporate law, along with the corporate powers that shape it.

CASE STUDY: PEABODY ENERGY

Peabody Energy and its presence in Black Mesa, Arizona illustrate several of the concerns of the environmental justice movement and demonstrate the ability of corporate powers to evade accountability for harm. Peabody Energy is the world's largest coal producer, headquartered in St. Louis, Missouri. In the 1960s, Peabody entered into a lease agreement with a council of Navajo and Hopi leaders. Despite efforts in the past to secure protection of Black Mesa from the federal government,⁴ a tribal council, empowered by the federal government to execute mineral leases, agreed to contract with Peabody. Other members of the Navajo and Hopi tribes protested and filed lawsuits, raising concerns about the mine's potential impact on water supply and desecration of religious sites.⁵ But the area also had high unemployment rates and few economic opportunities, and Peabody made a point of emphasizing the jobs the mine would create⁶ while simultaneously negotiating an agreement that left the Hopi and Navajo tribes with a fraction of what other owners of coal-mining land received.⁷ The attorney who represented the tribes in negotiations was actually working directly for Peabody at the same time that he purported to be representing the tribal council in negotiations.⁸ The final agreement granted Peabody the right to extract local ground water and an average of 14 million tons of coal per year from the Black Mesa area.⁹

The strip mine operated from 1965 to 2005, and pumped roughly 45 billion gallons of groundwater from Black Mesa in order to transport coal slurry (a mixture of fine coal particles and water which, unlike pure coal, can be transported by pipeline).¹⁰ This groundwater was pumped from a sandstone aquifer, one of few sources of water in the United States that naturally meets the Environmental Protection Agency's requirements for drinking water.¹¹ This aquifer was also the only source of drinking water for people living in and around Black Mesa.¹² Since the project began in 1965, Peabody's pumping has depleted much of the natural water source in order to transport coal slurry. Each year, the water levels in some of Black Mesa's wells have decreased by more than 100 feet.¹³ Today, Black Mesa's residents face water shortages.¹⁴ Peabody claims that its impact on the water levels has been minimal and points to droughts in the area as the main culprit,¹⁵ but according to the U.S. Geological Survey's Black Mesa Monitoring Program, Peabody's water usage accounted for "about 70-75 percent of the total

withdrawals to the mid-1980's and . . . about 60 percent of the total withdrawals from the mid-1980's to 2005.”¹⁶ Peabody discontinued use of the coal slurry pipeline in 2006, and now accounts for about 30% of total water use in the area.¹⁷ Residents of Black Mesa have been making do with limited water supplies. About one-third of households lacked running water as of July, 2020,¹⁸ making it difficult to comply with CDC’s guidelines around handwashing during the pandemic.¹⁹

Operating a coal mine on Hopi and Navajo land means that Indigenous people bear the brunt of the local impact of the mine’s operations. According to Navajo Nation’s Woven Integrated Navajo Data website,²⁰ Black Mesa is home to 351 people, 339 of whom are members of the Navajo Nation.²¹ Every resident is Indigenous.²² One-third of residents have a disability, and about 86% of households speak a language “other than English” at home.²³ The median household income in 2016 was \$16,500²⁴ (the federal poverty line in 2016 for a four-person family was \$24,300²⁵).

In this case, Peabody can point to the presence of oil as its justification for operating in Black Mesa. This rationale, with a focus on profit, sounds neutral. But the siting of environmental and health hazards has neither neutral nor equitable impact. According to a study conducted by Robert Bullard, neighborhoods that “host” commercial hazardous waste facilities “are 56% people of color whereas non-host areas are 30% people of color.”²⁶ Communities of color are also disproportionately likely to live near coal ash dumping sites (associated with cancer, low birth weight, and premature death) and pollution-emitting power plants (which increase the likelihood of asthma and cardiovascular disease).²⁷ Black Americans are particularly disproportionately affected by some environmental hazards; for example, they are 75% more likely to live near an oil or gas facility than people of other races.²⁸ And when it comes to air pollution in the United States overall, Black and Latinx individuals inhale more air pollution while white people are, on average, responsible for a larger portion of air pollution.²⁹ These disparities often correlate with income but cannot be explained away solely on that basis: “Black households with incomes between \$50,000 and \$60,000 experience overall pollution burdens equal to those felt by white households earning \$10,000 or less.”³⁰

Peabody’s operations in Black Mesa are not an anomaly. And unregulated pursuit of profit, which corporate law not only allows for but often encourages, all but guarantees that communities of color, especially Black, Latinx, and Indigenous communities, will bear the brunt of environmental hazards.

CORPORATE LAW ENABLING ENVIRONMENTAL RACISM

Corporate law enables corporations to harm both people and the environment. By failing to account for distributional inequity, corporate law allows companies like Peabody to target operations where they will generate the greatest profit. This is typically done in the name of shareholders' interests—"the primacy of shareholder/investor welfare dominates American enterprise law as a matter of pure empirics."³¹ "[W]hen traditional corporate law addresses 'fairness,' it generally refers to fairness to shareholders," who are defined as those who own a share of company stock and "don't get paid until everyone else is paid first."³² Under a shareholder primacy framework, anything that increases wealth of shareholders is viewed as "efficient," while anything that reduces shareholder wealth is generally viewed as inefficient and thus negative. By restricting corporate accountability to those who own a share of the corporation, many other stakeholders impacted by the corporations' decisions are left out of the decision-making framework. Marshall Johnson, a resident of Black Mesa, Arizona, highlighted the problems with this narrow conception of shareholder primacy:

"We were born and raised in Black Mesa; we are the original shareholders

Bottom line, it is our livelihood that is compromised, so that there can be expansion, so that there could be continuation of the civilization of profits."³³ But the voices of Black Mesa residents are left out of Peabody's decision-making process, their wellbeing subordinated to shareholder profits. Lack of accountability mechanisms thanks to legal limitations and corporate capture of regulatory agencies further encourage pursuit of profit at the expense of environmental justice communities. Corporate law grants most corporations limited liability, which limits any risk to investors to the amount they put into the corporation.³⁴ If a corporation goes bankrupt, those harmed by the corporation have no way to collect the damages they are due. They cannot reach the personal assets of CEOs or other major players and cannot typically collect from subsidiary corporations spun off from original entity. Corporate law also fails to create meaningful causes of action, limiting the ability of harmed individuals to get into court in the first place. Many people harmed by corporations are either locked into forced arbitration by hidden contract clauses³⁵ or have to turn to other legal regimes, such as torts, to bring claims. They face high pleading

standards and the need to demonstrate causation in a manner that is not always feasible, especially when it comes to health impacts such as cancer or asthma that varying factors can contribute to.³⁶

Corporations have also captured the government and the agencies that are supposed to regulate them. Federal action may seem like the quickest way to meaningfully shift the status quo on a national scale. But Congress has never acted on climate change, much less targeted environmental justice concerns exacerbated by corporate power. This is hardly surprising when oil and gas corporations donate millions of dollars to politicians who, once elected, are reluctant to regulate the entities that put them into power.³⁷ Even when laws do exist on the books, many corporations are able to skate around what is strictly legally required, in large part due to allies within regulatory agencies who look the other way. In Peabody's case, the Surface Mining Cleanup and Reclamation Act requires it to monitor and cleanup impact during and after its mining operation ends. Peabody claims that it has restored about 75% of land at its mining sites since it shut down operations in 2005, but Navajo and Hopi residents say that Peabody has done no more than "cleanup lite."³⁸ The Office of Surface Mining Reclamation and Enforcement (OSMRE), the government agency that is supposed to oversee the Act and ensure compliance, "treats Peabody like a special customer."³⁹ And one of the main priorities of the cleanup—restoration of the groundwater that Peabody pulled from the area's aquifer—appears to be at a standstill. Peabody continues to blame drought and "community use" for the water shortages, rather than the 1.3 billion gallons of water a year the corporation pumped out to transport its coal slurry.⁴⁰ Both Peabody and OSMRE have cited the COVID-19 pandemic to excuse cleanup delays. As of summer, 2020, about one-third of Navajo and Hopi households in the area still lacked running water.⁴¹

Peabody also illustrates another form of capture—the ability to puppeteer the workings of the legal system itself in order to get a better deal for its bottom line. When negotiating its original lease with the Navajo and Hopi Tribal Council, Peabody actively employed John Sterling Boyden, the Hopi Council's attorney, at the same time that he represented the Hopi in negotiations.⁴² During the negotiations, there were no public hearings.⁴³ The final lease "allowed Peabody to control much more land than was customary or, apparently, legal—40,000 acres as compared to the limit of 2560 acres in the federal regulations for Indian leasing. For the right to take almost 4000 acre-feet of Hopi water each year, in a lease signed at the height of the rush on the Plateau's limited water supply, Peabody paid the Hopi the laughable rate of \$1.67 per acre-foot."⁴⁴ When Peabody requested that the leasing area be

increased by ten thousand acres, Boyden recommended that the Council agree “without asking for anything in return.”⁴⁵ When the Hopi, nearly twenty years later, succeeded in renegotiating the lease, Hopi royalties doubled and the price for acre-foot of water jumped from \$1.67 to \$300.⁴⁶ It was not until Boyden’s legal files were donated after his death that the blatant conflict of interest came to light.⁴⁷ Boyden’s conduct was an extreme and unquestionable violation of legal ethics. Yet to this day, Peabody has faced zero consequences for its role in this one-sided negotiation. Even though these rules exist on the books, Peabody’s relationship with Boyden again illustrates corporations’ ability to skirt or utterly discount the law without being held accountable.

Finally, the law generally fails to account for distributional impact. Cases are almost always limited to their facts. Attorneys are discouraged, if not banned, from bringing in historical or political context that would highlight how the inequity at issue may be indicative of broader problems.ⁱ When it comes to remedy, tort law bases monetary damages off of harm to future earnings.⁴⁸ This framework makes it cheaper to pollute in low-income communities than in wealthy neighborhoods.

All of these facets of the United States’ legal system encourage corporations to pursue profit and enable them to evade governmental safeguards, even when corporate action causes immense harm.

THE FALLACY OF PROFIT OVER PEOPLE

So much of environmental racism, including measurable harm to human health, occurs in the name of shareholder profit. Milton Friedman wrote, “there is one and only one social responsibility of business—to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game.”⁴⁹ The problems with this narrative are abundant, as the discussion of environmental racism and corporate capture above indicates. But even if one were to accept harm to people and environment in the name of shareholder profit, the ability

ⁱ See, e.g., *McCleskey v. Kemp*, 481 U.S. 279 (holding that even though the death penalty is applied disproportionately to Black men, it was still constitutional for McCleskey, a Black man, to be sentenced to death so long as he had not demonstrated discrimination in his particular, individualized case).

to deliver on the bottom line to shareholders itself still can fail.

In Peabody's case, the company declared bankruptcy in 2016.⁵⁰ In 2020, less than four years after emerging from the 2016 bankruptcy, Peabody announced to investors that it could again go bankrupt in the next few years.⁵¹ At first blush, this may seem like a step away from fossil fuels. But Peabody has managed to create an elaborate scheme of interlocking corporations that enable it to disclaim billions of dollars in environmental and healthcare liabilities. In *Bankruptcy as Bailout: Coal Company Insolvency and the Erosion of Federal Law*, Joshua C. Macy and Jackson Salovaara credit Peabody Energy with the birth of the strategy to avoid regulatory obligations by placing them in underfunded subsidiary companies.⁵² They chronicle how Peabody has created subsidiaries and assigned them hundreds of millions of dollars in liabilities.⁵³ When a subsidiary later files for bankruptcy, "it wipe[s] out legacy . . . Peabody environmental and retiree obligations."⁵⁴ When Peabody itself filed for bankruptcy in 2016, "it shifted hundreds of millions of dollars in environmental obligations onto a subsidiary . . . which had assets of roughly \$6 million against claims of almost \$13 billion, including at least \$745 million in environmental claims."⁵⁵ These subsidiary spin-offs and bankruptcy proceedings enable the largest coal producer in the world to avoid billions of dollars of environmental cleanup⁵⁶ and employee retirement costs. According to Macy and Solovaara this system also "allow[s] coal companies to produce more coal and for longer than they otherwise would."⁵⁷ Environmental justice communities are left particularly harmed as both the most likely to feel the harshest effects of continued coal operations and the most likely to hold health and environmental claims against these corporations while left with no way to collect.

These subsidiaries and bankruptcy proceedings also mean that coal corporations' shareholders can be left with nothing.⁵⁸ When Peabody declared bankruptcy in 2016, it developed a reorganization plan that "would wipe out existing shareholders."⁵⁹ Shareholders sued, arguing that a dramatic rise in coal prices after Peabody's bankruptcy declaration meant that the corporation did have the funds to leave shareholders *something*.⁶⁰ The bankruptcy judge ruled against them.⁶¹

*In the name of profit, Peabody drained Black
Mesa's sole source of drinking water,
dramatically impacted life of residents there,
including religious practices,⁶² and exposed
workers in mines across the country to*

*dangerous toxins.⁶³ In the end, shareholders
were left with nothing.*

Peabody illustrates the lengths to which corporations are allowed to go to cut themselves the best possible deal and evade accountability for harm they cause. In Peabody's case, this meant reneging on promises made not only to their workers, but also to their own investors. Corporate law may claim to hold protections against misconduct and fraud, but the history of Peabody Energy in Black Mesa highlights just how feeble those mechanisms are when it comes to actually holding corporations accountable.

DOMINANT NARRATIVES

Past Dominant Narrative: Corporate Capture

For much of the twenty-first century, corporations dictated the narrative around environmental policy in the United States and around the world. They successfully emphasized jobs and economy over environmental concerns, and poured money into minimizing the harms of greenhouse gasses and other pollutants for the planet and humans' health. Corporations did acknowledge environmental concerns, but in a way that placed individual responsibility at the center. A mere twenty companies hold responsibility for one-third of global carbon emissions,⁶⁴ but the industry has invested in greenwashing campaigns to minimize the impact of their business and place the emphasis elsewhere.⁶⁵ Corporations have encouraged campaigns that push people to be more eco-conscious in their day-to-day lives by recycling and picking up trash in their neighborhoods, but never by challenging the entities responsible for the vast majority of the world's greenhouse gas emissions.⁶⁶

In this way, corporations successfully positioned themselves within both situationalist and dispositionalist frameworks, each when it suited their aims. When it came to environmental or other harms, corporations painted themselves as situationalized in the greater capitalist system—pursuing profit is simply what is dictated by capitalism and the needs of a market economy; if disproportionate harm is done to certain groups, that is outside of any individual corporation's hands. Simultaneously, corporations got to be dispositionalist, taking credit when their decision-making led to positive benefits such as job creation. Today, corporations still posit themselves within the dispositionalist framework when it comes to greenwashing, asking consumers to pay attention to the intentional decisions they make to slightly reduce impact on the

environment or create a benefit elsewhere, while disclaiming responsibility under the situationalist framework for the immense harms that remain unaddressed.⁶⁷

Today's Dominant Narrative: Environment, but not Environmental Justice

This dominant narrative around corporate impact on the environment has recently shifted. Environmental concerns are amplified, and the narrative of individual responsibility that corporations pushed for decades has slipped.⁶⁸ Many consumers consider the environment when making purchases,⁶⁹ and mechanisms for fact-checking corporate claims of being eco-friendly abound.ⁱⁱ Some corporations have begun taking steps beyond pure greenwashing to align themselves with the environmental movement, such as pledging to achieve net zero emissions or even go carbon positive by a particular date.⁷⁰ Purchasing carbon offsets is of course less meaningful than actually reducing emissions, but at the very least it is a more useful form of greenwashing than advertising campaigns telling individuals to recycle.

Despite this shift, environmental justice concerns remain largely absent from the current dominant narrative. Few corporations address the inequitable distribution of their operations' harms, and the emphasis on "going green" without discussing the distribution of the harm that remains enables corporations and their regulators to leave environmental justice to the side when discussing climate change and health. These changes in the dominant narrative have ultimately failed to address the crux of the problem: the corporate profit motive remains unchecked. So long as corporations are empowered to pursue profit for their shareholders (or even simply their CEOs), no matter the harm to society, corporations will continue to exploit already under-resourced areas for the biggest profit at the lowest cost.

ⁱⁱ For example, "Clearya" is a free Chrome extension that notifies online shoppers when they have unsafe ingredients in their shopping cart. EWG's Skin Deep database allows users to search skincare and beauty products to discover how they score on several health and environmental metrics, while the "Remark" app makes it easy for customers to send feedback to companies on their sustainability practices.

POSSIBILITIES AND POTENTIAL SOLUTIONS

The problems posed by corporate power and the ways it entrenches environmental injustice are vast. With a problem so multi-faceted, society likely needs immense change to truly end the narrative of profit as inherently good and destabilize corporate power. But as Mariame Kaba writes, “Changing everything might sound daunting, but it also means there are many places to start.”⁷¹ Awareness of environmental justice concerns is growing across the country. Organizers from youth activists to those who have engaged in this work for decades are proposing a multitude of options to contain corporate power and shift the emphasis from profit to people. On the legislative side, organizations such as the Indigenous Environmental Network, the Movement for Black Lives, and the Sunrise Movement are supporting the THRIVE Agenda,⁷² a proposition to “build a new economy to address the inequality and racism the COVID-19 pandemic has laid bare.”⁷³ One of THRIVE’s eight pillars is “combating environmental injustice and ensuring healthy lives for all” by curtailing pollution, replacing lead pipes, and putting resources into the communities most impacted by environmental injustice.⁷⁴ While the likelihood of THRIVE passing Congress is slim, it lays out a roadmap for tackling issues such as environmental injustice and may help to shift the dominant narrative further away from the idea that big oil and gas companies are necessary for a thriving economy.⁷⁵

A true dismantling of corporate power is unlikely to come from within the legal system that has legitimized it for so long. But there is potential for change in the law that could meaningfully shift the status quo. Veil-piercing doctrine, which allows individuals harmed by a corporation to recover damages from subsidiary companies, could be strengthened so that corporations like Peabody cannot so easily evade liability. The definition of “injustice” when it comes to considering whether or not to pierce the corporate veil could be broadened, so that courts could consider not only the impact on shareholders, but also the impact of corporate action on the people who live in the areas where corporate operations such as mines or toxic waste sites exist. Under a broader definition of “injustice,” courts could perhaps even take environmental impact and climate change into account when determining whether or not a corporation should retain limited liability. Another shift in the law would be loosening the standards for class action lawsuits so that groups of people similarly-harmed by corporate malfeasance can join together in one large claim. Finally, there is a need for more robust causes of action for both individuals and class actions. Title VII of the Civil Rights

Act, which provides a private right of action so that any individual victim of discrimination can bring a lawsuit under the statute, could provide a model to enable individuals harmed by corporations to better hold them to account.

CONCLUSION

Corporate power generally and corporate law specifically have contributed to and entrenched environmental racism and injustice. There is no denying that corporations have immense power to thwart environmental justice efforts, and that corporate law actively encourages inequitable distribution of corporate harms onto communities of color, especially Black, Latinx, and Indigenous communities. But while these forces may be intimidating, the recent shift in dominant narrative illustrates that there is a powerful push for change occurring. The public is holding corporations at least marginally more accountable, making it increasingly difficult for them to paint themselves in a situationalist framework, merely reacting to the greater forces of capitalism and the economy. Though environmental justice concerns remain largely absent from the dominant narrative, some companies are expanding their greenwashing efforts even to environmental justice.⁷⁶ And organizers actively pushing for more than these meager reforms are gaining traction. As Jamie Margolin, founder of youth-led climate justice organization Zero Hour, writes,

“The only thing that can create the change we need in the time we have left, if we’re honest with ourselves, is a radical political transformation that holds the rights of youth, of Indigenous peoples, of women, of all people as more important than the rights of corporations to pollute and perpetuate intergenerational injustice.”⁷⁷

The efforts of organizers like Margolin and the residents of Black Mesa demonstrate that immense energy exists to shift the status quo. Overturning profit’s primacy and taking control back from corporations on the decisions that determine the health of our communities and our planet is more than just a pipe dream; it is both possible and necessary.

ENDNOTES

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³ See Eric B. Brant, Andrew F. Beck & Tesfaye B. Mersha, *Air Pollution, Racial Disparities, and COVID-19 Mortality*, 146 J. Allergy Clin. Immunol. (1):61-63, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7204717/>; see also Lisa Friedman, *New Research Links Air Pollution to Higher Coronavirus Death Rates*, N.Y. Times (Apr. 17, 2020), <https://www.nytimes.com/2020/04/07/climate/air-pollution-coronavirus-covid.html>.

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¹¹ See Begaye, *supra* note 9.

¹² See *id.*

¹³ *See id.*

¹⁴ *See* Tripp Baltz, *Navajo, Battling Covid, Say Mines Sapped Drinking Water*, Bloomberg Law (June 17, 2020), <https://news.bloomberglaw.com/environment-and-energy/virus-ravaged-navajo-say-coal-mines-sapped-their-drinking-water>.

¹⁵ *See id.*

¹⁶ U.S. Geological Survey, *Black Mesa Monitoring Program* (2021), https://www.usgs.gov/centers/az-water/science/black-mesa-monitoring-program?qt-science_center_objects=0#qt-science_center_objects.

¹⁷ *See id.*

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¹⁹ *See* Baltz, *supra* note 14.

²⁰ The most recent statistics available are from 2016; as such these numbers are slightly out-of-date and also do not necessarily align with demographic data at the time that Peabody began its operations in the area.

²¹ *See* Navajo Nation Wind, *Black Mesa* (2010), <https://navajoprofile.wind.enavajo.org/Chapter/Black%20Mesa>.

²² *See id.*

²³ *See id.*

²⁴ *See id.*

²⁵ U.S. Dep't of Health & Human Services, Office of the Assistant Secretary for Planning and Evaluation, *Prior HHS Poverty Guidelines and Federal Register References* (2021), <https://aspe.hhs.gov/prior-hhs-poverty-guidelines-and-federal-register-references>.

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³⁰ *Id.*

³¹ William T. Allen & Reinier Kraakman, *Commentaries and Cases on the Law of Business Organization* (Chapter 1) (2003).

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³³ Caitlin Lee & Georgia McCandlish, *Interview with Marshall Johnson*, Students Against Peabody Energy (2014), <https://studentsagainstepeabody.tumblr.com/interview>.

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³⁷ See Emily Holden, *Oil and Gas Industry Rewards US Lawmakers Who Oppose Environmental Protections—Study*, The Guardian (Feb. 24, 2020), <https://www.theguardian.com/environment/2020/feb/24/oil-gas-industry-us-lawmakers-campaign-donations-analysis>; see also OpenSecrets, *Oil & Gas: Money to Congress*, Center for Responsive Politics (Mar. 22, 2021), <https://www.opensecrets.org/industries/summary.php?ind=E01>.

³⁸ Baltz, *supra* note 18.

³⁹ *Id.*

⁴⁰ *See id.*

⁴¹ *See id.*

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⁴⁵ *Id.* at 472.

⁴⁶ *Id.* at 480.

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⁵⁵ *Id.*

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