Incorporating the Environment?

Critiquing the Law's Structural Bias Against Nature and in Favor of Business Interests

Critical Corporate Theory Collection
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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.

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ABSTRACT

Corporations are responsible for a disproportionate share of environmental harms—from greenhouse gas emissions to water pollution, clear-cut forests to toxic agricultural waste. Environmentalists have been fighting a losing war with corporations for decades, because the law is structurally biased in favor of business interests. By recognizing "personhood" in corporations that exploit environmental resources—and denying this recognition to the environment itself—American law creates a power imbalance that leads inevitably to the degradation of the environment.

The dominant narrative maintains that corporate personhood is both logical and good, because its actual function is to help the real people who own corporations. At the same time, the narrative suggests that environmental personhood is an imaginative idea that, even if adopted, would fail to address the *actual* issues that plague environmental law.

This argument is wrong on both scores. Corporate personhood is no less imaginative than environmental personhood, and in fact has been the result of a concerted, centuries-long push to expand corporate rights. Who and what counts as a person in the eyes of the law—and what personhood entails—has always been a political choice made by judges.

What's more, as this history shows, personhood matters. Corporations enjoy many more rights today than they did under the common law, because the privileges of personhood have enabled them more effectively to advance their interests both in and out of court. Recognizing similar personhood rights in the environment would level the playing field in the fight against corporate environmental degradation.

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I. WOODS AND WATERS

In northeastern Minnesota, one can cross the U.S.-Canadian border easily—even inadvertently. Here, some 250 miles north of Minneapolis, Minnesota flows seamlessly into Ontario amidst a stunning natural landscape of rivers, lakes, wetlands, and boreal forests. This sprawling network of wilderness waterways is called (perhaps uncreatively) the Boundary Waters.

That this pristine ecosystem is also the site of an international border often feels absurd to those travelling through it. And it was precisely this absurdity that my friends and I found so thrilling when, at 13, we paddled the Boundary Waters with our fathers. That our snack breaks or campsites might also be violations of international law was an

intoxicating possibility for young boys who fancied themselves explorers.

It is easy to fancy oneself an explorer in the Boundary Waters. And to some extent, each time one ventures out into the wilderness, one *is* exploring—wilderness is by definition unaltered by humanity, and the outdoor enthusiast meets the world anew with his own eyes. But in fact, by seeking solace in the woods and waters of northeastern Minnesota, we merely joined a long line of would-be explorers stretching from modern-day canoeists, through the French-Canadian Voyageurs, and back to the Ojibwe people who lived there long before this particular international boundary was imagined.

That the Boundary Waters are worth protecting is evident to anyone who has paddled their winding currents. The area is culturally valuable to the Ojibwe people. It is recreationally valuable to outdoor enthusiasts from around the country. And it is also just plain beautiful—a vast, complex ecosystem where countless species of flora and fauna make their home.

No, my friends and I weren't the first people to explore the Boundary Waters' delicate ecosystem; but we could be among the last. After decades of negotiations, a multinational mining company is poised to begin operating a copper mine just upstream of the Boundary Waters

wilderness area, a development that threatens to pollute the wilderness watershed with toxic mining waste and endanger the entire ecosystem.

The firm seeking to develop the mine is Twin Metals Minnesota LLC ("Twin Metals"), a Delaware limited liability company[1]—incorporated in Delaware, not Minnesota, to take advantage of the former state's business-friendly laws.[2] Twin Metals is itself a subsidiary of Antofagasta PLC,[3] an international mining company that primarily operates in Chile but is incorporated in the United Kingdom.[4] Compared to the local environmentalists who seek to protect the Boundary Waters, Twin Metals and Antofagasta are far removed from northeastern Minnesota and represent a comparatively small group of interested parties.

Despite this, the mining company has had little trouble advancing its interests in front of environmental regulators and in the courts. If anything, the fact that Twin Metals is a single entity rather than a mass movement appears to have *helped* it during the ongoing regulatory battle over whether to renew Twin Metals' mineral lease. When the government initially denied Twin Metals' renewal application, the mining company was able to file a single lawsuit challenging the decision on behalf of itself and a wholly-owned corporate subsidiary.[5] But when the government later reversed course and renewed the lease,

three different environmental groups filed separate lawsuits challenging the decision and ended up bogged down in litigation over whether to combine their suits.[6] Whether or not the Twin Metals mine will proceed remains to be seen—with tens of thousands of locals and several environmental groups lined up against a single multinational corporation, the contest is still at a stalemate.[7]

The Boundary Waters ecosystem is unique. But the tale of multinational business interests using corporate law to exploit natural resources without regard for the environmental toll is not. And while legal and regulatory challenges may yet save the Boundary Waters, such challenges brought in the name of environmental interests against business interests generally fail; indeed, they fail by design. By recognizing "personhood" in joint economic ventures that exploit environmental resources—and denying this recognition to the environment itself—American law creates a power imbalance that leads inevitably to the degradation of the environment.

II. "SHOULD TREES HAVE STANDING?"

Trees aren't people. Nor are rivers, or rocks, or songbirds, or even chimpanzees (despite the latter sharing 99% of yours and my DNA). As a matter of everyday speech, we all know this to be true. There is something ineffable about personhood—some undefined line that

separates us, the people, from all the other flora, fauna, and inanimate minerals that surround us.

American law has largely adopted this understanding of personhood. *People* can bring lawsuits to assert their rights in court; but animals and natural objects cannot. Over the years, environmentalists have attempted to bring lawsuits on behalf of animals or natural objects,[8] and even United States Supreme Court Justice William O. Douglas argued once in dissent that "trees should have standing" to assert their rights in court.[9] But despite this activity, and considerable foment among legal academics, legal standing for trees has (if you will) failed to take root in American law. Justice Harry Blackmun likely spoke for most Americans when he characterized environmental personhood as "imaginative[]"—we all know what *people* are, and trees aren't it.[10]

A very different story emerges, though, when one considers the law of business corporations. Corporations, it would seem, *are* people—just ask Senator Mitt Romney, who famously characterized them this way in a town hall appearance during his 2012 presidential campaign.[11] And while Romney's statement might have been controversial as a political matter, it was not controversial as a legal matter. Under long-settled principles of American law, corporations are legal "persons" with the right to own property and to bring lawsuits in their own names.

Romney—who, in addition to his career as a business consultant, is a graduate of Harvard Law School—surely knew this fact.

The dominant narrative, then, is that corporations are people in the eyes of the law, but animals, trees, and other natural objects are not. The narrative argues, first, that this makes sense, because behind any corporate "person" is a group of *real* people. This means that protecting a corporation's rights is really just a way to protect its shareholders' rights. It also makes corporate personhood easy to administer, insofar as courts can easily identify which actual people have a stake in a case. Regardless, the narrative suggests, corporate personhood is simply a fact of American law—so while corporate personhood might seem as imaginative as environmental personhood at first glance, the former's long pedigree means that we needn't actually imagine a new regime at all.[12]

In addition, the narrative argues that a lack of environmental personhood doesn't explain American law's repeated failure to protect the environment from corporate greed. Instead, the blame lies with corporations' vast wealth and resultant political influence; arcane standing rules that make it difficult even for real human persons to pursue environmental claims in court; and an underlying body of law that doesn't take environmental harms seriously. Thus even many

environmentalists argue that personhood is the wrong fix for what ails environmental law, and that we should look to regulatory or common-law solutions instead.[13]

But this narrative elides key parts of the full story. For one, corporate personhood as it exists today is neither a longstanding feature of American law nor a natural entailment of abstract legal principles. Rather, legal personhood is a judicial invention resulting from a series of political choices over the centuries. What's more, environmental personhood isn't an alternative to greater economic, political, or legal power for the environment—it is a necessary precondition for those developments. Indeed, the economic, political, and legal advantages that corporations enjoy against the environment are direct results of the fact that law the recognizes business entities, but not natural objects, as legal persons.

III. "CORPORATIONS ARE PEOPLE TOO"

The idea that corporations are "people" in the eyes of American law dates back to before the founding. At least as early as 1765, British legal theorist William Blackstone—whose *Commentaries on the Laws of England* served as a basis for much of early American law—described corporations as "artificial persons" who could "sue or be sued," own property, and "do all other acts as natural persons may."[14] For

Blackstone, characterizing corporation as "persons" was very much a metaphor—what lawyers call a "legal fiction." Unlike a *real* person, Blackstone noted, a corporation "has no soul" and exists only in as a figment of our collection imaginative. As a result, British common law afforded corporations only some of the rights afforded to real people—for example, corporations could not serve in positions of trust, nor could they bring certain civil lawsuits.[15]

For the first century of this country's history, American jurists adopted Blackstone's legal fiction that corporations were "people" while making clear that corporate rights were limited. For example, in the same 1819 decision where the Supreme Court of the United States recognized that corporations have an independent right to enter into contracts,[16] it also recognized that corporations are "mere creature[s] of law" and thus categorically different from actual people.[17] And just under two decades later, the Court declined to extend constitutional rights to corporations, recognizing that corporations are only "person[s], for certain purposes in contemplation of law."[18]

But in a series of cases in the 1880s, the Supreme Court recognized a radical new vision of corporate personhood. In *Minneapolis and St. Louis Railroad v. Beckwith*,[19] the Court stated unequivocally that "corporations are persons" within the meaning of the Fourteenth

Amendment, and thus protected by that Amendment's guarantees of equal protection under the law and due process of laws.[20] The Court based this sweeping statement not on constitutional text, common law principles, nor even its own prior opinions; instead, it cited an editor's annotation that accompanied the Court's decision three years prior in *Santa Clara v. United States Southern Railroad*.[21] The annotation was written by a third-party—not a member of the Court—to summarize the legal issues before the Court in *Santa Clara*, but the annotator neglected to mention that the Court sidestepped the issue and decided *Santa Clara* on different grounds.[22] As shoddy as this legal argument was, the Supreme Court and the American legal elite at the time fell for it; not because they were unintelligent, but because they were primed to believe in corporate law's mythology.

For one, while *Beckwith* and *Santa Clara* may have marked a striking expansion of corporate rights, American law had described corporations as "persons" for the entirety of its history. Language is a powerful thing; and by repeatedly ascribing "personality" and "rights" to corporations, lawyers had talked themselves into believing that their legal fiction was a legal fact. The courts had, as Justice William Rehnquist would later right, "confuse[d] metaphor with reality."[23] Thus a well-educated Supreme Court justice in 1889—or, for that matter, a Harvard-educated

presidential candidate in 2011—could say without blinking what most anyone else would recognize is absurd: that corporations really *are* people.

That members of the legal elite were so steeped in pro-business ideology was no accident. American law schools, and top American universities more broadly, were largely dependent on donations from business interests (as they remain today).[24] Law professors at elite institutions were often plucked directly from the ranks of successful businessmen, and those who were not retained substantial business connections—indeed, during the mid- to late-nineteenth century, *every member* of the Harvard Law School faculty owned stock in large business corporations.[25] One needn't assume that law faculty at the time *intentionally* promoted pro-corporate ideology to recognize that they were "captured" by a certain set of doctrinal assumptions—a situation that continues, albeit in slightly different form, today.[26]

What's more, the justices likely overlooked the flaws in the argument for corporate constitutional rights because they had a great deal to gain from doing so. Psychologists use the term "motivated reasoning" to describe the process by which individuals subconsciously credit arguments that they want to believe and discredit arguments that they don't.[27] Then, as now, Supreme Court justices were individuals of

"upper-middle to high social status" who came from "economically comfortable famil[ies]."[28] Indeed, at least two justices who decided *Beckwith* and *Santa Clara* had worked as attorneys for railroad corporations immediately prior to joining the Court.[29] Supreme Court Justices and other judges generally recuse themselves from cases in which they have a *direct* financial stake in the outcome (usually, because they own stock in one of the parties to the case).[30] But there is no principle of ethics suggesting that judges should sit out cases where they have an indirect financial stake in the outcome—even though legal decisions often create precedents with far-reaching consequences for corporate power. As a result, this sort of motivated reasoning goes effectively unchecked.

IV. DEFINING PERSONHOOD

In everyday speech, neither nature nor corporations are "persons." That corporations are nonetheless legal persons shows that legal personhood is broader than colloquial understandings of personhood. At the same time, that natural objects are *not* persons shows that the category of personhood is closely guarded—a selective club whose depends on its exclusivity. Personhood, then, is law's way of drawing the line between legal subjects (the holders of legal entitlements) from legal objects.

On a theoretical level, this definition recalls Kant's imperative that persons ought always to be treated as ends in themselves, not merely as means to some other end.[31] The law recognizes the intrinsic value of legal persons by affording them certain rights—for example, the right to own property or the right to be left alone. And the law recognizes that persons are valuable *to themselves* by enabling them to enforce those rights in court on their own behalf. By contrast, the law labels as "property" those things that are only valuable because they are valuable to others[32]—when property is harmed, it is the *owner* who brings a lawsuit, and the law is only concerned with the *owner's* loss of profits or enjoyment.[33]

In this sense, everything is either a person or property in the eyes of the law—and nothing can be both. For example, American law long treated Black people as property,[34] and concomitantly denied them the rights of personhood.[35] During this time, Black Americans were brutalized by their White captors, all while slaveholders made handsome profits on the backs of free labor.[36] Even after the law formally recognized Black Americans as people, the effects of the old narrative lingered on—in Jim Crow laws, in the sharecropping economy, and in the inescapable implicit assumptions that Black Americans are somehow less human than Whites.[37]

Excluding *actual* people from legal personhood was, of course, a particularly indefensible way to define the category. But it shows that how we as a society draw the line is a choice—and a highly consequential choice at that. For centuries, American law denied personhood to Black Americans because big business benefited from slavery.[38] In today's society, profiteering on the back of the environment has replaced profiteering on the back of slave labor as a dominant driver of economic growth, though many of the most affected communities most affected remain the same.[39]

At its base, this dichotomy between persons and property reflects American law's deeper assumptions about who has and who lacks agency in different situations. In any given situation, we are both subjects and objects—actors who impart our will onto the world, yet whose actions are inevitably bound by external forces. But recognizing this nuance is difficult, and most of the time we only capable of seeing one side of the equation: generally, we see ourselves and those with whom we identify as agents capable of making choices, and see "others" as mere objects. [40] We can see this process played out with respect to nature and corporations: Tyson Foods, Inc. "produc[es]"[41] meat, and ExxonMobil "discover[s]" the oil that powers our global economy while altering our climate.[42] But we could just as easily flip this narrative: it's

cows and chickens who "produce" meat in the first place; and didn't ExxonMobil argue for years that humans didn't cause climate change?

Defining personhood, then, isn't a theoretical matter; it's a practical one. Indeed, when legal theorists have argued for expanding the category to include corporations or nature, they have done so by identifying personhood's benefits rather than by suggesting that those groups are *in fact* similar to real people.

For example, Blackstone justified corporate personhood based on the "advantages" that it conferred for business. For one, personhood afforded legal rights—to "sue or be sued," to contract, and to hold property—which in turn enabled corporations to pursue and to vindicate their own interests in their own names.[43] What's more, personhood afforded independence—it gave business corporations a life of their own, so they didn't have to dissolve and be reformed every time an owner died or parted ways. Life is short, interests change, people have fallings-out; that the corporation stood beyond the vicissitudes of health and human affairs enabled great human projects to flourish.[44] Lastly, personhood enabled collective action. A singular identity, and the collective action that it enables, are critical for business. But they are even more critical for advancing one's legal rights; as Blackstone noted, corporations would not be "capable of retaining any privileges or immunities" without

personhood, because there would be no clarity as to which member of the corporation had the prerogative or the duty to defend the corporation's privileges in court.[45]

These three advantages of personhood—legal rights, independence, and collective action—are equally important for protecting natural objects. In the seminal law review article, *Should Trees Have Standing?—Toward Legal Rights for Natural Objects*, Professor Christopher Stone argued that denying personhood to natural objects resulted in a great deal of environmental harm going unrecognized and therefore unpunished. Stone specifically pointed to natural objects' lack of standing to sue and lack of independent legal personality, which he argued leads courts to focus only on the rights of humans to use or enjoy nature while ignoring more systemic environmental harms that can't be assigned to a single plaintiff.[46] Like Blackstone, Stone recognized that when to recognize legal personhood is a political decision about who and what should enjoy this set of rights and privileges.[47]

V. ROADMAP FOR REFORM

Corporate personhood, then, creates a power imbalance between business interests and natural objects, and fails to offer a coherent justification for why this imbalance should exist. To level the playing field between business interests and the environment, the legal fiction

of artificial personhood should be extended to protect natural objects.

As an initial matter, many reformers believe that the best path for limiting corporate power is abandon the legal fiction of corporate personhood and limit personhood to *actual people*.[48] Reformers, though, would be wise to focus on expanding personhood rather than contracting it. For one, given our society's strong commitment to the power and promise of legal rights, we should aim to expand rights rather than take them away.[49] What's more, social science suggests that corporate opposition to expanding personhood would be weaker than opposition to abolishing corporate personhood. According to the "endowment effect," individuals place a higher value on the objects that they already have than they place on identical objects that they do not possess;[50] legal rights are no different. So while corporate shareholders would recognize that they had lost something incredibly valuable if corporate personhood were to be abolished, they likely wouldn't recognize just how valuable of a *gain* environmental personhood would be for nature.

Instead, reformers should focus on the many ways to recognize rights in nature. The dominant approach so far in the United States has been to advocate for environmental personhood on a case-by-case basis. Under this approach, attorneys purport to bring lawsuits on behalf of natural objects, and rely on the courts to recognize personhood where

appropriate.[51] The format of an attorney volunteering to serve as a guardian for the plaintiff is fairly familiar to American law—for example, many jurisdictions already authorize attorneys to bring suit as guardians *ad litem* on behalf of individuals who are unable to vindicate their own rights.[52] However, the fundamental flaw of a litigation-based approach to recognizing environmental personhood—and the reason that this approach has yet to succeed—is that it relies on judges to side with environmental interests. Given that former corporate lawyers have long dominated the ranks of the American judiciary[53]—and that the federal courts moved even farther right under President Trump—it's difficult to imagine that environmentalists will get far with this approach.

Alternatively, legislatures could pass enabling legislation authorizing the creation of legal entities to embody nature, just as every state legislature has done with respect to business corporations.[54] In fact states need not even go that far; they could simply amend their existing corporate enabling acts to cover environmental persons. Of course, while business may readily identify their stakeholders, it would be harder to identify who speaks for the trees.[55] But this overlooks the fact that shareholders are not the only parties affected by a corporation's activities—consumers, community members, and, yes, the environment

all have a stake in corporate affairs. State enabling acts have chosen to exclude such stakeholders from the incorporation process, and therefore privileged owners and investors over other relevant members of the community. That an environmental entity enabling act would also have to make value judgments about who could act on behalf of nature is no more offensive or anti-democratic.

Lastly, Congress or state legislatures could pass statutes recognizing personhood in one or more natural objects, just as state legislatures used to grant corporate charters on a case-by-case basis.[56] This is not a far-fetched idea—the New Zealand government recognized the local Whanganui River as a legal person in 2017.[57] The river has two appointed representatives—one to represent the local Maori people, and one to represent the Environmental Ministry[58]—who "act and speak for" the river in legal proceedings, thereby avoiding any uncertainty about who is entitled to advance nature's interest.[59] Moreover, whereas the litigation approach depends on the benevolence of judges, this approach depends on the benevolence of legislators—almost certainly unfounded with respect to Congress, but potentially promising with respect to some state legislatures.

To be sure, personhood is no panacea. The mere fact of environmental personhood would achieve nothing in the face of vast corporate wealth

and substantive laws that recognize economic harms but not environmental harms. What's more, to the extent that the federal courts' standing rules make it difficult to sue over environmental harms, personhood is no workaround—individuals bringing lawsuits on nature's behalf rather than their own would still have to show the same sorts of individual harms that so often doom environmental litigation in the first place.[60] There's also reason good to fear that whichever individuals or groups were recognized as nature's representatives would eventually fall under the sway of corporate influence, just as regulatory bodies are often captured by business interests.[61]

But to dismiss environmental personhood on this score misses the point. As Professor Stone argued, personhood is "rights-making" in at least two ways.[62] For one, if natural objects could bring lawsuits on their own behalf, courts would have to consider ecological interests that they might otherwise ignore because no human people were directly harmed.[63] More subtly, positing nature as a "person" would have the "socio-psychic" effect of subconsciously inspiring individuals to care more about nature.[64] Indeed, corporations take advantage of this precise aspect of corporate personhood all the time—many adopt mascots to give consumers the subconscious impression that the corporation is an actual person. To understand Professor Stone's point, one need look no further

than the steady accretion of corporate rights since the Founding. What began as a common law right to sue and own property became a Constitutional right to equal protection, and finally, in the modern era, the right to political speech.[65] The power of personhood lies in its downstream effects.

CONCLUSION

One thorny question that William Blackstone had to answer when defining corporate personhood was the question of identity: if a corporation's membership were constantly in flux, such that none of the individuals who comprised it today were still members in fifty years, could the corporation really be said to possess a constant identity over time? Why yes, he said, it could, just "as the river Thames is still the same river, though the parts which compose it are changing every instant."[66] For Blackstone, the river was the intermediary—the real-world entity that helped him to bridge the gap between purely conceptual corporate persons and living, breathing *people*. To compare a natural object to a person, after all, is certainly no *less* plausible than to compare a corporation to a person.

American law has made a different choice. Corporations are "people" in the eyes of the law, while natural objects—trees, rivers, whales, monkeys—are not. It's no coincidence that a legal system infused with

corporate influences has made this set of choices; and it's no coincidence that a legal system that has made this set of choices has then shrugged its shoulders while corporations plunder the environment for profit.

In northern Minnesota, the contest over the future of the Boundary Waters continues. Imagine, briefly, what that contest might look like if the environment enjoyed the same legal rights as businesses. Boundary Waters, Inc. could challenge future attempts at renewing mining leases near its watershed. There would be no contest between groups over who got to direct the lawsuit; no difficulty constructing a single shared narrative to counter the mining company; and courts would be forced to address potential ecosystem-wide harms without asking whether any of the human beings in court were personally affected.

Environmental groups would still lose some cases and fail to prevent some environmental degradation even with environmental personhood, just as they win some cases and succeed in protecting the environment without legal personhood. But affording the same rights to nature that we do to corporations would shift the balance of power, creating a legal system that values nature in the same way that it values profit.

ENDNOTES

[1] *See* Twin Metals Minnesota LLC, Notice of Exempt Offering of Securities (Form D) (June 21, 2011).

[2] *See* William L. Cary, *Federalism and Corporate Law: Reflections upon Delaware*, 83 YALE L.J. 663, 705 (1974).

[3] *See Meet Twin Metals*, TWIN METALS MINNESOTA, https://www.twin-metals.com/meet-twin-metals/ (last visited May 2, 2021).

[4] *See* Antofagasta PLC, Annual Report (Form ARS) 58–61 (Aug. 7, 2007).

[5] *See* Complaint, Franconia Minerals (US) LLC v. United States, No. 16-cv-3042 (D. Minn Sept. 12, 2016).

[6] *See* Wilderness Soc'y v. Bernhardt, No. CV 20-1176 (BAH), 2020 WL 2849635, at *1 (D.D.C. June 2, 2020).

[7] Press Release, Save the Boundary Waters, Boundary Waters Supporters Deliver Over 72,000 Petitions Urging the US Forest Service to Withhold Consent for Sulfide-Ore Copper Mining Leases Near the Wilderness (July 19, 2016), https://www.savetheboundarywaters.org/sites/default/files/public/attachments/16.07.19_petitiondelivery.pdf.

[8] *See, e.g.*, Naruto v. Slater, 888 F.3d 418, 426 (9th Cir. 2018) (finding that monkey can't own property).

[9] *See* Sierra Club v. Morton, 405 U.S. 727, 742 (1972) (Douglas, J., dissenting).

[10] Sierra Club, 405 U.S. at 758 (Blackmun, J., dissenting).

[11] *See* ADAM WINKLER, WE THE CORPORATIONS: HOW AMERICAN BUSINESSES WON THEIR CIVIL RIGHTS 377 (2018).

[12] *See generally, e.g.*, Christopher J. Wolfe, *"An Artificial Being": John Marshall and Corporate Personhood*, 40 HARV. J.L. & PUB. POL'Y 201 (2017).

[13] *See* Laura Spitz & Eduardo M. Peñalver, *Nature's Personhood and Property's Virtues*, 45 HARV. ENVTL. L. REV. 67 (2021).

[14] 1 WILLIAM BLACKSTONE, COMMENTARIES *455–57, 463.

[15] *Id.* at *464–65.

[16] Trustees of Dartmouth Coll. v. Woodward, 17 U.S. 518, 693 (1819).

[17] *Id.* at 636.

[18] Bank of Augusta v. Earle, 38 U.S. 519, 586-88 (1839).

[19] 29 U.S. 26 (1889).

[20] *Id.* at 28.

[21] *Id.*

[22] *See* WINKLER, *supra* note 11, at 151–56.

[23] Pac. Gas & Elec. Co. v. Pub. Utilities Comm'n of California, 475 U.S. 1, 33 (1986) (Rehnquist, J., dissenting).

[24] *See* RONALD STORY, THE FORGING OF AN ARISTOCRACY: HARVARD AND THE BOSTON UPPER CLASS, 1800–1870 50 (1980).

[25] *Id.* at 86.

[26] *See* Jon Hanson & David Yosifon, *The Situation: An Introduction to the Situational Character, Critical Realism, Power Economics, and Deep Capture*, 152 U. PA. L. REV. 129, 143 (2003) (discussing capture of law school faculty by law and economics scholars).

[27] Ziva Kunda, *The Case for Motivated Reasoning*, 108 PSYCHOL. BULL. 480, 480 (1990).

[28] HENRY JULIAN ABRAHAM, JUSTICES, PRESIDENTS, AND SENATORS: A HISTORY OF THE U.S. SUPREME COURT APPOINTMENTS FROM WASHINGTON TO BUSH II 49 (2007).

[29] BERNARD SCHWARTZ, A HISTORY OF THE SUPREME COURT 162–63 (1993).

[30] *See* Jeff Bleich & Kelly Klaus, *Deciding Whether to Decide*, 48 FED. LAW. 45, 46 (2001).

[31] IMMANUEL KANT, GROUNDING FOR THE METAPHYSICS OF MORALS *429 (1785).

[32] *See* Peter Halewood, *Law's Bodies: Disembodiment and the Structure of Liberal Property Rights*, 81 IOWA L. REV. 1331, 1346 (1996).

[33] Christopher D. Stone, *Should Trees Have Standing?—Toward Legal Rights for Natural Objects*, 45 S. CAL. L. REV. 450 (1972).

[34] *See, e.g.*, State v. Mann, 13 N.C. 263 (1830).

[35] *See, e.g.*, Dred Scott v. Sandford, 60 U.S. 393 (1857).

[36] *See* Ta-Nehisi Coates, *The Case for Reparations*, THE ATLANTIC (June 2014).

[37] *See, e.g.*, Adam Beam, *GOP Hopeful Not Sorry For Posts Depicting Obamas as Monkeys*, REUTERS (Sept. 30, 2016).

[38] *See, e.g.*, P.R. Lockhart, *How Slavery Became America's First Big Business*, VOX (Aug. 16, 2019), https://www.vox.com/identities/2019/8/16/20806069/slavery-economy-capitalism-violence-cotton-edward-baptist.

[39] *See* Andrew R. Highsmith, *A Poisonous Harvest: Race, Inequality, and the Long History of the Flint Water Crisis*, 18 J. L. SOCIETY 121, 122 (2018).

[40] *See* Adam Benforado & Jon Hanson, *The Great Attributional Divide: How Divergent Views of Human Behavior Are Shaping Legal Policy*, 57 EMORY L.J. 311, 314–17 (2008).

[41] *See Tyson Food Facts*, TYSON FOODS, https://ir.tyson.com/about-tyson/facts/default.aspx.

[42]*See* https://corporate.exxonmobil.com/Locations/Guyana/Guyana-project-overview

[43] BLACKSTONE, *supra* note 14, at *463.

[44] *Id.* at *456.

[45] *Id.*

[46] *See* Stone, *supra* note 33, at 459-62.

[47] *See* Steven Walt & Micah Schwartzman, *Morality, Ontology, and Corporate Rights*, 11 LAW & ETHICS HUM. RTS. 1, 27–29 (2017).

[48] *See*, *e.g.*, Susanna Kim Ripken, *Corporate First Amendment Rights After Citizens United: An Analysis of the Popular Movement to End the Constitutional Personhood of Corporations*, 14 U. PA. J. BUS. L. 209, 229 (2011) (discussing corporate abolitionism).

[49] PATRICIA WILLIAMS, ALCHEMY OF RACE AND RIGHTS 165 (1991) (arguing that rights should be given without limit "to all of society's objects").

[50] *See* Daniel Kahneman et al., *Experimental Tests of the Endowment Effect and the Coase Theorem*, 98 J. POL. ECON. 1325, 1328 (1990).

[51] *See, e.g.*, Colorado River Ecosystem v. Colorado, No. 1:17-cv-02316 (D. Colo. Sept. 25, 2017) (seeking legal personhood for Colorado River).

[52] Stone, *supra* note 33, at 464.

[53] *See* Elizabeth Warren, *The Corporate Capture Of The Federal Courts: An Address From October 2*, *2013*, 17

U.D.C. L. REV. 4, 6 (2014).

[54] *See, e.g.*, Del. Code Ann. tit. 8, § 101.

[55] *Cf.* DR. SEUSS, THE LORAX (1971).

[56] *See* Gwendolyn J. Gordon, *Environmental Personhood*, 43 COLUM. J. ENVTL. L. 49, 64 (2018).

[57] *See* Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, S 14 (N.Z.).

[58] *Id.* S. 20.

[59] *Id.* S. 19.

[60] *See* Spitz & Peñalver, *supra* note 13, at 82–87

[61] Sierra Club, 405 U.S. at 748 (1972) (Douglas, J., dissenting).

[62] Stone, *supra* note 33, at 482.

[63] *Cf.* Sierra Club*,* 405 U.S. at 741 (dismissing an anti-development lawsuit because no individual could claim a personal interest in the national forest land in question).

[64] Stone, *supra* note 33, at 489.

[65] *See* WINKLER, *supra* note 11, at xx–xxi.

[66] BLACKSTONE, *supra* note 14, at *456 .