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The Standing Dead: An Analysis of Nonhuman Personhood in U.S. Jurisprudence

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THE STANDING DEAD: AN ANALYSIS OF NONHUMAN PERSONHOOD IN U.S. JURISPRUDENCE

Morgan Voight

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I. INTRODUCTION

The United States Declaration of Independence states that “all men . . . are endowed by their Creator with certain unalienable Rights.”¹ But should any such rights extend to nonhuman entities?² This paper argues that a proper allocation of an entity’s rights derives from the entity’s value to humanity. Part II provides an overview of the history and substance of

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² THE DECLARATION OF INDEPENDENCE ¶ 2 (U.S. 1776).

natural and legal rights. Part III explores the U.S. Supreme Court's holdings with regard to the rights and "personhood" of nonhuman entities, specifically focusing on corporate and environmental entities. Part IV proposes a model of rights allocation which applies the legal theories of corporate rights to environmental entities, taking into account such entities' value to humanity.

II. HISTORICAL AND LEGAL LANDSCAPE

A. *On the Origin of Rights*

As the Declaration of Independence recognizes, at the heart of the question of personhood is the proper allocation and acknowledgment of attendant rights.² Societies throughout history have struggled to determine who should be granted rights and to what extent.³ While some governments have attempted to enumerate prominent rights,⁴ the interpretation and administration of even these enumerated rights have not been without controversy. For example, the U.S. Supreme Court infamously declared in *Dred Scott v. Sandford* "that neither the class of persons who had been imported as slaves, nor their descendants" had "rights which the white man was bound to respect."⁵ Upholding a law stating that "no Black or Mulatto person, or Indian shall be allowed to give evidence in favor of, or against a white man," the California Supreme Court held that Chinese Americans were unable to so testify in court, because they were "inferior, and . . . incapable of progress or intellectual development beyond a certain point."⁶ Women, of course, were denied the right to vote in the United States until 1920.⁷ In *Roe v. Wade*, the Court held "that the word 'person,' . . . does not include the unborn."⁸ Other examples abound. However, the resolution of these questions has always relied fundamentally on the ontological determination of the origin of such rights.⁹

² *Id.* at ¶ 4.

³ *See, e.g.*, THOMAS PAINE, *Rights of Man* (1791), in *RIGHTS OF MAN: BEING AN ANSWER TO MR. BURKE'S ATTACK ON THE FRENCH REVOLUTION*, 10 (Cambridge University Press 2012).

⁴ *See, e.g.*, U.S. CONST. amends. I–X (showing how the United States enumerated several important rights by promulgating its Bill of Rights).

⁵ 60 U.S. 393, 407 (1857), *superseded by* U.S. CONST. amend. XIV.

⁶ *People v. Hall*, 4 Cal. 399, 405 (1854).

⁷ *See* U.S. CONST. amend. XIX.

⁸ 410 U.S. 113, 158 (1973).

⁹ *See, e.g.*, JOHN LOCKE, *Concerning the True Original Extent and End of Civil Government*, in *TWO TREATISES OF GOVERNMENT*, 149 (1660), *reprinted in* *THE WORKS OF JOHN LOCKE* (1823).

While the Founding Fathers of the United States looked to a Creator as the source of a person's rights,¹⁰ others have found answers elsewhere.¹¹ Immanuel Kant postulated that rights derived from reason alone.¹² Thomas Hobbes surmised that there was such a time in which no rights existed, except that of an instinctual drive for self-defense.¹³ Dating as far back as antiquity, scholars have fixated extensively on distinguishing between natural rights—which are innate to a being and cannot be taken away¹⁴—and legal rights which are granted by a government and can therefore be rescinded.¹⁵

The conflict arises, then, when a society is tasked with recognizing, distributing, safeguarding, and adjudicating such rights. While recognizing an entity as having some basic level of natural rights provides a starting point, most metaphysical models impute greater levels of rights to different beings according to a hierarchy.¹⁶ This differentiation of rights necessarily compels a society to develop laws to determine what should be done when the rights of different beings conflict.¹⁷ Within the realm of U.S. jurisprudence, three “levels” of legal rights have emerged—standing, due process, and juridical freedoms.

B. *Legal Rights*

1. *Standing*

Fundamental to all other legal rights is the legal right of standing. A threshold issue requisite to all legal cases, the term “standing” refers to “[a]

¹⁰ See THE DECLARATION OF INDEPENDENCE ¶ 2 (U.S. 1776).

¹¹ See, e.g., PAINE, *supra* note 3.

¹² IMMANUEL KANT, CRITIQUE OF PURE REASON (1781), *reprinted in* THE CAMBRIDGE EDITION OF THE WORKS OF IMMANUEL KANT (Paul Guyer & Allen W. Wood eds., trans.) (1998).

¹³ See THOMAS HOBBS, LEVIATHAN: OR THE MATTER, FORME, & POWER OF A COMMONWEALTH ECCLESIASTICALL AND CIVILL, 79–87 (1651).

¹⁴ See the Declaration of Independence's assertion that people are created with “certain unalienable Rights” including “Life, Liberty and the pursuit of Happiness.” THE DECLARATION OF INDEPENDENCE ¶ 2 (U.S. 1776).

¹⁵ See, e.g., THOMAS AQUINAS, SUMMA THEOLOGICA: TREATISE ON LAW QUESTIONS 90–97 (1485); JOHN LOCKE, *Concerning the True Original Extent and End of Civil Government*, in TWO TREATISES OF GOVERNMENT (1660), *reprinted in* THE WORKS OF JOHN LOCKE (1823); THOMAS PAINE, *Rights of Man* (1791), in RIGHTS OF MAN: BEING AN ANSWER TO MR. BURKE'S ATTACK ON THE FRENCH REVOLUTION (Cambridge Univ. Press 2012).

¹⁶ See, e.g., *Great Chain of Being*, ENCYC. BRITANNICA, <https://www.britannica.com/topic/Great-Chain-of-Being> [https://perma.cc/M4NW-N5LJ].

¹⁷ For example, the rights of one person versus another, adults versus children, or humans versus animals.

party's right to make a legal claim or seek judicial enforcement of a duty or right.¹⁸ Because standing is a legal prerequisite to any legal action, standing determines whether an entity will have the opportunity to seek legal recourse for rights violations in the first place.¹⁹

The basis for this threshold right derives from the “case or controversy” clause in Article III of the U.S. Constitution.²⁰ In the interest of maintaining a separation of powers among governmental branches and system of intergovernmental checks and balances, the Court has determined that it must self-moderate the span of cases it can hear.²¹ Additionally, because judicial decisions are typically long-held through the doctrine of *stare decisis*,²² courts have an interest in ensuring that cases are brought by the parties with the greatest stake in the outcome of the case, and therefore that fervent argument ensues.²³

To acquire standing, a litigant must show three essential elements: (1) an injury-in-fact, (2) a causal connection between the injury and the defendant's conduct, and (3) a likelihood of redressability by the relief requested.²⁴ The first element, injury-in-fact, refers to the invasion of a legally protected interest.²⁵ Such an injury must be concrete and personal rather

¹⁸ *Standing*, BLACK'S LAW DICTIONARY (11th ed. 2019).

¹⁹ *See id.*

²⁰ U.S. CONST. art. III, § 2, cl. 1.

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made . . . to Controversies to which the United States shall be a Party;—to Controversies between two or more States;— between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claims Lands under Grants of different States, and between a State, and the Citizen thereof, and foreign States, Citizens or Subjects.

Id.

²¹ *See Baker v. Carr*, 369 U.S. 186, 198–99 (1962) (explaining the Court's nonjusticiability requirements preventing the Court from determining a case).

²² A term which literally means “to stand by things decided” and denotes the proposition that “a court must follow earlier judicial decisions when the same points arise again in litigation.” *Stare decisis*, BLACK'S LAW DICTIONARY (11th ed. 2019).

²³ *See Gladstone Realtors v. Vill. of Bellwood*, 441 U.S. 91, 99–100 (1979) (“[A] plaintiff may still lack standing under the prudential principles by which the judiciary seeks to avoid deciding questions of broad social import where no individual rights would be vindicated and to limit access to the federal courts to those litigants best suited to assert a particular claim.”); *Flast v. Cohen*, 392 U.S. 83, 99–100 (1968).

²⁴ *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992).

²⁵ *Id.* at 560.

than abstract²⁶ and must be actual and imminent—not hypothetical.²⁷ As the Court explained, “[t]he plaintiff must show that he ‘has sustained or is immediately in danger of sustaining some direct injury’ as the result of the challenged official conduct.”²⁸

The second element necessary to gain standing requires a plaintiff to show a causal connection between his injury and the defendant’s conduct.²⁹ The injury must be “fairly traceable to the defendant’s allegedly unlawful conduct.”³⁰ Further, the injury cannot be the result of a third party’s intervening action.³¹ Applying this reasoning, the Court held that plaintiffs lacked standing to challenge federal funding of an overseas dam building project that had the potential to harm endangered species, because other countries were funding the project as well.³² These foreign countries were therefore intermediaries, breaking the line of causation to the defendant.³³

Finally, for the third element of standing, a litigant must show that the relief he has requested is *likely* to redress his injury and not merely speculative.³⁴ For example, in *Linda R.S. v. Richard D.*, the Court found that a plaintiff had established injury-in-fact and causation, but nevertheless dismissed the plaintiff’s challenge to a district attorney’s refusal to enforce the payment of child support.³⁵ The Court reasoned that the relief requested by the plaintiff (enforcement of a child support order) was unlikely to remedy her injury because the penalty for the defendant’s failure to pay the support was incarceration—a consequence which would not bring the

²⁶ *Allen v. Wright*, 468 U.S. 737, 753–56 (1984). In this case, the Court held that the respondents, parents of black children enrolled in schools undergoing desegregation, did not have standing to sue the Internal Revenue Service for failing to withhold tax-exempt status from racially discriminatory schools. *Id.* at 753. The Court reasoned that the illegal actions of the government and the stigma the children faced due to generalized racist practices were not sufficiently concrete and personal so as to satisfy the first element of standing. *Id.* at 756.

²⁷ *Los Angeles v. Lyons*, 461 U.S. 95, 101–02 (1983) (holding that respondent did not have standing to seek an injunction prohibiting police officers in the City of Los Angeles, California, from utilizing chokeholds when apprehending non-violent suspects because the respondent could not show he was going to be placed in a chokehold by Los Angeles police in the future). Notably, Justice Thurgood Marshall, in his dissenting opinion, took a more functional approach to standing, arguing that if Lyons, an African American man who was gravely harmed after being placed in a chokehold by Los Angeles police, couldn’t bring this suit, then no one could. *Id.* at 113 (Marshall, J., dissenting).

²⁸ *Id.* at 101–02 (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)).

²⁹ *Lujan*, 504 U.S. at 560.

³⁰ *Allen*, 468 U.S. at 751.

³¹ *Lujan*, 504 U.S. at 560.

³² *Id.* at 571.

³³ *Id.* at 562.

³⁴ *Id.* at 561.

³⁵ 410 U.S. 614, 619 (1973).

plaintiff any closer to obtaining child support payments.³⁶ Therefore, an entity seeking to obtain standing to pursue a legal case must show “a direct nexus between the vindication of her interest and the enforcement of the [requested relief].”³⁷ Notably, even small or incremental steps toward the advancement of a remedy are sufficient to meet the redressability requirement.³⁸

While these standing requirements apply to most cases, there are some special circumstances under which the requirements are relaxed or altered. For example, many statutes include “citizen suit provisions” which preemptively grant private citizens the right to bring suits against violators of the statute or government agencies that fail to discharge a non-discretionary duty required under the statute.³⁹ Additionally, under the doctrine of “associational standing,” an association can bring a lawsuit on behalf of its members if it meets three conditions: (1) its members would otherwise have standing to sue in their own right, (2) the interests at stake are germane to the organization’s purpose, and (3) neither the claim asserted nor the relief requested require the participation of individual members in the lawsuit.⁴⁰ Third, under the doctrine of “special solicitude,” U.S. states bringing suit on their own behalf are entitled to special consideration and flexibility from typical standing requirements and need only prove that there is *some possibility*, rather than a likelihood, that the relief they request will advance the remedy sought.⁴¹ This consideration is given in light of the particular need that states have to protect their quasi-sovereign interests.⁴² Fourth is a narrow exception to the general prohibition on taxpayer standing, which ordinarily prevents a plaintiff from utilizing only their status as a taxpayer to gain standing.⁴³ The exception allows taxpayers to challenge federal

³⁶ *Id.* at 618.

³⁷ *Id.* at 619.

³⁸ See *Massachusetts v. EPA*, 549 U.S. 497, 524 (2007) (citing *Williamson v. Lee Optical of Okla., Inc.*, 348 U.S. 483, 489 (1995) (“[A] reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind.”) in holding that the regulation of carbon dioxide emissions from motor vehicles was sufficiently poised to advance the cause of slowing global warming to merit the grant of standing).

³⁹ See 11 FED. PROC., L. ED. § 32:119, Westlaw (database updated September 2019). Examples include provisions found in the Resource Conservation and Recovery Act, 42 U.S.C. § 6972 (2019), the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11046 (2019), and the Clean Air Act, 42 U.S.C. § 7604 (2019).

⁴⁰ *Friends of the Earth v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 181 (2000) (citing *Hunt v. Wash. State Apple Advert. Comm’n*, 432 U.S. 333, 343 (1977)).

⁴¹ *Massachusetts v. EPA*, 549 U.S. 497, 518-20 (2007).

⁴² *Id.* at 520.

⁴³ See *United States v. Richardson*, 418 U.S. 166, 172 (1974) (citing *Frothingham v. Mellon*, 262 U.S. 447, 488 (1923)). This prohibition is also called the prohibition against “generalized grievances.” *Id.* at 174.

expenditures when their status as a taxpayer enables them to demonstrate that they have a personal stake in the controversy and a specific constitutional infringement.⁴⁴ Finally, while standing requirements generally prohibit a litigant from bringing a claim on behalf of a third party, courts may allow such third-party standing when a litigant can show that his relationship with the third party is inextricably bound and that the third party has a genuine obstacle to asserting his own rights.⁴⁵ Outside of these exceptions, however, the *Lujan* requirements remain the default prerequisites for an entity to gain standing.⁴⁶

2. *Due Process*

Once an entity has established the legal right to be heard by demonstrating that it has standing, the next level of juridical rights ensures that sufficient justification is given,⁴⁷ and prescribed procedures are followed,⁴⁸ before the entity's rights can be taken away. This is the doctrine of due process. Encoded into U.S. jurisprudence by the Fifth and Fourteenth Amendments,⁴⁹ due process is defined as “[t]he conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights, including notice and the right to a fair hearing before a tribunal with the power to decide the case.”⁵⁰ The attainment of due process rights ensures that an entity will be safeguarded and obtain redress for unfair encroachment of any underlying rights, whether natural or otherwise.

⁴⁴ *Flast v. Cohen*, 392 U.S. 83, 101–02 (1968). For example, as was elicited in *Flast*, the “Taxing and Spending Clause,” which provides, “No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time,” was sufficient for a group of taxpayers to gain standing to challenge federal spending on textbooks for religious schools. *Id.* at 106 (citing U.S. CONST. art. I, § 9, cl. 7).

⁴⁵ See *Singleton v. Wulff*, 428 U.S. 106, 114–16 (1976) (holding that a physician had standing to challenge a state ban on the use of Medicaid funding for patients to obtain abortions due to his doctor-patient relationship and patients’ potential concerns for privacy and short time limitations).

⁴⁶ See *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992).

⁴⁷ This right is called “substantive due process.” *Due Process, Substantive Due Process*, BLACK’S LAW DICTIONARY (11th ed. 2019).

⁴⁸ This right is called “procedural due process.” *Due Process, Procedural Due Process*, BLACK’S LAW DICTIONARY (11th ed. 2019).

⁴⁹ U.S. CONST. amend. V (“No person shall be . . . deprived of life, liberty, or property, without due process of law . . .”); U.S. CONST. amend. XIV, § 1 (“ . . . nor shall any State deprive any person of life, liberty, or property, without due process of law . . .”).

⁵⁰ *Due Process*, BLACK’S LAW DICTIONARY (11th ed. 2019).

In determining what amount of process is “due” to a particular entity, courts employ three distinct standards of review. The most rigorous level, called “strict scrutiny,” applies to controversies involving fundamental rights⁵¹ or suspect classes of persons.⁵² To satisfy strict scrutiny, the government must show that it has a *compelling* governmental interest in restricting a fundamental right or burdening a suspect class, and that it has utilized the least restrictive mechanism in doing so.⁵³ Furthermore, courts will only consider direct and substantial infringements on a right to trigger heightened judicial scrutiny.⁵⁴ Such infringements must typically consist of an outright ban or significant disincentive to exercising a right.⁵⁵ Such a heightened level of review is very difficult to meet and therefore has proven to be extremely protective of an entity’s underlying rights.⁵⁶

The second level of review the government may be required to meet to satisfy due process is called “intermediate scrutiny.”⁵⁷ This standard

⁵¹ The determination of which rights qualify as “fundamental” has largely evolved throughout United States jurisprudence, but has come to include rights enumerated in the Constitution—such as the freedom of speech, association, and exercise of religion—as well as interests “traditionally protected by our society” and “rooted in the traditions and conscience of our people”—such as marriage, privacy, voting, and property ownership. *See* U.S. CONST. amend. I; *Michael H. v. Gerald D.*, 491 U.S. 110, 122 (1989); *Loving v. Virginia*, 388 U.S. 1, 12 (1967); *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934).

⁵² Suspect classes include distinctions made on the basis of race or nationality. *See* U.S. CONST. amend. XIII; U.S. CONST. amend. XIV; *Graham v. Richardson*, 403 U.S. 365, 371–72 (1971) (holding that classifications based on citizenship or alien status are “inherently suspect and subject to close judicial scrutiny”); *McLaughlin v. Florida*, 379 U.S. 184, 192 (1964) (holding that racial classifications are “constitutionally suspect”).

⁵³ *See Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995).

⁵⁴ *See Zablocki v. Redhail*, 434 U.S. 374, 386–87 (1978).

⁵⁵ *See New York State Rifle & Pistol Ass’n, Inc. v. City of New York*, 883 F.3d 45, 67 (2d Cir. 2018).

⁵⁶ *See, e.g., Obergefell v. Hodges*, 135 S. Ct. 2584, 2607–08 (2015) (holding laws banning gay marriage unconstitutional under the Due Process Clause); *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2226–33 (2015) (holding laws restricting the display of signs based on their content as unconstitutional); *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 745–48 (2007) (overturning school policies that assign students to different schools based on their race); *Adarand Constructors*, 515 U.S. at 220 (holding that all racial classifications, whether intended to benefit or harm minorities, are subject to strict scrutiny); *Texas v. Johnson*, 491 U.S. 397, 420 (1989) (holding that burning the United States flag is a form of speech protected by the First Amendment and thus requires strict scrutiny); *Application of Griffiths*, 413 U.S. 717, 728–29 (1973) (overturning a state law that restricted non-U.S. citizens from taking the bar exam to obtain certification to practice law); *Loving*, 388 U.S. at 12 (overturning a ban on interracial marriages); *Griswold v. Connecticut*, 381 U.S. 479, 485–86 (1965) (holding unconstitutional a ban on the use of, or assistance in obtaining, birth control for married couples).

⁵⁷ *Intermediate Scrutiny*, BLACK’S LAW DICTIONARY (11th ed. 2019).

applies to quasi-suspect classes such as restrictions based on gender⁵⁸ or a child's legitimacy.⁵⁹ At this level, the government must prove that it has an *important* governmental interest in restricting the entity's rights and that the mechanism chosen to do so is substantially related to achieving that interest.⁶⁰

The final standard of review is called "rational basis review."⁶¹ This standard is used for all remaining allegations of rights restrictions and requires a challenging entity to prove that the government had no *legitimate* interest in restricting their rights.⁶² In other words, the means chosen to do so were not rationally related to achieving the interest proffered.⁶³ At this level of review, the restriction of rights is typically upheld unless the government's action is clearly wrong, arbitrary, or not an exercise of judgment.⁶⁴

3. *Juridical Freedoms*

The final level of legal rights recognized in U.S. jurisprudence are the juridical freedoms granted by our nation's laws and precedent—many of which are enumerated in the Constitution.⁶⁵ They include the freedoms of speech⁶⁶ and the press;⁶⁷ the rights to assemble,⁶⁸ exercise religion,⁶⁹ bear

⁵⁸ *Craig v. Boren*, 429 U.S. 190, 197 (1976); *Reed v. Reed*, 404 U.S. 71, 75 (1971).

⁵⁹ *Trimble v. Gordon*, 430 U.S. 762, 767 (1977); *Mathews v. Lucas*, 427 U.S. 495, 510 (1976).

⁶⁰ *Craig*, 429 U.S. at 197 (stating "classifications by gender must serve important governmental objectives and must be substantially related to achievement of those objectives.").

⁶¹ See Rational-Basis Test, Black's Law Dictionary (11th ed. 2019).

⁶² Questions of legitimacy have largely been interpreted as relating to the states' traditional "police" powers—such as the protection of public safety, health, and morals—as well as virtually any goal that is not constitutionally forbidden. See *Berman v. Parker*, 348 U.S. 26, 32 (1954) (explaining how "[p]ublic safety, public health, morality, peace and quiet, law and order—these are some of the more conspicuous examples of the traditional application of the police power."). Generally, any conceivable interest is sufficient to meet this prong of the test, and that interest need not be the government's actual purpose in enacting the restriction. See *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 315 (1993).

⁶³ See *United States v. Carolene Prod. Co.*, 304 U.S. 144, 152 (1938).

⁶⁴ See *Bowen v. Owens*, 476 U.S. 340, 345 (1986); *Mathews v. DeCastro*, 429 U.S. 181, 185 (1976); *Helvering v. Davis*, 301 U.S. 619, 640 (1937).

⁶⁵ See U.S. CONST. amends. I, II, XV, XIX, XXVI. *But see* U.S. CONST. amend. IX. (stating that the enumeration of some rights in the Constitution "shall not be construed to deny or disparage others retained by the people.").

⁶⁶ U.S. CONST. amend. I.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

arms,⁷⁰ and vote;⁷¹ and the rights to marry,⁷² procreate,⁷³ own property,⁷⁴ and maintain privacy.⁷⁵ While this list is only a short iteration of the many rights the U.S. government grants or recognizes to varying degrees, it demonstrates the wide variety of freedoms that the United States has deemed necessary and proper for persons to bear. In returning to our original quandary, however, we now consider what legal rights—if any—nonhuman entities within the United States bear.

III. RIGHTS OF NONHUMAN ENTITIES

A. *Corporate Rights*

U.S. jurisprudence has considered two main theories of corporate personhood in determining whether corporations have rights: (1) whether they have rights independently as “persons” and (2) whether their owners’ rights must be imputed to them because the owners act through the corporation.

1. *Corporate Personhood Prior to Citizens United*

“Corporate personhood” refers to the concept that an entity, such as a corporation, has many or all of the same legally recognized rights and duties as a human being.⁷⁶ While the concept of corporate personhood is now an accepted notion within U.S. jurisprudence, this was not always so. Questions about the status and rights of corporations have been raised throughout the nation’s history.⁷⁷ In 1809, one of the earliest cases considering corporate rights, Chief Justice Marshall wrote, “That invisible, intangible, and artificial

⁷⁰ U.S. CONST. amend. II.

⁷¹ See U.S. CONST. amends. XV, XIX, XXVI.

⁷² See *Loving v. Virginia*, 388 U.S. 1, 12 (1967).

⁷³ See *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 541 (1942).

⁷⁴ U.S. CONST. amends. X, XIV.

⁷⁵ See *Lawrence v. Texas*, 539 U.S. 558, 564–65 (2003); *Griswold v. Connecticut*, 381 U.S. 479, 485 (1965); *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923); see also U.S. CONST. amend. XIV.

⁷⁶ See *Person*, BLACK’S LAW DICTIONARY (11th ed. 2019).

⁷⁷ Of course, many of these questions have been, and continue to be, contentiously confronted in other countries throughout the world. For example, Marxism brought about a new understanding of corporate personhood. Marxism recognizes the corporate personhood of the working classes (the proletariat) while rejecting the corporate personhood of businesses and individual nation states. See, e.g., KARL MARX & FRIEDRICH ENGELS, THE COMMUNIST MANIFESTO (1848). Conversely, historical Fascism opined that citizens speaking a common language and sharing a national history composed a corporate personhood, chiefly subsiding in the State. See, e.g., BENITO MUSSOLINI & GIOVANNI GENTILE, THE DOCTRINE OF FASCISM (1932).

being, that mere legal entity, a corporation aggregate, is certainly not a citizen; and, consequently, cannot sue or be sued in the courts of the United States, unless the rights of the members, in this respect, can be exercised in their corporate name.”⁷⁸ In 1819, the Supreme Court held that Dartmouth College, a corporate entity, was entitled to the same Constitutional protections that individuals enjoy when entering into contracts.⁷⁹ In 1886, the Court considered whether the Equal Protection Clause of the Fourteenth Amendment should be applied to railroad corporations.⁸⁰ Reflecting on the case, Justice Black wrote, “this Court . . . decided for the first time that the word ‘person’ in the amendment did in some instances include corporations.”⁸¹

The issue of governmental regulation of corporate spending during political elections helped define the notion of corporate personhood in the late twentieth century. In the 1976 case *Buckley v. Valeo*, the Court held that bans on corporate expenditures during political elections were inherently bans on free speech.⁸² It admonished, “the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment.”⁸³ Two years later, in *First National Bank of Boston v. Bellotti*, the Court provided further foundation for the notion of corporate personhood when it held that prohibiting corporate campaign contributions infringed on corporations’ “protected speech in a manner unjustified by a compelling state interest.”⁸⁴ It further opined that political speech is “indispensable to decisionmaking in a democracy, and this is no less true because the speech comes from a corporation.”⁸⁵

However, over a decade later, the Court initiated a complete paradigm shift regarding its view of corporate personhood. In *Austin v. Michigan Chamber of Commerce*, the Court upheld a state campaign financing law that prohibited corporations from contributing general treasury finances to elections.⁸⁶ In so doing, the Court determined that corporations were not, in fact, “persons” protected by the First Amendment.⁸⁷ In 2003, the Court

⁷⁸ *Bank of U.S. v. Deveaux*, 9 U.S. (5 Cranch) 61, 86 (1809).

⁷⁹ *Trs. of Dartmouth Coll. v. Woodward*, 17 U.S. (4 Wheat) 518, 712 (1819).

⁸⁰ *Santa Clara Cty. v. S. Pac. R.R. Co.*, 118 U.S. 394, 409 (1886).

⁸¹ *Connecticut Gen. Life Ins. Co. v. Johnson*, 303 U.S. 77, 87 (1938) (citing *S. Pac. R.R. Co.*, 118 U.S. at 394).

⁸² 424 U.S. 1, 51 (1976).

⁸³ *Id.* at 48–49.

⁸⁴ 435 U.S. 765, 795 (1978).

⁸⁵ *Id.* at 777.

⁸⁶ *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 668–69 (1990).

⁸⁷ *See id.*

reinforced *Austin*'s holding in *McConnell v. Federal Election Commission*, finding that the regulation of corporate political financing was necessary to prevent political corruption impairing the public good and democratic integrity.⁸⁸

Overall, the Supreme Court's decisions regarding the notion of corporate personhood demonstrate the varying levels of juridical rights granted to corporations within U.S. jurisprudence. The corporate protections of the *Bellotti* and *Buckley* era shifted dramatically to restrict corporate personhood in *Austin* and *McConnell* and set the stage for the re-examination of corporate personhood in *Citizens United*.⁸⁹

2. Corporate Personhood in *Citizens United*

In *Citizens United*, the Supreme Court was again faced with the question of corporate rights. *Citizens United*, a conservative, nonprofit corporation, challenged Federal Election Commission (FEC) regulations restricting corporate campaign contributions and public distribution of "electioneering communications."⁹⁰ The corporation had produced a film prior to the 2008 presidential elections entitled *Hillary: The Movie* which portrayed then-Senator Hillary Clinton in a negative light.⁹¹ *Citizens United* argued that the laws violated its First Amendment rights by distinguishing between corporate and individual speakers, and that corporate political speech was entitled to the same protection as individual speakers' rights.⁹²

The FEC, in defending the regulations, argued that limitations on corporate speech were necessary to protect citizens from "the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas."⁹³ Agreeing that the regulations were a ban on a fundamental right to corporate free speech, the Court had to determine whether, under the strict scrutiny standard, the laws sufficiently furthered a compelling governmental interest and were narrowly tailored toward that end.⁹⁴ Here, the distinction between individuals and corporations was of central importance. Justice Kennedy, writing for the majority, stated, "If §441b applied to individuals, no one would believe that

⁸⁸ *McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 205 (2003).

⁸⁹ *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010).

⁹⁰ *Id.* at 321.

⁹¹ *Id.* at 319–20.

⁹² *Id.* at 321, 330.

⁹³ *Id.* at 348 (quoting *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 660 (1990) (internal quotations omitted)).

⁹⁴ *Id.* at 337, 340 (finding the strict scrutiny standard appropriate because the regulations infringed on a fundamental right—the freedom of speech).

it is merely a time, place, or manner restriction on speech. Its purpose and effect are to silence entities whose voices the Government deems to be suspect.⁹⁵ Furthermore, “wealthy individuals and unincorporated associations can spend unlimited amounts on independent expenditures Yet certain disfavored associations of citizens—those that have taken on the corporate form—are penalized for engaging in the same political speech.”⁹⁶ Ultimately finding in favor of *Citizens United*, the Court stated:

By taking the right to speak from some and giving it to others, the Government deprives the disadvantaged person or class of the right to use speech to strive to establish worth, standing, and respect for the speaker’s voice. The Government may not by these means deprive the public of the right and privilege to determine for itself what speech and speakers are worthy of consideration. The First Amendment protects speech and speaker, and the ideas that flow from each.⁹⁷

Therefore, in a complete reversal from the holdings of *Austin* and *McCormell*, *Citizens United* extended First Amendment protections to corporations as “persons” entitled to free speech rights.⁹⁸

3. *Corporate Personhood in Hobby Lobby*

The Supreme Court recently revisited the notion of corporate personhood with respect to another First Amendment protection: religious liberty.⁹⁹ In *Burwell v. Hobby Lobby Stores, Inc.*, the Court considered whether a law requiring corporations to provide its employees with health insurance coverage for contraceptives violated the First Amendment.¹⁰⁰ The corporations in this case included several closely held, for-profit companies owned by individuals whose religious objections to certain contraceptives conflicted with the law’s requirements.¹⁰¹ They sought injunctive relief under the Free Exercise Clause of the First Amendment and Religious Freedom Restoration Act of 1993¹⁰² to enjoin application of the contraceptive mandate.¹⁰³

⁹⁵ *Id.* at 339.

⁹⁶ *Id.* at 356 (citation omitted).

⁹⁷ *Id.* at 340–41.

⁹⁸ *Id.* at 371–72.

⁹⁹ See U.S. CONST. amend. I (“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . .”).

¹⁰⁰ 573 U.S. 682, 736 (2014).

¹⁰¹ *Id.* at 700–03.

¹⁰² 42 U.S.C. § 2000bb *et seq.*

¹⁰³ *Id.* at 701, 703.

Lower courts that considered the case held that the for-profit corporations should not be exempted from the law on religious liberty grounds because their participation in the for-profit marketplace subjected them to different standards than private citizens.¹⁰⁴ The Third Circuit stated, “General business corporations do not, separate and apart from the actions of belief systems of their individual owners or employees, exercise religion. They do not pray, worship, observe sacraments or take other religiously-motivated actions separate and apart from the intention and direction of their individual actors.”¹⁰⁵ Thus, the Supreme Court was required to consider whether the personal beliefs of a corporation’s owners could be imputed to the corporation itself, and therefore, whether religious liberty protections applied.¹⁰⁶

Reversing the lower court’s decision and holding for the corporations, the Supreme Court stated, “Any suggestion that for-profit corporations are incapable of exercising religion because their purpose is simply to make money flies in the face of modern corporate law.”¹⁰⁷ Turning to the source of corporations’ personhood, the Court explained, “Corporations, ‘separate and apart from’ the human beings who own, run, and are employed by them, cannot do anything at all.”¹⁰⁸ “When rights, whether constitutional or statutory, are extended to corporations, the purpose is to protect the rights of these people.”¹⁰⁹ Holding the health insurance mandate to be unlawful, the Court again extended juridical freedoms to corporations pursuant to the First Amendment.¹¹⁰ However, this was accomplished on very different grounds than those in *Citizens United* and its forbearers.¹¹¹ Rather than granting rights to corporations as attendant to their status as “people,” the Court based its decision on the desire to protect the rights of the underlying people who make up corporations.¹¹²

¹⁰⁴ *Id.* at 702, 704.

¹⁰⁵ *Conestoga Wood Specialties Corp. v. Sec’y of the U.S. Dep’t of Health and Human Servs.*, 724 F.3d 377, 385 (3d Cir. 2013) (quoting *Hobby Lobby Stores, Inc. v. Sebelius*, 870 F. Supp. 2d 1278, 1291 (W.D. Okla. 2012), *rev’d en banc*, 723 F. 3d 1114 (10th Cir. 2013)).

¹⁰⁶ *Hobby Lobby*, 573 U.S. at 705.

¹⁰⁷ *Id.* at 684.

¹⁰⁸ *Id.* at 707 (quoting *Conestoga Wood Specialties*, 724 F.3d at 385).

¹⁰⁹ *Id.* at 706–07.

¹¹⁰ *Id.* at 736.

¹¹¹ *Compare Hobby Lobby*, 573 U.S. at 706–07 (holding that religious liberty protections extended to corporations because corporations are made up of persons deserving of religious liberty rights), *with Citizens United v. Fed. Election Comm’n*, 558 U.S. at 372 (holding the corporations themselves were “persons” to whom First Amendment protections should apply).

¹¹² *See Hobby Lobby*, 573 U.S. at 691. Of note is the discussion the Court had regarding the business owners’ choice of the corporate form under which to operate their business. *Id.* at

B. *Environmental Rights*

Even on the most basic level, U.S. jurisprudence has declined to grant environmental entities—natural objects such as trees, mountains, and bodies of water—any legal rights.¹¹³ In *Sierra Club v. Morton*, the Supreme Court considered a suit by an environmental group seeking an injunction to prevent the development of a Disney ski resort in Sequoia National Park.¹¹⁴ The Court ruled that because the environmental group had failed to demonstrate a “direct stake in the outcome” of the controversy, it failed to satisfy the injury-in-fact requirement necessary to gain standing.¹¹⁵

Dissenting from this outcome, Justice Douglas opined that “[c]ontemporary public concern for protecting nature’s ecological equilibrium should lead to the conferral of standing upon environmental objects to sue for their own preservation.”¹¹⁶ Likening such suits to other contexts in which legal standing is conferred upon inanimate objects,¹¹⁷ Justice Douglas argued that the environmental “‘aesthetic’ and ‘conservational’ interests [are] sufficiently threatened to satisfy the case-or-controversy clause,” as required by Article III of the U.S. Constitution.¹¹⁸ This call has been echoed by others who similarly argue that natural objects should be recognized as legal rights holders on their own accord, empowered with standing to “institute legal actions at [their own] behest.”¹¹⁹ The ruling of the Court, however, has maintained that environmental

712. The Court noted the significant advantages gained by organizing under the corporate form, “such as the freedom to participate in lobbying for legislation or campaigning for political candidates who promote their religious or charitable goals.” *Id.* Additionally, liability protections, taxation considerations, cost, and investor considerations play into the choice of form decision. WILLIAM K. SJOSTROM, JR., *BUSINESS ORGANIZATIONS: A TRANSACTIONAL APPROACH* 73–124 (2d ed. 2016). An alternative to the traditional corporate form that has been gaining growing popularity in the U.S. is called a “benefit corporation,” which allows an organization to organize with the dual purpose of achieving a socially-minded goal for the benefit of the public as well as a profit for the owners. *Hobby Lobby*, 573 U.S. at 712–13. This form may prove very useful for those who wish to operate a business while incorporating the central tenets of their faith into the company’s operating documents.
¹¹³ See *Sierra Club v. Morton*, 405 U.S. 727, 739–41 (1972); Christopher D. Stone, *Should Trees Have Standing?—Toward Legal Rights for Natural Objects*, 45 S. CAL. L. REV. 450, 459 (1972).

¹¹⁴ *Sierra Club*, 405 U.S. at 729–30.

¹¹⁵ *Id.* at 740–41.

¹¹⁶ *Id.* at 741–42 (Douglas, J., dissenting).

¹¹⁷ Such as ships in maritime law and corporations. *Id.* at 742 nn.2–3 (citing *Reid v. Barry*, 112 So. 846 (Fla. 1927); GRANT GILMORE & CHARLES L. BLACK, *THE LAW OF ADMIRALTY* 31 (1957)).

¹¹⁸ *Id.* at 741 n.1 (referencing U.S. CONST. art. III, § 2, cl. 1).

¹¹⁹ Stone, *supra* note 114, at 458.

entities may not bring legal actions—let alone claim other legal rights—without the intervention of a human being who can demonstrate an invasion of his rights.¹²⁰

C. *Rights of Other Nonhuman Entities*

While this paper's focus is primarily restricted to discussion of corporate and environmental rights, it is worth noting that courts have also considered the legal rights of other nonhuman entities within U.S. jurisprudence. Ships, for example, are treated as separate juridical entities that can bring suits and face prosecution in their own right.¹²¹ Conversely, as of yet, courts have not extended legal standing rights to animals.¹²² In several recent cases, the Ninth Circuit Court of Appeals has opined that an animal could assert standing in its own right, independent from a human being.¹²³ In considering a copyright claim brought by a monkey named Naruto who took a picture of itself, the court wrote:

Naruto's lack of a next friend does not destroy his standing to sue, as having a "case or controversy" under Article III of the Constitution [T]he court has "broad discretion and need not appoint a guardian ad litem [or next friend] if it determines the person is or can be otherwise adequately protected."¹²⁴

Although the court eventually dismissed Naruto's claim for lack of statutory standing under the Copyright Act, it did note that "Naruto's Article III standing . . . is not dependent on PETA's [People for the Ethical

¹²⁰ *Sierra Club*, 405 U.S. at 739.

¹²¹ *See* *United States v. Little Charles*, 26 F. Cas. 979, 982 (C.C. Va. 1818) (No. 15,612) ("[T]his is not a proceeding against the owner; it is a proceeding against the vessel, for an offense committed by the vessel"). *See also* *Ventura Packers, Inc. v. F/V Jeanine Kathleen*, 424 F.3d 852, 861 (9th Cir. 2005); *Aurora Shipping Co. v. Boyce*, 191 F. 960, 968 (9th Cir. 1911); *Power Auth. of N.Y. v. Tug M/V Ellen S. Bouchard*, 377 F. Supp. 3d 230 (S.D.N.Y. 2019).

¹²² Though, notably, a wide array of statutory efforts have yielded significant advancements in the recognition of certain animal rights, including imposing criminal penalties on those who mistreat or neglect animals. *See, e.g.*, *African Elephant Conservation Act*, 16 U.S.C. §§ 4201–4246; *Animal Welfare Act*, 7 U.S.C. §§ 2131–2160; *Horse Protection Act*, 15 U.S.C. §§ 1821–1831; *Wild Free-Roaming Horses and Burros Act*, 16 U.S.C. §§ 1331–1340; *see also* N.Y. AGRIC. & MKTS. LAW § 356 (requiring that all confined animals have access to clean air, water, shelter, and food); CAL. PENAL CODE § 597a (imposing criminal penalties for the transportation of animals in a cruel or inhumane way).

¹²³ *See* *Naruto v. Slater*, 888 F.3d 418, 422–23 (9th Cir. 2018); *Cetacean Cmty. v. Bush*, 386 F.3d 1169, 1171 (9th Cir. 2004).

¹²⁴ *Naruto*, 888 F.3d at 422–23 (quoting *United States v. 30.64 Acres of Land*, 795 F.2d 796, 805 (9th Cir. 1986)).

Treatment of Animals] sufficiency as a guardian or ‘next friend.’”¹²⁵ Although this language is arguably all dicta and has not been deliberated in the U.S. Supreme Court, it certainly presents an interesting insight into the current trajectory of the legal rights of animals.

IV. ANALYSIS

Having discussed the historical and legal landscapes surrounding the notions of corporate and environmental rights, we now turn to an analysis of the proper allocation and enforcement of these rights. As the proceeding analysis will show, because corporate rights are the manifestation of human rights, their allocation and enforcement are inextricably bound to the existence and enforcement of human rights. Correspondingly, the allocation and enforcement of environmental rights are likewise inextricable from the existence and enforcement of human rights. Finally, the precepts behind state and corporate rights are applicable to the proper allocation and enforcement of environmental rights.

In proceeding, it is necessary to consider the purpose and end goals of law.¹²⁶ U.S. jurisprudence has expressed that the fundamental ends protected by bestowing legal rights upon people are to “make men free to develop their faculties,”¹²⁷ respect their dignity and choice,¹²⁸ and facilitate the value of individual self-realization.¹²⁹ Therefore, the legal rights due to any single entity must be considered in relation to, and in proportion to, the ends that are sought.

A. *Corporate Personhood*

The Court’s analysis in *Citizens United* focused on whether corporations merited First Amendment protections as “people” in their own right.¹³⁰ Conversely, in *Hobby Lobby*, the Court extended rights to corporations not based on the corporations’ own personhood, but rather to protect the human persons comprising the corporations.¹³¹ In this distinction lies the key to delineating the proper allocation of corporate rights.

¹²⁵ *Id.* at 423.

¹²⁶ Thomas Aquinas surmised that law serves four primary functions: affecting justice, maintaining or restoring order, promoting the common good, and helping those subject to the law to live virtuous lives. AQUINAS, *supra* note 15.

¹²⁷ *Whitney v. California*, 274 U.S. 357, 375 (1927).

¹²⁸ *Cohen v. California*, 403 U.S. 15, 24 (1971).

¹²⁹ Martin H. Redish, *The Value of Free Speech*, 130 U. PA. L. REV. 591, 594 (1982).

¹³⁰ See *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 336–67 (2009).

¹³¹ *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 706 (2014).

1. Corporate Rights Are The Manifestation of Human Rights

“Corporation” is defined as “[a]n entity having authority under law to act as a single person,” or “a group or succession of persons established in accordance with legal rules into a legal or juristic person.”¹³² The word “corporation” derives from the Latin “*corporare*” meaning “combine in one body.”¹³³ This characterization of corporations as a conglomeration of *human* persons underscores the inherent anthropocentric nature of corporations. Corporations are man-made entities formed by the law, under the law. They are developed to fulfill the needs and desires of their human creators.¹³⁴ Therefore, the rights they hold ought to be commensurate to their nature as such.

As Justice Stevens expressed in his dissent to *Citizens United*, “The conceit that corporations must be treated identically to natural persons in the political sphere is . . . inaccurate . . . [T]he distinction between corporate and human speakers is significant. Although they make enormous contributions to our society, corporations are not actually members of it.”¹³⁵ Continuing, he added, “[C]orporations have no consciences, no beliefs, no feelings, no thoughts, no desires . . . [T]hey are not themselves members of ‘We the People’ by whom and for whom our Constitution was established.”¹³⁶ Extending the title of “personhood” to nonhuman entities further complicates already-tumultuous debate about what it means to be human.¹³⁷

¹³² *Corporation*, BLACK’S LAW DICTIONARY (11th ed. 2019).

¹³³ *Corporation*, OXFORD ENGLISH DICTIONARY (3d ed. 2010).

¹³⁴ The corporate form provides several notable advantages for the operation of a business, including shielding its owners from personal liability for commercial torts and obligations, facilitating outside investment, and enabling property to be held in perpetuity. See WILLIAM K. SJOSTROM, JR., BUSINESS ORGANIZATIONS: A TRANSACTIONAL APPROACH 73–124 (2d ed. 2016); Nina Totenberg, *When Did Companies Become People? Excavating the Legal Evolution*, NPR (July 28, 2014), <https://www.npr.org/2014/07/28/335288388/when-did-companies-become-people-excavating-the-legal-evolution> [<https://perma.cc/37C8-JMWE>].

¹³⁵ *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 394 (2010) (Stevens, J., dissenting).

¹³⁶ *Id.* at 466.

¹³⁷ See *supra* Section II.A.

2. *The Existence And Enforcement of Corporate Rights Are Inextricable From The Existence And Enforcement of Human Rights*

Any time a right is granted to a person or group of people, there is the potential for conflict with another's rights.¹³⁸ The free press very frequently leads to an imposition on others' right to privacy.¹³⁹ Property ownership necessarily precludes the right of others to assemble in certain areas without permission.¹⁴⁰ Similarly, the right to free speech or free exercise of religion may very well impede upon another's ability to exercise their rights fully. However, the weighing of such rights is precisely what our legal system was developed to address.¹⁴¹ These concerns are not limited to the realm of corporate rights, but rather are concerns addressed daily on the individual level. In so doing, the U.S. judicial system has established the multi-layered due process framework for evaluating the level of scrutiny necessary before an entity's rights can be said to have been unduly violated.¹⁴² Just as was done in both *Citizens United* and *Hobby Lobby*, courts must balance whether the alleged rights violation rises to the level of severity requisite for judicial intervention.¹⁴³

However, a proper balancing first requires an accurate assessment of the parties involved and consideration of the societal values at stake. In *Citizens United*, the Court became swept up in the metaphor of corporations as people and failed to accurately delineate the true nature and purpose of corporations.¹⁴⁴ In contrast, the Court in *Hobby Lobby* accurately articulated that "the purpose of extending rights to corporations is to protect the rights of people associated with the corporation, including shareholders,

¹³⁸ See, e.g., *Boy Scouts of Am. v. Dale*, 530 U.S. 640 (2000) (holding the Boy Scouts had the right to exclude an individual from membership because of his sexual orientation, based on the group's right to freedom of expressive association).

¹³⁹ See Kimberly A. Dietel, Note, *Shadow on the Spotlight: The Right to Newsgather Versus the Right to Privacy*, 33 SUFFOLK U.L. REV. 131, 132-33 (1999).

¹⁴⁰ For a discussion of property and First Amendment rights as they relate to privately owned shopping malls, see Alys B. Freeman, Comment, *Go to the Mall with My Parents?? A Constitutional Analysis of the Mall of America's Juvenile Curfew*, 102 DICK. L. REV. 481, 488 pt. II (1998).

¹⁴¹ Cf. Steven J. Heyman, *Righting the Balance: An Inquiry into the Foundations and Limits of Freedom of Expression*, 78 B.U.L. REV. 1275, 1279 (1998) ("Eighteenth-century Americans understood freedom of speech within the framework of natural rights theory Like all such rights, however, it was bounded by the rights of others. Because government was instituted to protect rights, it had an obligation not only to respect liberty of speech, but also to ensure that this liberty was not used to violate other fundamental rights.").

¹⁴² See *supra* Section II.B.2.

¹⁴³ See, e.g., *Fla. Star v. B.J.F.*, 491 U.S. 524, 530 (1989).

¹⁴⁴ See *Citizens United*, 558 U.S. at 342.

officers, and employees. Protecting the free-exercise rights of closely held corporations thus protects the religious liberty of the humans who own and control them.”¹⁴⁵

Corporations are not people. They do not derive rights from their own personhood, but rather merit juridical protection only to the extent that the rights of the people making up those corporations are threatened. The decision to operate under the corporate form does not strip any person of their rights, but rather must be weighed into the balance of the degree of conflict with other human persons’ rights, the extent of the process due to such persons, and the end goals of law.

B. Legal Rights of Natural Objects

As indicated by Justice Douglas’ dissent in *Sierra Club v. Morton*, a similar debate has been sparked with regard to the legal rights and “personhood” of natural environmental objects.¹⁴⁶ Legal scholar Christopher Stone asserts that environmental rights should be analogized to the judicial rights of corporations.¹⁴⁷ He states, “I am proposing we do the same with eagles and wilderness areas as we do with copyrighted works, patented inventions, and privacy: *make* the violation of rights in them to be a cost by declaring the ‘pirating’ of them to be the invasion of a property interest.”¹⁴⁸ To accomplish this vision, Stone suggests instituting a guardianship system, which would allow “a friend of a natural object [who] perceives it to be endangered, [to] apply to a court for the creation of a guardianship.”¹⁴⁹ As a guardian, Stone postulates that a person “would be entitled to raise the land’s rights in the land’s name, i.e., without having to make the roundabout and often unavailing demonstration . . . that the ‘rights’ of the club’s members were being invaded.”¹⁵⁰

However, as Stone himself admits, there are several acute ontological problems with this proposal.¹⁵¹ The old adage that a tree falling alone in the woods makes no sound is emblematic of the problem elicited by the notion of environmental rights. If a society were to grant natural objects independent legal rights, by what mechanism would these rights be asserted, adjudicated, and enforced? A tree can no more easily issue a summons and complaint than it can transmit its dying groans, absent a human audience. How would such a guardian divine the “wants” and “needs” of a natural

¹⁴⁵ *Hobby Lobby*, 573 U.S. at 683–84.

¹⁴⁶ See *Sierra Club*, 405 U.S. at 742–43 (Douglas, J., dissenting).

¹⁴⁷ See Stone, *supra* note 114, at 464.

¹⁴⁸ *Id.* at 476.

¹⁴⁹ *Id.* at 464.

¹⁵⁰ *Id.* at 466.

¹⁵¹ See *id.* at 464 n.49.

object? Surely a forest—could it speak—would protest being burned to the ground; yet controlled burns have been proven to provide great benefit to the regeneration and strengthening of forests.¹⁵² Furthermore, a colony of elm bark beetles wreaking destruction on a forest of Dutch elm trees would surely wish to raise a case opposing their extermination. Yet presumably the trees themselves would wish to petition for their own protection. If standing were granted enabling environmental entities to raise such issues, courts would inevitably be inundated with cases forcing them to weigh the competing interests of a multitude of species.

Another complication the notion of environmental rights elicits is the difficulty of defining the bounds of one environmental entity from another. How would one delineate a stream, for example, from its source?¹⁵³ Courts have already shown themselves to be ill-disposed toward resolving such issues as how to define a wetland or at what point a wetland becomes wet no longer.¹⁵⁴ Furthermore, if a guardian were appointed for one entity and another guardian for a separate, but connected entity, how would potentially inconsistent judgments be resolved?

Finally, Stone's proposal also fails to provide a solution for the underlying difficulty of asking a court to put a value on environmental destruction.¹⁵⁵ As Stone himself acknowledges, determining the "fair market value" for many natural objects is simply not possible.¹⁵⁶ It requires complete reliance on the subjective values of any given subset of society. Whose estimation of value should govern? Certainly, a farming community would weigh the interests of developing cropland over those of preserving a wetland. The debate over the Keystone XL Pipeline perfectly evidences the conflicting values held by those whose livelihoods depend on the use of natural resources versus those who value land for its historical, aesthetic, or spiritual significance.¹⁵⁷ Moreover, some environmental damages, no matter the amount of the judgment, are irreversible and can never be "made whole."

¹⁵² MINN. DEP'T OF NAT. RES., THE BENEFITS OF PRESCRIBED BURNING ON PRIVATE LAND 1 (1994), https://files.dnr.state.mn.us/assistance/backyard/privatelandsprogram/benefits_prescribed_burning.pdf [https://perma.cc/63K9-EFN7].

¹⁵³ See Stone, *supra* note 114, at 464 n.49.

¹⁵⁴ See, e.g., *Rapanos v. United States*, 547 U.S. 715, 729 (2006).

¹⁵⁵ See Stone, *supra* note 114, at 476.

¹⁵⁶ See *id.* at 478.

¹⁵⁷ Jeremy Diamond, *Keystone XL Pipeline Debate: What Do I Need to Know?*, CNN (Feb. 25, 2015), <https://www.cnn.com/2014/11/18/politics/keystone-pipeline-senate-vote-explainer/index.html> [https://perma.cc/955W-EM9G].

Stone offers two potential solutions to this issue. First, he suggests that these problems could be “sidestepped” by “making the ocean whole somewhere else, in some other way.”¹⁵⁸ By this, he seems to suggest that if destruction cannot be avoided in one area, then those who wish to utilize that area must pay to have another area ameliorated somewhere else. Alternatively, he proposes establishing a “trust fund” subsidized by all taxpayers and the proceeds of successful environmental suits to address environmental losses on the whole.¹⁵⁹ This fund, Stone suggests, could also be used to satisfy judgments against the environment itself inevitably brought by those who are injured by natural objects, as justice would necessitate.¹⁶⁰ However, both of these solutions are wrought with impediments.

First, ameliorating the problem elsewhere does not resolve the issue of competing values at the original site. Telling a Native American tribe that they can resume their veneration of sacred land at an alternative site is not bound to end in agreement. Nor can the historical value of a certain area simply be transplanted elsewhere. Stone’s “sidestepping” solution fails to address the underlying problems of environmental degradation: Fixing the environment elsewhere will not result in relief being granted where it is presently needed.

Secondly, ameliorating the environment elsewhere would entirely undermine the very notion that Stone proffers—that natural objects are entitled to legal rights in and of themselves.¹⁶¹ If cutting down a tree to make way for a road can be cured by planting a new forest elsewhere, then the tree itself is not valued or receiving redress. Considerations of environmental rights necessarily extend beyond the particularized decisions at individual sites.

Such ontological issues again arise when considering “who” is responsible for such natural disasters when they occur. As Stone acknowledges, “when the Nile overflows, is it the ‘responsibility’ of the river? the mountains? the snow? the hydrological cycle?”¹⁶² And when the dialogue regarding human-caused climate change is added to the mix, the allocation of fault becomes Sisyphean. Establishing a taxpayer-funded trust account places the responsibility on all Americans. Should all of society be made to pay the price for the destruction wreaked most heavily by the few?

¹⁵⁸ *Id.* at 478.

¹⁵⁹ *See id.* at 480–81.

¹⁶⁰ *Id.* at 481. Indeed, in ancient and medieval times, judgments were pronounced against natural objects, such as in cases of trees that fell and killed a person. However, these judgments consisted of the surrender of the tree to the deceased’s family or the Church, rather than any monetary award. OLIVER WENDELL HOLMES, *THE COMMON LAW* 19, 24 (1881).

¹⁶¹ *See Stone, supra* note 114, at 456.

¹⁶² *Id.* at 481.

Such a proposition certainly smacks of injustice considering the prohibition on taxpayer standing discussed above.¹⁶³ Moreover, as Stone recognizes, the true costs of environmental degradation are often borne most heavily by the poor and marginalized in society.¹⁶⁴

1. *The Existence And Enforcement of Environmental Rights Are Inextricable From The Existence And Enforcement of Human Rights*

All of these issues show that considerations of environmental rights are inextricably entwined with discussions of human values and human rights.¹⁶⁵ Certainly, protecting the environment is a worthy and vital cause. But preventing environmental degradation at all costs—up to and including the

¹⁶³ See *United States v. Richardson*, 418 U.S. 166, 177 (1974); *supra* Section II.B.1. One cannot help but wonder if such things do not seem to have an internal justice of their own and are best relegated to the court of nature itself.

¹⁶⁴ Stone, *supra* note 114, at 477 n.87 (“[T]he poor quite possibly will bear the brunt of the compromises.”). Pope Francis, too, took up this cry in his papal encyclical *Laudato Si’* in which he wrote:

[T]he deterioration of the environment and of society affects the most vulnerable people on the planet: ‘Both everyday experience and scientific research show that the gravest effects of all attacks on the environment are suffered by the poorest.’ For example, the depletion of fishing reserves especially hurts small fishing communities without the means to replace those resources; water pollution particularly affects the poor who cannot buy bottled water; and rises in the sea level mainly affect impoverished coastal populations who have nowhere else to go. The impact of present imbalances is also seen in the premature death of many of the poor, in conflicts sparked by the shortage of resources, and in any number of other problems which are insufficiently represented on global agendas [W]e have to realize that a true ecological approach *always* becomes a social approach; it must integrate questions of justice in debates on the environment, so as to hear *both the cry of the earth and the cry of the poor*.

Pope Francis, *Laudato Si’*, ¶¶ 48-49, (May 24, 2015), https://w2.vatican.va/content/dam/francesco/pdf/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si_en.pdf [<https://perma.cc/P43L-6G2X>] (quoting Bolivian Bishops’ Conference, *Pastoral Letter on the Environment and Human Development in Bolivia* El universo, don de Dios para la vida 17 (Mar. 23, 2012)).

¹⁶⁵ See Pope Francis, *supra* note 165, ¶ 48 at 33 (“The human environment and the natural environment deteriorate together; we cannot adequately combat environmental degradation unless we attend to causes related to human and social degradation.”).

complete erasure of humanity¹⁶⁶—is not a just and cogent solution. So what is man to do? Do we forsake our own natural rights to life and liberty for the sake of the planet on which we find ourselves? Or is there a way to protect the unique dignity attending our own humanity while also conserving the environment which enables us to continue living?

The conclusion that these issues demand is that the universe was created for humanity and finds its destiny in man.¹⁶⁷ Determining the value of environmental protection is inherently anthropocentric. Any tool selected will necessarily center on the environment's value to humankind rather than any inherent value of the entity in and of itself—whether the valuation is calculated based on the real estate value of the land, market value of its resources, or a more elusive societal value in preserving the environment for unborn generations. As Stone concedes, it is intractable to suggest “that the mountain, or the planet earth, or the cosmos, is concerned about whether the pines stand or fall [T]he cosmos [does not] care if we humans persist or not.”¹⁶⁸ Therefore, just as in the case of corporate rights, the concept of environmental rights must be analyzed with a view toward the protection of human rights and the fulfillment of the end goals of law.

2. The Precepts Behind State And Corporate Rights Are Applicable To The Allocation And Enforcement of

¹⁶⁶ Indeed, there are those who would call for the total extinction of humanity for the sake of preserving the environment. For example, the Voluntary Human Extinction Movement has as its mission, “Phasing out the human race by voluntarily ceasing to breed [to] allow Earth’s biosphere to return to good health.” Les Knight, THE VOLUNTARY HUMAN EXTINCTION MOVEMENT, <http://vhemt.org/> [<https://perma.cc/S2U4-C3NS>]. Similarly, there is a growing movement in which people are choosing not to have children in order to reduce carbon emissions and the use of resources. See Amy Fleming, *Would You Give Up Having Children to Save the Planet? Meet the Couples Who Have*, THE GUARDIAN (June 20, 2018), <https://www.theguardian.com/world/2018/jun/20/give-up-having-children-couples-save-planet-climate-crisis> [<https://perma.cc/A9UB-LNP5>]. Further, the Anti-Natalist movement espouses a philosophy that the creation of new human life is a negative thing. Its progenitors point to the suffering that human life involves, both for people themselves and for other species that suffer because of humans, and suggest that because of such suffering, the generation of new life should be avoided. See DAVID BENATAR, *BETTER NEVER TO HAVE BEEN* 8 (2006).

¹⁶⁷ Joseph Michalak, Dir. of the Inst. for Diaconate Formation, The Seminaries of Saint Paul, Address at the Catechetical Institute (February 11, 2018). See also Pope Saint Paul VI, *Lumen Gentium*, ¶ 48 (Nov. 21, 1964), http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19641121_lumen-gentium_en.html [<https://perma.cc/PQW7-KWKX>].

¹⁶⁸ See Stone, *supra* note 114, at 471–72 n.73.

Environmental Rights

Revisiting the Court's rationales for imposing standing requirements at the outset, we must consider whether "granting trees standing" would be in the best interest of our nation's traditions of safeguarding the separation of powers, ensuring checks and balances, and impelling fervent argumentation by litigants who are in the best position to bring a case.¹⁶⁹ As it currently stands, the protection of environmental entities is largely delegated to the individual states and specific federal agencies, such as the Department of the Interior (DOI) and the Environmental Protection Agency (EPA).¹⁷⁰ In so delegating this power, the Supreme Court referred to the "quasi-sovereign interests" that states have to protect their citizens and the natural resources within their borders:¹⁷¹

When the States by their union made the forcible abatement of outside nuisances impossible to each, they did not thereby agree to submit to whatever might be done. They did not renounce the possibility of making reasonable demands on the ground of their still remaining quasi-sovereign interests; and the alternative to force is a suit in this court.¹⁷²

However, as many have pointed out, states and agencies often have many impediments to pursuing actions in protection of environmental entities. These include a wide array of institutional duties and goals assigned to them, limited funding, and the conflicts of interest underlying their need to appease a vast variety of groups and actors.¹⁷³ But as the above explication surveyed, granting natural entities standing to bring cases on their own behalves is wrought with far too many functional and ontological constraints to be a feasible solution.

Instead, the concerns underlying the Court's decision in *Georgia v. Tennessee Copper Co.* to extend a special solicitude to states bringing suits

¹⁶⁹ See *supra* Section II.B.1.; *United States v. Richardson*, 418 U.S. 166, 188 (1974) (Powell, J., concurring).

¹⁷⁰ See *Georgia v. Tenn. Copper Co.*, 206 U.S. 230, 237 (1907) (holding "the State has an interest independent of and behind the titles of its citizens, in all the earth and air within its domain. It has the last word as to whether its mountains shall be stripped of their forests and its inhabitants shall breathe pure air."); *Missouri v. Illinois*, 180 U.S. 208, 241 (1901) (holding "it must surely be conceded that, if the health and comfort of the inhabitants of a State are threatened, the State is the proper party to represent and defend them."); *Knight v. United Land Ass'n*, 142 U.S. 161, 181 (1891) (holding "[t]he [S]ecretary [of the Interior] is the guardian of the people of the United States over the public lands.");

¹⁷¹ *Tenn. Copper Co.*, 206 U.S. at 237.

¹⁷² *Id.* (citing *Missouri v. Illinois*, 180 U.S. at 241).

¹⁷³ See Stone, *supra* note 114, at 472.

in protection of natural resources is instructive here.¹⁷⁴ The Court noted the special consideration that “the question of health [and] the character of the forests” necessitate in environmental cases.¹⁷⁵ Continuing, the Court stated,

It is a fair and reasonable demand on the part of a sovereign that the air over its territory should not be polluted on a great scale by sulphurous acid gas, that the forests on its mountains . . . should not be further destroyed or threatened by the act of persons beyond its control, that the crops and orchards on its hills should not be endangered from the same source. If any such demand is to be enforced this must be¹⁷⁶

These same concerns resonate whether the entity bringing the suit is the state or another interested group or actor. Therefore, extending a special solicitude to any party wishing to bring a suit in protection of the environment would seem to warrant these same exigencies, “notwithstanding the hesitation that we may feel” regarding the particularity or concreteness of the injury suffered by the plaintiff or the likelihood that the requested relief will redress the challenged harm.¹⁷⁷ This is not to say that the claims of environmental advocacy groups should be automatically assumed meritorious, but rather that in satisfying the traditional standing requirements needed to simply get in the door of the courtroom, they should receive relaxed consideration. Rather than requiring members to otherwise have standing to sue in their own right, the elements required for associational standing should be revised in environmental cases to require only as follows: (1) that the interests at stake in the case are germane to the organization’s purpose; and (2) and that neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.¹⁷⁸

While this solution is not without its own difficulties, the exigency of our environmental situation and the broad application that environmental protection has to all Americans—indeed all of humanity—warrants this conclusion. Taking this incremental step toward environmental conservation is much more palatable than the dramatic decision to grant natural entities standing outright. It does not go so far as to extend any special due process rights or juridical freedoms to environmental entities. Rather, it merely recognizes the inherent value that all entities—human or otherwise—have, and because of that value, the natural right to be free from

¹⁷⁴ *Tenn. Copper Co.*, 206 U.S. at 238-39.

¹⁷⁵ *Id.* at 238.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *See Friends of the Earth v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 181 (2000).

wanton destruction.¹⁷⁹ Extending special solicitude to environmental advocacy groups in environmental cases both protects these natural rights and promotes the fundamental goals of law.

V. CONCLUSION

Corporate and environmental entities have received vastly different treatment within U.S. jurisprudence regarding the legal rights that have been extended them. These differences have led to the notion of corporations as “people,” while environmental entities have been denied even the most basic level of judicial rights—standing to bring suit. The Supreme Court’s analysis informing this allocation of rights, however, has been inconsistent and led to a detrimental understanding of these issues.

Because both corporate and environmental entities derive their value from their relation to humanity, it is only through this lens that the extension of legal rights can be properly allocated. The concept of corporate personhood counterfeits the exclusive stature held by the human person and has a deleterious effect on society as a whole. While corporations can be a useful mechanism for humans to achieve their goals and improve society, they are not people and have no value distinct from the humans comprising them. Likewise, while protecting the environment is a vital and necessary cause, it too cannot be evaluated aside from the benefits it provides to humanity. Granting the environment standing, due process, or other legal rights is not an effective means of preserving it. Instead, a loosening of the standing requirements for associational groups to bring suits on behalf of the environment should be pursued in the interest of protecting human life and liberty.

¹⁷⁹ CATECHISM OF THE CATHOLIC CHURCH, ¶¶ 339–40 (2d ed.) (“Man must therefore respect the particular goodness of every creature, to avoid any disordered use of things which would be in contempt of the Creator and would bring disastrous consequences for human beings and their environment Creatures exist only in dependence on each other, to complete each other, in the service of each other.”). However, “all men by natural right . . . , [may use the earth] to sustain and develop life.” Pope Pius XII, *Summi Pontificatus*, ¶ 38 (Oct. 20, 1939), http://w2.vatican.va/content/pius-xii/en/encyclicals/documents/hf_p-xii_enc_20101939_summi-pontificatus.html [<https://perma.cc/5WXY-G4GJ>].

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