
A COMPARATIVE JURISPRUDENTIAL ANALYSIS OF CORPORATE RIGHTS VS. THE RIGHTS OF NATURE THROUGH THE LENS OF HUMAN VALUES

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ABSTRACT

Modern constitutional orders are strikingly generous towards corporations. An entity chartered yesterday, possessed of no body, no biography and nothing older than a filing date, is accepted without much argument into the company of persons. Rivers, forests and glaciers, which long pre-date any court that might judge them, are not. This paper is about that imbalance. I have come to call it the Ontological Hierarchy of legal personhood, and my argument, plainly put, is that it does not survive contact with any serious account of Human Values.

The method is doctrinal and comparative. On the corporate side, I follow the American line from *Trustees of Dartmouth College v. Woodward* (1819) down to *Citizens United v. FEC* (2010). On the ecological side, I take up the still- young body of Rights of Nature decisions that have emerged, in the last two decades or so, out of Ecuador, Bolivia, Aotearoa New Zealand, Colombia, Bangladesh and India. Read together, these two bodies of law disclose a disparity that is neither an accident of history nor defensible on principled grounds. It is, at bottom, a quiet preference for economic abstraction over ecological fact, and the conceptual apparatus of Human Values gives no cover for it.

Three structural problems run through the asymmetry. First, an evidentiary one: corporations walk into court with- standing more or less presumed, while environmental plaintiffs must clear increasingly demanding injury tests. Second, an ontological one: a legal fiction is treated as the paradigm person, while the living biological systems on which every person depends are treated, by default, as things. Third, there is what I will describe as a constitutional capture, in which the vocabulary of commerce ends up colonising the vocabulary of rights.

From this analysis I draw three reform proposals: a graded conception of legal personhood, calibrated to ontological category; statutory guardianship on the model of the Te Awa Tupua settlement; and a constitutional principle of what I call Ecological Reciprocity, to mediate conflicts between corporate

and ecological claims. None of this is about stripping corporations of anything they need. The goal is parity, not demotion—restoring some balance to a legal cosmology that, at present, leans a good deal too far in favour of fiction and away from fact.

Keywords: legal personhood; rights of nature; corporate constitutional rights; comparative environmental jurisprudence; human values.

I. Introduction: The Evolution of Legal Personhood

Law is at its strangest where its categories are forced to the limit. Put two entities side by side. One is a multinational corporation chartered yesterday in Delaware; it has no physical form, and its memory runs no further back than its articles of incorporation. The other is the Ganga, a river on whose banks civilisational, legal, spiritual and economic life have been arranged since at least the Vedic period. In the shared vocabulary of Anglo-American and Indian jurisprudence, the first is unambiguously a “person.” It can own property. It can contract. It can sue and be sued. In several jurisdictions it can even assert constitutional rights of speech, of religion, of due process. The second is, at law, a *res*—a thing. It can be owned, diverted, polluted, litigated over; what it cannot do, ordinarily, is claim any juridical interest in its own continued existence.

That ranking is a choice. Nothing in nature compels it. And it is a choice that sits very uncomfortably with any account of Human Values one might wish to invoke, if by Human Values we mean something like the body of ethical commitments concerning dignity, reciprocity, responsibility and the integrity of the larger order in which human life is conducted. The central contention of this paper is straightforward. Modern law’s treatment of corporate personhood, placed alongside its hesitant, often defensive engagement with the Rights of Nature, constitutes a coherent Ontological Hierarchy: a ranking in which legal fictions stand above biological realities. The hierarchy is coherent but it is largely unexamined. It was not historically inevitable. It is not philosophically defensible. And correcting it is, I think, among the more pressing jurisprudential tasks of the present century.

A short genealogy of personhood is useful here. Roman law distinguished *personae* from *res*, and within the first category distinguished *personae alieni juris* (slaves, women, children) from *personae sui juris*. Medieval canon lawyers later devised the *persona ficta*, the fictional person, to solve a narrow but pressing practical problem: how was a monastery, a cathedral chapter or a municipal corporation to hold property that outlived any of its members? The device,

traditionally attributed to Pope Innocent IV, was expressly artificial. Its authors knew what they were doing. It was an institutional convenience, and it did not pretend to correspond to any natural category of being.

English common law took over the device and polished it. Blackstone spoke of the corporation as a “body politic” existing only in contemplation of law. Chief Justice Marshall, in *Trustees of Dartmouth College v. Woodward*, called it “an artificial being, invisible, intangible, and existing only in contemplation of law.”¹ Marshall was, in effect, admitting the thing’s fictitious origin. Yet within a century that same fiction had gained enough substance to invoke the Fourteenth Amendment against the several States.

The recognition of ecosystems as legal subjects has moved along a much slower and more interrupted path. Christopher Stone’s 1972 article, *Should Trees Have Standing?*, was written partly as an intervention into the then-pending decision in *Sierra Club v. Morton*.² What Stone proposed seemed, to most readers at the time, closer to a jurisprudential provocation than a working doctrine: that natural objects might themselves hold legal rights, represented by human guardians on the model of children or the mentally incapacitated.³ The proposal then lay more or less dormant for a generation. Its revival came not from American courts but from the Andes. Ecuador’s 2008 Constitution was the first anywhere in the world to enshrine the Rights of Nature.⁴ Bolivia’s Law of Mother Earth followed in 2010.⁵ Aotearoa New Zealand’s 2017 settlement with the Whanganui iwi gave statutory personality to a whole river system.⁶ Almost simultaneously, in 2017, the Uttarakhand High Court declared the Ganga and the Yamuna to be juridical persons,⁷ though the Supreme Court of India soon stayed the declaration.⁸

The question this paper presses is, on its face, a simple one. What coherent principle, and what account of Human Values, justifies the easy, frictionless expansion of corporate constitutional rights on the one hand, and the reluctant, contested, frequently reversed recognition of rights

¹Trs. of *Dartmouth Coll. v. Woodward*, 17 U.S. (4 Wheat.) 518, 636 (1819).

²405 U.S. 727 (1972).

³Christopher D. Stone, *Should Trees Have Standing?—Toward Legal Rights for Natural Objects*, 45 S. Cal. L. Rev. 450 (1972).

⁴Constitución de la República del Ecuador arts. 71–74 (2008).

⁵Ley de Derechos de la Madre Tierra, Ley No. 071 (Dec. 21, 2010) (Bol.).

⁶Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 (N.Z.).

⁷Mohd. Salim v. State of Uttarakhand, Writ Pet. (PIL) No. 126 of 2014 (Uttarakhand H.C. Mar. 20, 2017) (India).

⁸State of Uttarakhand v. Mohd. Salim, Petition for Special Leave to Appeal (C) No. 016879 of 2017 (Sup. Ct. India July 7, 2017)

in nature on the other?

The paper is divided into five substantive chapters. Chapter I traces the corporate veil's transformation into a constitutional privilege, and shows how courts, in a series of steps that made local sense, turned a utilitarian fiction into a rights-bearing subject. Chapter II maps the parallel but much slower emergence of Rights of Nature jurisprudence across four continents. Chapter III brings these two bodies of law together and subjects the asymmetry to a Human Values critique, drawing on Aldo Leopold's land ethic,⁹ Stone's work, and the subsequent ecological jurisprudence. Chapter IV offers a comparative look at cases in which corporate rights have collided directly with ecological claims. Chapter V eventually covers the reforms such as graded personhood, statutory guardianship and Ecological Reciprocity, and finally the conclusion.

It is not being argued that corporate personhood should be abolished. The central argument is narrower. Parity demands that something comparable, appropriately calibrated to a different kind of entity, be extended to the ecosystems on which every corporation and every human being actually depends. In jurisprudential terminology, the shift is from anthropocentric to ecocentric. In the register of Human Values, it is from proprietary to relational.

II. The Corporate Veil and Constitutional Privilege

At several points, the law could have gone a different way. The practice of reconstructing historical events demonstrates its value for developing judicial restraint because it demonstrates how our present constitutional system developed through disputed historical decisions instead of existing as an inherent system that was already present at the beginning.

A. The Foundational Fiction: Dartmouth College

The standard starting point for this case begins with Justice Marshall's opinion in *Dartmouth College v. Woodward*.¹⁰ The Contract Clause decision determined whether New Hampshire's legislature had the authority to amend the college's royal charter without trustee approval. The charter was a contract; the contract was entitled to constitutional protection against state impairment. That, on its own, was the holding. Marshall's famous description of the

⁹Aldo Leopold, "A Sand County Almanac and Sketches Here and There" 201–26 (1949)

¹⁰*Dartmouth Coll.*, 17 U.S. at 636.

corporation as “an artificial being, invisible, intangible, and existing only in contemplation of law” was analytical rather than celebratory when one reads it in context. Still, the opinion did something quietly consequential. It placed the corporation, artificial as it was, under the protective reach of the Federal Constitution. The corporation’s “personality” acquired, for the first time, a constitutional aspect. That was not full equivalence with natural persons, not yet. It was an aperture, through which such equivalence would eventually flow.

B. Santa Clara County and the Headnote Controversy

The most important single moment in the constitutionalisation of the corporation arrived not in a holding but in a headnote. In *Santa Clara County v. Southern Pacific Railroad*,¹¹ the Supreme Court resolved a tax dispute in favour of the railroad. Before oral argument, Chief Justice Waite is reported to have said from the bench that the Court did not wish to hear argument on whether the Fourteenth Amendment’s Equal Protection Clause applied to corporations, because “we are all of opinion that it does.” The Court’s reporter, J.C. Bancroft Davis, included that remark in the syllabus. The opinion itself held no such thing. Yet the headnote was afterwards cited as though it had.

Morton Horwitz’s 1985 study remains, in my view, the authoritative historical account of what followed.¹² Horwitz showed that the late-nineteenth-century consolidation of corporate personhood was not a straightforward extension of earlier doctrine. It was a fresh jurisprudential construction, undertaken by judges and treatise writers in the context of an industrialising economy in which the corporation had become the dominant productive unit. What the Court in *Santa Clara* was *reported* to have assumed, later decisions simply treated as settled. Adam Winkler’s more recent work on what he terms the “corporate civil rights movement” reinforces and extends this reading.¹³ Once the fiction had been tucked inside constitutional text, it proved very difficult to extract.

It is worth pausing on the methodology of that move. A constitutional proposition of real weight was installed not by a reasoned opinion but by an editorial gloss on the syllabus. That a republic organised around a written Constitution should have accepted so far-reaching a shift from so informal a source tells us something about the sociology of legal fiction. Where a

¹¹118 U.S. 394 (1886).

¹²Morton J. Horwitz, *Santa Clara Revisited: The Development of Corporate Theory*, 88 W. Va. L. Rev. 173 (1985); see also John Dewey, *The Historic Background of Corporate Legal Personality*, 35 Yale L.J. 655 (1926).

¹³Adam Winkler, *We the Corporations: How American Businesses Won Their Civil Rights* 113–54 (2018).

fiction happens to align with the prevailing economic interest of its era, its authority accumulates quickly, and the question of its origin tends to fall out of view.

C. From Bellotti to Citizens United

Over the twentieth century, *Santa Clara*'s implicit assumption was generalised across doctrinal domains. *First National Bank of Boston v. Bellotti* held that corporations enjoyed a First Amendment right to make political expenditures in connection with state referenda.¹⁴ Justice Powell, writing for the majority, reasoned that it was the speech itself, rather than the corporate or natural character of the speaker, that the First Amendment protected. The move was subtle but decisive. By relocating the constitutional focus from speaker to speech, the Court made the corporate–natural distinction constitutionally uninteresting.

Citizens United v. FEC completed that logic.¹⁵ Striking down federal restrictions on independent corporate expenditures in candidate elections, the Court treated corporations and unions as speakers whose political expression merited constitutional protection on the same plane as that of individual citizens. Justice Stevens, in dissent, put the analytical objection very plainly. Corporations, he observed, “are not themselves members of ‘We the People’ by whom and for whom our Constitution was established.”¹⁶ That objection did not carry.

Burwell v. Hobby Lobby Stores, Inc. then extended corporate personhood into the domain of religious conscience, holding that closely-held for-profit corporations could assert rights under the Religious Freedom Restoration Act against the federal contraceptive-coverage mandate.¹⁷ The doctrinal distance between Dartmouth's “invisible and intangible” artificial being and Hobby Lobby's religiously sincere commercial enterprise is not, I would suggest, a minor analytical extension. It is closer to a category migration.

D. The Underlying Pattern

A pattern is visible when these decisions are read in sequence. Corporate personhood is less defended than assumed. Each extension relies on the assumptions built into the last, rather than on any first-principles account of what it means to be a “person” in the constitutional sense.

¹⁴435 U.S. 765 (1978).

¹⁵558 U.S. 310 (2010).

¹⁶Id. at 466 (Stevens, J., concurring in part and dissenting in part).

¹⁷573 U.S. 682 (2014).

The resulting structure is vertically stable but horizontally unexamined. It does not rest on a coherent ontology. It rests on an accretion of doctrinal moves, each plausible in its own small context, the cumulative effect of which is that an entity with no body, no mortality, and no conscience holds, in the jurisprudence of one of the world's major common law democracies, rights against the State that are in many respects indistinguishable from those of its human citizens.

It is not being suggested that every extension of corporate rights is illegitimate. Several of them serve genuinely useful purposes. Property protections, contract enforcement, and due-process guarantees against arbitrary state action can be defended on grounds of institutional reliability, and more to the point, by reference to the underlying human interests that corporations aggregate. My objection is narrower. The ease with which the Fourteenth Amendment was extended to cover fictional entities contrasts jarringly with the difficulty natural ecosystems have faced in obtaining even threshold standing. Both, technically, are non-human. Only one of them has had its non-humanity treated as constitutionally unremarkable.

III. The Emerging Rights of Nature

If the constitutionalisation of the corporation is a story of institutional ease, the legal recognition of nature has been a story of institutional friction. That friction is itself instructive. It lays bare the default assumptions of Anglo- American and Indian jurisprudence about what may, and may not, be a “person.”

A. Stone's Thesis and *Sierra Club v. Morton*

Christopher Stone's *Should Trees Have Standing?*, which appeared in the *Southern California Law Review* in 1972, was written as an intervention in the then-pending *Sierra Club v. Morton*.¹⁸ The Sierra Club had challenged the US Forest Service's approval of a Walt Disney development at Mineral King Valley. A majority of the Court held that the Club lacked standing, not having shown injury to its members. Justice Douglas, in dissent, cited Stone and proposed that natural objects be permitted to sue in their own names through human “next friends,” a device already familiar from the law of infants and the mentally incapacitated.¹⁹ The dissent remains, for my money, among the more lyrical passages in the United States Reports:

¹⁸Stone, *supra* note 3, at 450–57.

¹⁹*Sierra Club v. Morton*, 405 U.S. 727, 741–43 (1972) (Douglas, J., dissenting).

the voice of the inanimate object, Douglas insisted, should not be stilled.

Stone's own thesis was actually fairly modest. He did not claim that a tree was the moral equivalent of a person. He argued only that the category of legal personhood, already elastic enough to accommodate corporations, ships and municipalities, could and should be stretched to cover natural objects, with procedural mechanisms for representing their interests. The mechanism, in other words, was familiar; only the ontological reach was new. American courts did not take up the idea. But the idea was not lost. It found its way into the law elsewhere.

B. Ecuador: The First Constitutional Recognition

Ecuador's 2008 Constitution, at Articles 71 through 74, recognised Pachamama (Mother Earth) as a bearer of rights, including "the right to integral respect for its existence and the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes."²⁰ Article 71 authorises any person, "every person, community, people, or nationality," to demand the enforcement of these rights before public authorities. The effect of the text, notable in itself, is to decouple standing from personal injury: to speak on nature's behalf, you do not have to have been personally harmed.

Implementation has been uneven. There were early wins in the Provincial Court of Loja, most notably a 2011 ruling concerning the Vilcabamba River, in which unauthorised road construction causing severe erosion was restrained on rights-of-nature grounds. Later cases involving extractive industries have illustrated the more familiar gap between constitutional text and administrative reality.²¹

C. Bolivia's Law of Mother Earth

The Ecuadorian legal system received additional statutory regulations through Bolivia's *Ley de Derechos de la Madre Tierra* (Law 071) which the country enacted in December 2010. The statute recognizes seven rights for Mother Earth which include her right to life and her right to all forms of life and her right to water and her right to unpolluted air and her right to maintain balance and her right to restoration and her right to exist without contamination.²² The 2012

²⁰Constitución del Ecuador, supra note 4, art. 71.

²¹See Craig M. Kauffman & Pamela L. Martin, Can Rights of Nature Make Development More Sustainable? Why Some Ecuadorian Lawsuits Succeed and Others Fail, 92 World Dev. 130 (2017).

²²Ley de Derechos de la Madre Tierra, supra note 5, art. 7.

framework law (*Ley Marco de la Madre Tierra y Desarrollo Integral para Vivir Bien*) introduced regulatory mechanisms for implementation. The drafters of Bolivia used indigenous Andean concepts including *Suma Qamaña* which means “living well” to create a legal system that follows different cosmological beliefs than the individual ownership rights of traditional liberal rights systems.

D. Aotearoa New Zealand: Te Awa Tupua

The Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 departs in structure from the Andean models. It was not framed as a constitutional abstraction about the rights of nature in general. It was a settlement of a long-standing grievance: the historical claim of the Whanganui iwi, a Māori community whose traditional relationship with the river is captured in the pepeha “*Ko au te awa, ko te awa ko au*” (“I am the river, and the river is me”), a relationship which the colonial legal order had systematically ignored. The Act declared the river itself to be a legal person, vested its rights in two guardians (*Te Pou Tupua*)- one appointed by the Crown, one by the iwi- and set up a statutory framework for collaborative management.²³

What is striking about the New Zealand model, at least to my reading, is its procedural coherence. The river’s personhood is not a rhetorical flourish. It is an operational fact of law, with named guardians, defined duties, and a working governance structure. In the comparative literature, *Te Awa Tupua* has become the reference case for how rights of nature can actually be institutionalised without doctrinal confusion.

E. India: The Uttarakhand Cases and Their Reversal

In March 2017, within days of each other, the Uttarakhand High Court handed down two decisions of remarkable doctrinal ambition. In *Mohd. Salim v. State of Uttarakhand*, the court declared the rivers Ganga and Yamuna to be “juristic/legal persons/living persons” entitled to the rights, duties and liabilities of living persons.²⁴ Among the sources the court cited was the well-established Indian jurisprudence of idol-worship cases, in which deities had long been recognised as juridical persons capable of holding property. Weeks later, in *Lalit Miglani v. State of Uttarakhand*, the same court extended juristic personality to the Gangotri and Yamunotri glaciers, and by implication to “rivers, streams, rivulets, lakes, jungles, air, forests,

²³Te Awa Tupua, supra note 6, §§ 14, 18–20.

²⁴Mohd. Salim, supra note 7, ¶ 19.

meadows, dales, wetlands, grasslands, and springs.”²⁵

The boldness of these declarations was matched, almost immediately, by practical difficulty. The named guardians, who were senior state officials, were unsure of their duties. Awkward questions arose about liability. If the Ganga, as a person, could be said to “cause” flooding that damaged property, could the state be sued in its capacity as guardian? Within months, and at the State’s request, the Supreme Court of India stayed the High Court’s orders.²⁶ The Indian episode is, I think, a useful illustration of a recurring difficulty in Rights of Nature jurisprudence. The declaratory move is easy. The institutional design needed to make the declaration operate is not. The Whanganui settlement succeeded where the Uttarakhand judgments faltered in no small part because the former rested on a detailed statutory framework, and the latter was a piece of judicial innovation issued without legislative backing.

F. Colombia, Bangladesh and the United States

Colombia’s Constitutional Court recognised the Atrato River as a subject of rights in *Sentencia T-622* of 2016, ordering the national government to co-operate with local communities in the river’s protection.²⁷ The Court’s reasoning leaned on the concept of biocultural rights—the proposition that the cultural identities of indigenous and Afro-descendant communities cannot be separated from the ecosystems in which those identities are formed and sustained.

Bangladesh followed in a different register. In 2019 the High Court Division held, in what has become known as the Turag River case, that all the rivers of the country possess legal personality, and designated the National River Conservation Commission as their guardian.²⁸ In the United States, where the doctrinal ground remains much less welcoming, municipal experiments have run into judicial resistance. The City of Toledo, Ohio, adopted the Lake Erie Bill of Rights in 2019, which claimed to grant legal rights to Lake Erie. The federal district court invalidated the ordinance in *Drewes Farms Partnership v. City of Toledo* because it contained vague language and violated pre-existing laws.²⁹

²⁵Lalit Miglani v. State of Uttarakhand, Writ Pet. (PIL) No. 140 of 2015 (Uttarakhand H.C. Mar. 30, 2017) (India).

²⁶State of Uttarakhand v. Mohd. Salim, supra note 8.

²⁷Corte Constitucional [C.C.] [Constitutional Court], noviembre 10, 2016, Sentencia T-622/16 (Colom.).

²⁸Human Rights & Peace for Bangladesh v. Bangladesh, Writ Petition No. 13989 of 2016 (High Ct. Div. Bangl. Jan. 30, 2019).

²⁹441 F. Supp. 3d 551 (N.D. Ohio 2020).

G. The Uneven Canon

The canon has resulted in an extremely disorganized state. The scope of the study includes three legal systems which protect rights through constitutional law in Ecuador and through statutory law in New Zealand and through judicial decisions in India before the court granted a stay and through municipal regulations in Toledo. The examples all share one commonality which shows that people believe ecosystems need protection because they present their own value to the world. What divides them is the institutional shape in which the intuition has been poured. The comparative lesson is not difficult to extract. Declarations without institutional scaffolding tend to collapse under their own weight. Settlements with scaffolding endure. Much of the work of the coming decade is likely to be about building that scaffolding.

IV. The Human Values Critique

The Ontological Hierarchy I have been describing is not a theoretical curiosity. It is a substantive moral failure- and, measured against the principles that the Human Values framework actually invokes, it cannot easily be defended.

A. Anthropocentrism and Its Limits

The dominant tradition in modern Western law is anthropocentric. The human is treated as the paradigmatic rights-holder, and juridical status is extended outward from there by analogy or by convenience. The corporation is, in a sense, a limit-case of this extension. It “works” as a juridical person because it aggregates human interests and advances human economic projects. The corporate person, in other words, earns its place in the juridical order by reference to human utility.

Nature, by contrast, has typically been classified in this tradition as *res communes* or *res nullius*: a commons open to use, or a thing belonging to no one and therefore available for capture. The juridical grammar inherited from Roman property law simply has no native home for ecosystems as subjects. They appear in legal consideration only as property, or as externalities. This framing has not been unchallenged within Western thought itself. Aldo Leopold’s land ethic proposed that the circle of moral consideration be widened to include “soils, waters, plants, and animals, or collectively: the land.”³⁰ Leopold wrote without legal

³⁰Leopold, *supra* note 9, at 203–04.

vocabulary, and the legal implication came later, largely through Stone. But the underlying claim—that ethical consideration should track biological reality rather than juridical convenience—is the conceptual ancestor of every Rights of Nature regime surveyed in the preceding chapter.³¹

B. The Ontological Incoherence

Take the ontological comparison directly. A corporation exists because a statute or a charter says it does. Its continuation depends on filings, fees, and the pleasure of its members. It has no body, no metabolism, and no capacity to be injured except through the interests of those natural persons for whom it operates as a vehicle. When we speak of “corporate harm,” we are really speaking metaphorically. The actual harm is suffered by shareholders, employees, creditors or customers—the natural persons whose interests the corporation aggregates. Philosophers who have taken the corporate person seriously as a moral agent in its own right have been forced to argue the case at length; a river, by contrast, requires no such argument.³²

A river exists regardless of law. It has a hydrology, a sediment cycle, a biotic community. It can be injured in ways that do not reduce, without remainder, to injuries of identifiable humans. When the Atrato’s mercury levels rise, the river is harmed, and the harm is present even before any human has drunk its water. To say the river has no legal interest in its own continuation is not to describe what the river is. It is to describe a limitation of the juridical vocabulary we have happened to apply to it.

The implication is sharper than it might first appear. If legal personhood is to be extended at all to non-humans, the weaker candidate is the entity whose very existence depends on legal recognition. The river would still be here if every court in the world closed tomorrow. The corporation would not. And yet our jurisprudence treats the latter as the paradigmatic protected artificial person, and the former as a thing available for allocation.

C. Human Values and the Failure of Reciprocity

The framework of Human Values most commonly invoked in Indian and global jurisprudence rests on familiar principles: Truth (*Sathya*), Righteous Conduct (*Dharma*), Peace (*Shanti*),

³¹Roderick Frazier Nash, *The Rights of Nature: A History of Environmental Ethics* 3–12 (1989); Cormac Cullinan, *Wild Law: A Manifesto for Earth Justice* 77–96 (2d ed. 2011).

³²Peter A. French, *The Corporation as a Moral Person*, 16 *Am. Phil. Q.* 207 (1979).

Love (*Prema*), and Non-Violence (*Ahimsa*). Each of these assumes a relational universe. Duties and entitlements are distributed across a web of interdependence, not concentrated in atomistic rights-bearers whose interests are presumed to terminate at their own borders.

On the corporate side, the jurisprudence has been generous. Speech rights, religious exercise rights, due process rights, property rights: the full constitutional apparatus has been made available. On the side of nature, it has been markedly less so. Standing doctrines require individualised injury. Property regimes treat ecosystems as divisible resources. The tort system permits environmental externalities to be discharged without the actual bearer of the harm, the ecosystem itself, ever appearing in court as a party.

The asymmetry cannot really be defended in the vocabulary of any of the five principles. Truthfulness is a problem at the outset, because the defence rests on a legal fiction that has, over time, come to masquerade as ontological fact. Righteousness is a problem too, since the arrangement privileges the economically powerful over the ecologically foundational. Peace fares no better, given that the arrangement guarantees the continued subordination of biospheric reality to legal artifice. Nor is it easy to square with love, at least if love involves attention to the vulnerable. And if the destruction of ecosystems counts as violence, as it surely must if the word is to mean anything at all beyond the immediate physical injury of individuals, then non-violence sits uneasily with it as well.

D. The Capture Problem

A final critique concerns the vocabulary of rights itself. Once the corporate form has acquired constitutional rights, the language of rights tends to become progressively more available to the economically dominant actors of any given era. “Free speech” comes, among other things, to include unlimited political expenditure. “Religious exercise” comes to include the employer’s opt-out from a regulatory scheme. The constitutional grammar, designed historically to protect the vulnerable against the state, is turned to the protection of corporate prerogative against democratic regulation.

This is what I mean by the capture problem. It is not unique to environmental law. But environmental law is among its more acute manifestations, because corporate rights tend to be asserted, in environmental contexts, against the very regulations designed to protect ecosystems

that would otherwise have no voice in the matter at all.³³

V. A Comparative Analysis

Moving from doctrine to the empirical record, this chapter looks at several paradigm cases in which corporate rights or interests collided directly with ecological claims. The analysis is qualitative; these cases do not lend themselves to clean quantification. But the pattern across them is, I think, consistent. I have chosen not to present aggregate statistical data without verifiable primary access; where global figures are relevant, the reader can consult the open-access reports of the United Nations Environment Programme and the Intergovernmental Panel on Climate Change.

A. Chevron-Texaco and the Ecuadorian Amazon

The litigation arising from Texaco's, and later Chevron's, oil operations in the Ecuadorian Amazon is among the most protracted in the entire history of modern environmental law.³⁴ Indigenous plaintiffs from the Lago Agrio region alleged decades of contamination: unremediated waste pits, polluted waterways, and clusters of disease in the affected communities. Ecuadorian courts ultimately entered a multi-billion dollar judgment against Chevron. Chevron, having long since pulled its productive assets from Ecuador, resisted enforcement successfully across several jurisdictions, relying on international arbitration and bringing racketeering litigation against the plaintiffs' counsel. The main result of the process shows us everything needed to understand its complete value. The global business organization which holds both constitutional rights and treaty rights in multiple countries succeeded in overturning a court decision which protected injured natural persons and a harmed ecosystem.

B. Standing Rock and the Dakota Access Pipeline

The DAPL lawsuit demonstrates a new aspect of the existing imbalance between opposing parties.³⁵ The Standing Rock Sioux opposed the pipeline because it would cross Lake Oahe, which they considered a violation of their treaty rights and religious beliefs and their right to protect sacred environmental areas. The pipeline company's property and contractual interests,

³³See generally Erin Daly, *The Ecuadorian Exemplar: The First Ever Vindications of Constitutional Rights of Nature*, 21 *Rev. Eur. Community & Int'l Env't L.* 63 (2012).

³⁴*Chevron Corp. v. Donziger*, 833 F.3d 74 (2d Cir. 2016); see also *Maria Aguinda y Otros v. Chevron Corp.*, Juicio No. 2003-0002 (Corte Provincial de Justicia de Sucumbíos Feb. 14, 2011) (Ecuador).

³⁵*Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs*, 985 F.3d 1032 (D.C. Cir. 2021).

on the other hand, were straightforwardly cognisable in American law. At various procedural stages, the pipeline's interests prevailed. The ecosystem, and its human custodians, were repeatedly relegated to secondary consideration. The pattern is by now familiar. Where corporate interest and ecological interest collide, the former enters the courtroom with a full, ready vocabulary of rights. The latter must translate its claim into terms the law already knows.

C. Vedanta and the Niyamgiri Hills

The Niyamgiri bauxite-mining controversy in Odisha pitted Vedanta Resources against the Dongria Kondh, an adivasi community for whom the Niyamgiri hills are sacred. In *Orissa Mining Corp. v. Ministry of Environment and Forests*, the Supreme Court of India directed that the *gram sabhas* of the affected villages be consulted on whether the proposed mining would infringe their religious and cultural rights.³⁶ The *gram sabhas* voted unanimously against the project. What made the outcome exceptional was the route by which it was reached: the decision was mediated through the cultural rights of a defined human community. Had the hills themselves been recognised as legal persons, the consultation would have rested on different, and perhaps firmer, conceptual ground.

D. Bhopal- The Limits of Corporate Accountability

The Bhopal gas disaster of December 1984, in which methyl isocyanate released from a Union Carbide facility killed thousands and injured hundreds of thousands more, remains the reference point for everything that is inadequate about corporate liability in cases of environmental catastrophe.³⁷ The eventual settlement, the criminal proceedings, and the repeatedly raised question of parent-company responsibility together show how structurally difficult it is to hold multinational corporate persons accountable for ecological and human harm at the scale that the harm itself demands. The Bhopal site, still unremediated after four decades, stands as a piece of physical testimony to a juridical shortfall.

E. An Asymmetric Ledger

These cases share a structure. Corporate actors come to court pre-equipped with rights and with resources. Ecosystems come to court, if they come at all, through human proxies whose

³⁶*Orissa Mining Corp. v. Ministry of Env't & Forests*, (2013) 6 S.C.C. 476 (India).

³⁷*Union Carbide Corp. v. Union of India*, (1989) 3 S.C.C. 38 (India); *Union Carbide Corp. v. Union of India*, (1991) 4 S.C.C. 584 (India).

standing may itself be contested. The result is not that corporations always win. It is that the field is not level, and the slope of it runs in favour of the entity whose existence depends on the law over the entity whose existence the law is asked to protect. Quantitative corroboration of this asymmetry at the global scale is available in the open-access literature on planetary boundaries and ecological externalities; readers seeking aggregate figures should consult UNEP's *Inclusive Wealth Report* series and the IPCC's synthesis assessments.³⁸

VI. Proposals for Reform

If the preceding chapters have shown that the Ontological Hierarchy is historically contingent, ontologically incoherent, and morally indefensible, the task of this chapter is to propose its correction. The proposal is not revolutionary in vocabulary. It is reconstructive in its structure. It rests on five interlocking recommendations, discussed in turn below.

A. Graded Legal Personhood

The legal category of “personhood” has always been graded in actual practice, even if this is rarely said out loud in theory. Minors have personality but only limited capacity. The mentally incapacitated retain personality but act through guardians. Corporations have personality, but, in principle, only within the scope of their chartered purposes. Personhood is, in short, a bundle of rights and duties that the law assembles differently for different kinds of entities.

What I propose is that this graded structure be made explicit and extended to include ecosystems. The relevant typology would distinguish at least three categories. First, full natural persons: human beings, whose rights are, in principle, comprehensive. Second, derivative corporate persons: entities whose rights are functional, and limited to the purposes for which they were chartered. Third, what might be called custodial ecosystem persons: rivers, forests, mountains and similar systems, whose rights are relational and enforced through statutory guardians. The custodial category would carry specific, enumerated rights- to existence, to integrity of function, to restoration- along with correlative standing in legal proceedings. The law would provide ecosystems through its right to assert their interests against all human activities. The law establishes a standard which protects ecosystems from being overlooked as

³⁸U.N. Env't Programme, *Inclusive Wealth Report 2023: Measuring Sustainability and Equality* (2023); Intergovernmental Panel on Climate Change, *Climate Change 2023: Synthesis Report* (2023).

evidence of their existence.

B. Statutory Guardianship on the Whanganui Model

The Whanganui settlement provides the most complete institutional framework for current use according to my assessment. The system requires named guardians who will oversee distinct constituencies which include both indigenous and state populations. The system requires specific duties which need to be performed. The system requires funding through a mechanism which does not rely on ongoing political battles for financial resources.³⁹

Constitutional democracies which seek to implement similar reforms must learn from three main operational lessons. The function of guardianship needs multiple guardians because single guardian systems create high chances of either wrongful control or complete oversight. The law requires specific guidelines which establish enforceable duties because statutes that contain only general statements fail to function as valid laws who do not follow the Toledo ordinance. Administrative facilities need to support guardianship processes because the right to sue becomes ineffective when legal resources needed for actual court cases are unavailable. The guardian system needs to function as an actual guardianship system which protects indigenous and local custodial powers from state control. The statutory framework must maintain the traditional protective role of communities which have historically protected their ecological areas.

C. A Constitutional Principle of Ecological Reciprocity

The third recommendation operates as a constitutional doctrine. A principle called the principle of Ecological Reciprocity is being proposed to govern conflicts between corporate and ecological claims at the constitutional interpretive level. The principle would require that when a recognized corporate right is used against an ecological protection measure, which safeguards an ecosystem with personhood status, the corporate right should be diminished according to the ecological value of the situation. The principle establishes a process that reverses the normal rule which protects existing rights from new regulatory frameworks within this specific area of application.

The innovation does not represent a fundamental change. Indian constitutional law has long

³⁹Te Awa Tupua, supra note 6, § 18-19.

recognised analogous calibrations through the public trust doctrine and the precautionary principle and the principle of inter-generational equity which courts established in *M.C. Mehta v. Kamal Nath*,⁴⁰ *Vellore Citizens' Welfare Forum v. Union of India*,⁴¹ and *Indian Council for Enviro-Legal Action v. Union of India*.⁴² The systematization of these instincts through Ecological Reciprocity will change them from their current state into a permanent process for understanding ecological matters. The constitutional principle in India requires no textual change because Articles 48A and 51A(g) already establish ecological duties for the government and citizens respectively. The requirement would need only a reading practice which takes those provisions with the same importance as fundamental rights.

D. Reform of Standing Doctrine

The standing doctrine requires complete reform at this moment. Standing rules in American federal practice and Indian writ jurisprudence have developed to support public interest litigation but they have not established ecosystems as legitimate legal entities that can sue. The Ecuadorian constitutional model which allows "every person, community, people, or nationality" to seek enforcement of nature's rights establishes a straightforward legal framework. The extension can succeed through Indian writ jurisdiction which already allows citizens to present cases through its expanded standing rules while the Supreme Court has established environmental protection as a fundamental right under Article 21.⁴³

E. Liability Regimes and the Polluter Pays Principle

The existing liability framework requires complete transformation. The polluter pays principle which Indian courts established through *Indian Council for Enviro-Legal Action* extends to multiple international treaties which international law recognizes. The principle achieves a new understanding through ecosystem personhood frameworks. The ecosystem itself through its guardianship system becomes the valid entity which demands environmental restoration. Compensation funds do not go to state revenue but specifically finance ecological restoration work which creates a closer connection between legal outcomes and actual harm than current system allows. Articles 48A and 51A(g) of the Constitution provide the textual anchor; the

⁴⁰*M.C. Mehta v. Kamal Nath*, (1997) 1 S.C.C. 388 (India).

⁴¹*Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 S.C.C. 647 (India).

⁴²*Indian Council for Enviro-Legal Action v. Union of India*, (1996) 3 S.C.C. 212 (India).

⁴³See, e.g., *Subhash Kumar v. State of Bihar*, (1991) 1 S.C.C. 598 (India).

jurisprudence just surveyed supplies the doctrinal vocabulary.⁴⁴

F. The Objection from Economic Ordering

The standard objection to all of this is economic. The argument states that corporate persons enable businesses to combine their financial resources while distributing their investment hazards and making long-term investments which sustain present-day economic growth. The organization loses its ability to function when its rights are restricted through new environmental protection standards which create untested limitations.

The objection needs to be treated as a serious matter yet its investigation shows that it has been wrongly presented. The abolition of corporate personhood is not what I am proposing. The rights of corporations should not be allowed to operate against ecological conditions which sustain all productive activities. The corporation depends on the continuation of the biosphere. A legal system which gives more value to fictional entities than to actual existing entities needs to be rejected because it undermines its own objectives. The proper implementation of Ecological Reciprocity functions as an economic system which evaluates decisions over extended periods of time. The concept exists for the purpose of proving economic systems wrong.

VII. Conclusion

The strange characteristics of modern legal systems become clear through observing their most extreme aspects. The extreme I have been concerned with is the Ontological Hierarchy by which legal fictions stand above biological realities, the arrangement under which a corporation chartered yesterday enjoys constitutional protections that a river centuries old cannot assert in its own name. The analysis has ranged fairly widely: from *Dartmouth College* to *Citizens United* in American constitutional law, from the Vilcabamba in Ecuador to the Whanganui in Aotearoa, from the Uttarakhand High Court's ambitious declarations to the practical difficulties that followed them. The research study has maintained its original central argument since the beginning of the research study. The Human Values framework which essential jurisdictions use cannot support the present difference between corporate personhood and ecological personhood. The process involves changing a fictional element into a fundamental reality. The system gives priority to theoretical concepts instead of actual existing conditions.

⁴⁴India Const. arts. 48A, 51A(g).

The system permits ongoing power relations between the biosphere and extraction activities. The text creates difficulty because it needs an honest reading to reveal either its loving nature or its non-violent nature.

The corrective solution which I have proposed through graded personhood and Whanganui model statutory guardianship and Eco Reciprocal constitutional principle and standing doctrine reform and new liability system design, is not an idealized solution. The existing legal system already contains all necessary components as established by current legal practices. The existing elements must be converted into a unified system through political and legal establishment processes. The author presents two final points. The corporate reform that I propose does not support anti-corporate sentiments. The corporation exists as an exceptional legal invention which maintains its fundamental economic function. The reform is about equilibrium. The rights that have been accorded to the useful fiction cannot be accorded only to the fiction. Every corporation and every individual needs equal acknowledgment of their essential biological systems.

The legal system makes its standards through judicial rulings. The reform requires assessment because it brings forth a new worldview that existing legal systems currently depend on. Jurisprudence which prioritizes fictional elements over actual evidence fails to comprehend the universe which it claims to govern. The transition toward eco-centric principles represents an epistemic shift. Legal systems must respond to biosphere conditions instead of using ledger systems for their purposes. The Indian philosophical tradition of jurisprudence describes a Universal Harmonious Order which includes a *rta* system and a dharmic balance between human beings and non-human entities and cosmic forces. The underlying structural assertion can be accepted without needing to embrace the entire metaphysical framework. A law system which detaches itself from environmental facts loses its basis for establishing legitimate authority. The next generation of lawyers judges and scholars needs to restore that balance which has been disrupted. The paper presents a mapping attempt through different dimensions. The work itself belongs to them.