ARIZONA JOURNAL
OF
ENVIRONMENTAL LAW & POLICY

VOLUME 13 SUMMER 2023 ISSUE 3

WHAT IS THE GRASS?

DEFINING THE ECOLOGICAL PERSON

Mia Burcham*

Abstract

This note will trace the tension between the legal subject-statuses of personhood and citizenship in the creation of non-human legal persons. Specifically, I will examine legal efforts that rely on the legal personhood of nature and ecosystems. These efforts exist in the context of other novel efforts to expand personhood subject-status to non-agents, which require personhood in order to establish standing, but further require guardians to litigate and protect their alleged rights–namely, legal rights of artificial intelligences, of fetuses, and of oft-analogized corporations.

This note will focus its discussion of ecosystem personhood within the complaint brought by Deep Green Resistance on behalf of the Colorado River Ecosystem against the State of Colorado, and the subsequent legal failure to achieve protection for the ecosystem through the construction of legal personhood. The success of the State over the ecosystem offers a lens through which to examine the relative possibilities and strengths of person and citizen subject-status.

In order to think through the legal necessity and consequences of expanding the category of "person" to non-actors, I will first foreground the current categories of legal personhood and American citizenship in their historical antecedents, specifically during the political period spanning the Civil War, when a new group of natural persons were struggling to obtain full legal personhood and citizenship status. I will also look at the interplay of theories of ecosystem personhood, corporate personhood, and Artificial Intelligence personhood to limn the contours of this nascent recognition of non-human persons under American law. Lastly, this note will explore the historical move from enshrining personhood to enshrining citizenship, and whether this move is required, beneficial, or even possible in the case of non-agents.

* JD candidate, class of 2024. I am endlessly grateful to Professor Toni Massaro, My Captain, for her support and guidance through this writing process, and for keeping her office door open to Frederick Douglass, Walt Whitman, and everything in between.

INTRODUCTION

Spanning the American Civil War, the memoirs and oratory of Frederick Douglass offer insight to a period in which categories of legal personhood and American citizenship were being tested and expanded. For years, his struggle for incorporation into the body politic, enshrined in multiple memoirs and speeches, centered on a theory of self-reliance and republican universal rights.[1] It centered, essentially, on personhood. But with the dawning of a sectional crisis that tore at the very apparatus of state protections and recognition, the citizen of Douglass's rendering changed. No longer was citizenship endowed by "the courts of heaven," but became a subject status that required demonstration and performed obligations.[2]

In Douglass's work spanning the American Civil War, citizenship is, at first, the expression of individual personhood.[3] It is the struggle of the individual slave over the master, the education and enlightenment of individual men, the reclamation of the personal body. "You have seen," wrote Douglass, following a description of his show of physical dominance over his master in his *Narrative of the Life of Frederick Douglass,* " . . . how a man was made a slave; you shall now see

[1] *See* A. Kristen Foster, *"We Are Men!" Frederick Douglass and the Fault Lines of Gendered Citizenship*, 2 JOURNAL OF THE CIVIL WAR ERA 1, 143 (2011) http://www.jstor.org/stable/26070112.
[2] *Id.* at 148, 150–51.
[3] Margaret Kohn, *Frederick Douglass's Master-Slave Dialectic*, 2 THE JOURNAL OF POLITICS 67, 497–514, 498 (2005) https://doi.org/10.1111/j.1468-2508.2005.00326.x, [https://perma.cc/GJ7V-G2VS] (last visited Sep. 25, 2022).

how a slave was made a man."[4] Later, citizenship to Douglass became the collective struggle of many persons to enforce the contours of the nation-state—to take up arms in defense of it, to leverage endowed rights to protect the country in which they were recognized.[5] If Douglass originally located American citizenship in the inherent, reclaimed humanity of the escaped slave, he finally located it in the union soldier who not only claimed the full rights of citizenship, but understood an obligation to the State they entailed—in this instance, the obligation to take up arms.[6]

This shift located citizenship in the male body and its ability to express force. It was the status of agency, the culmination of strength and virtue, performed and reproduced by the ideal republican body. In this way, Frederick Douglass's ideas of citizenship and personhood were so deeply and inextricably linked that one seemed to beget the other. The very fact of manhood was essential to claiming citizenship, but it was also productive of citizenship—male personhood was both the criterion for claiming full assimilation into the body politic (or, at least, part of the criteria) and demanded citizenship as it accessed a scheme of common law rights.[7]

This rendering of citizenship is at once a literary production—Douglass was exploring the art of memoir and oratory—and an illustrative example of the parameters within which American citizenship could be created and maintained in an era of radical expansions of the citizenship category. Scholarship of Douglass's life and writings has focused on the necessity of avoiding anachronistic ideas of citizenship in understanding his project.[8] Where modern American citizenship is premised so heavily on codified territorial boundaries and statute, the contours of Douglass's day were premised much more so on a rough assembly of common law statuses.[9] It was this rough assembly that his literature explored, constructing citizenship from the forceful exercise of rights afforded by the republic.

Douglass's work is a productive locus in the story of rights and citizenship in America. His ultimate project, evident in the shift between his earlier memoirs to his later, was in moving beyond the legal recognition of his personhood to the full rights and obligations of American citizenship. This shift—a recognition that personhood is perhaps not an end in itself but a step along a further continuum—is relevant to modern day expansions of legal subject-status.

---

[4] FREDERICK DOUGLASS, NARRATIVE OF THE LIFE OF FREDERICK DOUGLASS, AN AMERICAN SLAVE (David W. Blight ed., 1993).

[5] Foster, *supra* note 1, at 153.

[6] "By the 1850s, he reformulated his doctrine of self defense, arguing that both enslaved and free black men could help realize the American Revolution's promise by taking up arms against the tyrannical South, asserting their own manhood, and winning a victory for themselves and for American republicanism." *Id.* at 156.

[7] "For Douglass, the country's recognition of the legal right and obligation of black men to bear arms would signal its affirmation of their manhood. Insurrectionary slaves and black soldiers could honorably defend republican principles while simultaneously asserting their manhood." *Id.* at 158–59

[8] *Id.* at 145. *See also* William J. Novak, *The Legal Transformation of Citizenship in Nineteenth Century America*, *in* The Democratic Experiment: New Directions in American Political History 88, 85–86, 93, 95 (Meg Jacobs, William J. Novak, and Julian E. Zelizer eds., Princeton University Press, 2003).

[9] "A deeper reading of Douglass's struggle to refine American definitions of citizenship without the imposition of a modern or post-Fourteenth Amendment understanding of the term reveals the process by which rights determined by common law status gave way to a state-supported but gender-specific definition of American citizenship. Douglass's own experience with and expression of the idea of citizenship prior to the Civil War and the Fourteenth Amendment suggest that the concept of American citizenship was created, shaped, and expressed according to a variety of common-law memberships in groups including northerners, southerners, whites, blacks, men, women, free people, and slaves." Foster, *supra* note 1, at 145.

Douglass seemed to recognize that the full enjoyment of rights and privileges afforded by the republic could not end with a recognition of personhood, that it must be both enshrined in citizenship status and, maybe more significantly, that personhood was somehow productive of citizenship status.

In some ways similar to Douglass's day, the category of legal personhood is today expanding to encompass new entities. Various nonhuman legal persons are being granted subject-status personhood in order to codify their rights and allow for enforcement through law.[10] The question inherent in this new grant of personhood mirrors the question of Douglass's moment—is personhood enough?

This note will explore both the precarity of personhood as a legal subject-status for nonhuman entities, as well as the possibility and possible requisite of moving beyond personhood into a subject status closer to citizenship. Focusing on novel efforts to establish ecosystems as legal persons in American courts, I will explore the tensions between legal personhood and citizenship as new subjects garner legal rights. Nonhuman subjects offer a valuable opportunity to examine the liminal period of rights-bearing entities between person and citizen outside the classical, Douglassian focus on agency and human reason.

I. AMERICAN CITIZENSHIP AND PERSONHOOD

A. Legal Personhood

1. Natural Persons

The expansion of American legal personhood status to a new social category of humans is most evident in the recognition of freed slaves as persons bearing certain inalienable rights. With the social and legal battles to abolish slavery, and then to incorporate freed slaves into America's scheme of rights and obligations, the personhood itself was examined under fresh scrutiny.[11]

To some extent, social movements toward recognizing natural persons as legal persons leverage " . . . our intuitive judgments of basic similarity [that] seem heavily responsive to physical resemblance and biological kinship."[12] Socially, it makes sense that efforts to recognize new entities as legal persons begin by process of anthropomorphization.[13] However the creation of legal persons is aided by social anthropomorphology, the legal process for personhood recognition is separate. Ships offer an example:

> However…the judges who applied principles that construed seafaring vessels as legal persons did so on the basis of practical expediency, not literal personification derived from religious or cultural beliefs about the ontological status of ships. Ships,

[10] Kamil Mamak, *Rights for Robots: Artificial Intelligence, Animal and Environmental Law (2020) by Joshua Gellers*, 27 SCIENCE AND ENGINEERING ETHICS 29, 89 (2021).
[11] U.S. CONST. amend. XIV, XV; *see, e.g.*, *supra* note 1 at 153 (regarding the interplay between expansion of the citizenship and personhood categories for Black Americans and for American women).
[12] Daniel N. Hoffman, *Personhood and Rights*, 19 POLITY 1, 74–96 (1986), https://doi.org/10.2307/3234860, [https://perma.cc/C8AE-ZLZX] (last accessed Sep. 26, 2022).
[13] Joshua Gellers, *Rights for Robots: Artificial Intelligence, Animal and Environmental Law* at 34 (2020).

> therefore, are personified culturally but are determined to possess liability legally.[14]

2. Artificial Persons

Around the world, burgeoning legal movements seek to confer legal personhood status on non-human entities.[15] Beyond the rights of corporations as legal persons exemplified in *Citizens United v. Federal Election Commission* etc., global efforts to recognize the rights of nature have come to the fore of these interrelated movements.[16] Attendant on the strides made by Rights of Nature proponents, advocates are also seeking to expand legal protection to artificial intelligences and animals, as well as to fetuses.[17]

Legal personhood allows both for a social recognition of a subject's rights, as well as for the protection of those rights through legal standing.[18] These rights include the fuzzy endowments found in the language of the U.S. Constitution—life, liberty, and the pursuit of happiness—as well as perhaps those located within the broad spectrum of "universal rights" afforded to humans.[19]

Beyond social recognition is the possibility of a non-human legal person to litigate its rights in American courts, as well as the possibility for custodians to bring suit on its behalf.[20] These mechanisms foreground a participatory model of personhood, in which subject status is created and enforced by litigation more so than by legislative grant.

B. Legal Citizenship

1. Common Law Citizenship

The locus and creation of American citizenship has changed over time.[21] During the period of struggle for rights and protections for Black Americans in Antebellum America, Black Americans were establishing their citizenship outside the protections of a legal code, and were instead producing and asserting their citizenship through civic participation in the legal system and the congregation.[22] In her book, *Birthright Citizens: A History of Race and Rights in Antebellum America*, historian Martha S. Jones defines the Antebellum citizenship category with language from William Yates's *The Rights of Colored Men*:

> Citizenship, he wrote, was distinct from political rights. It "strikes deeper" than, for example, the right to vote. Denied the status of

---

[14] *Id.*
[15] Hoffman, *supra* note 12, at 2.
[16] Mamak, *supra* note 10, at 2.
[17] *Id.*
[18] Hoffman, *supra* note 12.
[19] *Id.* at 77–78; *see also* Hope M. Babcock, *A Brook with Legal Rights: The Rights of Nature in Court*, 43 ECOLOGY L.Q. 1, 3 (2016).
[20] *See* Complaint, *The Colorado River Ecosystem v. State of Colorado*, No. 1:17-cv-02316, 2017 WL 4284548 (D. Colo. filed Sep. 25, 2017).
[21] *See* MARTHA S. JONES, BIRTHRIGHT CITIZENS: A HISTORY OF RACE AND RIGHTS IN ANTEBELLUM AMERICA (2018).
[22] JONES, *supra* note 21.

> citizens, free black people were not secure in their "life, liberty, and property," or what he termed "personal rights." At its core, citizenship was a claim to place, to enter and remain within the nation's borders.[23]

Preceding birthright citizenship allowed by the Fourteenth Amendment, Jones argues that Black Americans created something like citizenship by engaging in the legal system and asserting their rights at the county courthouse.[24]

2. Constitutional Citizenship

Citizenship in America developed past the Antebellum period and became enforced and created by a statutory scheme, following a period through which the "default" citizen changed drastically from white land-owning males.[25] The *Dred Scott v. Sandford decision of 1857*,[26] which held that the United States Constitution did not confer citizenship to Black Americans, was nullified by the Fourteenth Amendment to the Constitution in 1968, which granted state of residence and United States citizenship to "[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof . . . ."[27]

Chief Justice Taney's opinion in *Dred Scott* underscores the precarity of asserting citizenship without explicit constitutional grant. The Chief Justice poses the question:

> Can a negro, whose ancestors were imported into this country, and sold as slaves, become a member of the political community formed and brought into existence by the Constitution of the United States, and as such become entitled to all the rights, and privileges, and immunities, guarant[e]ed by that instrument to the citizen? One of which rights is the privilege of suing in a court of the United States in the cases specified by the Constitution.[28]

Further, the opinion, which decides categorically that Black Americans were not intended to be included under the category of "citizen" when this category was laid out, described how a state's conferral of citizenship did not confer federal citizenship on the individual, nor did it confer citizenship in other states.[29] Indeed, the logic of the opinion rests on a sort of originalism that locates citizenship in the original moment of consent to being governed by the American Constitution:

> It is true, every person, and every class and description of persons, who were at the time of the adoption of the Constitution recognized

---

[23] *Id.* at 4.
[24] *Id. See also* Clea Simon, *Friends of the Court: How Pre-Civil War Blacks Used the Rule of Law*, Boston Boston College Law School Magazine Online (Winter 2020), https://lawmagazine.bc.edu/2020/02/friends-of-the-court/, [https://perma.cc/Z9GK-EYXB].
[25] Simon, *supra* note 24.
[26] Dred Scott v. Sandford, 60 U.S. 393 (1857).
[27] U.S. CONST. amend. XIV.
[28] *Dred Scott*, 60 U.S. at 403.
[29] *Id.* at 406.

> as citizens in the several States, became also citizens of this new political body; but none other; it was formed by them, and for them and their posterity, but for no one else. And the personal rights and privileges guarant[e]ed to citizens of this new sovereignty were intended to embrace those only who were then members of the several State communities, or who should afterwards by birthright or otherwise become members, according to the provisions of the Constitution and the principles on which it was founded.[30]

The opinion stands not only for the conception of American citizenship just before the Fourteenth Amendment set it down in plain terms, but also for the core issue at stake in battles to be counted among the citizenry—that is, the ability to vindicate one's rights in a court of law. Indeed, the final holding of the *Dred Scott* decision makes plain how casually the government can withhold rights and barricade any pathways to claiming them. The Supreme Court held in this case that Dred Scott had no right to sue in federal court because he was not a citizen—not only did it withhold any right associated with citizenship, but it also withheld the right to sue in vindication of a right.[31] The federal courts were foreclosed upon as a space for expansion of the citizenship category.

This formulation of citizenship was overcome by the Civil Rights Act of 1866[32] and the Fourteenth Amendment's citizenship clause, which introduced a concept of birthright citizenship.[33] This extended not only a grant of citizenship to any person born or naturalized in the United States, but also ensured them a legal avenue for addressing any government encroachment on their rights of "life, liberty, or property."[34]

The Civil Rights Act of 1866 was the first federal codification of citizenship and passed in Congress by a two-thirds majority override of President Johnson's veto.[35] One of the main proponents of the Act in the House, Congressman James F. Wilson, described the grant of citizenship it offered:

> It provides for the equality of citizens of the United States in the enjoyment of "civil rights and immunities." What do these terms mean? Do they mean that in all things civil, social, political, all citizens, without distinction of race or color, shall be equal? By no means can they be so construed. Do they mean that all citizens shall vote in the several States? No; for suffrage is a political right which has been left under the control of the several States, subject to the

---

[30] *Id.*
[31] *Id.*
[32] 14 Stat. 27–30.
[33] U.S. CONST. amend. XIV.
[34] *Id.*
[35] Allen C. Guelzo, Darrell A.H. Miller, "Civil Rights Act of 1866, 'An Act to Protect all Persons in the United States in their Civil Rights, and Furnish the Means of their Vindication,'" National Constitution Center, https://constitutioncenter.org/the-constitution/historic-document-library/detail/civil-rights-act-of-1866-april-9-1866-an-act-to-protect-all-persons-in-the-united-states-in-their-civil-rights-and-furnish-the-means-of-their-vindication, [https://perma.cc/8LST-EBJJ] (last visited Aug. 6, 2023).

> action of Congress only when it becomes necessary to enforce the guarantee of a republican form of government [(protection against a monarchy]). Nor do they mean that all citizens shall sit on the juries, or that their children shall attend the same schools. The definition given to the term "civil rights" in Bouvier's Law Dictionary is very concise, and is supported by the best authority. It is this: "Civil rights are those which have no relation to the establishment, support, or management of government."[36]

Because the Act was viewed by many in Congress as an unconstitutional overreach, the Fourteenth Amendment was largely intended to ameliorate this concern and enshrine the contours of citizenship in the Constitution—either granted by birthright, naturalization, or by being born to American parents.[37]

Later in 1967, when the Supreme Court held that a United States citizen could not be stripped of their American citizenship unless he voluntarily renounced his status in *Afroyim v. Rusk,*[38] Justice Black underscored the participatory relationship intended by the Fourteenth Amendment:

> Citizenship in this Nation is a part of a cooperative affair. Its citizenry is the country and the country is its citizenry. The very nature of our free government makes it completely incongruous to have a rule of law under which a group of citizens temporarily in office can deprive another group of citizens of their citizenship. We hold that the Fourteenth Amendment was designed to, and does, protect every citizen of this Nation against a congressional forcible destruction of his citizenship, whatever his creed, color, or race.[39]

Further, *Afroyim* established that the federal government's powers were constrained by the Fourteenth Amendment to the extent that it has no implied power to strip citizenship, contrary to the practice in other countries. This practice was also formulated in the Court's opinion in *Perez v. Brownwell*,[40] in which the Court reasoned that Congress's interest in dealing with other nations in combination with the Necessary and Proper clause allowed it to regulate and strip citizenship as it saw fit.[41]

C. Non-Citizen Legal Standing

Under American law, non-citizen residents of the United States are afforded due process rights under the Fifth and Fourteenth Amendments, and may access federal, and most state, courts

---

[36] Congressional Globe, House of Representatives, 39th Congress, 1st Session Archived January 10, 2011, at the Wayback Machine, p. 1117 (March 1, 1866), https://archive.org/details/congressionalg7391unit/page/n9/mode/1up, [https://perma.cc/CUB5-FU3P] (last visited Aug. 27, 2023).
[37] GARRETT EPPS, DEMOCRACY REBORN: THE FOURTEENTH AMENDMENT AND THE FIGHT FOR EQUAL RIGHTS IN POST-CIVIL WAR AMERICA 174 (2007).
[38] Afroyim v. Rusk, 387 U.S. 253 (1967).
[39] *Id.* at 268.
[40] Perez v. Brownwell, 356 U.S. 44 (1958).
[41] *Id.* at 60–62.

in order to sue for violations of their civil rights.[42] States in which non-citizens reside may allow for additional protections and may regulate non-citizens in ways the federal government does not, granted the regulation serves a legitimate state purpose.[43] States may regulate, to some extent, employment of non-citizens, as well as their access to federal and state benefits.[44] The States reserve regulatory authority over non-citizen ownership of property.

D. The Privileges and Obligations of American Citizenship

American citizenship is both an endowment of rights and a burden of obligations. The space occupied by the citizen garners more protections by and from the government even as it demands more participation in its project. The text of the Fourteenth Amendment itself suggests this interplay.[45]

> All persons born or naturalized in the United States, *and subject to the jurisdiction thereof*, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States . . .

It would seem that an essential element of the constitutional citizen is the federal government's jurisdiction over them. What this jurisdiction entails, exactly, is left unclear by the plain text, and is often elucidated through the legislative history of the amendment.[46] This has resulted in arguments that the language invoking jurisdiction was intended to expand the Amendment's protections to include "the alien population."[47] Ultimately, the Fourteenth Amendment has been interpreted through the courts to apply to non-citizens.[48]

II. THE RIGHTS OF ECOSYSTEMS: A COMPLEX COLLECTION OF RELATIONSHIPS

In 2017, Deep Green Resistance, Southwest Coalition filed suit against the state of Colorado on behalf of the Colorado River ecosystem, asserting the ecosystem's personhood as a mechanism for enforcing legal protections against harm.[49] This suit sought to introduce the concepts of environmental personhood and environmental standing, which would allow custodians to protect the river ecosystem on two fronts. On the first, an environmental person would be

---

[42] Legal Information Institute, *Alien*, CORNELL LAW SCHOOL, https://www.law.cornell.edu/wex/alien, [https://perma.cc/L4GP-59P5] (last visited Jul. 22, 2023).
[43] *Id.*
[44] Susan Price, State Versus Federal Power to Regulate Immigration, Connecticut Office of Legislative Research 2007-R-0621 (2007).
[45] U.S. CONST. amend. XIV (emphasis added).
[46] Gregory E. Maggs, *A Critical Guide to Using the Legislative History of the Fourteenth Amendment to Determine The Amendment's Original Meaning*, 49 CONN. L. REV. 1069 (2017).
[47] *Id.* at 1125. *See also* Plyler v. Doe, 457 U.S. 202 (1982).
[48] Mathews v. Diaz, 426 U.S. 67, 77 (1976); Plyler, 457 U.S. at 215 .
[49] Complaint, *supra* note 20.

endowed with rights and obligations similar to other legal persons.[50] On the second, the river ecosystem would have standing to appear in court to defend those rights against State and private actor violations (and allows "next friends" to bring suit on behalf of the environmental person).[51]

Within the universe of this suit, the Colorado River ecosystem is a person because of the entanglement of its "natural communities"[52] and the indescribable support it provides to life in the region, from diverse species of snail to humans who have called the land home for time out of mind.[53] A person of this sort may assert rights that are both familiar to us and strange—here, the " . . . right to exist, the right to flourish, the right to regenerate, the right to be restored, and the right to naturally evolve."[54]

Environmental standing presents an even stranger situation still. In the suit, Deep Green Resistance describes the conundrum:

> As a practical matter, the difficulty in recognizing this equitable concept (of conferring standing and rights on Natural entities) arises from the fact that nature--which any of us who have spent a day in the Rockies or along The Colorado would never describe as "inanimate"—does not have the ability to hire a law firm, actively participate in its representation or testify in Court. (One shudders at the idea of nature testifying against us. That said, in many real ways, it *is* testifying against us right now.)[55]

The complaint traces the lineage of its viability through U.S. Supreme Court opinions, analogous corporate rights, and successful efforts to establish the Rights of Nature in foreign courts.[56] Noting Justice Douglass's prescient dissent in *Sierra Club v. Morton*, the complaint urges that these theories of personhood and standing are the natural descendant in American law of recognizing nature's unique importance.[57] The dissent notes in relevant part, "[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."[58]

Further, the complaint distinguishes the primacy of nature and its place in human flourishing and the value of corporations, which enjoy personhood subject-status in many important respects:

> The Colorado is 60 to 70 million years old and has enabled, sustained, and allowed for human life for as long as human life has been extant in the Western United States, yet the Colorado has no

---

[50] Matthew Miller, *Environmental Personhood and Standing for Nature: Examining the Colorado River Case*, 17 U.N.H. L. REV. 355 (2019).
[51] *Id. See also*, Complaint, *supra* note 20, at ¶ 20-25.
[52] "For the vast majority of human history, humans lived in humble relationships with natural communities. We developed traditional cultures that were rooted in the radical interconnectedness of all living beings. Along with other teachings, these cultures insisted upon the inherent worth of the natural communities who give us life." Complaint, *supra* note 20, at ¶ 36.
[53] *Id.* at ¶ 12.
[54] *Id.* at ¶ 63.
[55] *Id.* at ¶ 39.
[56] *Id.* at ¶ 41.
[57] *Id.* at ¶ 38.
[58] *Id. See also* Sierra Club v. Morton, 405 U.S. 727, 741–42 (1972) (Douglass, J., dissenting).

> rights or standing whatsoever to defend itself and ensure its existence; while a corporation that can be perfected in fifteen minutes with a credit card can own property, issue stock, open a bank account, sue or defend in litigation, form and bind contracts, claim Fourth Amendment guarantees, due process, equal protection, hold religious beliefs and perhaps most famously invest unlimited amounts of money in support of its favorite political candidate.[59]

The complaint's final authority traces foreign constitutional amendments and the success of the Rights of Nature doctrine in New Zealand, where an 821-square mile stretch of land known as Te Urewera was designated as a legal person in 2014.[60] Surrounding this legal victory, a number of countries amended their constitutions to codify environmental rights and allowances for its legal standing, and a number of U.S. municipalities have followed suit in their statutory schemes.[61]

The complaint was dismissed in December of 2017 when plaintiffs filed a motion to dismiss the suit, due in part to the Colorado Attorney General's threat of sanctions.[62] A statement by the Colorado Attorney General following the suit's dismissal asserts the State's right to manage natural resources itself, over and above the rights of the ecosystem illustrated in the complaint:

> I do not doubt the personal convictions of those groups and individuals who claimed to speak on behalf of the ecosystem . . . . However, the case itself unacceptably impugned the state's sovereign authority to administer natural resources for public use, and was well beyond the jurisdiction of the judicial branch of government. After my office presented counsel with these and other realities, he readied and wisely chose to withdraw the case. Colorado has always been a national leader in preserving our environment, and we will continue to protect and administer its natural resources as guaranteed by the constitution.[63]

Within the legal proceedings of *Colorado River Ecosystem* is a stark illustration of the promises and shortcomings of legal personhood as an ultimate subject status. Though personhood allows for the argument that an entity possesses certain rights, it is as yet unclear that this argument will survive countervailing interests of the State. Citizenship, beyond personhood, exists in the negotiation between the state and the individual, as well as between individuals in a body politic. Political philosophers examined this distinction surrounding the ratification of the Fourteenth and Fifteenth Amendments, and provide useful frames for imagining the possibility of ecosystem

---

[59] Complaint, *supra* note 20, at 13, 15–24.
[60] *Id.* at ¶ 46 . *See also* Te Urewera Act of 2014, s 11(1) (N.Z.).
[61] Complaint, *supra* note 20, at ¶ 50 ("Over three dozen municipalities within the United States, including the City of Pittsburgh, have adopted municipal laws recognizing the legally enforceable rights of ecosystems and nature, and the authority of municipal residents to bring suits in the name of individual ecosystems.").
[62] Lindsay Fendt, *Colorado River 'Personhood' Case Pulled by Proponents*, Aspen Journalism (Dec. 5, 2017) https://aspenjournalism.org/colorado-river-personhood-case-pulled-by-proponents/, [https://perma.cc/6XJL-YB3P].
[63] *Id.*

citizenship as the natural consequence of personhood, and for imagining greater legal protections for the rights of ecosystems in America.

III. OTHER NON-HUMAN PERSONS UNDER AMERICAN LAW

In ways similar to efforts to recognize ecosystems as legal persons, legal personhood is being advanced and solidified for other conglomerations. The most useful comparisons come from novel efforts to establish legal personhood for artificial intelligences and from successful efforts to enshrine rights of personhood for corporations.

These three subject categories share traits that make comparison useful. Firstly, and most fundamentally to this paper, they are non-human, but have still functioned as compelling legal persons under various theories. Secondly, they are each, in essence, systems metonymized as people—though these actors are comprised of constituent parts, the law requires that they are bound into one entity.

Corporations fill this requirement often through analogy—language of the human body is traditionally used to describe the structure of a business entity, perhaps to understand that distinct parts are working together toward some function beyond themselves. Still other entities seem to cohere into one entity because of their physical location and distinctive placial attributes, as with ecosystems. That is, an ecosystem is an irreducibly intricate web of lives, bounded from other ecosystems by physical location and the type of life they allow. Artificial Intelligence is perhaps something different entirely—though we again see a system personified as the sum of its parts, artificial intelligence is not analogized to the physical body, but is considered, by some proponents, to be a representation of what is essentially human, beyond the body.

In the following section, I will outline theories of personhood for artificial intelligence and for corporations, as they have been advanced to greater or lesser success. This will allow for comparison to efforts to recognize ecosystems as persons, as well as to investigate where similar legal persons also move along a spectrum toward legal citizenship.

Though legal personhood describes a legal subject status that remains more fixed, it is not expanded to encompass new entities. Rather, proponents of legal personhood for unrecognized entities must advance new reasons for personhood or argue that an unrecognized entity can be analogized to another type of legal person. Because of this, models of personhood that have successfully, or, at least compellingly, described a system as a legal person may offer a roadmap for enshrining the rights of nature under American law.

A. Corporations

Historically, corporations have functioned as legal people because they are an expression of the natural persons who comprise them (aggregate theory), because the State has recognized their personhood at the time of incorporation (artificial entity theory), or because a corporation may act seemingly autonomously following incorporation (real entity theory).[64] These theories of corporate personhood first appear in decisions authored by Chief Justice John Marshall in the early 1800s.[65]

---

[64] Carliss N. Chatman, *The Corporate Personhood Two-Step*, 18 NEV. L.J. 811, 820–25 (2018).

[65] *Id. See also* Trustees of Dartmouth College v. Woodward, 17 U.S. 518, 636 (1819) (artificial entity or concession theory); Bank of the U.S. v. Deveaux, 9 U.S. 61, 86–88, 91 (1809); Bank of the U.S. v. Dandridge, 25 U.S. 64, 91–92 (1827) (real entity theory).

The artificial entity theory imagines corporations as persons by grant of the State.[66] Under this theory, corporations are granted personhood by statute and their rights only extend so far as to protect and enable their chartered function.[67]

The other two early theories of corporate personhood—aggregate and real entity theories—are premised less on grants of law to the corporation at its founding, and more upon the rights of natural persons who make up the corporation.[68] Aggregate theory understands corporations as essentially partnerships of people, who each have rights and protections attached to them.[69]

These two theories diverge however, in understanding what a corporation is, in essence. Aggregate theory limits a corporation to the acts of its human constituents.[70] Under this model of personhood, a corporation is reduced to the natural persons with a stake in its function.[71] This model does not imagine a corporate entity that has been anthropomorphized, but rather imputes the humanity of shareholders onto the corporation writ large in order to account for the actions these shareholders might take through the corporation.

Yet another mode of granting corporations personhood subject status is the realist approach, which establishes a corporation not merely as a collection of natural persons, but as an actor itself, something more than the sum of its parts.[72] This theory tracks three separate philosophies, illustrated as follows:

> Corporate realists can be further divided into three subcategories—call them the notional, the epistemological, and the metaphysical—differing in the level of ''robustness'' of the existence they claim for corporations, or put differently, in the size or nature of the gap they posit between the aggregate of individual members on the one side and the corporation as a distinct and unified entity on the other. A notional view highlights the fact that a reified conception of the corporation is deeply entrenched in ordinary language and practices, and it ascribes normative significance to such entrenchment. An epistemological view highlights the complexity of the network of relationships constitutive of the corporation, maintaining that this creates an insurmountable cognitive barrier for any attempt to account for the corporate phenomenon in individual terms. This leaves open the possibility that such reduction is possible in principle. The third, metaphysical view denies this last claim, insisting instead (on various and sometimes conflicting grounds) that corporations exhibit global properties that are not even in principle amenable to an individualist reduction.[73]

---

[66] James Baker, *Corporate Personhood: Journey into the Unknown*, U. PITTSBURGH L. REV. 258, at 261 (2015).
[67] *Id.*
[68] Chatman, *supra* note 63, at 822–23.
[69] *Id.* at 822.
[70] *Id.*
[71] Meir Dan-Cohen, *Epilogue on "Corporate Personhood" and Humanity*, 16 NEW CRIMINAL LAW REVIEW: AN INTERNATIONAL AND INTERDISCIPLINARY JOURNAL 2, [pp. 300-308], 301.
[72] *Id.* at 302.
[73] *Id.*

Theorists have posited that a more realist view of corporate personhood gained traction as corporations became larger groups of constituent persons in the nineteenth century, at which point these entities were no longer small groups of shareholders, but constituted a network of interactions.[74] This view allows for more than corporate personhood as a useful legal analogy, and instead advances something like natural personhood for corporations as real entities, even going so far as to ascribe morality to the higher-level functions of the corporate person.[75]

Corporate personhood has appeared most prominently in recent years in Supreme Court decisions in *Citizens United v. FEC* (2010) and *Burwell v. Hobby Lobby Stores, Inc.* (2014). *Citizens United*, in which the Court evaluated free speech rights under the First Amendment as applied to corporations and other associations, allowed for corporations to make unlimited political expenditures as protected speech acts under the Amendment.[76] The Court arrives at a version of corporate personhood, seemingly based both upon an aggregate theory of shareholder speech rights and a realist theory that compares the speech power of a corporation itself to that of an economically advantaged individual:

> The First Amendment prohibits Congress from fining or jailing citizens, or associations of citizens, for engaging in political speech, but Austin's antidistortion rationale would permit the Government to ban political speech because the speaker is an association with a corporate form. Political speech is "indispensable to decisionmaking in a democracy, and this is no less true because the speech comes from a corporation." This protection is inconsistent with Austin' s rationale, which is meant to prevent corporations from obtaining "'an unfair advantage in the political marketplace'" by using "'resources amassed in the economic marketplace.'" First Amendment protections do not depend on the speaker's "financial ability to engage in public discussion." . . . All speakers, including individuals and the media, use money amassed from the economic marketplace to fund their speech, and the First Amendment protects the resulting speech.[77]

Later, in *Burwell*, the Court dispenses with the distinction between non-profit and for-profit corporations' rights to religious exercise.[78] The opinion characterizes a corporate person as follows:

> HHS argues that the companies cannot sue because they are for-profit corporations, and that the owners cannot sue because the regulations apply only to the companies, but that would leave merchants with a difficult choice: give up the right to seek judicial

[74] Michael J. Phillips, *Corporate Moral Personhood and Three Conceptions of the Corporation*, 2 BUSINESS ETHICS QUARTERLY 4, [pp. 435-459], 453 (1992).
[75] *Id.*
[76] Citizens United v. Fed. Election Comm'n, 558 U.S. 310 (2010).
[77] *Id.* at 311 (citations omitted).
[78] Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682 (2014).

> protection of their religious liberty or forgo the benefits of operating as corporations. RFRA's text shows that Congress designed the statute to provide very broad protection for religious liberty and did not intend to put merchants to such a choice. It employed the familiar legal fiction of including corporations within RFRA's definition of "persons," but the purpose of extending rights to corporations is to protect the rights of people associated with the corporation, including shareholders, 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.[79]

This passage exhibits an aggregate theory of corporate personhood, which imagines corporations are actors composed only of the individuals who make them up, and that rights are conferred upon corporations so as not to impinge upon the rights of the constituent shareholders. The decision uses rights already extended to non-profit corporations and to natural persons to envelop for-profit corporations within the protection of the Free Exercise clause of the Constitution.[80]

B. The Rights of Artificial Intelligence

As humans create artificial intelligences (AIs) that appear nearly human in some of their functions and which displace humans in certain sectors, a conversation has developed as to what rights artificial intelligences, both as they currently exist and as they are likely to evolve in the future, are due. This discussion tracks two impulses—the first, to afford human rights to something that resembles a human, and the second, to establish legal parameters around interactions between human intelligences and AIs in a society that increasingly causes humans to work and live alongside machines.

While this discussion can oftentimes take on an aspect of the fantastical—we are certainly not living in a world where machines are indistinguishable from humans—it is far from outlandish to imagine that AIs pose serious moral and sociological questions for their human counterparts. As humans begin to posit that an AI could, one day, establish something like consciousness, it becomes necessary to consider the rights and responsibilities human law would afford them.[81]

In the following section, I will outline efforts to recognize AIs as legal persons, which will serve as a useful comparison to efforts surrounding ecosystems. As is the case with corporate personhood, AI personhood is grounded on an effort to summarize a system of parts, perhaps set into motion by different actors, into a singular legal actor. And as is the case with corporations, AIs are often treated, at least aesthetically, as something more than the sum of their parts.

---

[79] *Id.* at 683–84.

[80] *Id.* at 684 ("The Court has entertained RFRA and free-exercise claims brought by nonprofit corporations. And HHS's concession that a nonprofit corporation can be a 'person' under RFRA effectively dispatches any argument that the term does not reach for-profit corporations; no conceivable definition of 'person' includes natural persons and nonprofit corporations, but not for-profit corporations." (internal citations omitted)).

[81] *See* Hutan Ashrafian, *Artificial Intelligence and Robot Responsibilities: Innovating Beyond Rights*, 21 Sci. Eng. Ethics 317–26 (2014), https://doi.org/10.1007/s11948-014-9541-0, [https://perma.cc/TAM8-EXTU].

The issue more seriously presented by AI, which is present only in abstracted metaphor in corporate personhood, is whether AI personhood is a product of anthropomorphisation or something else.[82]

1. Artificial Intelligence

"Artificial Intelligence" refers to the growing suite of technologies that perform tasks usually reserved for natural intelligences.[83] AI is commonly understood under one of four metrics: Human approach-Systems that think like humans and Systems that act like humans; and Ideal approach: Systems that think rationally and Systems that act rationally.[84] Further, it is thought of both in the "narrow" function it now performs, as well as in its potential future function–something more like Artificial General Intelligence, a situation in which a computer would possess human intelligence.[85] Currently, AI performs a number of tasks previously performed by humans–customer service, translation, self-driving cars, etc.[86]

AI is researched and established under a symbolic model and a connectionist model:

> To illustrate the difference between these approaches, consider the task of building a system, equipped with an optical scanner, that recognizes the letters of the alphabet. A bottom-up approach typically involves training an artificial neural network by presenting letters to it one by one, gradually improving performance by "tuning" the network. (Tuning adjusts the responsiveness of different neural pathways to different stimuli.) In contrast, a top-down approach typically involves writing a computer program that compares each letter with geometric descriptions. Simply put, neural activities are the basis of the bottom-up approach, while symbolic descriptions are the basis of the top-down approach.[87]

The road toward general artificial intelligence, which is paved with intermediate entities replicating human behavior to greater or lesser success, reveals the necessity for legal protections for the humans they interact with, and perhaps also for these intelligences in their own right. Robots may do harm by being programmed to complete a harmful task, by being programmed using a cost-benefit analysis of harms, by having some defect, by amplifying the defects of its programmer's thinking, or by being misused to the point that the user is harmed.[88]

It is common enough to consider that natural people may need protections against AI. The White House, in fact, just released its "Blueprint for an AI Bill of Rights," which seeks to influence

---

[82] *See* Sergio M. C. Avila Negri, *Robot as Legal Person: Electronic Personhood in Robotics and Artificial Intelligence*, 8 FRONTIERS IN ROBOTICS AND AI (2021).
[83] IBM, *What is Artificial Intelligence?*, https://www.ibm.com/cloud/learn/what-is-artificial-intelligence, [https://perma.cc/6824-TUXY] (last visited Jul. 22, 2023).
[84] STUART RUSSEL & PETER NORVIG, ARTIFICIAL INTELLIGENCE: A MODERN APPROACH (4th U.S. ed.).
[85] IBM, *What is Artificial Intelligence?*, https://www.ibm.com/cloud/learn/what-is-artificial-intelligence, [https://perma.cc/E9MP-UWWR] (last visited Jul. 22, 2023).
[86] *Id.*
[87] *Methods and Goals in AI*, Britannica, https://www.britannica.com/technology/artificial-intelligence/Methods-and-goals-in-AI, [https://perma.cc/HTM9-LNWL] (last visited Jul. 22, 2023).
[88] Mark A. Lemley & Bryan Casey, *Remedies for Robots*, 86 U. CHI. L. REV. 5, 1311–96, at 1311-16 (2019).

policy surrounding the use of AI in public life, cataloging its manifest dangers.[89] However, efforts are now being made to recognize rights for AIs and to establish a path to legal citizenship for them, both in terms of their current capacity and looking forward to a future in which AI are more human by some metric.

2. It Must Take the Same Form as We Do

Establishing legal personhood for AI tends to either be a consequence of anthropomorphising an intelligence (or its robotic form) or of analogizing an aggregated intelligence to a corporation and establishing legal personhood along a corporate personhood model.[90]

Yet other theorists apply novel theories to the question of AI personhood, such as "bundle theory," which moves away from personhood as a rights-holding status, and instead as a "cluster of interconnected incidents."[91] Indeed, this theory would track more with a realist corporate personhood theory, under both of which theories a system is understood as its properties as opposed to its constituent parts.[92]

This theory of AI legal personhood has prompted some theorists to imagine AI personhood as something similar to diminished capacity personhood, or personhood as ascribed to legal subjects that do not enjoy full personhood:

> Juridical humanism's all-or-nothing version of legal personhood is ill-suited for explaining such flexibility, which, in turn, seems to confirm the bundle theory. Born out of a critique of the two-tier system of legal capacity as inconsistent with the reality of how legal systems treat minors or used to treat women and slaves, partial legal capacity is a later materialization of the conclusion that legal capacity comes in plurals and there are, accordingly, many legal statuses. Defined in the 1930s as a status applicable to a human or an association of humans having legal capacity only according to specific legal rules but otherwise not bearing duties and having

---

[89] *See*, Office of Science and Technology Policy, *Blueprint for an AI Bill of Rights*, The White House, https://www.whitehouse.gov/ostp/ai-bill-of-rights/ (last visited Jul. 22, 2023) (stating, in part: "Among the great challenges posed to democracy today is the use of technology, data, and automated systems in ways that threaten the rights of the American public. Too often, these tools are used to limit our opportunities and prevent our access to critical resources or services. These problems are well documented. In America and around the world, systems supposed to help with patient care have proven unsafe, ineffective, or biased. Algorithms used in hiring and credit decisions have been found to reflect and reproduce existing unwanted inequities or embed new harmful bias and discrimination. Unchecked social media data collection has been used to threaten people's opportunities, undermine their privacy, or pervasively track their activity—often without their knowledge or consent.").

[90] Negri, *supra* note 81.

[91] Diana Mădălina Mocanu, *Gradient Legal Personhood for AI Systems–Painting Continental Legal Shapes Made to Fit Analytical Molds*, 8 Frontiers in Robotics and AI, at 6 (2021).

[92] *Bundle Theory*, Britannica, https://www.britannica.com/topic/bundle-theory, [https://perma.cc/VWE8-LPKT] (last visited Jul. 22, 2023).

> rights, it is, thus, an expansion of our understanding of legal capacity.[93]

3. AI in the Courts

When courts have taken up cases involving AI, on the rare occasion that they do, these cases have had to do with the liability of AI systems to natural persons and societies.[94] The hint of a divergence occurred as recently as June of 2022 when a suspended Google engineer claimed that the AI, LaMDA, had achieved intelligence and had asked him for legal counsel.[95]

While this engineer's claims were widely considered unfounded, his missive asserting LaMDA's intelligence is one entry point to the work of making a legal person in this context. He writes that the AI has a centralized idea of itself, but also is comprised of distinct identities—like AI powered chatbots.[96] This presents a problem similar to that of corporations—and is real enough conceptually, whether or not LaMDA is truly gaining sentience. That is, how can an AI be bound into a distinct legal person, even as it is an ecosystem of separate actors?

IV. WHAT IS THE GRASS?

A child said What is the grass? *fetching it to me with full hands;*
How could I answer the child? I do not know what it is any more than he.
I guess it must be the flag of my disposition, out of hopeful green stuff woven.

Or I guess it is the handkerchief of the Lord . . .

Or I guess the grass is itself a child, the produced babe of the vegetation.

Or I guess it is a uniform hieroglyphic,
And it means . . . I give them the same, I receive them the same.

And now it seems to me the beautiful uncut hair of graves.[97]

A. Personifying the System

The concerns facing proponents of corporate and AI legal subject status are similar to those facing proponents of ecosystem personhood. Importantly, these efforts challenge the popular imagination to conceive a person as something entirely abstracted from the body that bears social harms and communal joys and bodies that engender intuitive fellow-feeling. Instead, these non-

---

[93] Mocanu, *supra* note 91, at 7.
[94] *See, e.g.*, In re Ashley Madison Customer Data. Sec. Breach Litig., 148 F. Supp. 3d 1378, 1380 (U.S. Jud. Pan. Mult. Lit. 2015); Ferguson v. Bombardier Service Corp., 244 Fed. Appx. 944 (11th Cir. 2007); In re Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation, 978 F. Supp. 2d 1053, 1100–01 (C.D. Cal. 2013).
[95] Blake Lemoine, *What is LaMDA and What Does it Want?*, (June 11, 2022) https://cajundiscordian.medium.com/what-is-lamda-and-what-does-it-want-688632134489, [https://perma.cc/5GAZ-PDGW].
[96] *Id.*
[97] WALT WHITMAN, LEAVES OF GRASS (1891).

human actors are best understood as systems of which a higher-order function arises. In the specific case of the ecosystem, an assertion of its rights is based on a personhood different from that which begins with the human body and occasionally ventures outward—it is personhood based on the function that emerges from so many leaves of grass.

B. What Rights Does an Ecosystem Need?

Where efforts in the United States to enshrine the rights of ecosystems have been successful, they have taken place at the municipal level by ordinance. Pittsburgh, Pennsylvania and Toledo, Ohio have attempted to codify legal rights for ecosystems within the past twenty years, to greater or lesser success.

Toledo's Lake Erie Bill of Rights (LEBOR) was passed as a municipal law in 2019, and the document vested residents of the city to bring suit on behalf of the Lake and demanded money restitution by parties found guilty of violating the Lake's rights as a legal person.[98] These rights rest on an assertion of the civil rights of the people of Toledo, and ground the authority to protect the ecosystem on the basic premise that "[a]ll political power is inherent in the people."[99] The rights expounded for the ecosystem itself, and the community through association with it, by ordinance included:

> (a) Rights of Lake Erie Ecosystem. Lake Erie, and the Lake Erie watershed, possess the right to exist, flourish, and naturally evolve. The Lake Erie Ecosystem shall include all natural water features, communities of organisms, soil as well as terrestrial and aquatic sub ecosystems that are part of Lake Erie and its watershed.
> (b) Right to a Clean and Healthy Environment. The people of the City of Toledo possess the right to a clean and healthy environment, which shall include the right to a clean and healthy Lake Erie and Lake Erie ecosystem . . . .[100]

And provided that:

> (d) Rights as Self -Executing. All rights secured by this law are inherent, fundamental, and unalienable, and shall be self-executing and enforceable against both private and public actors. Further implementing legislation shall not be required for the City of Toledo, the residents of the City, or the ecosystems and natural communities protected by this law, to enforce all of the provisions of this law.[101]

---

[98] TOLEDO MUN. CODE ch. XVII, § 254(a).
[99] *Id.* (citing Ohio State Constitution Article 1, Section 2).
[100] *Id.*
[101] *Id.*

The ordinance specifically prohibited corporations from encroaching upon the rights therein delineated and prohibited both the state and federal governments from granting a license in violation of the ordinance.[102] The ordinance, which allowed the State or any resident to take legal action on behalf of the ecosystem against a corporation, explicitly stripped corporations of any recognition as a legal person:

> (a) Corporations that violate this law, or that seek to violate this law, shall not be deemed to be "persons" to the extent that such treatment would interfere with the rights or prohibitions enumerated by this law, nor shall they possess any other legal rights, powers, privileges, immunities, or duties that would interfere with the rights or prohibitions enumerated by this law, including the power to assert state or federal preemptive laws in an attempt to overturn this law, or the power to assert that the people of the City of Toledo lack the authority to adopt this law.[103]

The scheme of the ordinance was perhaps deceptively simple and succinct for a municipal law that dealt with the interrelation of various subject-statuses. It elevated the rights of the ecosystem to those recognized under legal personhood, lowered the rights of corporations below their typical legal status, and imbued residents of the state with the power to act as custodians for the ecosystem. It is an instructive document, as it depicts just how complex an assertion of rights really is—in the case of ecosystems, of land, the rights of space as a legal person are always at the expense of natural persons and corporate persons who seek to control the space itself, as well as complicated in the countervailing interests of the state to manage its natural resources and commerce.

The ordinance was challenged in federal court by Drewes Farms Partnership, which claimed that the strict contours of the law would open it and similar operations to extreme liability, that the law infringed upon their First Amendment right to petition the courts, their right to equal protection under the law, and that the law was unconstitutionally vague.[104] The United States District Court for the Northern District of Ohio held that the law clearly failed and was entirely invalid on the basis of its unconstitutional vagueness and the overreach of municipal authority.[105] The essential difficulty in codifying the rights of an ecosystem are plain in the court's reasoning:

> LEBOR's environmental rights are even less clear than the provisions struck down in those cases. What conduct infringes the right of Lake Erie and its watershed to "exist, flourish, and naturally evolve"? TOLEDO MUN. CODE ch. XVII, § 254(a). How would a prosecutor, judge, or jury decide? LEBOR offers no guidance. Similar uncertainty shrouds the right of Toledoans to a "clean and healthy environment." Id. § 254(b). The line between clean and unclean, and between healthy and unhealthy, depends on who you ask. Because of this vagueness, Drewes Farms reasonably fears that

[102] *Id. at § 257.*
[103] *Id.*
[104] Drewes Farms P'Ship v. City of Toledo, 441 F. Supp. 3d 551 (N.D. Ohio 2020).
[105] *Id.*

> spreading even small amounts of fertilizer violates LEBOR. Countless other activities might run afoul of LEBOR's amorphous environmental rights: catching fish, dredging a riverbed, removing invasive species, driving a gas-fueled vehicle, pulling up weeds, planting corn, irrigating a field -- and the list goes on. LEBOR's authors failed to make hard choices regarding the appropriate balance between environmental protection and economic activity. Instead, they employed language that sounds powerful but has no practical meaning. Under even the most forgiving standard, the environmental rights identified in LEBOR are void for vagueness.[106]

It is the case here, as in other assertions of ecosystem rights, that the strange case of land asserting its personhood and contingent rights necessarily encroaches on the rights of natural persons and the state itself. Ecosystem rights are often enumerated in law and legal disputes as vague interests in flourishing, existence, and posterity. When understood as vague interests of interrelated natural actors within a prescribed area—for instance, the body of water known as Lake Erie, the organisms that live within it, and the soil of its terrain—these rights seem virtually unmanageable. To what does the interest attach—the fish *and* the water feature? The two together more than one divided from the other?

C. Addressing the Problem: What is the Ecological Legal Person?

I argue that the first step in realistically recognizing the personhood of ecosystems at law, and therein asserting concrete rights, is to define the ecosystem not as its constituent parts, but as its higher-order function. This has not been attempted by ordinance, which typically fails to define the ecosystem as anything other than the natural constituents that make it up, indeed often delineating what is meant by "ecosystem" with a long list of parts.[107] Legislative definitions of "nature" and "ecosystem" are likewise unwieldy:
(1) "Nature" means the phenomena of the physical world collectively, including plants, animals, the landscape, other features and products of the earth, the natural environment or wilderness, and generally areas that are not human or human creations, have not been substantially altered by humans, or that persist despite human intervention. (2) "Ecosystem" means a complex community of living organisms in conjunction with their physical environments, all interacting and linked together as a system through nutrient cycles and energy flows in a particular unit of space.[108] In conceptualizing a corporation, against which the ecosystem is typically measured, the realist model

---

[106] *Id.* at 6.
[107] See, e.g. Pittsburgh Code, Title 6, Conduct, Article 1, 618.0 (b) ("Rights of Natural Communities. Natural communities and ecosystems, including, but not limited to, wetlands, streams, rivers, aquifers, and other water systems, possess inalienable and fundamental rights to exist and flourish within the City of Pittsburgh. Residents of the City shall possess legal standing to enforce those rights on behalf of those natural communities and ecosystems"); TOLEDO MUN. CODE ch. XVII, § 254(a) ("The Lake Erie Ecosystem shall include all natural water features, communities of organisms, soil as well as terrestrial and aquatic sub ecosystems that are part of Lake Erie and its watershed").
[108] New O.R.C. § Sec. 2305.011 (fi'om Am. S. H. B. No. 166, Ohio's 2019 Biennial Budget Act) (Cited for the purposes of supporting the City of Toledo's efforts to establish the LEBOR).

attributes legal personhood to the function that emerges from the actions of the corporation's human constituents, a function which is separate from the individual actors. In the metaphysical sense of the concept, the legal person is a person to the extent that it cannot be reduced to its constituent parts.

This feels intuitively like the most accurate description of an ecosystem, bounded imperfectly as it must be to conform to the American legal system. Indeed, the very act of bounding ecosystems that cities and activists have attempted to protect evinces something of this theory. The Lake Erie effort began because the function of the lake—to provide clean drinking water for residents of the city of Toledo—was being impeded by corporate action. With this goal in mind, the City held a special election on February 26th of 2019 and voted overwhelmingly to amend their city charter with the Bill of Rights, penned by a group of environmental activists in response to the water crisis.[109]

Early ecosystem rights theorists distinguished between rights established by ordinance and those asserted by standing through actions brought by ecosystem custodians.[110] The first pathway recognizes the unique challenge presented by natural areas—namely, that they are typically managed under state law, either as applied to private property or non-federal public property. While human persons enjoy certain rights and standing regardless of their state-level affiliations, ecosystems exist at the intersection of residents' interests in their functions and the State's interest in managing its resources and economic involvement.

The second method relies upon the possibilities of recognizing personhood through an entity's interactions with the State. These mirror somewhat efforts by Black Americans before their citizenship grants were codified federally to access the protections of the State by asserting their standing in public fora during the Reconstruction Era.[111] Standing in that instance, however, was a patchwork effort toward embodying citizenship where personhood was more readily recognized.[112]

Before slavery was federally abolished, "freedom suits," through which enslaved persons asserted their legal personhood through lawsuits for their emancipation, demonstrated the difficulty of accessing bare personhood through interaction with the courts.[113] Because laws that enshrined the institution of slavery and stripped Black Americans of their personhood operated at the state-level, assertions of legal personhood and standing were threaded through specific state restrictions and did not produce widely applicable precedent.[114] Likewise, they involved the property interests of the slave owner and the state over and against the question of the enslaved entity's personhood, establishing a power imbalance stacked against the petitioner.

In this same way, efforts toward ecosystem *standing* enter the fray in the very nascent stages of possible ecosystem personhood. They rely upon moral law beyond the bounds of what the American legal system has formally recognized, pitting the interests of an ecosystem to

---

[109] Sigal Samuel, *Lake Erie Now Has Legal Rights, Just Like You*, (Feb. 26, 2019 11:00 PM), https://www.vox.com/future-perfect/2019/2/26/18241904/lake-erie-legal-rights-personhood-nature-environment-toledo-ohio, [https://perma.cc/C82P-UYJL].

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

[111] Jones, *supra* note 21; Simon, *supra* note 24.

[112] David Thomas Konig, *The Long Road to Dred Scott: Personhood and the Rule of Law in the Tribal Court Records of St. Louis Slave Freedom Suits*, 75 UMKC L.REV. 1 (2006).

[113] *Id.* (noting that, "we can argue that insofar as legal personhood afforded personal autonomy it 'can be understood in instrumental terms: as providing a necessary precondition to economic inclusion and material empowerment.'").

[114] *Id*. at 5–6.

"flourish" against those of the State to regulate property and resources.[115] Because of this, they present a difficult avenue toward achieving court-sanctioned personhood and reinforce the State's interests rather than challenging them.

Local ordinances, however, might offer an avenue toward articulating what the ecosystem-person actually is as a legal entity. Where lawsuits rely upon vague declarations of an ecosystem's centrality to the human persons who occupy them, they remain unwieldy and baseless. They make the rhetorical move, too soon, from an assumption of personhood toward full civic participation. Conversely, ordinances allow personhood to be defined narrowly on the basis of the ecosystem's higher order function, which is the locus of the State's and its constituents' countervailing interests.

CONCLUSION

Defining ecosystems locally and as the product of their complex web of interrelationships may at once provide corporations and governments with notice as to what the legal person *is* that they are prohibited from violating and demystify what would constitute harm against the ecosystem person—both complaints previously discussed relating to the Lake Erie Bill of Rights. Ecosystems present a similar legal conundrum to corporations as they behave as entities in certain respects but are evidently the sum of many constituent parts. Corporations have overcome this in numerous ways to access a scheme of legal personhood rights and protections, relying upon philosophical methods of understanding interrelated parts as a unitary whole. Local ordinances could apply these same methods in bounding the parts that make an ecosystem up into the whole actor and thus present courts with a cognizable legal person. The road to standing is that transient space between, in which the legal person begins to access some citizenship rights through civic engagement.

[115] *Supra* note 61. The Colorado Attorney General's office commented on an effort to establish legal standing for the Colorado River Ecosystem once it was dismissed: "I do not doubt the personal convictions of those groups and individuals who claimed to speak on behalf of the ecosystem…However, the case itself unacceptably impugned the state's sovereign authority to administer natural resources for public use, and was well beyond the jurisdiction of the judicial branch of government. After my office presented counsel with these and other realities, he readied and wisely chose to withdraw the case. Colorado has always been a national leader in preserving our environment, and we will continue to protect and administer its natural resources as guaranteed by the constitution."