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Challenging Corporate “Personhood”: Energy Companies and the “Rights” of Non-Humans

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Since the early 2000s, the idea of “rights” for nature has gained increasing traction among environmental activists throughout the Americas. Drawing on a series of recent legal cases in the state of Pennsylvania, this article tracks the efforts of a U.S.-based nongovernmental organization to use such rights in ongoing struggles against energy companies involved in natural gas extraction. The central argument is that, despite their considerable philosophical and practical difficulties, the rights of nature are being productively used as part of a grassroots movement of civil disobedience that aims to simultaneously challenge corporate personhood and reestablish the power of local communities to defend the rights of ecosystems within their jurisdictions. By explicitly juxtaposing the “rights” of nature with the “rights” of corporate persons, local communities facing the impacts of natural gas extraction are attempting not only to make substantive claims about the legal defensibility of nonhuman rights but also, just as importantly, to set precedents for the revocation of corporate personhood. Close attention to these arguments suggests ways of bringing together recent

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work on corporate personhood with theoretical insights drawn from political ontology.

[nonhuman rights, corporate personhood, ontology, extraction, United States]

Since the early 2000s, the idea of “rights” for nature has gained increasing traction among environmental activists throughout the Americas. The idea in its Western legal form has been debated at least since Christopher Stone’s ([1972] 2010) *Should Trees Have Standing?* However, it has only been in the last fifteen years that it has been implemented at national, regional, and municipal levels in countries as diverse as Ecuador, Bolivia, Mexico, and the United States. In Ecuador and Bolivia, environmental and indigenous groups have successfully agitated for the inclusion of “rights for nature” in their national constitutions, while in the United States, the people of cities, townships, and counties are rewriting local constitutions to render the waste disposal practices of energy companies violations of the “rights” of ecosystems (Burdon 2011; Burdon and Maloney 2014; Cullinan 2003; Fitz-Henry 2014; Tanasescu 2015a). In all of these countries, growing numbers of lawyers and communities, frustrated with what they perceive to be insufficiently precautionary and excessively corporate-friendly regulatory agencies, are struggling to find creative points of leverage in struggles with state governments. In many cases, these communities have exhausted all the standard legal channels through which to challenge the permitting processes of regulatory agencies. Nevertheless, they still find themselves unable to halt extractive projects using existing appeals mechanisms. Seeing this failure of the current system of environmental law, lawyers and activists are more and more vocally insisting on “rights” for ecosystems. In the United States, the organization primarily responsible for advancing these rights is the Community Environmental Legal Defense Fund (CELDF), a small, not-for-profit legal organization.

There have been enduring reservations about the practical feasibility of rights for nature. For the purposes of this article, I do not engage in these philosophical debates at any length, not because I think them unimportant, but because my primary ethnographic interest is in the ways in which the rights of nature are currently being operationalized in US courts. While detractors might point out that the ultimate success of these cases depends in large part precisely on their philosophical coherence, or that to separate conceptual integrity from practical utility is logically indefensible, my response is twofold. First, these rights claims are dynamically unfolding experiments that are arguably not yet fully worked through. Thus, to hold them responsible for “philosophical incoherence” is perhaps a bit premature (or at least ungenerous). Second, and probably more importantly, regardless of these debates’ ultimate moral validity, they are nevertheless having very real effects on the ground in the places where they are being operationalized. Those effects can be productively examined, much as the wide-ranging effects of neoliberal reforms have been explored, regardless of the fact that those reforms have been driven by economic assumptions that are problematic, flawed, and morally dubious, if not wildly inaccurate.

My argument in this article is that rights for nature are proving politically productive, which is to say generative of novel understandings of both “property” and “personhood” that are currently being debated in communities and courts across the United States. Although these rights remained for many years on the fringes of environmental thought following Aldo Leopold’s essay “The Land Ethic” (1949) and Christopher Stone’s manifesto ([1972] 2010), finding voice only among some deep ecologists, they have moved relatively quickly into debates in a range of local and national contexts over the past ten years, in large part owing to the work of CELDF both nationally and internationally. From New Zealand and India to Colombia and Bolivia, rights for nature have been debated in constitutional assemblies (Ecuador), used by judges to ensure state compliance with environmental remediation

programs (Colombia), and included in national treaty settlements that have finalized long-standing indigenous territorial claims (New Zealand).

While unlikely to achieve federal-level or even state-level success in the United States anytime in the near future, at least if “success” is measured in terms of US circuit court wins, ongoing legal battles over the respective “rights” of corporations, communities, and ecosystems are sparking heated debates across the country over the limits of corporate personhood, the power of local communities to extend “rights” to ecosystems, and state preemption as a ceiling on human and ecological rights protections. With more than three-dozen U.S. municipalities having already accepted versions of these rights, and swelling numbers of lawsuits brought by companies and state regulatory agencies against these municipalities over the past three years, the contestations are growing increasingly heated. I draw primarily on legal briefs from a series of recent “rights of nature” court cases heard in the state of Pennsylvania between 2014 and 2017 involving a small rural community, the Pennsylvania General Energy Company, and the Pennsylvania Department of Environmental Protection, as well as interviews with activists involved in the broader movement in the United States, Europe, and Latin America. In this article I explore the legal frictions generated by activist-led efforts to play radically different conceptions of nonhuman “rights” off against one another: ecosystems, on the one hand, and corporations, on the other.. As I will show, these struggles raise enduring questions about how U.S. law currently imagines, solidifies, defends, and polices the lines between personhood and property, granting and withholding “rights” to a range of nonhuman entities in ways that remain strongly biased toward corporations.¹

What conversations are being initiated by these activist-led struggles to push from the ground up against the doctrine of corporate “personhood” by extending legal rights to the natural world? What kinds of nested decision-making hierarchies around natural resource

extraction are being both rendered visible and challenged? On what grounds are energy companies and state regulatory agencies pushing back, as they struggle to reaffirm and naturalize their privileges? How, most broadly, might more fine-grained attention to these struggles further expand an understanding of the unstable legal terrain in which radically nonhuman persons are beginning to find their voices in explicit opposition to corporations, perhaps for the first time in recent history (Bennett 2010; Latour 2004)?

In line with a growing body of critical legal scholarship on corporate constitutional rights in the United States, political anthropologists since the mid-2000s have spent considerable time exploring the diverse meanings, forms, and ramifications of corporate personhood, a trend that has only intensified in the years since the highly contentious *Citizens United v. Federal Election Commission* (Bashkow 2014; Benson and Kirsch 2010; Dolan and Rajak 2016; Foster 2014; Kirsch 2014a; Rajak 2011; Welker 2014).² As Stuart Kirsch aptly notes in his introduction to a symposium published in this journal (*On Imagining Corporate Personhood*), the metaphor of corporate personhood has had far-reaching effects beyond the realm of law in not only shifting how shareholders and consumers think about corporations (for example, by attributing to them motives such as greed or benevolence) but also by irrevocably altering how people think about themselves (for example, as minienterprises or bundles of always-improvable assets). This work has raised important questions about the migrations of the metaphor of corporate personhood into nonlegal contexts, the contradictions that too often emerge when corporations “selectively claim the rights of natural persons while ignoring the social personhood of corporations” (Kirsch 2014a, 211), and the possibility that other, non-Western models of the person might be better suited to the imagining of the contemporary corporation (Riles 2011).

However, despite this important research on the material effects and ideological reverberations of the legal doctrine of corporate personhood and of the corporate form more

generally (Bashkow 2014; Welker, Partridge, and Hardin 2011), to date there has been little exploration of the ways in which corporate “persons” might productively be destabilized or at least differently contextualized by attention to imaginings of other nonhuman “persons.” Anthropologists have a long tradition of engagement with diverse forms of personhood (Strathern and Stewart 2011), and, more recently, proponents of the ontological turn have been at the forefront of encouraging more sustained attention to the diverse agencies and “cultural” perspectives of nonhuman bodies (Tsing et al. 2017; Viveiros de Castro 2014). Growing numbers of these scholars have begun to explicitly engage the role of these nonhuman “persons” on the political stage as actors in their own right and not just as “cultural beliefs,” “representations,” or “folkloric” relics blandly conducive to the embrace of liberal multiculturalism (de la Cadena 2010). From Peruvian “mountains that get angry” and Chilean aquifers possessed of “agency” to Central Australian “rocks that listen” and Malaysian “mud volcanoes” with powerful “spirit names,” “earth beings” are increasingly being invoked in struggles against mining and other forms of resource extraction in places as diverse as Peru, Chile, and Aboriginal Australia (Blaser 2009; Bubandt 2017; de la Cadena 2010, 2015; Escobar 2016; Li 2015; Povinelli 1995, 2016). What is being witnessed, these ethnographers suggest, is the emergence (or reemergence) of a more “pluriversal politics”—one which recognizes that “the world is more than one socio-natural formation,” which is “competently fluent in [that] multiplicity,” and which grapples seriously with the *legal* implications of embracing a wider and more distributed understanding of “agency” than is traditionally recognized by Western legal theorists (de la Cadena 2010, 361).

Bringing this emerging work on “pluriversal politics” (de la Cadena 2010; Escobar 2016) into more sustained conversation with theorists of corporate personhood, this article considers the ways in which diverse “persons”—those iconic rights-bearing entities in the Western liberal tradition—are being strategically used by U.S.-based environmental activists

associated with the Community Environmental Legal Defense Fund to denaturalize and delegitimize currently hegemonic deployments of corporate “rights.” A careful consideration of recent efforts in the state of Pennsylvania to experiment with creative juxtapositions of these radically different forms of personhood (and their attendant “rights”) may, I suggest, encourage anthropologists of the corporate turn to look more closely at a broader range of anticorporate social movements (Graeber 2009; Haugerud 2013). At the same time, they may also encourage anthropologists interested in political ontology to look more carefully, and perhaps for many closer to “home,” at the translational processes by which diverse forms of “radical alterity” are pushing their way into U.S. circuit courts, perhaps for the very first time (Graeber 2015; Hage 2015). After all, as John Law and Arturo Escobar have each recently noted, the spaces of “ontological reconstitution” (Escobar 2016, 26) that challenge the dominance of “one-world” or mono-ontological theorizing are not to be found exclusively in ethnic minority territories (Law 2015). Instead, one of the central challenges of the present time is to recognize and support “the practices within the [Global] North that multiply realities” (Escobar 2016, 21), and that may serve as emergent challenges to the limitations and injustices of “one-world” imaginings (Law 2015, 128).

From Reforming Regulation to Home Rule Charters for the “Rights” of Ecosystems

The CELDF is a small but growing not-for-profit legal organization that, since 1995, has been working with municipalities throughout the United States to rewrite local charters to include *rights for nature* or *rights for ecosystems*. It has grown from a relatively mainstream environmental organization concerned in the late 1990s with appealing state-issued environmental permits to the first organization in the country to agitate for “rights” for the natural world. As one of its principal lawyers explained to me in an interview in 2010, CELDF had experienced significant frustration with its initial strategy of appealing permits

because in practice that process had simply meant facilitating corporate access to communities. By carefully pointing out errors and omissions in the environmental impact assessments of companies applying for state-issued permits, CELDF found itself in the unenviable position of ultimately working to facilitate the approval process, since the companies were subsequently able to simply remedy these procedural errors and gain the approval of the state. Rather than being effective civil society counterweights to extractive corporations, CELDF lawyers felt that they had become agents and even facilitators of those corporations. What was missing from the process, they came to see, was any legal mechanism by which communities could say “no” to corporations. While the issue of free, prior, and informed consent (FPIC) for indigenous communities, first stipulated in the International Labour Organization’s Indigenous and Tribal People’s Convention 169, has generated an enormous amount of literature over the past few years, significantly less attention has been paid to consent processes around extractive projects in non-indigenous communities. A recent Oxfam America study suggests that extractive companies are more and more frequently extending FPIC protocols to non-indigenous communities (Voss and Greenspan 2012). However, these practices are not yet industrywide standards, and, indeed, in most of the places where CELDF works in the United States, processes of industry–community consultation either have not taken place or have only taken place perfunctorily.

The CELDF lawyers realized that they needed to fundamentally change the structure of law that has historically treated the natural world as “property” (Nash 1989). As one CELDF lawyer explained to me succinctly via e-mail in November 2016:

In our legal system, the earth—“nature”—is property, and thus we (the collective we) have the right to destroy it. Our environmental laws have not challenged this central facet of property law. Instead, the policy framework for the environmental regulatory laws in the United States (Clean Air Act, Clean

Water Act, Endangered Species Act, National Environmental Policy Act, etc.)

accepted the idea that the environment is property, and from there simply tried to regulate the use of that property. So we can only destroy our property at a certain speed, or to a certain amount. The fundamental idea that the earth is property wasn't challenged. Thus, “environmental law” as it is practiced today is a subset of property law.

Instead, then, of engaging with state regulatory agencies, which they saw as primarily in the business of simply regulating permissible levels of property damage (or, said differently, the amount of environmental destruction that can be legally sanctioned), CELDF moved toward a strategy of trying to ignite a civil rights movement that would change the status of the natural world from “property” to “person,” much as previous grassroots movements had done for women and African Americans. As Thomas Linzey, the group’s cofounder, made explicit in a 2004 speech at the University of Pittsburgh School of Law:

The Abolitionist movement thrust the rights of slaves into the constitution via the Fourteenth amendment, transforming once-property into people. The Womens’ rights movement thrust the rights of women into the constitution via the Twentieth amendment, transforming those once considered property into people. Indeed, the American Revolution transformed states that were once private corporations and royal proprietorships—run and owned as private property by English investors—into public, constitutionalized governments. Securing rights for that considered property means not fiddling around with regulating how that property can be used, but instead, it means changing the

very framework of governance that defined those things as property in the first place. (Linzey 2004, 2)

Forcefully articulated by Stone ([1972] 2010) in his landmark call to recognize the rights of nature in the early 1970s, this is a claim frequently reiterated by CELDF-affiliated activists throughout the United States, who see themselves as furthering the inevitable march of progress that first abolished the slave trade and granted African Americans the full rights of US citizenship. This parallel with previous civil rights struggles has been critiqued by political theorists who argue that fundamentally unlike women and slaves, ecosystems are not *inherently* damaged by ownership, and that, furthermore, both women and slaves actively struggled to achieve the recognition of their civil rights in ways that cannot be said to be happening among ecosystems in any meaningful sense (Tanasescu 2015a). This critique, however, seems to CELDF lawyers to be based on a serious conceptual error in so far as it makes an untenable distinction between local communities and ecosystems. If local communities are seen as integral parts of ecosystems, then their voicing of concerns about state and corporate violations of those ecosystems is not at all dissimilar from previous civil rights struggles.

Like other NGOs involved in the broader “corporate abolitionist” movement, CELDF lawyers firmly believe that efforts to merely regulate environmental pollution are as morally bankrupt as nineteenth-century efforts to seek a Slavery Protection Act or a Slavery Regulatory Agency would have been because they miss the fundamental root of the problem: the treatment of nature exclusively as legal property (Ripken 2011). While detractors, again, have pointed out that the treatment of nature as property is not in and of itself inherently morally problematic (that is, is there anything *necessarily* harmful about owning a river?), the cultural and historical contexts in the United States are crucially important here. In a country

where that which is arguably little more than the property of shareholders, that is, corporations, have been repeatedly (if also unevenly) granted the legal rights of “personhood,” the notion that ecosystems should be denied the necessary legal standing to challenge that personhood seems particularly morally outrageous, especially when, as many of these activists know intimately, ecological systems are composed of considerably more “vibrant” or “agentive matter” than the companies currently protected by constitutional rights (Barad 2007; Bennett 2010; Kirby 2017).

Other environmental groups have used substantially different strategies to work toward similar environmental ends, pushing, for example, for more robust forms of federal compliance with FPIC commitments (Hanna and Vanclay 2013), an international tribunal that would prosecute crimes of ecocide (Higgins, Short, and South 2013), deeper consideration of the environmental justice concerns of affected communities before granting environmental permits (Pulido, Kohl, and Cotton, 2016), an extension of human rights to include the “right to a healthy environment” (Boyd 2012), and the “right to a safe climate” [e.g., *Juliana v. United States*, 217 F. Supp. 3d 1224, (D. Or. 2016)].³ However, the “rights of nature” in the United States are unique in that they are framed explicitly by way of juxtaposition with the rights of corporations in order to perform a kind of moral–political double labor—simultaneously extending ecological rights and undermining corporate constitutional rights. In a situation in which, as CELDF regularly points out, communities regularly find themselves up against powerful regulatory/ industry alliances protected both by constitutional claims of personhood and a concentration of decision-making power in the hands of states increasingly influenced by corporate lobbyists, it is perhaps no surprise that these activists are committed to prioritizing a legal transformation of ecosystems from forms of property to types of “persons,” thereby dramatically extending legal standing to intervene in environmental contestations.⁴

Toward this end, beginning in the mid-2000s, CELDF organizers began working with municipalities throughout the country who were finding themselves facing the arrival of factory hog farms or fracking injection wells. City by city, CELDF representatives and volunteers worked to rewrite municipal bills of rights and home rule charters that simultaneously granted ecosystems “rights” and prevented state governments from interfering in local decision making around the protection of these rights. While this strategy has been met at times with considerable derision and fear of costly corporate backlash by community members who worry that it will mean a halt to local development projects or a proliferation of frivolous court cases against neighbors for engaging in acts as routine as mowing the lawn, growing numbers of municipalities throughout the United States, from Santa Monica to Pittsburgh, have voted to approve such ordinances. As previously noted, as of this writing more than three-dozen municipalities across the United States have approved such ordinances.

One of those municipalities is Grant Township, in western Pennsylvania, located about an hour and a half east of Pittsburgh. Grant is a small, rural township of approximately eight hundred residents (99 percent white, with a median family income of approximately \$38,000) which, like so many other rural communities in western Pennsylvania, has been faced with an onslaught of natural gas and other energy companies interested in mining the Marcellus Shale formation that stretches across the state. For Grant, the company in question was the Pennsylvania General Energy Company (PGE). PGE currently operates eight deep gas wells within the town’s boundaries, but what fueled the writing of a community bill of rights in June 2014 was the company’s decision to convert one of the deep gas wells into an injection well for depositing brine and other toxic byproducts of hydraulic fracturing. On April 16, 2014, PGE applied to the Pennsylvania Department of Environmental Protection (DEP) to reclassify the Yanity Farm well from a “production well” to an “injection well,” a

reclassification for which it subsequently received approval from the federal Environmental Protection Agency, which issued the company an Underground Injection Control (UIC) program Class II-D permit with only the most perfunctory public hearing, at which it became known that the company planned to inject 42,000 gallons of wastewater a day for at least the next ten years. Tired of the fact that the DEP seemed always to be aligned with the energy company (activists and locals joke that DEP might just as well stand for the “Department of Everything Permitted”), residents decided that the only way forward was to write a community bill of rights to ban extractive activities within the boundaries of the town and to formally recognize the rights of community members to protect the waterways likely to be affected by the well.

On June 3, 2014, Grant approved a community bill of rights. Drafted in conversation with CELDF lawyers and Pennsylvania organizers, this bill of rights makes three interrelated and innovative legal moves. First, it rescales the “inalienable” right to local self-government by insisting that the local include the town of Grant and not just the state of Pennsylvania, thereby challenging the decision-making authority of the DEP. Second, it codifies a novel series of environmental rights, including the “rights of natural communities and ecosystems,” explicitly granting legal standing to the rivers and aquifers most likely to be damaged by PGE’s injection well. Third, and perhaps most controversially, it revokes the rights of extractive corporations that challenge or violate the rights of either communities or ecosystems. More specifically, the ordinance asserts that the community has the inalienable right to community self-government, by which it means the right to make local decisions about any extractive activities on land within the township—a right that it somewhat contentiously interprets as “deeply rooted in this nation’s history and tradition,” as evidenced by the “Mayflower Compact, the Exeter Compact of 1639, the Articles of Consideration for the United Colonies of 1643, and the Declaration of Independence” [Memorandum Opinion,

Penn. Gen. Energy Co. v. Grant Twp., No. 2014cv00209, ECF No. 113 (W.D. Pa. Oct. 14, 2015, 7)].⁵ It then goes on to enumerate six additional rights afforded the community that are explicitly linked to the need to be “free from energy extraction, production, and use that may adversely impact the rights of human or natural communities,” including its right “to clean air, water, and soil,” to “scenic preservation,” and “to a sustainable energy future” (Linzey, Brannen, and Dunne 2015, 4).

Most important for the purposes of this article, however, is its delineation of what it calls, the “rights of natural communities and ecosystems.” Section 2(d) of the ordinance reads simply: “Natural communities and ecosystems within Grant Township, including but not limited to rivers, streams, and aquifers, possess the right to exist, flourish, and naturally evolve” (Linzey et al. 2015, 4). While both “flourish” and “naturally evolve” are as open to interpretation as are “nature,” “natural communities,” and “ecosystems” more generally (a critique often made by key interpreters of this movement such as Mihnea Tanasescu (2015a), this is language that has found its way into growing numbers of local bills of rights that attempt to establish a more thoroughgoing legal basis for resisting corporate projects too often approved by state regulatory agencies. The argument is that, just as states have the ability to increase environmental protections above federally mandated minimum levels, so, too, should local communities have the ability to do so when state protections do not seem to adequately assess or address likely environmental harms. In the case of Grant, it should be remembered that the Environmental Protection Agency had already authorized the injection of brine and produced fluids for disposal and specifically rejected claims that the by-products of hydraulic fracturing represented a potentially fatal challenge to the health of rivers and aquifers throughout the county. While the language of personhood is not yet fully explicit in this formulation (this issue, as I show shortly, would come more centrally to the fore in a subsequent legal intervention brought against PGE by the Little Mahoning Watershed),

activists asserted that the notion that ecosystems, like human beings, have “the right” to “exist, flourish, and natural evolve” (Linzey, Brannen, and Dunne 2015, 4) goes a long way toward breaking down insidious distinctions between human and nonhuman “persons” that have allowed corporations to treat rivers as commodities and externalities for more than two centuries.

The strategies that activists have used to juxtapose the “personhood” of ecosystems with the personhood of corporations are particularly instructive, as they have regularly provoked the ire of PGE and other energy companies that have been repeatedly forced to defend their corporate rights in courtrooms throughout the United States. One such strategy is particularly poignant in the opening rationale for the ordinance. The text begins:

Private corporations engaged in the depositing of waste from oil and gas extraction are wrongly recognized by the federal and state government as having more “rights” than the people who live in our community, and thus, recognition of corporate “rights” is a denial of the rights of the people of Grant township. (Linzey, Brannen, and Dunne 2015, 2)

Section 5 even more explicitly lays out the community’s position on corporate “rights” and corporate legal personhood:

Corporations that violate this ordinance, or that seek to violate this Ordinance, shall not be deemed to be “persons,” nor possess any other legal rights, privileges, powers, or protections which would interfere with the rights or prohibitions enumerated by this Ordinance. (Linzey, Brannen, and Dunne 2015, 6)

Finally, as part of the concluding call for constitutional changes at the state level:

Through the adoption of this Ordinance, the people of Grant Township call for amendment of the Pennsylvania Constitution and the federal Constitution to recognize a right to local self-government free from governmental preemption and/or nullification by corporate “rights.” (Linzey, Brannen, and Dunne 2015, 7)

From the perspective of the majority of residents in Grant Township, not only are corporations wrongly recognized by the federal and state governments as having more rights than people, but also corporations should be stripped of their legal personhood within township limits to prevent them from violating the rights of ecosystems. Thus, in residents’ perspective, legal personhood becomes both more malleable and more expansive than is currently recognized by Supreme Court precedent—simultaneously revocable in the case of corporate infringements of ecosystem rights (that is, a right circumscribed by other rights) and extendable with equal validity to nonhuman persons.

As deeply felt and widely supported as this perspective was, especially as news about the dangers of hydraulic fracturing began to become widely known in the second decade of the twenty-first century (de Rijke 2013; Willow and Wylie 2014), the problem remains that municipal governments in second-class townships in the United States currently do not have the authority to enact such legislation, particularly when that legislation stands in the way of the rights of corporations to engage in free commerce. Not unpredictably, less than two months after the ordinance passed in June 2014, PGE sued the township, alleging that the series of rights laid out by the town’s Board of Supervisors violated their corporate

constitutional rights and that, furthermore, perhaps more importantly, state laws preempt the ordinance. Similar lawsuits have been fought in courtrooms all across the country after such rights have been approved by local residents (Burdon and Maloney 2014). Unfortunately, from the perspective of CELDF activists and the communities they support, to date the vast majority of these cases have resulted in lengthy legal exchanges with corporate lawyers and state regulatory agencies, but always ending in variations of the same decision: the nullification of the ordinances by state courts. The town of Grant was no exception.

In August 2014, PGE sued Grant Township, asserting, among other charges, that the ordinance violated the supremacy clause of the US Constitution, the equal protection clause, the First Amendment, the contract cause, and substantive due process, as well as pointing out that the township lacked the authority to regulate oil and gas operations and was furthermore preempted by the Pennsylvania Oil and Gas Act and the Pennsylvania Limited Liability Company Law. To provide just one example of the arguments mobilized by PGE:

The Equal Protection Clause requires that the laws of the state treat persons in the same manner as others similarly situated. ... The Community Bill of Rights Ordinance, without any rational basis, treats corporations and governments seeking to inject and/or store Oil and Gas Materials within Grant township differently than similarly situated natural persons, in that the Community Bill of Rights Ordinance only applies to corporations, such as PGE, and governments, and not natural persons. Consequently, the Community Bill of Rights Ordinance violates the Equal Protection Clause of the U.S. Constitution by treating corporations and governments differently than similarly situated natural persons. [Complaint Against Grant Township,

PGE's claims initially focused less on the rights of nature, which it clearly considered "without any rational basis," and more on the efforts on the part of the township to challenge its corporate personhood and attendant rights. As can be seen in their argument that the ordinance violates their rights as a corporation under the equal protection clause, their defense of the proposed injection well rearticulates precisely the problem that CELDF and other radical environmentalists are attempting to bring to the national fore, city by city: Why should corporations be treated as other "natural persons"? Why should the Fourteenth Amendment be used to protect extractive industries and not the ecosystems they destroy? Why should Oil and Gas Materials be granted legal standing when the aquifers sullied by those materials are denied such standing? Why should local communities be prevented from approving laws to protect the environment that are more stringent than those recognized by state governments? To argue that Grant's community bill of rights is discriminatory because it accords greater rights to "natural persons" than to "corporate persons" is, to CELDF activists and many community residents, simply to reiterate the very problem that these ordinances are constructed to make visible.

In order to force the issue further, and to bring additional focus to the "rights" for nature, in November 2014, the Little Mahoning Watershed filed a motion to intervene in the case. The Little Mahoning Watershed is a unique watershed in western Pennsylvania that, unlike many others, escaped the worst effects of coal mine drainage and now boasts large numbers of fresh water species, making it an important tourist destination and boon for the local economy. While similar cases on behalf of rivers have been filed in Ecuador and New Zealand—and in both cases, it should be noted, the rivers have been granted legal standing,

albeit in quite different ways—this motion to intervene represented the first time in US history that an ecosystem had attempted to intervene in a legal proceeding to protect its rights. Brought to court by a local organization—the East Run Hellbenders Society—the Little Mahoning Watershed argued that its rights were being violated by PGE on the grounds that they planned to inject highly toxic wastewater into nearby underground wells at a depth of some seventy-five hundred feet. Not surprisingly, however, once again PGE pushed back, this time even more forcefully, aiming not just to reassert the rights and privileges of corporate personhood but also to explicitly ridicule the legal personhood of nature. As its lawyers argued in their opposition to the motion to intervene on December 8, 2014:

Incredibly, the Motion to Intervene seeks, apparently for the first time in American jurisprudence, for a condition of nature, in this case the Watershed, to intervene in a lawsuit. The Watershed does not meet the definition of a “person” under the Federal Rules of Civil Procedure, and lacks the most fundamental capacities necessary to be a participant in the judicial process. ... A watershed lacks consciousness, intelligence, cognition, communicability, or agency. A watershed can neither recall nor forget; neither articulate nor remain silent; neither agree nor dispute. The Watershed cannot decide to intervene, cannot accept representation or engage with counsel as a client, and cannot appear in court or testify. It cannot knowingly participate in the adversarial system of justice. [Plaintiff’s Brief in Opposition to Motion to Intervene by Little Mahoning Watershed and East Run Hellbenders Society, Pennsylvania General Energy Company v. Grant Township, 1:14-cv-00209-JFM, Dkt. 45 (W.D. Pa. December 8, 2014)]

The PGE lawyers drew on previous cases in which animals presented themselves as plaintiffs, notably *Hawaiian Crow v. Lujan*, in which an endangered bird attempted to gain standing to sue the US Fish and Wildlife Service on the grounds that it had failed in its statutory duty to protect the bird.⁶ The PGE’s lawyers argued, “[I]f an animal is not considered a ‘person,’ then a natural condition, such as a watershed, cannot be deemed to be a ‘person’ with standing to sue” [Plaintiff’s Brief in Opposition to Motion to Intervene by Little Mahoning Watershed and East Run Hellbenders Society, Pennsylvania General Energy Company v. Grant Township, 1:14-cv-00209-JFM, Dkt. 45 (W.D. Pa. December 8, 2014)].

This limited conception of legal personhood, however, is precisely what CELDF aims to challenge. To make this point in language that would be understood by PGE’s legal representatives, CELDF lawyers began by pointing to a number of cases in which so-called natural resources have been parties in US federal courts, including, perhaps most famously, in *Cetacean Community v. Bush* (2004),⁷ in which the Ninth Circuit Court argued, “[W]e see no reason why Article III prevents Congress from authorizing a suit in the name of an animal, any more than it prevents suits brought in the name of artificial persons such as corporations, partnerships, or trusts” [*Cetacean Community v Bush*, 386 F. 3d 1176 (9th Circuit 2004)]. However, CELDF lawyers did not stop at simply underscoring these legal precedents. They also used the controversy over the standing of the river to, again, raise more enduring questions about the validity of corporate persons:

The irony here must be pointed out. PGE’s lawyers represent a legal fiction, which is itself incapable of doing the things PGE’s lawyers required an ecosystem to be able to do. A [business entity] lacks consciousness, intelligence, cognition, communicability, or agency. A [business entity] can neither recall nor forget; neither articulate nor remain silent. (Reply to

Plaintiff's Opposition to Motion to Intervene by Little Mahoning Watershed
and East Run Hellbenders Society, Inc., Pa. Gen. Energy Co. v. Grant Twp.,
W.D. Pa., ECF No. 54, filed Dec. 18, 2014, 10)

After replacing “watershed” with “business entity” in each part of the clause first presented by PGE’s lawyers, thereby explicitly juxtaposing the two forms of nonhuman personhood in question, they forcefully concluded:

PGE’s lawyers’ argument is that our system of justice allows lawyers to accommodate legal fictions, but not accommodate the living ecosystems upon which we all depend and within which we are a part, even when those ecosystems are recognized by law to have rights. If that is indeed true, then it is the greatest legal fiction of all. (Reply to Plaintiff's Opposition to Motion to Intervene by Little Mahoning Watershed and East Run Hellbenders Society, Inc., Pa. Gen. Energy Co. v. Grant Twp., W.D. Pa., ECF No. 54, filed Dec. 18, 2014, 23)

As passionate as this plea was, in October 2015 Magistrate Judge Susan Baxter, for the Western District of Pennsylvania, ruled that the ordinance protecting the rights of nature was a fundamental violation of corporate constitutional rights. As she explained: “Although the Defendant wishes it were not so, the development of oil and gas (which necessarily includes the management of waste materials generated at a well site) is a legitimate business activity and land use within Pennsylvania”

(<https://stateimpact.npr.org/pennsylvania/2015/10/16/federal-court-rejects-townships-waste-water-disposal-ban>, accessed 7/2/2018). Striking down key parts of the ordinance as

unlawful, specifically those that attempted to strip corporations of their rights within township limits, she ruled:

Defendant provides no precedential statute or constitutional provision authorizing its action other than its assertion that Plaintiff has no rights ... because it is not a person. This view is contrary to over one hundred years of Supreme Court precedent that establishes that corporations are considered “persons” under the United States Constitution. [Memorandum Opinion, Penn. Gen. Energy Co. v. Grant Twp., No. 2014cv00209 ECF No. 113 (W.D. Pa. Oct. 14, 2015,16)]

While this decision, like so many others across the country, came as a blow to both CELDF and the local community, Judge Baxter was not entirely dismissive of the challenge and, in fact, left significant openings for future challenges to corporate personhood. Citing a similar case heard in New Mexico in 2015 (again, one in which CELDF lawyers had been instrumental in drafting a local ordinance), she quoted directly:

The Defendant’s argument that corporations should not be guaranteed constitutional rights, or that corporate rights should be subservient to people’s rights, are arguments that are best made before the Supreme Court—the only court that can overrule Supreme Court precedent—rather than a district court. [Memorandum Opinion, Penn. Gen. Energy Co. v. Grant Twp., No. 2014 cv 00209 ECF No. 113 (W.D. Pa. Oct. 14, 2015, 10)]

It is toward precisely this ultimate forum that organizers are attempting to build grassroots momentum.

While many critics of the rights of nature fear that they will result in more and more of these “frivolous” cases against completely legal and fully permitted development projects, getting such cases into courts, that is, getting extractive corporations to push back on these ordinances through threats, financial intimidation, and repeated lawsuits, is part of a larger strategy, activists told me, of forcing change from the ground up. “We see ourselves as part of a great grassroots movement of civil disobedience,” one explained at his home in Pittsburgh in fall 2014. Just as it took hundreds of young people of different races sitting together at lunch counters to topple the segregationist policies of mid-twentieth-century America, so, too, it will take hundreds of thousands of rights of nature ordinances to topple the kind of entrenched corporate power that means that communities are unable to say no to extractive projects within their communities. While this strategy obviously raises thorny questions about the extent to which local communities should have the decision-making authority to protect natural resources within their municipal borders, activists insist that local decisions cannot remove or undermine the civil rights of natural persons, but they can augment those rights to provide *increased* environmental protection, just as states can exact more stringent environmental laws than those required by the federal government. This is not just a form of “not in my backyard,” activists point out, because the strategy is one motivated by explicitly national (and even international) aims; that is, the reform of a body of federal law heavily rigged in favor of corporate “persons” and their extractive imperatives.

In response to those who additionally fear that the rights of nature will open the door to hundreds or even thousands of “illegitimate” court cases in which people (previously without standing) hope to defend the natural world, another organizer similarly told me that that was precisely the aim: to keep writing these ordinances and forcing companies into

courts in order to spur a broader national conversation about what it means to be a rights-holder, and at whose expense. It is this deepening contestation that they see as critical to building a body of law that begins to reckon with a greater multiplicity of “persons” than those recognized by one hundred years of Supreme Court precedent, not just corporate trustees but also the guardians of ecosystems and riverways. This was a point made particularly vividly by another lawyer working on the Pennsylvania case in early 2017. Unlike the Move to Amend campaign favored by liberal strategists, which seeks to drop an untested constitutional amendment into the US Constitution, he explained, recognizing rights for nature—and those of the local communities embedded in those ecosystems—draws considerable state and corporate pushback, thereby allowing citizens to more clearly see “how the system is put together and [to] get more understanding of how corporate constitutional rights work.” He continued, “Actually stepping outside the box as the people of Grant Township ... have done, leads to a full attack by corporations, state environmental protection agencies, and insurance companies.” This, thereby, exposes the legal architecture that so powerfully supports corporate persons at the expense of both communities and other rights-bearing nonhumans.

The aims, as CELDF activists often insist, are to use the language of rights for nature to think more broadly about human obligations to the natural world and about ways to move environmental law beyond the framework of property law, in which such rights remain unproductively mired. It is also to de-naturalize the “rights” of corporate persons and the state preemption laws that ensure that corporate personhood goes unchallenged at the local level. As I have shown, this language of rights for nature in the United States is spurring an intensifying conversation between state regulatory agencies, energy corporations, and communities over which kinds of entities should have which kinds of rights. This is a conversation that is growing particularly heated as the natural gas industry continues to

expand across the state of Pennsylvania. By pushing for an extension of civil rights to natural communities and ecosystems, CELDF is driving into the courts critical questions about the nested structure of laws around high-risk extractive projects. Just as importantly, it is raising fundamental moral–legal doubts about the hundred years of Supreme Court precedent that have left aquifers and rivers flimsily protected, communities unable to refuse extractive development projects, and corporations capable of repeatedly suing or financially punishing any community that dares challenge its sovereign right to inject wastewater into underground wells. These are doubts well worth further attending to ethnographically.

Conclusion: The Politics of Ontology and the “Corporate Turn”

Stuart Kirsch—in his coauthored article (Benson and Kirsch 2010) and again in *Mining Capitalism: The Relationship Between Corporations and their Critics* (Kirsch 2014b)—calls for an anthropology of corporate harm, focusing specifically on the processes by which corporations respond to critique. One of the primary ways in which corporations do this, he points out, is by co-opting oppositional discourses while engaging in lengthy legal battles with affected communities and their legal allies. Building on this call to more centrally engage corporations in theorizations of contemporary capitalism, and, more specifically, to explore the relationships between corporations and their critics, in this article I have sketched some of the ways in which the growing movement for the rights of nature is serving to galvanize important grassroots contestations over the decision-making authority of energy corporations and the state environmental agencies that do their bidding. Others who have taken up this call have focused (1) on corporate efforts to instill a kind of historical amnesia about past abuses (Rajak 2015), (2) on corporate social responsibility projects that inadvertently extend colonialist projects and philanthropic impulses (Dolan and Rajak 2016; Rajak 2015; Welker 2014), and (3) on doubts raised about the scientific legitimacy of

anticorporate environmental claims (Li 2015). Instead, I have explored how a grassroots environmental NGO has innovatively attempted to both problematize and relativize corporate “rights” by providing legal support to communities defending the “rights” of ecosystems. While these are primarily in the service of struggles to secure far-reaching community rights and to challenge existing state laws that preempt local decision making about extractive projects, my argument has been that the formulation of “rights” for nature does particularly important moral-political work in so far as it raises questions about what kinds of entities and at what scales should be allowed to intervene in contestations over extractive resources. While there is nothing inherent or necessary about this parallel between corporations and ecosystems, it is a strategically deployed one that is motivated and energized by a US constitutional context that has strongly enshrined the personhood of corporations over the past two centuries.⁸ If courts and regulatory agencies speak the language of corporate personhood, so too, these activists contend, must they push against that personhood by working at the grassroots level to explode it, repurpose it, and stretch it toward an encompassment of those living beings most directly affected by extractive activities but most regularly denied standing. As problematic as all strategic essentialisms are, this juxtaposition is one that is nevertheless proving particularly provocative in so far as it is eliciting precisely the kinds of defensive corporate and federal retaliations that, from the perspective of these activists, will ultimately allow a more vivid recognition—and thus a way to organize and challenge—the deeply antidemocratic architecture of contemporary environmental decision making in the United States.

In making this argument, I have further suggested that close attention to the propositions currently being mobilized both in defense of and in opposition to the personhood of nature may significantly expand recent work in political ontology by focusing explicitly on communities in the Global North. Growing numbers of scholars working loosely in this

tradition are wrestling with the legal–political interventions of “earth beings” in a range of different contexts (de la Cadena 2010; Escobar 2016), and in so doing, are raising important questions about the limits of bourgeois liberalism and the diluted forms of tolerance characteristic of Western multiculturalism. Nevertheless, they still focus disproportionately on indigenous communities, as if “radical alterity” were primarily to be found among such communities. Whether in highland Peru (de la Cadena 2010), lowland Amazonia (Viveiros de Castro 2009; Kohn 2013), northern Australia (Povinelli 1995), or lowland Paraguay (Blaser 2009), these theorists have offered timely provocations to engage seriously with more “pluriversal” politics that do not share the epistemological assumptions and ontological categories of Western liberalism, particularly when it comes to the dividing lines between nature and culture. In so doing, however, with some notable exceptions (e.g., Law 2015), they have not brought sustained attention to the ways in which other forms of alterity, in this case, other ways of drawing the lines between person and property, are *also* being mobilized in the very heart of the industrialized West.

One of the primary contributions of this article has been to suggest that this political pluriversality is just as vividly taking shape in communities across the United States. As I have demonstrated, in the state of Pennsylvania, novel socio–natural languages that pivot around legal “rights” for natural communities and ecosystems are being used as part of a grassroots social movement explicitly committed to rendering the lines between personhood and property open to democratic contestation at a range of levels too often foreclosed by state mandates over oil and gas. This is crucially important work, it seems to me, especially at a time when growing numbers of other nonhuman entities are being considered for legal personhood in a range of quite different cultural and institutional contexts. I provide here two examples.

In March 2017, in a remarkable series of decisions, three rivers, one in New Zealand and two in India, were granted legal personhood, allowing their interests to be directly represented by court- and state-appointed guardians for the first time in world history. Only a few months earlier, in entirely different circumstances, the granting of “electronic personhood” to robots was vigorously debated and then approved by the European Parliament, a move that has similarly drawn on specific comparisons with corporate personhood. By juxtaposing very different kinds of rights-holders—corporations, communities, and ecosystems—the emerging movement for the rights of nature in the United States is similarly engaging the courts at the very coalface of extractive projects in ongoing questions about who, beyond the Environmental Protection Agency responsible for the permitting of waste injection sites, should be permitted to make such potentially life-changing decisions and what kinds of legal personhood they might be granted. As state governments throughout the Americas side more and more frequently with extractive companies (Arsel, Hogenboom, and Pellegrini 2016; Bebbington 2012; Li 2015), and as regulatory agencies continue to further cede their mandates to business interests, these issues will only become more pressing in the years to come.

Notes

¹ As legal scholar Susanna Ripken (2011) points out, the boundaries between property and personhood have historically *always* been contested and thus should not be seen as newly in flux. Personhood has been “arbitrarily applied in constitutional law cases” (Ripken 2011, 224), with some decisions granting and extending First, Fourth, Fifth, and Fourteenth Amendment rights to corporations and others curbing or limiting such rights.

² *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010).

³ *Juliana v. United States*, 217 F. Supp. 3d 1224, (D. Or. 2016).

⁴ It should be noted that since the passage of *Citizens United* in 2010, corporate lobbyists have been working state by state to convince state legislatures to further roll back the rights of local communities, challenging municipal efforts to raise minimum wage in places like Birmingham, Alabama, and Iowa City, Iowa, and encouraging draconian legislation aimed at decimating union bargaining power in places like Wisconsin (Lafer 2017). So pronounced has the industry capture of regulatory agencies been that growing numbers of environmental justice activists are similarly promoting a turn away from reformist, incremental engagement with state regulatory agencies (see, e.g., Pulido, Kohl, and Cotton 2016).

⁵ Memorandum Opinion, Penn. Gen. Energy Co. v. Grant Twp., No. 2014cv00209, ECF No. 113 (W.D. Pa. Oct. 14, 2015).

⁶ *Hawaiian Crow (Alala) v. Lujan* ([1991], 906 F.Supp. 549) was a case brought against the US Fish and Wildlife Service (USFWS) by the Hawaii Audubon Society, the National Audubon Society, and the Hawaiian Crow (Alala). The alala is a critically endangered species (now extinct in the wild), which the Audubon Society alleged had failed to be sufficiently protected by the USFWS's Alala Recovery Plan. In the court's decision, it rejected the plaintiffs argument that the alala should be granted legal standing, arguing, "The ESA authorizes enforcement suits by 'any person,'" but understands the term "person" to mean an "individual, corporation, partnership, trust, association, or any other private entity" (<https://www.leagle.com/decision/19911455906fsupp54911363>, accessed 7/2/2018). The alala, the court argued, is neither "a person within the meaning of the Endangered Species Act" nor an "infant or incompetent person" under Rule 17c (which plaintiffs attempted to argue provided a model for the intervention of the crow)(<https://www.leagle.com/decision/19911455906fsupp54911363>, accessed 7/2/2018).).

⁷ In *Cetacean Community v. Bush* (386 F.3d 1169 [2004]), the Ninth Circuit Court was asked to decide whether the world’s cetaceans have standing to bring suit in their own name under the Endangered Species Act, the Marine Mammal Protection Act, and the National Environmental Protection Act. The cetaceans aimed to challenge the US Navy’s use of underwater surveillance technology that was interfering with their capacity to both communicate and navigate. The court granted the defendant’s motion to dismiss the intervention on the grounds that the federal statutes did not grant citizen standing to allow cetaceans to bring suit. “If Congress and the President intended to take the extraordinary step of authorizing animals as well as people and legal entities to sue,” the opinion read, “they could, and should, have said so plainly” (<https://www.animallaw.info/case/cetacean-community-v-bush>, accessed 7/2/2018).

⁸ See *Trustees of Dartmouth College v. Woodward* (17 U.S. [4 Wheat.] 518 [1819]).

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