

HOLISTIC REWILDING: THE USE OF EXISTING PROPERTY LAW TO SECURE INTERESTS OF THE WILDERNESS

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INTRODUCTION

The critical question of "standing" would be simplified and also put neatly in focus if we fashioned a federal rule that allowed environmental issues to be litigated before federal agencies or federal courts in the name of the inanimate object about to be despoiled, defaced, or invaded by roads and bulldozers and where injury is the subject of public outrage. Contemporary public concern for protecting nature's ecological equilibrium should lead to the conferral of standing upon environmental objects to sue for their own preservation. —*Justice William O. Douglas*¹

1. *Sierra Club v. Morton*, 405 U.S. 727, 741–42 (1972) (Douglas, J., dissenting).

Justice William O. Douglas's famous dissent in *Sierra Club v. Morton* exemplifies both the problems of excluding the environment from legal standing and that including the environment within our legal framework would not be an extraordinary measure. Contemporary issues have exacerbated the necessity for a legal system that provides avenues for environmental interests to be adequately considered. Legal traditions allowing nonhumans to have legal standing could reasonably be extended to wildlife. This article analyzes "rewilding" as a way of exploring the ways in which wildlife could fit into the context of contemporary property law. As the United Nations has declared 2021–30 as the "Decade on Ecosystem Restoration," the time is ripe for governments to look to legal mechanisms to conserve and enrich the wilderness.²

Robust conservation efforts, such as rewilding, have become necessary from various perspectives. In the current era of the Anthropocene, human activity has increasingly driven environmental changes. This has led to seismic changes in wildlife and anthropocentric climate change.³ Biodiversity loss and climate change are economic, existential, and moral problems facing the world today; indeed, over the past half-century, Earth has lost two-thirds of its wildlife and an additional 40% of plant species face possible extinction.⁴ Likewise, this problem directly relates to the governance of Western industrial democracies. Notably, both the United States and the United Kingdom have contributed to this problem within their own territories. The United Kingdom has decimated a large portion of its environment—as much as 40% of all species—through destructive farming practices, hunting, pollution, and contamination.⁵ Further, the United States has had a significant negative impact on nearly all aspects of the country's environment. This trend is omnipresent throughout the world. For example, humans have substantially damaged forests, reduced global wetlands by 50%, and damaged the ecosystems of coastal waters through pollution and damaging fishing practices.⁶ These harms reinforce each other because

2. Phillippa C. McCormack et al., *Wilderness Law in the Anthropocene: Pragmatism and Purism* 51 ENV'T L. 383, 432 (2021); see also FOOD AND AGRIC. ORG. OF THE UNITED NATIONS, THE UN DECADE ON ECOSYSTEM RESTORATION 2021-2030 (June 2020), <https://wedocs.unep.org/bitstream/handle/20.500.11822/30919/UNDecade.pdf> (discussing the United Nation's goal of ecosystem restoration).

3. McCormack et al., *supra* note 2, at 419–20.

4. Rosie Frost, *Scotland Could Become the World's First 'Rewilding Nation'. How Did They Get Here?*, EURO NEWS (April 26, 2021), <https://www.euronews.com/green/2021/04/26/scotland-could-become-the-world-s-first-rewilding-nation-how-did-they-get-here>.

5. Sarah Wilson, *Rewilding Scotland*, THE SCOTSMAN, <https://www.scotsman.com/interactive/rewilding-scotland-natural-ecosystem#main-page-section-0> (last visited Nov. 12, 2021).

6. See Anastasia Telesetsky, *Ecoscapes: The Future of Place-Based Ecological Restoration Laws*, 14 VT. J. ENV'T L. 493, 499 (2013) (stating "acreage of primary old-growth forests . . . has decreased by over forty million hectares since 2000").

climate change is an additional driver of biodiversity loss: “even low levels of biodiversity loss in wilderness areas will likely include global losses of important reservoirs of genetic information, some of the last remaining reference points for restoration and rewilding, and habitat strongholds for many threatened species, ecological communities, and ecological processes.”⁷ Wilderness areas also serve as a refuge for species in times of climate change or crisis, and their degradation reinforces these issues.⁸

In addition to biodiversity loss and climate change, this environmental degradation poses a direct threat to world hunger needs. For example, 87% of the world’s fisheries face overexploitation.⁹ These environmental issues demand legal action to prevent the most negative consequences of climate change, biodiversity loss, and fishery depletion from happening. Preservation and restoration of wilderness spaces is important for both anthropocentric and environmental reasons.¹⁰

I. ANGLO AMERICAN TRADITION

Within British common law is a doctrine that gives wildlife the right to pass through private land: *fera naturae*.¹¹ Additionally, as Justice Douglas addressed in his famous dissent in *Sierra Club*, there is precedent for granting legal personhood to wildlife: “Legal institutions have long extended legal personhood for the sake of property interests to nonhumans, including corporations, real estate investment trusts, and even ships. Animals already have a limited capacity to own property.”¹² Applying this concept to the wilderness would not require a radical overthrow of Anglo-American law; on the contrary, such application would be simply an extension of longstanding precedent. Furthermore, both American and European customs support this assertion. Legal philosophers throughout the Western tradition have endorsed paradigms that, while anthropocentric, leave room for

7. McCormack et al., *supra* note 2, at 422.

8. *Id.*

9. Telesetsky, *supra* note 6, at 500.

10. See McCormack et al., *supra* note 2, at 387 (discussing a variety of reasons to value wilderness through environmental, scientific, and economic perspectives: wilderness mitigates greenhouse gas pollution, provides habitats for biodiversity to flourish, provides recreational experiences for humans; inspires religious and spiritual values in humans; offers scientists unique research opportunities; and garners economic value through tourism and ecosystems services).

11. KAREN BRADSHAW, *WILDLIFE AS PROPERTY OWNERS: A NEW CONCEPTION OF ANIMAL RIGHTS* 57 (Univ. of Chi. Press 2020).

12. *Id.* at 130.

nature.¹³ The largest barrier to stronger legal rights for wildlife interests lies in systemic attitudes toward property ownership. Humans generally do not consider wildlife's dependence on shared resources because they treat the environment as a resource instead of a claim holder.¹⁴ While the current systems within American and international law lack structure for wildlife interests, these systems themselves provide room for the wilderness to play a larger role within law.

II. AMERICAN LAW

In American law, environmental protection exists through a regulatory patchwork sewn into balance of powers in the federalist system. The Property Clause of the United States Constitution addresses the governance of public land: "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States."¹⁵ Courts have traditionally interpreted this provision by deferring to Congress's judgment.¹⁶ As a result, conservation efforts at the federal level have been manifested through two major pieces of legislation: the Wilderness Act¹⁷ and Endangered Species Act.¹⁸ Congress passed the Wilderness Act with the purpose of "protect[ing] areas 'untrammled by man, where man himself is a visitor who does not remain.'"¹⁹ In doing so, Congress established a National Wilderness Preservation System that designates certain federal lands as "wilderness" and grants them certain legal protections.²⁰ Under this system, in which only Congress may identify lands for preservation, protected lands have increased from about nine million acres in 13 states to about 111 million acres in 44 states.²¹ While there have been several other congressional actions intended to protect wildlife, these two laws are crucial elements of congressional efforts to protect the environment. Additionally, the federal government has established agencies

13. *See id.* at 22 (stating "Although Western property theorists have long assumed that only humans had property rights, they also noted the natural, universal nature of rights. Plato described law as operating in accordance with nature. Aristotle described law as 'universal' and 'all-embracing.' John Locke described property as a 'natural right' that preexisted government. Blackstone believed that human property behavior operated along principles reducible to mathematical equations. Natural law scholars believed that it was useful to look at human behavior divorced from government, but ended at the human—not considering broader biological principles.").

14. *Id.* at 38.

15. U.S. CONST. art. IV, § 3, cl. 2.

16. *See Kleppe v. New Mexico*, 426 U.S. 529, 536 (1976) (noting that courts have traditionally deferred to Congress when faced with issues about the Property Clause).

17. Wilderness Act, 16 U.S.C. §§ 1131–36 (1964).

18. Endangered Species Act, 16 U.S.C. §§ 1531–54 (1973).

19. *See Wolf Recovery Found. v. U.S. Forest Serv.*, 692 F. Supp. 2d 1264, 1266 (D. Idaho 2010). (quoting 16 U.S.C. § 1131(c)).

20. McCormack et al., *supra* note 2, at 402–03.

21. *Id.* at 403.

pursuant to the Property Clause to enact congressional legislation and serve as drivers of environmental conservation efforts; specifically, these agencies include the Environmental Protection Agency,²² the U.S. Fish and Wildlife Service,²³ and the Bureau of Land Management.²⁴

Meanwhile, American courts have traditionally protected Congress's authority under the Property Clause, generally finding that the Clause grants Congress the power to determine rules for public lands without limitation.²⁵ In the case of *Kleppe v. New Mexico*, the United States Supreme Court reviewed Congress's authority to protect unclaimed horses and burros on public land.²⁶ The Court held that Congress's power over public lands encompasses the power to protect and regulate the wildlife inhabiting those public lands.²⁷ Furthermore, the Court determined that even when state governments have claim to public land, Congress has the ultimate authority: "Absent consent or cession a State undoubtedly retains jurisdiction over federal lands within its territory, but Congress equally surely retains the power to enact legislation respecting those lands pursuant [to] the Property Clause."²⁸ Ultimately, the American Constitution enumerates that Congress has the authority regarding property of the United States. Congress has delegated portions of this power to administrative agencies and the Executive Branch. Examples of this delegation include President Ulysses S. Grant demarcating the Alaska Pribilof Islands as a home for the northern fur seal with land use restrictions, and President Theodore Roosevelt establishing the Pelican Island Migratory Bird Reservation.²⁹ Courts have respected these actions, and public land is effectively used by the federal government for environmental conservation. Karen Bradshaw provides two examples of this dynamic: (1) in 1976 and 1980, Congress passed legislation converting millions of acres of unclaimed land in Alaska and the western half of the

22. See Act of September 6, 1966, Pub. L. No. 89-554, 1966 (80 Stat.) 378, (authorizing Reorganization Plan No. 3 of 1970 with "An Act to enact title 5, United States Code, 'Government Organization and Employees' codifying the general and permanent laws relating to the organization of the Government of the United States and to its civilian officers and employees"); See U.S. EPA, *The Origins of EPA*, <https://www.epa.gov/history/origins-epa> (last visited June 24, 2022) (recounting EPA's institutional history).

23. *History of the U.S. Fish & Wildlife Service*, U.S. FISH & WILDLIFE SERVICE, <https://www.fws.gov/history-of-fws> (last visited June 30, 2022).

24. BUREAU OF LAND MGMT., *National History*, U.S. DEP'T OF THE INTERIOR, <https://www.blm.gov/about/history/timeline> (last visited Jun. 30, 2022); Federal Land Policy and Management Act of 1976, Pub. L. No. 94-579, 90 Stat. 2743 (codified as amended at 43 U.S.C. §§ 1701-82); see also 48 U.S.C. §§ 1-2241.

25. *Kleppe*, 426 U.S. at 539.

26. *Id.* at 546.

27. *Id.* at 540-41.

28. *Id.* at 542-43.

29. BRADSHAW, *supra* note 11, at 57.

contiguous United States to federal ownership; and (2) the federal government owns and protects roughly 640 million acres, which is approximately one-third of American land.³⁰

However, American law has also incorporated and developed common law rules regarding private property that coexist with principles governing public property (governed by the Property Clause). Private property owners, for example, have rights and powers over property that come with a degree of permanence absent in legislative protections that can be reversed by later Congresses.³¹ Private property has played a significant role in environmental degradation and could play a significant role in the reverse of this process. However, the current American system of private property does not grant legal voice to the environment, and landowners have traditionally opposed conservation efforts by the government on private land.³² This trend has allowed conservation efforts to hit a snag. While wilderness protection initiatives have been successful on public land, this success lies at the mercy of congressional action and administrative support. The vast amount of wildlife that depends on private land does not have legal recourse, even when there is congressional and administrative action.

III. COMPARATIVE/INTERNATIONAL LAW

The United States is not the only country with an approach to conservation law. The legal frameworks of other countries encompass rewilding and other environmental protection methods. Scotland, in particular, has faced a recent push to repair its natural landscape through rewilding. However, other countries have also engaged in various approaches to address climate change and biodiversity loss. This trend reflects the global nature of these problems:

Based on a definition of wilderness that is an area without significant human disturbance such as forestry, farming or mining, we are losing

30. *Id.* at 39–40.

31. *Id.* at 19.

32. *See id.* at 35 (describing the conflict between landowners and federal agencies, and how this conflict ultimately leads to a lack of environmental protection: “Many endangered species rely on habitat located on private land. To protect species, federal agencies must conserve their habitat. Agencies do so by exerting control over state and private landowners through critical habitat designations under the Endangered Species Act. Landowners fear that such designation will reduce property values and restrict future development on their property. As a result, landowner opposition has formed the primary barrier to species conservation, creating well-documented public choice effects through which agency officials avoid designating valuable private land as critical habitat. Congressional control of agency budgets creates further incentives for the agency to avoid listing species or designating habitat in the regions represented by key Congressmen. Property owners even destroy habitat or kill soon-to-be-listed wildlife to avoid federal control over their land.”).

it rapidly: the planet lost one tenth of its wilderness between 1993 and 2016 (3.3 million km², an area larger than India). Today, the largest wild areas within national borders are the Australian outback, Alaska's arctic tundra, Canada's and Russia's vast boreal forests, and the Amazon jungle. The principal wilderness areas outside national borders are in Antarctica and the high seas, although even these wildernesses are declining. Recent research shows that less than 32% of the Antarctic continent may be considered inviolate wilderness, and researchers consider only 13% of the oceans comprise wilderness, free from fishing, shipping or other disturbances.³³

While Scotland, amongst other countries, has taken efforts to restore the wilderness in certain areas, more work needs to be done within the legal frameworks of countries across the world in order to combat climate change, biodiversity loss, and other forms of environmental degradation.

A. Scotland

While Scotland is known for its beautiful landscapes, it is actually a location that has faced significant natural destruction.³⁴ The Scottish Rewilding Alliance, a group of several environmental organizations in Scotland, has campaigned to expand rewilding efforts in the country.³⁵ Presently, popular support has grown for rewilding in Scotland as evidenced by a 2020 poll indicating that 76% of respondents supported rewilding while only 7% opposed it.³⁶ The Scottish Parliament even proposed a measure recognizing Scotland's potential as a "rewilding nation."³⁷ However, the government has been hesitant to lean heavily into this approach, so rewilding

33. McCormack et al., *supra* note 2, at 389.

34. See generally Ilona Amos, *Scotland's Wildlife in Crisis as Half of Species Declining and One in Ten At Risk of Extinction*, THE SCOTSMAN (Oct. 3, 2019), <https://www.scotsman.com/news/scottish-news/scotlands-wildlife-crisis-half-species-declining-and-one-ten-risk-extinction-1406066> (discussing the decline of species and habitat in Scotland over the past 25 years); Billy Briggs, *Scotland's Wildlife and Habitats At Risk With More Than 1100 in 'Poor' State*, THE HERALD (Oct. 20, 2021), <https://www.heraldsotland.com/news/homenews/19655278.scotlands-wildlife-habitats-risk-1100-poor-state/> (discussing how wildlife instability in Scotland is in part linked to overall global warming).

35. *About the Alliance*, THE SCOTTISH REWILDING ALL., <https://www.rewild.scot/about> (last visited Nov. 15, 2022).

36. Stephanie Parker, *Scotland Could Become the World's First 'Rewilding Nation'*, HOWSTUFFWORKS (May 10, 2021), <https://science.howstuffworks.com/environmental/conservation/issues/scotland-rewilding-nation-news.htm>.

37. Scotland's Potential to be a Rewilding Nation, Motion Ref. S5M-24154 (Feb. 17, 2021) (Scot.), <https://www.parliament.scot/chamber-and-committees/votes-and-motions/votes-and-motions-search/S5M-24154>.

and conservation efforts have been driven by private individuals.³⁸ For example, in 2003 a wealthy individual named Paul Lister purchased 23,000 acres for rewilding, and in the succeeding 17 years he has planted a million native trees, reintroduced species, and revitalized peatlands.³⁹ Likewise, another private initiative launched recently aims to rewild the Affric Highlands (a large part of the Scottish Highlands between Loch Ness and the west coast), including a mountain range, peat bogs, and forests.⁴⁰ Species reintroduction has been effectively utilized with the successful reintroduction of the European beaver, white-tailed eagle, and the rare vendace fish.⁴¹

The efforts made in Scotland thus far show that rewilding is an effective weapon against climate change and biodiversity loss. Specifically, the reintroduction of beavers has reinvigorated wetlands and the promotion of white-tailed sea eagles on the Isle of Mull, contributing significantly to revenue from tourism.⁴² These benefits are not only limited to species reintroduction, but they are also obtained through restoration of landscapes themselves. Restored peatlands in Scotland have the potential to store annually as much as the average amount of carbon dioxide citizens of the United Kingdom emit each year.⁴³

Rewilding advocates in Scotland want to make Scotland the first “rewilding nation” and have several other goals they hope to achieve beyond the current success. The Scottish Rewilding Alliance is advocating for public officials to commit to five policies: rewilding 30% of public land; establishment of a community fund for rewilding in more urban areas; reintroduction and integration of keystone species; creation of a coastal zone with a ban on trawling and dredging; and a plan to prevent overgrazing and control deer population growth.⁴⁴ The largest hurdle for rewilding advocates in Scotland is a key demographic: farmers. Since most action has been private thus far, farmers hold significant power because they manage a substantial amount of land.⁴⁵ This is a problem for rewilding supporters as farmers are less likely than the population to support rewilding, even when given information about the ecology of species that have been proposed for

38. Wilson, *supra* note 5.

39. *Id.*

40. Phoebe Weston, *Vast Area of Scottish Highlands to be Rewilded in Ambitious 30-Year Project*, THE GUARDIAN (Sept. 24, 2021), <https://www.theguardian.com/environment/2021/sep/24/vast-area-of-scottish-highlands-to-be-rewilded-in-ambitious-30-year-project-aoe>.

41. Whitney G. Stohr, *Trophic Cascades and Private Property: The Challenges of a Regulatory Balancing Act and Lessons the UK Can Learn from the Reintroduction of the American Gray Wolf*, 2 U. BALT. J. LAND & DEV. 15, 35 (2012).

42. Wilson, *supra* note 5.

43. *Id.*

44. Frost, *supra* note 4.

45. Wilson, *supra* note 5.

reintroduction (such as the lynx).⁴⁶ Opposition from rural communities and a lack of action from Scottish Natural Heritage are barriers to more widespread action.⁴⁷ A broader problem exists with the agricultural subsidy program, which rewards farmers for productivity without concern for environmental conservation.⁴⁸ Reforming the subsidy system to reward farmers for environmental work and sustainable practices would be an important first step, even if doing so would not solve every problem between the rewilding movement and the farming community.⁴⁹

B. Other Countries

Outside of Scotland, other countries have engaged with rewilding as a conservation effort. Switzerland, for example, provides an early case study in environmental conservation, as it established the Swiss National Park in 1914.⁵⁰ Specifically, Switzerland emphasized restoring wilderness through active intervention instead of passive protection, this led to culling overabundant deer populations and reintroduction of multiple indigenous species.⁵¹ Norway recently strengthened environmental protection with the Svalbard Environmental Protection Act of 2001. The Act established a protected area containing about 65% of the arctic archipelago.⁵² The provisions of the Act aim “to maintain large, continuous and largely undisturbed areas of natural environment on land and in the sea with intact habitats, ecosystems, species, natural ecological processes, landscapes, cultural heritage, and cultural environments.”⁵³ France recently saw the creation of its first private wildlife preserve, which reinforces the myriad of wilderness regulatory bodies.⁵⁴ The creation of this preserve, however, was a response to liberalization of protected areas in natural parks, allowing for more human interference.⁵⁵ France recently passed a new law increasing

46. *Id.*

47. Stohr, *supra* note 41, at 35–36.

48. Wilson, *supra* note 5.

49. *Id.*

50. Pascale Meyer, *The Birth of the Swiss National Park*, SWISS NAT'L MUSEUM BLOG (May 24, 2022), <https://blog.nationalmuseum.ch/en/2022/05/the-birth-of-the-swiss-national-park/>.

51. McCormack et al., *supra* note 2, at 393–94.

52. *Id.* at 412; *see also Svalbard Environmental Protection Act Act of 15 June 2001 No.79 Relating to the Protection of the Environment in Svalbard*, NOR GOV'T: MINISTRY OF CLIMATE & ENV'T, (June 15, 2001), <https://www.regjeringen.no/en/dokumenter/svalbard-environmental-protection-act/id173945/#:~:text=The%20purpose%20of%20this%20Act,provided%20for%20information%20purposes%20only.>

53. McCormack et al., *supra* note 2, at 412.

54. Audrey Garric, *Wildlife and Conservation Given a Home in France's First Private Nature Reserve*, THE GUARDIAN (May 5, 2014), <https://www.theguardian.com/environment/2014/may/06/grand-barry-private-nature-wildlife-reserve-france>.

55. *Id.*

protections and rights afforded to certain animals,⁵⁶ and the country also established The French Biodiversity Agency in 2020 to advance greater biodiversity preservation.⁵⁷ In Germany, the Conservation of Nature and Landscapes Act provides for several comprehensive conservation measures including: protections for critical species, intervention regulation, and conservation planning.⁵⁸ China implements a variety of measures to protect its extensive wildlife, such as designated protected areas and efforts to combat illegal wildlife trade.⁵⁹ China has also recently increased the amount of animals afforded significant protection under Chinese law.⁶⁰ In Japan, there are multiple civil society organizations dedicated to promoting wildlife conservation,⁶¹ and the government has enacted statutes governing hunting regulations and wildlife protection.⁶² Additionally, in Australia, a variety of efforts have been endorsed to actively intervene in the environment to promote conservation. There, the Western Australian Department for Environment and Water described various methods of active intervention to promote conservation in a 2017–18 report: “burning, fire management, track and trail maintenance, mechanical hazard reduction in wilderness protection areas, feral goat and deer eradication, aerial and ground-based fox baiting, wildlife trapping, pitfall trapping, camera traps including baited camera traps, and drone flights for aerial population mapping of sea lions and island habitat.”⁶³ Globally, the rewilding movement has tried to balance the policies of environmental conservation with economic concerns. Notably, rewilding advocates have also used environmental tourism to replace income that would have been obtained through “extractive jobs.”⁶⁴

56. *Historic Animal Protection Bill Passed in France*, EUROGROUP FOR ANIMALS (Nov. 19, 2021), <https://www.eurogroupforanimals.org/news/historic-animal-protection-bill-passed-france>.

57. *See About Us*, THE FRENCH BIODIVERSITY AGENCY, <https://www.ofb.gouv.fr/en/french-biodiversity-agency-ofb> (citing law no. 2019-773 of 24 July 2019 that established the Office Français de la Biodiversité).

58. *Federal Nature Conservation Act (Bundesnaturschutzgesetz, BNatSchG)—Excerpts*, GERMAN L. ARCHIVE (Sept. 21, 1998), <https://germanlawarchive.iuscomp.org/?p=319>.

59. Guangping Huang, et al., *Wildlife Conservation and Management in China: Achievements, Challenges and Perspectives*, 8 NAT'L SCI. REV. 7, 1 (2021).

60. Xinhua, *China Increases Wildlife Protection with List Revision*, THE PEOPLE'S REPUBLIC OF CHINA: THE STATE COUNCIL (Feb. 6, 2021), http://english.www.gov.cn/statecouncil/ministries/202102/06/content_WS601e36f0c6d0f725769453b5.html.

61. Chris Lee, *3 Japanese Organizations Dedicated to Biodiversity and Conservation*, ZENBIRD (June 21, 2021), <https://zenbird.media/3-japanese-organizations-dedicated-to-biodiversity-and-conservation/>.

62. MINISTRY OF THE ENV'T, *Wildlife Protection System and Hunting Law: Wildlife Conservation in Japan*, GOV'T OF JAPAN, <https://www.env.go.jp/en/nature/biodiv/law.html> (last visited July 5, 2022).

63. McCormack et al., *supra* note 2, at 400.

64. Sophie Yeo, *New Rewilding Project Teaches Tour Guides to Offer Fresh Look at Travel*, THE GUARDIAN (Jan. 22, 2021), <https://www.theguardian.com/travel/2021/jan/22/new-rewilding-project-teaches-tour-guides-to-offer-fresh-look-at-travel>.

IV. LEGAL PARADIGM OF THE WILDERNESS

In order to come to a solution and take rewilding to the next level of a legal framework, it is important to evaluate the nature of jurisprudence. Helena Howe, a professor at the University of Sussex, argues that we need to shift our current legal reasoning toward an “Earth Jurisprudence” to prioritize ecocentrism: “Until we change our thought processes—our jurisprudence—we cannot change the way we regulate our interactions with the natural world. Views may differ about the precise content of this concept, particularly the extent to which it encompasses a recognition of the intrinsic value of all nature.”⁶⁵ Howe further argues that we need to shift our paradigm from one focused on “the rights-based liberal concept of private property, in which land is seen as a dephysicalised object or commodity” in favor of “a more ecocentric perspective that recognises the uniqueness and ecological integrity of land.”⁶⁶ Through this paradigm shift, property owners would have a legal obligation to care for the common good of the environment.⁶⁷

In defining “the wilderness,” there are several characteristics that are critical to understanding the goals of rewilding and legal conservation efforts. The concept of *ecoscap*es, as described by Howe, is a helpful way of evaluating the wilderness as a potential legal actor. Under this conception, *ecoscap*es are not fixed spaces; rather, they change as humans change their level of commitment to restoring ecosystems.⁶⁸ Many projects related to these *ecoscap*es have been advanced through private civil society and there have been varying degrees of reliance on human action to facilitate restoration.⁶⁹ A critical component of successful development of *ecoscap*es is size—a large enough geographic area is necessary because fragmentation into smaller parcels of land kneecaps management and reduces efficacy.⁷⁰ Additionally, a large size is critical to enable the area to absorb natural disasters.⁷¹ Another component to the definition of “wilderness” is the concept of “remoteness” from human society: “[r]emoteness from human infrastructure and activity . . . protects the ecological and experiential values of wilderness, such as enabling visitors to experience solitude and a sense of place in nature . . . wilderness would be strengthened and enhanced if

65. Helena R. Howe, *Making Wild Law Work - The Role of ‘Connection with Nature’ and Education in Developing an Ecocentric Property Law*, 29 J. ENV’T L. 19, 29 (2017).

66. *Id.*

67. *Id.*

68. Telesetsky, *supra* note 6, at 528.

69. *Id.* at 539.

70. *Id.* at 540.

71. Dave Foreman, Symposium, *Wilderness Act of 1964: Reflections, Applications, and Prediction: Content: III. Specific Application: The Wildlands Project and the Rewilding of North America*, 76 DENV. U. L. REV. 535, 543–44 (1999).

remoteness was recognized as its primary value.”⁷² Wilderness must also be defined geographically, to an extent, on its own terms and not on land derogated by humans as a result of the land being “lesser” in value.⁷³

Broadening the legal paradigm to include a space for the wilderness as an actor is compatible with current legal conventions. Standing, the legal concept that allows legal persons to appear in court in cases that are legally relevant to them, has been granted to non-human entities in the past. As Justice Douglas wrote,

Inanimate objects are sometimes parties in litigation. A ship has a legal personality, a fiction found useful for maritime purposes. The corporation sole . . . is an acceptable adversary, and large fortunes ride on its cases. The ordinary corporation is a ‘person’ for purposes of the adjudicatory processes.⁷⁴

Likewise, the concept of property ownership, through presence or through the concept of establishing a “home,” is utilized by animals in the wild. In many cases, the concept of property ownership mirrors the function of a residency that humans use (even in the creation of structures, such as nests or burrows).⁷⁵ Animals hunting on their territory could be perceived as “working the land” as there are both public and private functions fulfilled by allowing animals to hunt on their territory.⁷⁶ The greatest distinction between functions of property “ownership” in humans and animals is the concept of alienation, as humans often claim property in excess of individual needs in order to gain additional economic value.⁷⁷ However, a paradigm of property law that is inclusive of the wilderness as a legal actor would refrain from instigating clashes between the interests of humans and the wilderness. Instead, this paradigm would promote synergy across all interests involved, in contrast with the current framework which sees the interests of animals and humans as zero-sum.⁷⁸ Howe lays out a roadmap for this paradigm shift in the law of property:

72. McCormack et al., *supra* note 2, at 388.

73. See BRADSHAW, *supra* note 11 (“Accepting the premise that species can be restricted to less valuable land diminishes the intrinsic value of species and undermines our country’s ecological values. Such reasoning commodifies the value of animal habitat rather than capturing the full value of a landscape or ecosystem.”).

74. *Sierra Club v. Morton*, 405 U.S. 727, 742 (1972) (Douglas, J., dissenting).

75. BRADSHAW, *supra* note 11, at 49.

76. *Id.*

77. *Id.* at 55.

78. *Id.* at 132–33.

A Wild Law of property, for example, holds that humans understand that they play a part in a wider ecological whole and they must exercise rights over the land in ways which respect the ecological sustainability of that whole. This is not just a sense of interdependence with non-human nature, although this is vital. Property, on this view, is a social relationship which shapes human interaction. The significance of property to the development or protection of autonomy, identity and freedom is recognised but it is interpreted as socially situated and thus as involving obligations to others who may need to use or access the land.⁷⁹

A. Rewilding

Rewilding as a concept exists as an extension of other conservation efforts. Rewilding consists of returning land back to the wilderness and restoring ecosystems to the point that they are self-sustainable. This can be viewed conceptually as a stream of environmental idealism that flows beyond several “currents” of environmental conservation efforts that have already been observed and reinforce each other. The first current of the traditional wilderness movement promotes recreation and inspiration from the environment.⁸⁰ The second current focuses on the protection of “hot spots” for biodiversity and important habitats.⁸¹ And the third current recognizes the need for connection between protected areas to reflect advancements in biogeography.⁸² These currents are a marked improvement from the focus on conserving individual species without concern for habitats as a whole. Which can produce species without a functioning natural habitat and can therefore only exist in captivity or for the purpose of human recreation.⁸³ However, these approaches are not mutually exclusive and can effectively coexist and reinforce each other.⁸⁴ Some scholars have used three features to describe rewilding: large wilderness reserves, connectivity, and keystone species.⁸⁵ Taking these features into account, there are a variety of aspects to rewilding as well as multiple legal perspectives that could be used to implement this concept. But there is some criticism of the rewilding approach, as many

79. Howe, *supra* note 65.

80. Foreman, *supra* note 71, at 549.

81. *Id.*

82. *Id.*

83. BRADSHAW, *supra* note 11, at 15, 39.

84. Foreman, *supra* note 71, at 550.

85. *Id.* at 548.

ecosystems have substantially changed to the point where rewilding efforts would radically transform existing ecosystems.⁸⁶

B. Keystone Species Reintroduction

Taking a page from the economic concept of self-regulation, there is evidence to suggest that undisturbed ecosystems would be able to provide adequate regulation over their property. This environmental self-sustainability is based on the concept of “keystone species,” which can manifest through species that perform several different functions for the ecosystem. According to Brian Miller (a conservation biologist with the Denver Zoo), keystone species exist alongside other types of “focal species.” These types of species include the following: umbrella species that cover large areas and impact the habitats of a wide variety of wildlife; flagship species, which inspire support for wildlife among the population (like the bald eagle); and indicator species, which are sensitive to environmental changes and often provide warnings to observers about the impacts of environmental degradation in a localized area.⁸⁷ Miller defines keystone species in a much broader manner. According to Miller, they are species which enrich their specific ecosystem in impacts that are disproportionate to their number.⁸⁸ For example, “[a]pex predators provide natural top-down regulation within their respective range habitat. The impact of the predator-prey relationship resonates throughout the food chain in a trophic cascade, from the apex predator at the top to the soil.”⁸⁹ However, as these keystone species have been eliminated from their habitats, humans must reintroduce these species to restore balance to the ecosystem and rein in the unforeseen consequences of their elimination.⁹⁰ These unforeseen consequences can be wide-reaching and affect a variety of other species in the ecosystem as well as the landscape of the habitats themselves.⁹¹

The reintroduction of the wolf in Yellowstone National Park in the United States is a successful example of reintroduction. In 1995, a small population of wolves was reintroduced to Yellowstone National Park alongside a privately managed trust to compensate victims of any associated livestock loss. The wolf population grew exponentially and reestablished itself as a species in the ecosystem.⁹² After the wolves were reintroduced to Yellowstone, elk overgrazing was reined in as they were driven back to

86. Telesetsky, *supra* note 6, at 506–07.

87. Foreman, *supra* note 71, at 546–47.

88. *Id.* at 546.

89. Stohr, *supra* note 41, at 19.

90. *Id.*

91. *Id.* at 20.

92. *Id.* at 28.

normal behavioral patterns associated with a predator-prey relationship, vegetation surged, and other animals saw restoration of their habitats—holistically, the ecosystem “reawakened.”⁹³ Opposition from local interests, especially ranchers, remains ardent in spite of empirical successes of species reintroduction.⁹⁴ Despite this opposition, scientists argue that large predators are necessary for three reasons: ecosystems are often maintained by “top-down” interactions stemming from large predators; large predators justify having significant amounts of land for wilderness designation; and they require connectivity, which also ensures sustainability of the ecosystem as a whole.⁹⁵ There is also the novel idea proposed by some rewilding advocates of introducing non-native species in hopes of constructing favorable environmental areas, such as introducing animals like lions, tigers, and elephants to North America to hopefully construct new ranges for them.⁹⁶

A limitation of species reintroduction is its narrowness. Even with keystone species, there are a host of other factors that have contributed to environmental decline rather than the elimination of specific species from their historic habitats.⁹⁷ Revitalizing specific species will likely be insufficient to revitalize environmental areas. The reintroduction of keystone species therefore would not serve as a silver bullet for environmental conservation—reintroduction needs to be accompanied with additional measures as part of a larger scheme.

C. Public-Private Partnerships

Public-private partnerships are another mechanism to expand rewilding and other expansion of rights for the wilderness. Public-private partnerships have seen some empirical application with the establishment of the Tall Grass Prairie Preserve in Kansas.⁹⁸ In this case, a trust purchased and now manages

93. *Id.* at 20–21.

94. Telesetsky, *supra* note 6, at 506.

95. Foreman, *supra* note 71, at 547.

96. Telesetsky, *supra* note 6, at 506–07.

97. See generally Chong Wang et al., *Social and Economic Factors Responsible for Environmental Performance: A Global Analysis*, PLOS ONE (Aug. 27, 2020) <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0237597>; Mahendra Pratap Choudhary et al., *Environmental Degradation: Causes, Impacts and Mitigation*, CONFERENCE: NATIONAL SEMINAR ON RECENT ADVANCEMENTS IN PROTECTION OF ENVIRONMENT AND ITS MANAGERIAL ISSUES (Feb. 2015) https://www.researchgate.net/publication/279201881_Environmental_Degradation_Causes_Impacts_and_Mitigation; Jenna Tsui, *Five Biggest Environmental Issues Affecting the U.S.*, ENV'T PROT. (Feb. 24, 2020), <https://eponline.com/articles/2020/02/24/five-biggest-environmental-issues-affecting-the-us.aspx>.

98. Tyler Sutton & Joel Sartore, *Lead Commentary: Renewing the Great Plains: Towards a Greater Black Hills Wildlife Protected Area*, 5 GREAT PLAINS NAT. RES. J. 1, 3–4 (2001).

public land for the purpose of the Preserve.⁹⁹ While an admirable effort to preserve a unique ecosystem, the limited size renders the Preserve's value to the wilderness fairly small.¹⁰⁰ As a result, a serious effort to reintroduce extirpated wildlife, such as bison, would require an application of this concept to a much larger area.¹⁰¹ Two issues that have prevented a more aggressive approach to environmental protection and restoration of the Great Plains are a lack of a larger concept and sustained advocacy.¹⁰² Given the cross-border nature of ecosystems and the status of public land in America, federal legislation is likely necessary to promote a more aggressive pursuit of public-private partnerships on federal land, in addition to amenable local policy.¹⁰³

A problem with this approach is that it provides a significant amount of oversight to private organizations. These organizations can lack the stability and longevity of state agencies, and they have the potential to co-opt the public interest. Another issue is the aforementioned lack of sustained advocacy that is necessary for a public-private partnership effort on a large scale. Finally, the federalist system in the United States requires a patchwork approach to provide effective conservation measures across land owned by both the federal and state governments.

D. Trusts

Legal scholar Karen Bradshaw proposes integrating wildlife interests into the system of trust law:

Under this model, human trustees would manage the land at an ecosystem level for the collective benefit of animal beneficiaries, operating under a fiduciary duty. To ensure consistently sound practices, each trustee would operate under the guidance of a private governance committee, which would regularly update standards requiring best practices. Such practices would operate against the backdrop of judicial oversight under trust law. Trustee selection could be determined on a trust-by-trust basis, so long as it accords with the general principles established by the overarching governance committee and common-law trust principles.¹⁰⁴

99. *Id.*

100. *Id.*

101. *Id.* at 4.

102. *Id.*

103. *Id.* at 5.

104. BRADSHAW, *supra* note 11, at 66–67.

Under this system, trustees would make decisions with the health of the overall ecosystem in mind. This proposal seeks to address the inability of animals themselves to communicate their desires for proper use of their property. Likewise, this proposal also takes an ecosystem approach rather than a species approach, which allows for more holistic decision making—instead of the interests of a single species. Bradshaw describes several problems with an individual approach, such as the need for censuses and the inability to gather accurate information due to migration and seasonal changes in wildlife.¹⁰⁵ Bradshaw touts the benefits of an ecosystem approach, as it would benefit all animals in the territory of the trust, define ownership by mere physical presence (possession) in the landscape, allow room for biologists to gather information, maintain affordability, and create an opportunity to connect humans with animal users which share resources.¹⁰⁶

Bradshaw also argues for a singular certification regime of experts that would allow trusts to be set up with “perpetual certification” and would create rules for trusts to govern responses to environmental changes.¹⁰⁷ Bradshaw touts three benefits of this regime: “First, it creates a single, transparent set of guidelines that trustees, the public, and courts can review. Second, it threatens trustee transfer under conditions of improper management. Third, the existence of a standing group avoids issues of statutory ossification and allows flexible rules responsive to changes over time.”¹⁰⁸

Wilderness trusts would also likely need to leave room for active intervention by managers to preserve and/or restore parcels in the event of natural disasters, such as replanting vegetation after a fire.¹⁰⁹ However, a trust regime brings its own risks. Notably, two risks are significant: (1) people hostile to the interests of the environment might capture these trusts, and (2) benign trusts could project human interests onto environmental actors.¹¹⁰ This potential for subversion undermines trusts as a “silver bullet” to enact a more assertive conservation scheme. To prevent infiltration by hostile actors, there must be a means to ensure that environmental trusts continue to serve the best interests of the environments they seek to represent. This also has the potential for problems as what is “best for the environment” can itself be

105. *Id.* at 67.

106. *Id.* at 69.

107. *Id.* at 75.

108. *Id.*

109. McCormack et al., *supra* note 2, at 425.

110. BRADSHAW, *supra* note 11, at 74.

a subject of debate.¹¹¹ As a result, environmental trusts, while a reasonable and effective measure, are insufficient to carry the full weight of a conservation-based legal regime. Without other measures in place to reinforce environmental trusts, they would ultimately be ineffective in accomplishing broad conservation goals on their own.

E. Custom

In Anglo-American law, custom often serves as a guide for courts to inform application of the law. This concept allows domestic courts to look to the jurisprudence of other courts to inform their decisions. This is especially effective between the United Kingdom and the United States, two countries with closely related legal systems. Specifically, when two countries have similarities between their legal regimes, transplanting laws might be more successful—because these two countries share several historical, ecological, and cultural characteristics, the ground between them is fertile for legal transplantation.¹¹² Custom also allows courts to look to private practices that predate the formation of the relevant law to inform the application and scope of relevant law.

In the United States, there were a variety of indigenous communities with their own customs and traditions, regarding the environment already in existence when Europeans founded the country.¹¹³ These longstanding traditions could be used by courts to expand the legal rights of the wilderness, as some indigenous communities had a conception of animals as coequal with people regarding property rights.¹¹⁴ In addition to indigenous traditions, there were also comparative European customs at the time of America's founding that could inform property rights for the wilderness. Europeans were influenced by Christian perspectives that animals and humans are coparticipants on God's Earth. For example, "In medieval France, Italy, and Switzerland, local officials brought class action lawsuits against insects and rodents who occupied land. Courts held elaborate trials against animals, in which the animals appeared in court and were represented by skilled lawyers."¹¹⁵

Bradshaw argues that since there was no explicit rejection of indigenous customs regarding the environment, they could still be invoked by courts as effective; specifically, colonial courts did not challenge rights that animals

111. Patrik Sörqvist & Linda Langeborg, *Why People Harm the Environment Although They Try to Treat It Well: An Evolutionary-Cognitive Perspective on Climate Compensation*, FRONTIERS IN PSYCH. (Mar. 4, 2019), <https://www.frontiersin.org/articles/10.3389/fpsyg.2019.00348/full>.

112. Stohr, *supra* note 41, at 36.

113. BRADSHAW, *supra* note 11, at 56–57.

114. *Id.* at 81.

115. *Id.* at 56–57.

claimed under certain indigenous customs, rendering them dormant yet still arguably valid.¹¹⁶ Likewise, the doctrine for the allowance of custom to supersede common law was traditionally invoked “if the customary right existed without dispute for a time that supposedly ran beyond memory, and [was] well-defined and reasonable.”¹¹⁷ This practice has generally been determined to predate the reign of Richard I of England in 1189 CE.¹¹⁸ While early American courts were reluctant to find that any customary practices superseded common law, these courts did not consider Tribal laws and customs that predated colonization and likely satisfy the common law test for customary rights.¹¹⁹ Courts, therefore, could recognize indigenous practices as legal customs and use them as a way to expand legal rights for environmental actors—both individual animal species and the wilderness as a whole.

The problem with custom as a method arises with the fundamental question: did the establishment of the *discovery doctrine* also erase any preexisting customs? In the foundational case of *Johnson v. M’Intosh*, a dispute arose over land claimed by both parties: one by title acquired from indigenous tribes, the other through a patent granted by the United States government.¹²⁰ The Court, led by Chief Justice John Marshall, found that the federal government would reject private purchases on tribal lands¹²¹ because the indigenous peoples did not hold the legal right to sell them.¹²² Through this decision, the Court reiterated the *discovery doctrine*, which is based on the concept that the discovery of land in America gave exclusive title of the land to the government to whom the discovery was made. Thus, the discovering country had the exclusive right to acquire land from the indigenous population against other European countries.¹²³ This decision arguably eliminates the ability of pre-founding customs used by the indigenous peoples to have salience in American courts as the *discovery doctrine* could be seen as erasing indigenous legal customs utilized by the tribes in order to enshrine those of the “discoverer” and subsequent United States.

116. *Id.* at 81.

117. *Id.* (edited in original) (internal quotations omitted).

118. *Id.*

119. *Id.*

120. Eric Kades, *History and Interpretation of the Great Case of Johnson v. M’Intosh*, 19 L. & HIST. REV. 67, 69 (2001), <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1050&context=facpubs>.

121. *Id.*

122. *See Johnson v. M’Intosh*, 21 U.S. 543, 584–85 (1823) (annulling all property transactions between Native Americans and individuals).

123. *Id.* at 573.

However, despite the establishment of the *discovery doctrine*, there is reason to believe that custom would be a compelling argument in today's courts. First, the decision in *Johnson v. M'Intosh* leaves several holes in the *discovery doctrine* that recognized indigenous property rights at the time. Marshall wrote that the United States had title to all the lands within its boundaries "subject only to the Indian right of occupancy," and the exclusive power to extinguish that right was also placed in the United States.¹²⁴ This indicates a couple of conclusions. First, the indigenous peoples did hold at the very least a right of occupancy on their lands, and they might implicitly have held other types of rights that were not enumerated in the decision at the time. Second, while the United States did have the power to extinguish the indigenous right of occupancy, it also implicitly has the power to confer additional property rights onto indigenous peoples. Additionally, Marshall explicitly recognized the independence of the indigenous tribes occupying the lands acquired from France in the Louisiana Purchase.¹²⁵ Finally, in assessing "title by conquest," Marshall outlines limits on the power of the conqueror. Rather than being "wantonly oppressed," conquered peoples are usually incorporated into the conquering nation and become citizens or subjects of that nation. Notably, "the rights of the conquered to property should remain unimpaired; that the new subjects should be governed as equitably as the old, and that confidence in their security should gradually banish the painful sense of being separated from their ancient connexions, and united by force to strangers."¹²⁶ Through these conclusions, Marshall effectively left open a path to greater recognition of indigenous property rights, including legal recognition of indigenous customs, while still issuing a decision that would satisfy an expansionist nation.

Asserting those rights through custom would also run through the complex path of American Tribal law. Modern Supreme Court jurisprudence suggests that litigation regarding dormant customs might be successful. In the case of *McGirt v. Oklahoma*, the Supreme Court held that much of the land granted to tribes in Eastern Oklahoma had never been disestablished by Congress, thus granting tribes authority over the prosecution of crimes on these lands.¹²⁷ While this case was about criminal law and tribal authority, it suggests that courts would be receptive to a reinvigoration of tribal legal authority, potentially including recognition of tribal customs regarding land and the environment. Even if this recognition was only limited to lands in which tribes have recognized authority, this would likely be a useful tool for environmental preservation. However, because at one time tribes controlled

124. *Id.* at 584–85.

125. *Id.* at 587.

126. *Id.* at 589.

127. *McGirt v. Oklahoma*, 140 S. Ct. 2452, 2459 (2020).

all American land and there is no explicit evidence suggesting a repudiation of tribal environmental customs, there is potential for a revival of a different paradigm regarding land use and environmental conservation. Additionally, shortly after *McGirt*, the Supreme Court released its decision in *Oklahoma v. Castro-Huerta*, which rolled back tribal authority in favor of state governments. There, the Court asserted that the understanding of tribal sovereignty in *Worcester v. Georgia*, which viewed tribal reservations as distinct from their surrounding states, had been abandoned.¹²⁸ These two cases, that seem to be operating from conflicting paradigms, suggest that jurisprudence is in flux regarding tribal authority. The future of the issues present in those cases remains in doubt. Consequently, it is impossible to predict how the Supreme Court, or any federal court, would review a claim arising from indigenous customs concerning land use or environmental conservation.

F. A Holistic Approach to Rewilding

Ultimately, these different methods all showcase pathways to bolster the property rights of the amorphous *wilderness* within the current legal regime. These methods should not be viewed as mutually exclusive. This article proposes that all of these approaches should be synthesized to construct a robust place for the wilderness within the current system of property rights. While these different approaches would likely be insufficient and open to exploitation by hostile interests on their own, taken together they provide a self-reinforcing, robust framework for revitalizing American wilderness by bestowing a complex system of property rights on the wilderness itself. Where there are gaps in a certain approach, those gaps would likely be filled in by another approach. For example, the limits of any indigenous customs incorporated into our modern system could be supplemented by robust environmental trusts and vice versa.

A synthesis of approaches, including those discussed above, form a holistic method of rewilding that is the best pathway forward for wilderness protection and sustainability. This proposal may appear controversial to both critics of environmental conservation and property law scholars. After all, property law was devised from an anthropocentric perspective, and the system places an importance on the interests of humans.¹²⁹ Opponents of this

128. *Oklahoma v. Castro-Huerta*, 142 S. Ct. 2486, 2491 (2022).

129. Julie Elizabeth Boyd, *Considering Environmental/Property Law Towards a More Eco-Centric Position Within Legal Education*, TEACHING AND LEARNING CUHK LAW (July 6, 2020), <https://www.learning.law.cuhk.edu.hk/post/considering-environmental-property-law-towards-a-more-eco-centric-position-within-legal-education>.

holistic rewilding approach have several crucial arguments. First, they would likely argue that this approach would subvert the current legal regime and place a significant amount of human ownership into question. However, this article argues that this would neither be a radical realignment of American property law, nor would it eliminate property interests in a manner inconsistent with the current regime. Some nonhuman actors, like corporations, are already granted legal recognition and property rights in many circumstances.¹³⁰ Utilizing the aspects of property law that could be used to represent and empower environmental interests would not obliterate precedent or predictability in a substantial way. Additionally, mechanisms such as the Takings Clause and eminent domain have existed for centuries without significant threat to the system of property law. Holistic rewilding would not create new methods for seizing private property. Holistic rewilding would utilize public land in addition to private land granted through cooperation, consent, and methods already used for public projects in a manner consistent with history and tradition.

Critics would also argue that even with environmental interests represented, they would still be managed by humans so the permeation of anthropocentrism into disputes is inevitable. Likewise, humans would still make value judgments about environmental interests, undermining the idea of extending legal property rights to wilderness actors. While this article concedes that the fact that humans are inevitably making value judgments, rendering anthropocentrism inevitable to some extent, the way anthropocentrism is oriented can vary to be used to prioritize the interests of the wilderness. This article argues conservation is a net-good through an anthropocentric lens, given the scientific, recreational, and economic benefits of a healthy environment. This is particularly true in light of climate change, meaning that the interests of anthropocentrism and ecocentrism are aligned. Actions that would be endorsed by a framework of ecocentrism would also be celebrated through an anthropocentric lens. Meanwhile, over time, norms are certain to develop that will solidify ecocentrism within the system and gradually alleviate anthropocentric influences. Even with humans conceiving and administering these property schemes, the interests of the wilderness can be centered through the institutionalism of wilderness values.

130. Adam Winkler, *The Long History of Corporate Rights*, 98 B.U. L. REV. ONLINE 64 (2018), <https://www.bu.edu/bulawreview/files/2018/11/WINKLER-4.pdf>.

CONCLUSION

The conflict between the interests of the environment, which presently is unable to advocate for itself, and the interests of humans invites a paradox in any exploration of a resolution: “Either humankind must agree to live absent law and markets on animal-owned land by taking no more than they can individually consume and resolving disputes without courts, or they must force animals to resolve conflict on human terms in courtrooms and through market solutions.”¹³¹ Several options within the current legal regime exist that could be used to establish a greater voice within the law for the environment. To expand environmental conservation to a rewilding system, legal structures will have to adapt to allow the legal interests of the wilderness. A *holistic rewilding* approach would be the most efficacious and durable way to protect the interests of the wilderness without fundamentally changing the current law of property. Likewise, this could also serve as a model for other countries to enshrine their own protections for the wilderness as an independent, collective entity.

131. BRADSHAW, *supra* note 11, at 73.