

LEGISLATING NONPERSONHOOD

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Recently, two state legislatures—Idaho’s and Utah’s—passed statutes that preclude courts, agencies, and lawmakers from recognizing the legal personhood of nonhuman animals, nature, artificial intelligence, and inanimate objects. These “nonpersonhood statutes” are reactions to social, political, and legal efforts to expand the concept of personhood to include nature, animals, and sentient artificial consciousnesses. As social movements continue to advocate for more robust moral and legal status for various nonhuman entities, this kind of legislative backlash is virtually inevitable. Idaho’s and Utah’s nonpersonhood statutes are thus harbingers of legislative debates to come.

This Article critically analyzes the nonpersonhood statutes by situating them in their broader political, jurisprudential, and ethical contexts. It describes the social milieu in which these laws have arisen and analyzes the rationales and discursive practices of the laws’ sponsors and proponents. It argues that the nonpersonhood statutes conflict with leading jurisprudential theories of personhood, illustrating the malleability and indeterminacy of the “legal person.” The nonpersonhood statutes show how personhood is a vehicle for social, political, and moral beliefs about who should—and should not—matter before the law. These statutes demonstrate the ways in which the concept of the human person is defined in opposition to its Others: the animal, the natural, the artificial, and the material. This kind of abjection justifies the relegation of nonhuman others to the status of nonpersons, which in turn justifies, enables, and normalizes acts of violence against them.

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This Article's analysis of the nonpersonhood statutes makes several novel contributions to the literatures on personhood, ecology, animal rights, artificial intelligence, and the legislative process. First, it collects and describes the legislative histories of these first-of-their-kind laws. Second, while personhood scholarship tends to focus on the opinions of judges and the theories of scholars, this Article analyzes the discourse of personhood in the context of legislators, to whom personhood scholarship has paid scant attention. Third, it explores the gap between jurisprudential theories and legislative practice, illustrating the indeterminate and political nature of complex legal concepts such as "personhood."

Through a close reading of these statutes and their social and legal contexts, the Article illustrates how the legal system countenances the exclusion of the nonhuman world from the legal community, with important consequences for theorizing the nature, function, and coherence of legal personhood.

TABLE OF CONTENTS

INTRODUCTION	117
I. THEORIES OF PERSONHOOD	122
A. <i>The Orthodox Theory</i>	123
B. <i>The Bundle Theory</i>	125
II. PERSONS ON THE EDGE.....	128
A. <i>Animals</i>	128
B. <i>Nature</i>	131
C. <i>Artificial Intelligence</i>	133
III. THE NONPERSONHOOD STATUTES	136
A. <i>Idaho</i>	137
B. <i>Utah</i>	140
IV. MAKING (NON)SENSE OF (NON)PERSONS	145
A. <i>Politics and Rhetoric in the Nonpersonhood Statutes</i>	146
1. <i>Political Alignment and Nonhuman Personhood</i>	146
2. <i>Moral Panic, Misrepresentation, and Nonhuman Personhood</i>	150
B. <i>The Disjunction of the Nonpersonhood Statutes with Theories of Legal Personhood</i>	156
1. <i>Nonpersonhood Statutes and the Orthodox Theory</i> ..	157
2. <i>Nonpersonhood Statutes and the Bundle Theory</i>	158
C. <i>Indeterminacy, the Apparatus of Personhood, and the Abject Nonperson</i>	162
1. <i>Persons Unknown</i>	162
2. <i>The Functions of Nonpersonhood</i>	166
V. A CAUTIONARY NOTE ON JUDICIAL DEFERENCE TO LEGISLATURES	173
CONCLUSION.....	175

INTRODUCTION

In 2022, Representative Tammy Nichols of the Idaho House of Representatives warned her colleagues of several impending threats to their state: orangutans bearing legal rights, trees that own themselves, and brothels staffed by robot sex workers.¹ All of these threats, warned Representative Nichols, stemmed from a permissive interpretation of the concept of legal personhood, making it necessary for Idaho to proactively limit who it would recognize as a legal person.²

To confront this perceived danger, Representative Nichols introduced House Bill 647, “An Act Relating to Personhood.”³ The proposal ultimately became law, making Idaho the first state to enact a nonpersonhood statute.⁴ The law states that “environmental elements, artificial intelligence, nonhuman animals, and inanimate objects shall not be granted personhood in the state of Idaho.”⁵ In 2024, Utah passed the second such statute, which states that “a governmental entity may not grant legal personhood to, nor recognize legal personhood in” a plethora of entities, including the environment, artificial intelligence (AI), and nonhuman animals.⁶ Other states have introduced similar bills,⁷ and as the movements for the rights of animals and nature build steam—and as AI becomes ever more sophisticated—these nonpersonhood laws are harbingers of future legislation.

1. *Hearing on H.B. 647 Before the H. State Affs. Comm. Feb. 23, 2022*, 66th Leg., 2d Reg. Sess. (Idaho 2022, at 22:00) [hereinafter *Idaho H. Comm. Hearing 1*] (statement of Rep. Tammy Nichols), <https://perma.cc/74SS-VWML> (discussing tree that owns itself); *Hearing on H.B. 647 Before the H. State Affs. Comm. Mar. 1, 2022*, 66th Leg., 2d Reg. Sess. (Idaho 2022, at 24:45) [hereinafter *Idaho H. Comm. Hearing 2*] (statement of Rep. Nichols), <https://perma.cc/74SS-VWML> (discussing orangutan with personhood and robot brothel).

2. *Idaho H. Comm. Hearing 2*, *supra* note 1, at 24:45.

3. H.B. 647, 66th Leg., 2d Reg. Sess. (Idaho 2022).

4. *See infra* Section III.A.

5. IDAHO CODE § 5-346 (2025).

6. UTAH CODE ANN. § 63G-32-102 (2025).

7. *See, e.g.*, H.B. 1361, 68th Legis. Assemb. (N.D. 2023) (prohibiting the granting of personhood “or any right personhood entails” to “environmental elements, artificial intelligence, animals, inanimate objects, corporations, or governmental entities”). The bill was amended to remove the prohibitory language and instead to provide a general definition of “person” for purposes of the legislative code. The North Dakota legislature passed the amended bill and the governor signed it into law. N.D. CENT. CODE § 1-01-49(17) (2025). As passed, the law does not prohibit granting personhood per se as the Utah and Idaho bills do; instead, it provides a general definition of “person” for statutory interpretation purposes. *Id.*

This Article is the first to holistically analyze these important statutes.⁸ Through a close examination of the statutes, including their legislative histories and debates, this Article evaluates the extent to which the nonpersonhood statutes clash with judicial and academic understandings of what it means to be a legal person. My central thesis is that the nonpersonhood statutes conflict with the leading theories of legal personhood and thus illustrate the instability and indeterminacy of personhood. That is, these laws show that legal personhood lacks a stable juridical meaning and jurisprudential rationale; instead, personhood serves as a stage upon which political and ethical disputes play out. As legal scholar Ngaire Naffine puts it, debates about personhood reflect “conflicting fundamental metaphysical views operating within the field of law about what makes us what we are and who should therefore matter and why.”⁹

The nonpersonhood statutes confound the leading academic theories of personhood to bluntly reassert anthropocentrism as a reactionary response to social movements for animal rights and the rights of nature. Rather than declare what a person *is*, these statutes operate by conceptually isolating what it is *not*: animals, the natural world, machines, and inanimate objects.¹⁰ Like so many binary concepts, personhood is defined *against* that which it purports not to be, in contradistinction to its Others: the animal, the natural, the artificial, and the material.¹¹ The nonpersonhood statutes construct personhood through the processes of abjection (the casting out of that

8. Linda Halsey has analyzed the artificial intelligence portion of the Idaho statute, though her focus differs from mine. See generally Linda Halsey, *Why Idaho Should Revisit Its Prohibition of Personhood for AI*, 60 IDAHO L. REV. 63 (2024) (arguing that Idaho should repeal the prohibition on AI personhood because it conflicts with the corporate personhood of “autonomous corporations” operated through AI).

9. NGAIRE NAFFINE, LAW’S MEANING OF LIFE: PHILOSOPHY, RELIGION, DARWIN AND THE LEGAL PERSON 6 (2009).

10. MAX HORKHEIMER & THEODOR W. ADORNO, DIALECTIC OF ENLIGHTENMENT: PHILOSOPHICAL FRAGMENTS 203–04 (Gunzelin Schmid Noerr ed., Edmund Jephcott trans., 2002) (“Throughout European history the idea of the human being has been expressed in contradistinction to the animal. The latter’s lack of reason is the proof of human dignity. . . . [F]ew other ideas are so fundamental to Western anthropology.”); Paulina Siemieniec, *Centering Animality in Law and Liberation: The Zoopolitics of Reclaiming the Animal in Personhood*, 26 BETWEEN SPECIES 93, 100 (2023) (“As it stands, personhood is a nonanimal concept of humanity that defines the human in contradistinction to the animal.”).

11. On binary oppositions and the construction of meaning through opposition, see JACQUES DERRIDA, OF GRAMMATOLOGY (Gayatri Chakravorty Spivak trans., 40th Anniv. ed. 2016) (1967); J.M. Balkin, *Deconstructive Practice and Legal Theory*, 96 YALE L.J. 743 (1987); TERRY EAGLETON, LITERARY THEORY: AN INTRODUCTION 115 (2d ed. 1983).

which is perceived as not-self), a process that rationalizes exclusion and, ultimately, violence.

This Article proceeds in four main Parts.

Part I describes the two leading theories of legal personhood: the orthodox theory and the bundle theory. The orthodox theory, which is widely considered the dominant view of personhood, conceives of legal persons as simply subjects of legal rights or duties, such that almost anything could be a legal person.¹² The bundle theory views personhood as a cluster concept that arises from the constellation of specific rights and duties, so-called “incidents of legal personhood,” such as fundamental legal rights or the ability to be held liable.¹³ By describing these theories of personhood, the Article sets up its later analysis of how the nonpersonhood statutes fit with academic and judicial thinking about legal persons.

Part II introduces the various candidates for legal personhood that spurred the passage of the nonpersonhood statutes: animals, nature, and AI. In recent years, advocates have made significant efforts to push the legal system to recognize legal personhood for various nonhuman entities who are, according to proponents, morally entitled to an elevated legal status. It is these entities that the nonpersonhood statutes concern.

Part III then provides a detailed description of the legislative histories of the Idaho and Utah nonpersonhood statutes. By exploring both the texts of the laws and their rhetorical justifications, one gets a fuller picture of the legal, political, and cultural disputes that animate the debate.

Having established this background, the Article then critically analyzes the nonpersonhood statutes. Section IV.A first identifies common themes from the legislative histories: that the legislative proponents share a conservative political and theological ideology, that they used apocryphal examples of personhood run amok to create a moral panic around nonhuman personhood, and that they mischaracterized the goals of the rights of nature and animal rights movements to rally support for their bills. These political alignments and rhetorical strategies illustrate the tensions and anxieties that circulate in personhood debates.

Next, Section IV.B assesses whether the concept of personhood implicit in the nonpersonhood statutes aligns with the leading theories of legal personhood. It concludes that the nonpersonhood statutes confound the orthodox and bundle theories. To give one brief example: The predominant conception of legal personhood understands personhood as a non-biological concept that includes anything upon which the law confers rights and duties, whether

12. *See infra* Section I.A.

13. *See infra* Section I.B.

human or not.¹⁴ The category of legal persons already includes nonhuman entities such as corporations, ships, and municipalities.¹⁵ Yet Representative Walt Brooks, the sponsor of the Utah nonpersonhood statute, pithily described his bill as follows: “It identifies ‘personhood’ as a human being, and that’s it.”¹⁶

What to make of this incongruence? Section IV.C draws some conclusions about legal personhood from the preceding discussion. It argues that personhood as a concept lacks stability and determinacy; it is formulated and reformulated to police the borders of legal inclusion. Hence, the nonpersonhood statutes eliminate the possibility of personhood for animals, nature, and AI, but preserve it for another nonhuman entity, corporations. This line-drawing unsurprisingly reasserts anthropocentrism and capitalism, elevating ideological values over theoretical coherence. Relatedly, this Section describes how the nonpersonhood statutes construct the “nonperson” through its differentiation and isolation from the human. This process of abject otherization can provoke alienation within the self, because we exclude those things that are actually part of us as embodied, cultural beings inhabiting a biosphere. It also can lead to violence against the nonhuman world, because nonpersonhood renders it exploitable.

Finally, Part V offers a brief insight regarding the judiciary’s role in deciding cases involving nonhuman personhood. It responds to courts’ repeated assertions in such cases that legislatures, not courts, are the appropriate venue for advocates to press their claims for inclusive personhood. Given the uninspiring story of the nonpersonhood statutes, premised as they are on factual misinformation and jurisprudential incongruity, this Article urges courts not to shirk their common law responsibilities by passing the buck to the legislature on common law questions of legal personhood.

This Article offers three contributions to the legal literature, one descriptive, one scholarly, and one normative.

First, it offers a detailed description of these statutes and their legislative histories, including a discursive analysis of the committee hearings and a critical investigation into the rationales offered by the bills’ supporters. This account will assist scholars of environmental

14. See, e.g., W.S. Holdsworth, *Maitland Reissued*, 46 YALE L.J. 801, 804 (1937) (“The law recognizes persons, not from the biological point of view, but as the subjects of rights and duties.”); *Byrn v. N.Y.C. Health & Hosps. Corp.*, 286 N.E.2d 887, 889 (N.Y. 1972) (“[W]hether legal personality should attach [is] not a question of biological or ‘natural’ correspondence.”).

15. See Jessica Berg, *Of Elephants and Embryos: A Proposed Framework for Legal Personhood*, 59 HASTINGS L.J. 369, 372–73 (2007).

16. *Utah Legal Personhood Amendments: Hearing on H.B. 249 Before the S. Judiciary, L. Enft., & Crim. Just. Comm. Feb. 5, 2024*, 65th Leg. Gen. Sess. (Utah 2024, at 51:25) [hereinafter *Utah S. Comm. Hearing*] (statement of Rep. Walt Brooks), <https://perma.cc/V6FK-5HZB>.

law, animal law, AI law, jurisprudence, and the legislative process in understanding the full context of these important, first-of-their-kind statutes.

Second, by analyzing the personhood question in the context of legislation, the Article expands the scope of scholarly research into the concept of personhood. With a few exceptions,¹⁷ disputes over who counts as a legal person have been waged in the courts and amongst legal philosophers, not legislators.¹⁸ As a co-equal branch of government, and one that ostensibly represents popular views and engages in deliberative decision-making, legislatures' views on personhood are important, yet understudied.

Third, by describing the process of abjection through the concrete legislative example of the nonpersonhood statutes, it urges a reevaluation of the legal person that has normative implications. The nonpersonhood statutes illustrate how the concept of the person—the “basic unit” of legal relationships¹⁹—is built and maintained through the exclusion of the nonhuman, in its multitudinous forms: corporeal and incorporeal, natural and artificial, animate animals and inanimate matter. As Naffine argues, “Perhaps the greatest political act of law is . . . the making of legal non-persons.”²⁰ This political

17. The two most notable legislative efforts to expand or restrict legal personhood are the anti-abortion movement's campaign to enact fetal personhood bills and the progressive movement's campaign to eliminate corporate personhood. On fetal personhood bills, see Kristen L. Popham, Note, *Embryos Are Not People, but Disability Is Difference: Toward an Antidiscrimination Theory for Reproductive Services*, 125 COLUM. L. REV. 193, 208–09 (2025) (noting that since the Supreme Court eliminated the right to abortion, legislators have proposed thirty-six bills to establish legal personhood for fetuses, at least six of which have passed); PREGNANCY JUST., UNPACKING FETAL PERSONHOOD (2024), <https://perma.cc/RG8V-28Z3> (describing and critiquing the fetal personhood movement and cataloging states that have adopted such provisions). On the anti-abortion movement's efforts to establish fetal personhood through the judiciary, see MARY ZIEGLER, PERSONHOOD: THE NEW CIVIL WAR OVER REPRODUCTION (2025). On efforts to eliminate corporate personhood, see *State & Local Support*, UNITED FOR PEOPLE (2026), <https://perma.cc/E9J3-WE5P> (listing state and local resolutions calling for a constitutional amendment to eliminate corporate personhood). While a discursive analysis of these two campaigns could shed further light on how legislators conceptualize personhood, it is outside the scope of this Article.

18. See, e.g., Nadia Banteka, *Artificially Intelligent Persons*, 58 HOU. L. REV. 537, 551 (2021) (“To deal with the puzzle of conferring legal personhood on different entities, courts and scholars have long debated underlying theory.” (emphasis added)).

19. David Derham, *Theories of Legal Personality*, in LEGAL PERSONALITY AND POLITICAL PLURALISM 1, 5 (Leicester Webb ed. 1958) (quoted in Ngaire Naffine, *Who Are Law's Persons? From Cheshire Cats to Responsible Subjects*, 66 MOD. L. REV. 346, 352 (2003)).

20. Naffine, *supra* note 19, at 347.

construction of nonpersonhood merits documentation, analysis, and critique.

I. THEORIES OF PERSONHOOD

The concept of personhood undergirds our legal system, yet it is one that often hides in the shadows. Persons are those whom law is *for*,²¹ and yet who counts as a person is typically taken for granted—at least until controversy erupts over fundamental principles, as in the case of fetuses, corporations, people with minimal cognitive function, animals, the environment, and AI.

Judges address these questions when they must, which is relatively rarely, as most cases before them involve conventional legal persons.²² Legal scholars have addressed the question in much greater depth, formulating theories of personhood that aim to synthesize broad legal principles, judicial opinions, and various philosophical positions. This Section describes the two primary views put forth by scholars to explain what constitutes a legal person: the orthodox theory and the bundle theory.²³ Understanding these

21. NAFFINE, *supra* note 9, at 3.

22. *But see, e.g.*, *Byrn v. N.Y.C. Health & Hosps. Corp.*, 286 N.E.2d 887, 889 (N.Y. 1972) (addressing whether fetuses are persons); *Roe v. Wade*, 410 U.S. 113, 156–59 (1973) (same); *Justice v. Vercher*, 518 P.3d 131, 136 (Or. Ct. App. 2022) (addressing whether nonhuman animals are persons), *review denied*, 370 Or. 789 (2023); Nonhuman Rts. Project, Inc. *ex rel. Happy v. Breheny*, 197 N.E.3d 921, 924 (N.Y. 2022) (same).

23. There are, of course, other articulations of legal personhood, including Jessica Berg’s interest-based theory, Saru Matambanadzo’s feminist embodied vulnerability theory, and Richard Cupp’s species-based social contract theory, among others. *See* Berg, *supra* note 15, at 372–74; Saru M. Matambanadzo, *Embodying Vulnerability: A Feminist Theory of the Person*, 20 DUKE J. GENDER L. & POL’Y 45, 48 (2012); Richard L. Cupp, Jr., *Moving Beyond Animal Rights: A Legal/Contractualist Critique*, 46 SAN DIEGO L. REV. 27, 33 (2009). Space constraints preclude me from engaging with each of these theories, but, briefly, each of these theories is essentially a variation on the orthodox theory; they simply establish different criteria for the conferral of rights and duties (e.g., rationality, autonomy, will, capacity to contract, species membership, vulnerability, sentience, life, etc.).

In this Article, I focus on the most widely accepted general theory of personhood (the orthodox view) and what I take to be the most compelling alternative to the orthodox theory (the bundle theory articulated by Visa Kurki). I am not alone in considering Kurki’s bundle theory the leading alternative theory of personhood. His 2019 book *A Theory of Legal Personhood* has been called “no less than an instant classic,” Amin Ebrahimi Afrouzi, Book Review, 83 MOD. L. REV. 1354, 1358 (2020) (reviewing VISA A.J. KURKI, *A THEORY OF LEGAL PERSONHOOD* (2019) [hereinafter KURKI, *A THEORY OF LEGAL PERSONHOOD*]), and “a milestone in thinking and conceiving legal persons and subjects of law,” Brunello Stancioli, *A Bundle of Rights and Pachamama: Visa Kurki’s Theory of Legal Personhood*, 44 REVUS 103, 111 (2021) (reviewing KURKI, *A THEORY OF LEGAL PERSONHOOD*, *supra*).

theories of legal personhood will enable us to situate the nonpersonhood statutes alongside scholarly understandings of the concept.

A. *The Orthodox Theory*

The influential scholar John Chipman Gray, in his 1909 book *The Nature and Sources of the Law*, formulated the conventional understanding of legal personhood: “[T]he technical legal meaning of a ‘person’ is a subject of legal rights and duties.”²⁴ Writing around the same time, Sir John Salmond, in his legal classic *Salmond on Jurisprudence*, agreed that, “[s]o far as legal theory is concerned, a person is any being whom the law regards as capable of rights or duties. Any being that is so capable is a person, whether a human being or not”²⁵ The definition of a person as a subject of rights and duties is pervasive and long-standing; it is the predominant legal concept of personhood.²⁶ Because of this definition’s ubiquity, contemporary legal scholar Visa Kurki has called it “the Orthodox View of legal personhood.”²⁷

Both Gray and Salmond made clear that the possession of *either* rights or duties suffices to establish personhood, so the more accurate formulation of this theory is that a person is “a subject of legal rights or duties.” In Gray’s words, “One who has rights but no duties, or who has duties but no rights, is, I suppose, a person. . . . [I]f there is any one who has rights though no duties, or duties though no rights, he is, I take it, a person in the eye of the Law.”²⁸ Salmond also defined personhood in the disjunctive: “[A] person is any being whom the law

24. JOHN CHIPMAN GRAY, *THE NATURE AND SOURCES OF THE LAW* 27 (Roland Gray rev. 2d ed., MacMillan Co. 1921) (1909). On the centrality of Gray’s theory of personhood, see Lawrence B. Solum, *Legal Personhood for Artificial Intelligences*, 70 N.C. L. REV. 1231, 1238 (1992) (describing Gray’s formulation as “[t]he classical discussion of the idea of legal personhood”); Banteka, *supra* note 18, at 549–50 (same).

25. JOHN W. SALMOND, *JURISPRUDENCE* § 108, at 329 (7th ed. 1924).

26. *See, e.g.*, Harold J. Laski, *The Personality of Associations*, 29 HARV. L. REV. 404, 405 (1916) (“Persons are the subjects of rights and duties which the courts will, at need, enforce.”); Bryant Smith, *Legal Personality*, 37 YALE L.J. 283, 283 (1928) (“To be a legal person is to be the subject of rights and duties. To confer legal rights or to impose legal duties, therefore, is to confer legal personality.”); Holdsworth, *supra* note 14, at 804; Michael J. Gerardi, Note, *The “Person” at Federal Law: A Framework and a RICO Test Suite*, 84 NOTRE DAME L. REV. 2239, 2239 (2009) (“The word ‘person’ describes the entities to which the law assigns rights and duties.”); *see also* Zoë Robinson, *Constitutional Personhood*, 84 GEO. WASH. L. REV. 605, 613 (2016) (“Constitutional personhood refers to a specific form of legal personhood that denotes a person’s status as a constitutional rights holder, entitled to the protective auspices of the rights contained in the U.S. Constitution.”).

27. KURKI, *A THEORY OF LEGAL PERSONHOOD*, *supra* note 23, at 5.

28. GRAY, *supra* note 24, at 27.

regards as capable of rights *or* duties.”²⁹ Nevertheless, some courts have held duty-bearing to be a necessary condition for the holding of rights and, therefore, of personhood.³⁰

Under the orthodox theory, any entity that the law imbues with legal rights or legal duties constitutes a person, be it a “natural” person (such as a human being) or a “legal,” “artificial,” or “juristic” person (such as a corporation, a municipality, or an unincorporated association).³¹ Gray even discusses the potential personhood of supernatural beings, animals, and inanimate things, each of which has had its personhood recognized under some legal systems, including those of ancient Greece, ancient Rome, and medieval Europe.³² In these cases, the relevant legal system considered these nonhuman entities—be they deities, deer, or deodands—persons because they either received legal rights or owed legal duties.³³ The American legal system does not currently recognize the personhood of supernatural beings, animals, or things (besides corporations and ships),³⁴ but, under the orthodox view, if the legal system were to give legal rights to or demand legal duties from God or elephants or computers, there would be nothing incongruous about calling them legal persons. As philosopher Richard Tur has put it, personhood is an “empty slot that can be filled by anything that can have rights or duties.”³⁵

The orthodox view overlaps in large part with what Naffine calls the “Legalist” perspective on personhood.³⁶ Legalists view personhood

29. SALMOND, *supra* note 25, § 108, at 329 (emphasis added).

30. *People ex rel. Nonhuman Rts. Project, Inc. v. Lavery (Lavery I)*, 998 N.Y.S.2d 248, 250–51 (App. Div. 2014); *Nonhuman Rts. Project, Inc. v. R.W. Commerford & Sons*, 216 A.3d 839, 845 (Conn. App. Ct. 2019). These decisions are, however, internally inconsistent as they recognize the personhood of humans who lack legal duties, such as infants. On this point, see Gianfranco Cesareo, *The Elephant in the Room: New York’s Highest Court Takes Up Animal Rights*, GEO. ENV’T L. REV. BLOG (Feb. 23, 2022), <https://perma.cc/T72B-Y3JP>.

31. GRAY, *supra* note 24, at 47–48.

32. *Id.* at 39, 42, 45–46.

33. *Id.*; see also Rahul Govind, *On the Deity as Juristic Personality: The Religious, the Secular and the Nation in the Ayodhya Dispute and the Ayodha Judgments (2010 and 2019)*, 33 NAT’L L. SCH. INDIA REV. 150 (2021) (discussing the personhood of religious deities under Indian law). See generally E.P. EVANS, *THE CRIMINAL PROSECUTION AND CAPITAL PUNISHMENT OF ANIMALS* (1906) (describing criminal trials of animals in medieval Europe, which imposed duties on animals); Trayce Hockstad, *The Wrong, the Wronged, and the Wrongfully Dead: Deodand Law as a Practice of Absolution*, 101 NEB. L. REV. 731 (2022) (describing the practice of holding inanimate objects legally responsible for harm).

34. See Berg, *supra* note 15, at 372.

35. Richard Tur, *The “Person” in Law*, in *PERSONS AND PERSONALITY: A CONTEMPORARY INQUIRY* 116, 121 (Arthur Peacocke & Grant Gillett eds., 1987).

36. NAFFINE, *supra* note 9, at 21 (describing the Legalist position as “the orthodox, technical approach to law’s persons”).

as “strictly a formal and neutral legal device for enabling a being or entity to act in law, to acquire what is known as a ‘legal personality’: the ability to bear rights and duties.”³⁷ This view is essentially a version of *positivism*, in that a legal person is whoever the law *posits* as a person, whoever is declared to hold rights or bear duties. Because, for Legalists, law constructs persons internal to its own system, it need not, does not, and should not refer outside of law, to some essential characteristic of its subjects to determine personhood.³⁸ As Naffine puts it, “Law’s person is not intended to mirror nature” and it need not “go elsewhere to find law’s subject.”³⁹ If a legal system confers rights or duties to an entity, that entity is a person, regardless of its status outside of law.

B. *The Bundle Theory*

There is an appealing simplicity to the equation of personhood with rights-holding or duty-bearing, and in many cases, this theory has strong explanatory power. But, as Kurki has pointed out, the simplicity of the orthodox view clashes with some of the current predominant positions of the legal system.⁴⁰ Depending on the theory of rights one adopts, a dilemma arises: Either some persons *lack* rights or some nonpersons *have* them, neither of which should be possible under the orthodox equation of legal personhood with rights-holding.

For example, under the *will theory* of rights, which holds that legal rights protect the free will and autonomous choices of those who have the capacity to exercise such will,⁴¹ human infants do not possess rights—because they lack the cognitive capacity to make autonomous choices.⁴² Yet the law does consider infants legal persons.⁴³ Alternatively, under the will theory’s main competitor, the *interest theory* of rights, which holds that legal rights protect the interests of those who have them,⁴⁴ animals have legal rights—

37. *Id.*

38. *Id.* at 21–22.

39. *Id.*

40. KURKI, A THEORY OF LEGAL PERSONHOOD, *supra* note 23, at 4–5, 14; VISA A.J. KURKI, LEGAL PERSONHOOD 12 (2023) [hereinafter KURKI, LEGAL PERSONHOOD].

41. See Alon Harel, *Theories of Rights*, in THE BLACKWELL GUIDE TO THE PHILOSOPHY OF LAW AND LEGAL THEORY 191, 194 (Martin P. Golding & William A. Edmundson eds., 2005).

42. KURKI, A THEORY OF LEGAL PERSONHOOD, *supra* note 23, at 66; see also Visa Kurki, *Active but Not Independent: The Legal Personhood of Children*, 30 GRIFFITH L. REV. 395, 397 (2021) [hereinafter Kurki, *Active but Not Independent*].

43. See 43 C.J.S. *Infants* § 231 (2025) (“An infant under a specified age may be considered as lacking legal capacity. Infants, however, are possessed of certain rights.” (footnote omitted)); see also KURKI, A THEORY OF LEGAL PERSONHOOD, *supra* note 23, at 14.

44. See Harel, *supra* note 41, at 195.

because legal systems protect (some of) animals' interests to be free from cruelty.⁴⁵ Yet judges do not consider animals to be legal persons.⁴⁶ If, as the orthodox view holds, persons are the subjects of rights or duties, how could it be that infants lack rights but *are* persons, or, alternatively, that animals have rights but are *not* persons? The orthodox view is thus hard to square with contemporary theories of rights, which would either deny personhood to human infants (if one adopts the will theory) or compel the recognition of animal personhood (if one adopts the interest theory).

Given this discrepancy between the orthodox view and the legal system's extensional beliefs about who is a person, Kurki proposes an alternative theory, which he calls the "bundle theory" of legal personhood.⁴⁷ The bundle theory views personhood as a "cluster property" that is composed of various active and passive "incidents" of personhood.⁴⁸ Incidents of personhood comprise specific rights, duties, and abilities (or, more precisely, "claim-rights, responsibilities, and/or competences"), which constellate into personhood.⁴⁹ No single incident of personhood is a necessary condition of personhood; neither is any incident a sufficient condition of personhood.⁵⁰ Entities may have some of these incidents but not others, making personhood "a complex disjunctive property."⁵¹

Kurki identifies two active incidents of personhood: *legal competences* and *onerous legal personhood*.⁵² Legal competences describe the capacity to take legal actions, such as entering into contracts or initiating litigation.⁵³ Onerous legal personhood

45. On animals as rights-holders under the interest theory of rights, see KURKI, A THEORY OF LEGAL PERSONHOOD, *supra* note 23, at 14–15. See also Saskia Stucki, *Towards a Theory of Legal Animal Rights: Simple and Fundamental Rights*, 40 OXFORD J. LEGAL STUD. 533, 542–43 (2020); Matthew Liebman, *Animal Plaintiffs*, 108 MINN. L. REV. 1707, 1768–76 (2024).

46. Judges have rejected the argument that animals are legal persons. See, e.g., *Cetacean Cmty. v. Bush*, 386 F.3d 1169, 1177–79 (9th Cir. 2004) (holding that cetaceans are not "persons" under federal environmental statutes); *People ex rel. Nonhuman Rts. Project, Inc. v. Lavery*, 998 N.Y.S.2d 248, 251 (App. Div. 2014) (holding that chimpanzee was not a "person" under the common law for habeas corpus purposes); *Nonhuman Rts. Project, Inc. v. R.W. Commerford & Sons*, 216 A.3d 839, 844–46 (Conn. App. Ct. 2019) (holding that elephants were not "persons" under the common law for habeas corpus purposes); *Nonhuman Rts. Project, Inc. ex rel. Happy v. Breheny*, 197 N.E.3d 921, 927–32 (N.Y. 2022) (same); *Nonhuman Rts. Project, Inc. v. Cheyenne Mountain Zoological Soc'y*, 562 P.3d 63, 69–71 (Colo. 2025) (same).

47. KURKI, A THEORY OF LEGAL PERSONHOOD, *supra* note 23, at 5.

48. *Id.*

49. *Id.* (emphasis omitted).

50. *Id.* at 93–94.

51. *Id.* at 5.

52. *Id.* at 113.

53. *Id.* at 113–16.

describes the capacity to be held criminally or civilly liable for one's actions.⁵⁴ Some legal persons have these active incidents: Adults of sound mind can enter into contracts, file lawsuits on their own behalf, be charged with crimes, and be held liable for torts.⁵⁵ Other legal persons lack these active incidents: Very young children generally cannot be charged with crimes or be held liable for torts.⁵⁶ By the same measure, some nonpersons have had these active incidents of legal personhood. Enslaved people, for example, were typically considered nonpersons, and yet they were held criminally responsible for their conduct.⁵⁷

In addition to these active incidents, personhood includes passive incidents that shield persons from harm.⁵⁸ Such passive incidents include protections for one's life, liberty, and bodily integrity; legal standing; the capacity to own property; the ability not to be property oneself; protection under the criminal law as a victim; and the capacity to suffer legal harms in tort.⁵⁹ Legal persons who lack some of the active incidents of legal personhood may nevertheless have some of the passive incidents—infants cannot be held civilly and criminally liable, but they are victims under the criminal law and they can sue for injuries in tort through a guardian.⁶⁰ Some nonpersons may have some of these passive incidents—animals have some legal protections of their interests through anticruelty laws and they can even own property in trust⁶¹—yet they remain nonpersons because they lack a sufficient cluster of incidents to be persons.

For Kurki, then, personhood is a cluster of incidents, some of which an entity may have, while lacking others.⁶² This nuanced approach to legal personhood recognizes that an entity might be a

54. *Id.* at 116–18.

55. *Id.* at 116–17.

56. Kurki, *Active but Not Independent*, *supra* note 42, at 399.

57. KURKI, A THEORY OF LEGAL PERSONHOOD, *supra* note 23, at 117. But in *United States v. Amy*, Chief Justice Roger Taney, riding circuit, held that an enslaved woman was a “person” as that term was used in a federal law prohibiting “any person” from committing mail theft. 24 F. Cas. 792, 809–10 (C.C.D. Va. 1859) (No. 14,445). Enslaved people had all of the burdens of personhood, but none of its benefits. *Id.* (“[W]e must not lose sight of the twofold character which belongs to the slave. He is a person, and also property. As property, the rights of the owner are entitled to the protection of the law. As a person, he is bound to obey the law, and may, like any other person, be punished if he offends against it . . .”).

58. KURKI, A THEORY OF LEGAL PERSONHOOD, *supra* note 23, at 95.

59. *Id.* at 97–113.

60. *See* Kurki, *Active but Not Independent*, *supra* note 42, at 400–10.

61. For an example of an anticruelty law, see IDAHO CODE § 25-3511 (2025). For a discussion of pet trusts, see Susan J. Hankin, *Not A Living Room Sofa: Changing the Legal Status of Companion Animals*, 4 RUTGERS J.L. & PUB. POL'Y 314, 362 (2007).

62. *See* KURKI, LEGAL PERSONHOOD, *supra* note 40, at 14.

legal person even when it lacks some of aspects of legal personhood (such as a human infant who lacks legal competences and onerous legal personhood). At the same time, an entity might not be a legal person, even though it has aspects of personhood (such as animals, who have some legal rights).⁶³

II. PERSONS ON THE EDGE

Both the orthodox theory and the bundle theory link personhood to the possession of legal rights, which are the mechanisms by which our legal system accords important protections, and thus a sign of the extent to which the prevailing culture respects and values a given entity. As such, legal history is replete with contestations over the limits of personhood.⁶⁴ Personhood reflects the degree to which an entity matters legally. There are robust social movements agitating for legal personhood for animals and nature, and a nascent movement urging the same for AI. These edge cases are the subject of this Part.

A. *Animals*

The idea that animals are persons has a long history in North America, dating back to indigenous legal and social orders, many of which viewed animals as relatives rather than property.⁶⁵ But the colonial legal systems of the United States did not share these views. They imported from England the common law distinction between human persons and animal things.⁶⁶ Although state laws began protecting animals from cruelty as early as 1821, these laws were often intended to protect public morality and the property interests of animals' owners.⁶⁷ Today, many animal protection laws recognize animals themselves as morally significant and deserving of protection for their own sake,⁶⁸ but these laws do not expressly recognize animals as legal persons.

63. *Id.* at 13 (“One can hold some legal rights without being a legal person.”).

64. Matambanadzo, *supra* note 23, at 45.

65. See Sarah Deer & Liz Murphy, “Animals May Take Pity on Us”: Using Traditional Tribal Beliefs to Address Animal Abuse and Family Violence Within Tribal Nations, 43 MITCHELL HAMLINE L. REV. 703, 707 (2017); Angela McGinnis et al., *Strengthening Animal-Human Relationships as a Doorway to Indigenous Holistic Wellness*, 11 ECOPSYCHOLOGY 162, 166 (2019).

66. See Steven M. Wise, *The Legal Thinghood of Nonhuman Animals*, 23 B.C. ENV'T AFFS. L. REV. 471, 525–29 (1996). There was, however, at least one colonial-era prohibition on animal cruelty. See *The Body of Liberties* § 92 (Mass. Bay Colony 1641), <https://perma.cc/NTQ4-P6M4>.

67. See David Favre & Vivien Tsang, *The Development of Anti-Cruelty Laws During the 1800's*, 1993 DET. COLL. L. REV. 1, 7–8 (1993).

68. See, e.g., *State v. Nix*, 334 P.3d 437, 447–48 (Or. 2014), *vacated on procedural grounds*, 345 P.3d 416 (Or. 2015) (holding that the legislature intended to protect individual animals themselves from suffering).

With the birth of the modern animal rights movement in the 1970s, advocates began using the language of rights rather than just welfare, and, eventually, they began to argue for the legal personhood of animals.⁶⁹ By the early 1980s, animal lawyers were making the case that the legal system should recognize “animals as persons with rights.”⁷⁰ The push for legal personhood has become a central component of animal law in both scholarship and litigation.⁷¹

The arguments for animals’ legal personhood typically start from a normative premise: that something about animals entitles them to the classification of “person.”⁷² Advocates such as Steven Wise argue that at least some animals have advanced cognitive abilities, which establish their capacity for autonomy and consequently their interests in liberty and bodily integrity, which in turn entitle them to

69. See generally Stephen I. Burr, *Toward Legal Rights for Animals*, 4 B.C. ENV’T AFFS. L. REV. 205 (1975); Joyce S. Tischler, Comment, *Rights for Nonhuman Animals: A Guardianship Model for Dogs and Cats*, 14 SAN DIEGO L. REV. 484 (1977); David S. Favre, *Wildlife Rights: The Ever-Widening Circle*, 9 ENV’T L. 241 (1979). This is not to say no one had previously used the language of rights in relation to animals. The English reformer Henry Salt entitled his 1892 book *Animals’ Rights*. HENRY S. SALT, ANIMALS’ RIGHTS: CONSIDERED IN RELATION TO SOCIAL PROGRESS (1892). But the concept of “animal rights” did not catch on popularly until the 1970s. See JAMES M. JASPER & DOROTHY NELKIN, THE ANIMAL RIGHTS CRUSADE: THE GROWTH OF A MORAL PROTEST 5 (1992).

70. Joyce Tischler, *The History of Animal Law, Part I (1972–1987)*, 1 STAN. J. ANIMAL L. & POL’Y 1, 27 (2008) (describing animal lawyer Nancy Ober’s suggestion, in a letter in 1983, that Attorneys for Animal Rights (which later became the Animal Legal Defense Fund) specify animal legal personhood as one of its organizational goals); see Roger W. Galvin, *What Rights for Animals? A Modest Proposal*, 2 PACE ENV’T L. REV. 245, 252 (1985) (endorsing personhood for animals).

71. For scholarship on animal legal personhood, see Wise, *supra* note 66; Steven M. Wise, *Animal Thing to Animal Person—Thoughts on Time, Place, and Theories*, 5 ANIMAL L. 61 (1999); David Favre, *Equitable Self-Ownership for Animals*, 50 DUKE L.J. 473 (2000); STEVEN M. WISE, RATTLING THE CAGE 7 (1st ed. 1999) [hereinafter WISE, RATTLING THE CAGE]; Taimie L. Bryant, *Sacrificing the Sacrifice of Animals: Legal Personhood for Animals, the Status of Animals As Property, and the Presumed Primacy of Humans*, 39 RUTGERS L.J. 247 (2008); GARY L. FRANCIONE, ANIMALS AS PERSONS (2008); Liebman, *supra* note 45. For litigation seeking to establish animal legal personhood, see *Citizens to End Animal Suffering & Exploitation, Inc. v. New Eng. Aquarium*, 836 F. Supp. 45, 46–50 (D. Mass. 1993); *Cetacean Cmty. v. Bush*, 386 F.3d 1169, 1179 (9th Cir. 2004); *Nonhuman Rts. Project, Inc. v. R.W. Commerford & Sons*, 216 A.3d 839, 840, 846 (Conn. App. Ct. 2019); *People ex rel. Nonhuman Rts. Project, Inc. v. Lavery*, 998 N.Y.S.2d 248, 249, 251–52 (App. Div. 2014); *Justice v. Vercher*, 518 P.3d 131, 136 (Or. Ct. App. 2022); *Nonhuman Rts. Project, Inc. v. Breheny*, 197 N.E.3d 921, 923–24 (N.Y. 2022); *Nonhuman Rts. Project, Inc. v. Cheyenne Mountain Zoological Soc’y*, 562 P.3d 63, 69 (Colo. 2025).

72. NAFFINE, *supra* note 9, at 24 (describing animal personhood advocates as “naturalist realists” who want to align personhood with extrinsic characteristics and traits that include nonhumans).

personhood to protect those rights.⁷³ Others, such as Gary Francione, argue that animals' basic capacity for sentience—the ability to have positive or negative experiences—entitles them to be treated as ends in themselves, and, thus, rights-holding persons.⁷⁴ Regardless of where one draws the line, there is a general sense among animal personhood advocates that denying animals access to the label of “person” fails to give due regard to the kinds of beings that they are and denies them dignity and respect.

Animal legal personhood is not just expressive and symbolic of a general elevated status; it would also enable animals to possess meaningful substantive and procedural rights.⁷⁵ Substantively, those rights might include the right to life, liberty, and bodily integrity (including the right to be free from torture). Procedurally, if animals were persons, they could avail themselves of the legal processes that protect substantive rights—to be plaintiffs and to seek writs of habeas corpus, for example.⁷⁶

Thus far, courts in the United States have consistently rejected animal personhood.⁷⁷ In doing so, courts have relied on the historical exclusion of animals from the concept of the person, the human-centered intent of framers' of constitutions and statutes, dictionary definitions of personhood, and conceptual arguments about personhood that limit it to humans and their legal creations.⁷⁸ A few

73. See generally WISE, *RATTLING THE CAGE*, *supra* note 71; STEVEN M. WISE, *DRAWING THE LINE: SCIENCE AND THE CASE FOR ANIMAL RIGHTS* (2002); Steven M. Wise, *Hardly A Revolution—The Eligibility of Nonhuman Animals for Dignity-Rights in A Liberal Democracy*, 22 VT. L. REV. 793, 823–914 (1998).

74. See Gary L. Francione, *Taking Sentience Seriously*, reprinted in *ANIMALS AS PERSONS*, *supra* note 71, at 129, 146–47.

75. There is an important chicken-and-egg debate about the precise relationship between personhood and rights-holding. Do rights precede personhood or is it the other way around? One possibility is that personhood, once granted, *automatically* comes with certain fundamental rights, such as the right to life or the right to sue. Another possibility is that personhood necessarily *precedes the possibility* of holding fundamental rights, but that those rights must be separately recognized. See Steven M. Wise, *Legal Personhood and the Nonhuman Rights Project*, 17 ANIMAL L. 1, 5 (2010). A third possibility is that rights precede personhood; personhood arises epiphenomenally from the granting of substantive rights. See Ethan Prall, *Animal Rights Before Legal Personhood*, 110 CORN. L. REV. 75, 118 (2025). A fourth option is that the legal person simply *is* the bundle of rights itself, such that the temporal question is nonsensical; they co-arise because they are the same thing. See Thomas Buocz & Iris Eisenberger, *Demystifying Legal Personhood for Non-Human Entities: A Kelsenian Approach*, 43 OXFORD J. LEGAL STUD. 32, 33 (2023). These questions are outside the scope of this Article, and I do not take a position on them here.

76. See Liebman, *supra* note 45, at 1730–31; Steven M. Wise, *The Entitlement of Chimpanzees to the Common Law Writs of Habeas Corpus and De Homine Replegiando*, 37 GOLDEN GATE U. L. REV. 219, 221 (2007).

77. See cases cited *supra* note 71.

78. See Liebman, *supra* note 45, at 1757–64.

courts in other countries, however, have recognized animals as rights-holders and, in some cases, legal persons.⁷⁹

B. Nature

Like the movement for animal personhood, a movement to establish the rights and personhood of nature has emerged in recent years.⁸⁰ Efforts to recognize rights and personhood for nature and natural entities have a long genealogy. Many indigenous communities throughout the world have held nature in high ethical and social regard, both historically and in the present day.⁸¹ The influence of indigenous people on the rights of nature movement is significant. Indigenous cosmologies have inspired tribal rights of nature provisions in the United States,⁸² and indigenous activists have influenced the development of rights of nature provisions in statutory and constitutional law in other countries, such as Ecuador, Bolivia, New Zealand, Australia, and Uganda.⁸³

While indigenous law has long conceived of nature as a subject, the concept has a more recent genesis in Anglo-American jurisprudence. Christopher Stone introduced the idea of granting legal personhood to nature in his influential 1972 article *Should Trees Have Standing?*⁸⁴ Stone argued that the legal system should extend

79. See Macarena Montes Franceschini, *Animal Personhood: The Quest for Recognition*, 17 ANIMAL & NAT. RES. L. REV. 93, 95–146 (2021) (discussing various animal personhood cases in Latin America and Asia); Nicole Pallotta, *Argentine Court Declares Cougar a “Subject of Rights,”* ANIMAL LEGAL DEF. FUND (Aug. 3, 2023), <https://perma.cc/VLF7-487S>; Macarena Montes Franceschini & Kristen Stilt, *Estrellita the Woolly Monkey and the Ecuadorian Constitutional Court*, REVISTA (Feb. 10, 2023), <https://perma.cc/7GH3-Z9XR>.

80. For overviews of the rights of nature movement(s), see DAVID R. BOYD, *THE RIGHTS OF NATURE: A LEGAL REVOLUTION THAT COULD SAVE THE WORLD* (2017); Gwendolyn J. Gordon, *Environmental Personhood*, 43 COLUM. J. ENV'T L. 49 (2018); Erin Ryan, Holly Curry & Hayes Rule, *Environmental Rights for the 21st Century: A Comprehensive Analysis of the Public Trust Doctrine and Rights of Nature Movement*, 42 CARDOZO L. REV. 2447, 2502–03 (2021); Alexandra Huneus, *The Legal Struggle for Rights of Nature in the United States*, 2022 WIS. L. REV. 133 (2022); Elizabeth Kronk Warner & Jensen Lillquist, *Laboratories of the Future: Tribes and Rights of Nature*, 111 CALIF. L. REV. 325, 328 (2023). On the intersections and divergences of animal rights and the rights of nature, see Macarena Montes Franceschini & Kristen Stilt, *Naturalized Rights of Animals, Animalized Rights of Nature*, 44 STAN. ENV'T L.J. 1 (2025).

81. See Warner & Lillquist, *supra* note 80, at 328; Ryan, Curry & Rule, *supra* note 80, at 2502–03; Vanessa Racehorse, *Indigenous Influence on the Rights of Nature Movement*, 38 NAT. RES. & ENV'T 4, 4–8 (2023).

82. See Warner & Lillquist, *supra* note 80, at 379–85.

83. Ryan, Curry & Rule, *supra* note 80, at 2514–19; Warner & Lillquist, *supra* note 80, at 343–51.

84. See Christopher D. Stone, *Should Trees Have Standing?—Toward Legal Rights for Natural Objects*, 45 S. CAL. L. REV. 450 (1972). The concepts of personhood, rights, and standing are analytically distinct but practically

enforceable “legal rights to forests, oceans, rivers and other so-called ‘natural objects’ in the environment—indeed, to the natural environment as a whole.”⁸⁵ Stone’s suggestion was so outside the norm of the law at the time that he felt it necessary to emphasize that he was “quite seriously proposing” rights for nature.⁸⁶ Stone’s article famously caught the eye of Justice William O. Douglas, who endorsed the idea in his storied dissent in *Sierra Club v. Morton*,⁸⁷ giving credibility to the idea of legal rights, standing, and personhood for nature.⁸⁸

As with animals, the case for natural personhood has both ethical and practical rationales.⁸⁹ The ethical rationale posits that nature has moral standing because it has intrinsic value.⁹⁰ There is something about the more-than-human world that inspires awe and deserves respect. Legal personhood is a way of recognizing nature’s moral status by protecting its rights to flourish.⁹¹

Supplementing this ethical argument, the practical rationale for natural personhood sees it as a more effective method of preserving the environment. If the hitherto anthropocentric approach to environmental law has failed—and the ongoing climate crisis and despoliation of the natural world suggests it has—then a more robust set of substantive and procedural protections may be necessary, not only for biocentric reasons, but to save ourselves.⁹²

In the early 2000s, the rights of nature became enshrined in legal systems. In 2002, the Navajo Nation enacted a law that recognized Diné Natural Law, which “declares and teaches that . . . [a]ll creation, from Mother Earth and Father Sky to the animals, those who live in water, those who fly and plant life have their own laws and have rights and freedoms to exist.”⁹³ In 2006, the small town of Tamaqua

interdependent. Stone does not disambiguate standing from rights or personhood, though it is important to note that personhood is a precondition for standing, at least under current rules. *See* Liebman, *supra* note 45, at 1753.

85. Stone, *supra* note 84, at 456.

86. *Id.*

87. 405 U.S. 727 (1972).

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

89. *See* Ryan, Curry & Rule, *supra* note 80, at 2500.

90. *See id.* at 2500–02; Stone, *supra* note 84, at 498–99. On the intrinsic or inherent value of nature, see Arne Naess, *The Shallow and the Deep, Long-Range Ecology Movement. A Summary*, 16 *INQUIRY* 95 (1973); HOLMES ROLSTON, III, *ENVIRONMENTAL ETHICS: DUTIES TO AND VALUES IN THE NATURAL WORLD* (1988); J. BAIRD CALLICOTT, *IN DEFENSE OF THE LAND ETHIC: ESSAYS IN ENVIRONMENTAL PHILOSOPHY* (1989).

91. *See* Gordon, *supra* note 80, at 72–74.

92. Ryan, Curry & Rule, *supra* note 80, at 2501; Stone, *supra* note 84, at 492 (“[T]he strongest case can be made from the perspective of human advantage for conferring rights on the environment.”).

93. 1 NNC § 205 (2010) [NAVAJO NATION CODE ANNOTATED tit. 1, § 205 (2010)].

Borough, Pennsylvania, passed the first municipal rights of nature ordinance, which declared that “natural communities[] and ecosystems shall be considered to be ‘persons.’”⁹⁴ In 2008, Ecuador became the first country to enshrine the rights of nature in its constitution, providing that “Pachamama,” an indigenous term sometimes translated as Mother Earth,⁹⁵ “has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes.”⁹⁶ Today, six countries have established some form of rights for nature, as have approximately seven tribal nations and fifty municipalities in the United States.⁹⁷

Substantively, rights of nature laws are best understood under the typology described by Erin Ryan, Holly Curry, and Hayes Rule, which identifies four axes along which these laws can be situated.⁹⁸ These are: (1) which natural entities the law protects; (2) who the law authorizes to speak on nature’s behalf; (3) the legal mechanism by which the law was enacted (e.g., by constitution, statute, or judicial decree); and (4) the scope of the substantive protections that the law affords to nature.⁹⁹ Each of these axes vary from law to law.¹⁰⁰ In some cases, rights of nature provisions explicitly recognize elements of nature as persons, such as Aotearoa New Zealand’s recognition of the personhood of Te Urewera (a region of land) and Whanganui (a river), both of which hold spiritual significance to the Māori people.¹⁰¹

C. Artificial Intelligence

Science fiction authors have long reflected on the moral status of sentient nonhumans, including robots and AI.¹⁰² Until fairly recently,

94. Tamaqua Borough, Pa., Ordinance 612 (Sep. 19, 2006).

95. *But see* Miriam Tola, *Between Pachamama and Mother Earth: Gender, Political Ontology, and the Rights of Nature in Contemporary Bolivia*, 118 FEMINIST REV. 25, 25–26 (2018) (critiquing the equation of Pachamama with the concept of “Mother Earth” as rigidly and normatively gendered). I am grateful to Maneesha Deckha for bringing this point to my attention.

96. CONSTITUCIÓN DE LA REPÚBLICA DEL ECUADOR Oct. 20, 2008, tit. II, ch. 7, art. 71 (Ecuador).

97. Warner & Lillquist, *supra* note 80, at 327, 354, 379–80. The enforceability of these provisions remains largely untested. *Id.* at 355. In one case, a federal court declared a municipal ordinance void. *Drewes Farms P’ship v. City of Toledo*, 441 F. Supp. 3d 551, 556 (N.D. Ohio 2020).

98. Ryan, Curry & Rule, *supra* note 80, at 2506.

99. *See id.*

100. *See id.* at 2506–13.

101. *Id.* at 2512–13, 2517–18; Warner & Lillquist, *supra* note 80, at 334–38, 348–49; *see also* Catherine J. Iorns Magallanes, *Maori Cultural Rights in Aotearoa New Zealand: Protecting the Cosmology That Protects the Environment*, 21 WIDENER L. REV. 273, 292 (2015).

102. *See, e.g.,* SAMUEL BUTLER, EREWHON: OR, OVER THE RANGE 275 (The Floating Press 2009) (1872) (novel that hypothesized the development of

such considerations seemed like speculative projections of a distant future. But now, with the rapid and exponential development of AI technology, the question of personhood for artificial intelligences is timelier and more urgent than ever.¹⁰³

As with animals and nature, the case for AI personhood is both ethical and pragmatic.¹⁰⁴ The ethical case for AI personhood argues that AI has (or that there is a non-negligible probability that it soon will have) capabilities that entitle it to moral and legal consideration.¹⁰⁵ Those capabilities include consciousness, emotion, sentience, self-awareness, intelligence, and rationality.¹⁰⁶ If it is possible to create AI systems, either embodied in robots or disembodied in networks, that have a phenomenological perspective on the world, then the subjective experiences of those systems would be ethically salient; their experience of suffering would matter morally.¹⁰⁷ Whether the creation of artificial subjectivity is even

“mechanical consciousness”); KAREL ČAPEK, R.U.R. (ROSSUM’S UNIVERSAL ROBOTS) 25 (Paul Selver trans., Oxford Univ. Press 1928) (1920) (fictional play that introduced the term “robot” and included a character who wants to “liberate the Robots”). Technically, robotics and AI are separate fields, but because robots are physical entities driven by artificial intelligence systems, the ethical discussions about robots and AI overlap significantly.

103. For overviews of the debates concerning AI personhood, see Solum, *supra* note 24; Joanna J. Bryson, Mihailis E. Diamantis & Thomas D. Grant, *Of, For, and by the People: The Legal Lacuna of Synthetic Persons*, 25 A.I. & L. 273 (2017); Matthew U. Scherer, *Of Wild Beasts and Digital Analogues: The Legal Status Of Autonomous Systems*, 19 NEV. L.J. 259, 260 (2018); Gerhard Wagner, *Robot, Inc.: Personhood for Autonomous Systems?*, 88 FORDHAM L. REV. 591 (2019); Banteka, *supra* note 18; Carla L. Reyes, *Autonomous Corporate Personhood*, 96 WASH. L. REV. 1453, 1476–77 (2021); Tanner W. Mathison, *Recognizing Right: The Status of Artificial Intelligence*, 19 J. BUS. & TECH. L. 105 (2023); Katherine B. Forrest, *The Ethics and Challenges of Legal Personhood for AI*, 133 YALE L.J.F. 1175, 1176 (2024); Robert J. Rhee, *Do AIs Dream of Electric Boards?*, 119 NW. U. L. REV. 1007 (2025).

104. Forrest, *supra* note 103, at 1198.

105. Jeff Sebo & Robert Long, *Moral Consideration for AI Systems By 2030*, 5 AI & ETHICS 591, 591 (2025). For a literature review of discussions of robot rights, see John-Stewart Gordon & Ausrine Pasvenskiene, *Human Rights for Robots? A Literature Review*, 1 AI & ETHICS 579 (2021).

106. Forrest, *supra* note 103, at 1176; Solum, *supra* note 24, at 1281.

107. The risk of creating new sentient and autonomous beings who have subjective experiences carries enormous ethical implications. We can conceive of a future in which the power to create individualized AI beings is largely unconstrained and a programmer could create billions of sentient beings with a few keystrokes. If those sentient beings’ phenomenological existence consisted primarily of servitude and suffering, it would be a moral atrocity. Thomas Metzinger, *Artificial Suffering: An Argument for a Global Moratorium on Synthetic Phenomenology*, 8 J. A.I. & CONSCIOUSNESS 43, 44–45 (2021). But granting moral and political rights to billions of new entities controlled by corporations or governments could create other hazards, including skewing elections (if they had the right to vote), draining material resources (if they had

possible remains a subject of debate.¹⁰⁸ But in the years to come, we can expect highly contentious conversations about what terms like “consciousness,” “sentience,” and “rationality” mean, the extent to which they condition ethical and legal status, and whether a particular AI possesses the relevant criteria.¹⁰⁹

While the moral case for AI personhood is concerned with the rights of AI, the pragmatic case focuses on its possible legal duties.¹¹⁰ Granting AI personhood could be a legal mechanism for holding AI systems financially and even criminally accountable for harms they cause.¹¹¹ Generally, humans and corporations are responsible for the foreseeable harms of the products they create, but challenges arise when AI’s decision-making processes become opaque, autonomous, and even contrary to the intent of their creators.¹¹² For now, the law apportions liability to the AI’s creator, but some scholars have argued that the law should hold AI directly liable.¹¹³ Extending legal

the right to electric nourishment), and undermining democracy (if they had the right to free speech and the power to disseminate misinformation). *See* Bryson, Diamantis & Grant, *supra* note 103, at 289 (arguing that synthetic personhood could be exploited by powerful human interests). Given the moral dilemma here (the moral atrocity of not granting rights to AI and the social risks of doing so), philosopher Thomas Metzinger has called for a moratorium on all research that could yield sentient AI. Metzinger, *supra*, at 107. In other words, if we don’t create sentient AI in the first place, we won’t have to deal with the thorny questions of AI personhood.

108. *See, e.g.*, Georg Northoff & Steven S. Gouveia, *Does Artificial Intelligence Exhibit Basic Fundamental Subjectivity? A Neurophilosophical Argument*, 23 PHENOMENOLOGY & COGNITIVE SCIS. 1097 (2024) (arguing against the existence of AI subjectivity, at least in its current form); Michele Farisco, Kathinka Evers & Jean-Pierre Changeux, *Is Artificial Consciousness Achievable? Lessons from the Human Brain*, 180 NEURAL NETWORKS 1 (2024) (arguing for the possibility of AI consciousness by analogy to the human brain). For a general critique of AI as incapable of replicating the phenomenological experience of being-in-the-world, see HUBERT L. DREYFUSS, *WHAT COMPUTERS STILL CAN’T DO: A CRITIQUE OF ARTIFICIAL REASON* (1992).

109. Forrest, *supra* note 103, at 1177.

110. *See, e.g.*, Hannah Quicksell, *When AI Takes Responsibility for Its Actions*, 28 INTELL. PROP. & TECH. L.J. 1, 16 (2023). Civil and criminal duties for AI would also likely require corresponding rights for AI, including the right to own property (if they are subject to monetary judgments) and possibly the right to due process (if they are subject to criminal liability).

111. There is a nefarious flip-side to this argument: Granting personhood to AI could also serve the liability-insulating function that corporate personhood currently serves, protecting humans from personal liability for the harms of their creations. Forrest, *supra* note 103, at 1197. On the intersection of corporate personhood and AI personhood, which manifests in autonomous and automated corporations, see Reyes, *supra* note 103; Halsey, *supra* note 8.

112. Forrest, *supra* note 103, at 1203–04; Quicksell, *supra* note 110, at 3.

113. Quicksell, *supra* note 110, at 19–20; Ying Hu, *Robot Criminals*, 52 U. MICH. J.L. REFORM 487, 503–18 (2019) (defending criminal liability for intelligent robots).

personhood to AI could also enable them to serve roles that are typically reserved for legal persons, such as trustees or corporate board members, for which they may be better qualified than humans.¹¹⁴

To date, no court or jurisdiction has recognized the personhood of robots or AI,¹¹⁵ with one exception. In 2017, Saudi Arabia purportedly granted citizenship (and, implicitly, personhood) to a humanoid robot named Sophia.¹¹⁶ The move, announced at a technology investment conference, sparked both skepticism and outrage—skepticism because the government has never released any documents to substantiate the grant of citizenship, making it likely that it was a publicity stunt,¹¹⁷ and outrage because women and migrant workers in Saudi Arabia lack full citizenship.¹¹⁸ That a synthetic, female-presenting robot (and one for whom there was no evidence of consciousness or sentience) received citizenship while flesh-and-blood women must have the permission of a male guardian to exercise many of their civil rights illustrated a warped and opportunistic set of priorities.¹¹⁹

While the case of Sophia may have been a stunt, on-going technological developments in AI could ultimately lead to conscious entities that have both the capacity to suffer and the ability to inflict suffering. As former federal judge Katherine Forrest puts it, “While we may not have clarity on all of the legal and ethical challenges before us or heading our way, we know they are coming.”¹²⁰

III. THE NONPERSONHOOD STATUTES

Having described the dominant theories of legal personhood and the efforts to adapt and expand them to include unconventional candidates, I turn now to the nonpersonhood statutes in Idaho and

114. Solum, *supra* note 24, at 1240; Rhee, *supra* note 103, at 1019.

115. The D.C. Circuit recently held that AI cannot hold the copyright to works that it creates, as it is not an “author” under the Copyright Act. *Thaler v. Perlmutter*, 130 F.4th 1039, 1041 (D.C. Cir. 2025).

116. Olivia Cuthbert, *Saudi Arabia Becomes First Country to Grant Citizenship to a Robot*, ARAB NEWS (Oct. 26, 2017), <https://perma.cc/6E8B-EP3Z>.

117. James Vincent, *Pretending to Give a Robot Citizenship Helps No One*, VERGE (Oct. 30, 2017), <https://perma.cc/T6F3-E9YJ> (“If [granting Sophia citizenship] sounds like a PR stunt to you, well, you’re right: [T]he Saudi kingdom was using this eye-grabbing headline to promote a tech summit ‘It’s obviously bullshit,’ [said] Joanna Bryson, a researcher in AI ethics at the University of Bath . . .”).

118. Rozina Sini, *Does Saudi Robot Citizen Have More Rights Than Women?*, BBC (Oct. 26, 2017), <https://perma.cc/BFV5-L3KE>.

119. *Id.*

120. Forrest, *supra* note 103, at 1211.

Utah.¹²¹ These laws respond to the push to include animals, nature, and AI within the moral and legal domains.

A. *Idaho*

In February 2022, Republican representative Tammy Nichols introduced House Bill 647, entitled “An Act Related to Personhood.”¹²² The bill provided that “[n]otwithstanding any other provisions of law, environmental elements, artificial intelligence, animals, and inanimate objects shall not be granted personhood in the state of Idaho.”¹²³ The bill declared the existence of an emergency, which authorized its expedited entry into force.¹²⁴ At the initial hearing before the House State Affairs Committee, Representative Nichols warned her colleagues about personhood “being used by groups to keep natural resources from being utilized.”¹²⁵ The

121. Notably, Florida passed a law in 2020 that, among other things, precluded local governments from “recogniz[ing] or grant[ing] any legal rights to a plant, an animal, a body of water, or any other part of the natural environment.” FLA. STAT. ANN. § 403.412(9)(a) (2025). The law was a response to efforts by Orange County residents to establish rights for the Wekiva and Econlockhatchee rivers. See Ryan, Curry & Rule, *supra* note 80, at 2532–33. I do not include the Florida statute in the present analysis because it is not, strictly speaking, a nonpersonhood statute, but rather a *preemption* statute. See *id.* at 2533–34; Parker Watts, Note, *Florida Preemption of Local Environmental Ordinances*, 74 FLA. L. REV. 483, 493–94 (2022). Unlike the Idaho and Utah laws, the law does not purport to declare what is and is not a person but instead reserves such decisions to the state rather than local governments. Moreover, the bill that included the preemption provision, the Clean Waterways Act, made numerous changes to Florida water laws and passed unanimously in both houses, making it difficult to isolate the significance of the preemption provision in relation to its other provisions. See 2020 Fla. Sess. Law Serv. Ch. 2020-150; CS/CS/SB 712: *Environmental Resource Management*, FLA. S. (2020), <https://perma.cc/3CR9-SUAV>.

This Article also does not address statutes that define “person” for statutory interpretation purposes. See, e.g., 1 U.S.C. § 1 (“In determining the meaning of any Act of Congress, unless the context indicates otherwise . . . the words ‘person’ and ‘whoever’ include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals . . .”); VA. CODE ANN. § 1-230 (2025) (defining “person” for statutory interpretation). While these statutes do codify a legislative understanding of personhood, they are outside the scope of this Article, because (1) they are generally inclusive rather than exclusive, which means they are not exactly *nonpersonhood* statutes; (2) they are rules of construction and interpretation rather than substantive rules of law; and (3) they were not passed to address the controversial edge cases of animals, nature, or AI.

122. H.B. 647, 66th Leg., 2d Reg. Sess. (Idaho 2022).

123. *Id.*

124. *Id.*

125. *Idaho H. Comm. Hearing 1*, *supra* note 1, at 22:17 (statement of Rep. Nichols).

committee referred the bill to the house floor with a “Do Pass” recommendation.¹²⁶

But two days after the committee hearing, Representative Nichols seemed to have realized problems with the bill’s language, namely the effects it could have on the personhood of humans (who are animals) and corporations (which are arguably inanimate objects). On March 1, she reappeared before the House State Affairs Committee with a substitute bill, House Bill 720, which added the word “nonhuman” before “animals” and added the following language: “Nothing in this section revokes the status of legal person in or of any municipality, organization, corporation, or other legal or business entity recognized by the laws of the state of Idaho as such prior to July 1, 2022.”¹²⁷

At this second hearing, Representative Nichols described the impetus for the bill:

[P]ersonhood status is being given to bodies of water, trees, nature, artificial intelligence, and so on. . . . And it’s creating quite a problem as far as making my rights, your rights, our children, grandchildren’s rights coequal to animals, artificial intelligence, and so on.¹²⁸

Asked whether the push for nonhuman personhood was causing problems in Idaho, Representative Nichols replied that although no such efforts existed in the state, her bill was “proactive.”¹²⁹ When asked for examples of harms from other states, Representative Nichols responded:

In Florida, there was a gorilla that was brought in from another country. That country had granted it personhood status—I think it was actually an orangutang—but that country had granted it personhood status. It was brought to Florida and the agreement was that its personhood status would follow it into our country.

. . . .

One other example is Texas wanted to open up a brothel—this is kinda one of my favorites—that would be, would have robots as their workers there, and they were getting ready to give workers’ rights to those robots. Unfortunately, or fortunately, that brothel did not make it to the final, final destination of

126. *Minutes of the H. State Affs. Comm. Feb. 23, 2022*, 66th Leg., 2d Reg. Sess. (Idaho Feb. 23, 2022), <https://perma.cc/9QDT-XL3R>.

127. H.B. 720, 66th Leg., 2d Reg. Sess. (Idaho 2022).

128. *Idaho H. Comm. Hearing 2*, *supra* note 1, at 24:45 (statement of Rep. Nichols).

129. *Id.* at 25:20.

being able to open, but that was what they were trying to go for is to start adding workers' rights for the robots.¹³⁰

Convinced, the committee voted to send the bill to the House floor, where it passed on a 50-17-3 vote.¹³¹

HB 720 was then sent to the Senate and referred to the Senate State Affairs Committee, which held a hearing on the bill. Representative Nichols again explained its purpose:

What we are trying to accomplish here is to make sure that Idaho values and the Idaho way of life and our resources and our agriculture are protected. There are many organizations . . . that are using the status of personhood to give co-equal rights that you and I have that are granted to us through the Bill of Rights and the Constitution. . . . And what that is doing is it is creating problems in both the legal system and as well as devaluing our rights that we have.¹³²

Representative Nichols told the committee that the agriculture industry had brought the issue of nonhuman personhood to her attention because of its concerns that animal personhood would undermine its ability to conduct business.¹³³ Representative Nichols stated, “[O]ne of the issues that is very applicable is the desire to start giving farm animals human rights or personhood status. So there is a great push in that regard.”¹³⁴

Senator Michelle Stennett, a member of the committee, pointed out that the legal system already recognizes nonhuman personhood in corporations.¹³⁵ She asked Representative Nichols to reconcile granting personhood to corporations but denying it to other nonhuman entities, which seemed “not consistent” to Senator Stennett.¹³⁶ Representative Nichols, perhaps missing the gist of the question, simply responded that HB 720 would not interfere with corporate personhood.¹³⁷

Committee member Grant Burgoyne called personhood for nonhuman animals “just absurd and ridiculous and wrong,” and stated, “I have to agree that things like artificial intelligence,

130. *Id.* at 25:45.

131. *House Bill 720*, IDAHO LEG. (2022), <https://perma.cc/76D2-P5UM> (Idaho House votes).

132. *Hearing on H.B. 720 Before the S. State Affs. Comm. Mar. 18, 2022*, 66th Leg., 2d Reg. Sess. (Idaho 2022, at 1:06:38) [hereinafter *Idaho S. Comm. Hearing*] (statement of Rep. Nichols).

133. *Id.* at 1:07:43.

134. *Id.* at 1:08:15.

135. *Id.* at 1:10:00 (question by Sen. Michelle Stennett).

136. *Id.*

137. *See id.* at 1:11:15 (statement of Rep. Nichols).

nonhuman animals, inanimate objects, it all strikes me as a little too ‘woke.’”¹³⁸

The committee voted to send the bill to the Senate floor for a vote.¹³⁹ The floor sponsor, Senator Lee Heider, encouraged his colleagues to vote for the bill, because without it, “you could be arrested for chopping down [a] tree” and “if you kicked a cat across the street, you could be arrested for kicking a human across the street.”¹⁴⁰ In his view, “we as humans should be granted personship [sic], but other animals and other inanimate objects should not.”¹⁴¹ Senator James Patrick agreed, adding that “machine[s]” should not be “classif[ied] the same” as humans: “I mean, I love my tractor, I love my car, but they don’t count.”¹⁴² Despite some testimony that the bill was unnecessary and that it was inconsistent to recognize corporate personhood while denying other forms of nonhuman personhood,¹⁴³ the Senate voted overwhelmingly to pass the bill.¹⁴⁴

House Bill 720 was delivered to Governor Brad Little, who signed it into law on March 31, 2022.¹⁴⁵ Because of the emergency provision in the legislation, it went into effect on July 1, 2022.¹⁴⁶

The bill was codified at Section 5-346 of the Idaho Code, in Chapter 3 (“Parties to Actions”) of Title 5 (“Proceedings in Civil Actions in Courts of Record”).¹⁴⁷ The statute states in full:

Notwithstanding any other provisions of law, environmental elements, artificial intelligence, nonhuman animals, and inanimate objects shall not be granted personhood in the state of Idaho. Nothing in this section revokes the status of legal person in or of any municipality, organization, corporation, or other legal or business entity recognized by the laws of the state of Idaho as such prior to July 1, 2022.¹⁴⁸

B. *Utah*

Less than two years after Idaho enacted the first nonpersonhood law, Utah followed suit. In January 2024, Republican representative Walt Brooks introduced House Bill 249, entitled “Utah Legal

138. *Id.* at 1:13:21, 1:17:37 (statement of Sen. Grant Burgoyne).

139. *Minutes of the S. State Affs. Comm. Mar. 18, 2022*, 66th Leg., 2d Reg. Sess. (Idaho Mar. 18, 2022), <https://perma.cc/ZA73-B35L>.

140. *Floor Debate on H.B. 720 Before the S. Chambers Mar. 23, 2022*, 66th Leg., 2d Reg. Sess. (Idaho 2022, at 3:17:38) (statement of Sen. Lee Heider).

141. *Id.* at 3:17:55.

142. *Id.* at 3:18:22 (statement of Sen. James Patrick).

143. *See id.* at 3:23:40 (statement of Sen. Stennett).

144. *House Bill 720*, *supra* note 131 (The Idaho Senate voted 30-5-0 to pass the bill).

145. An Act Relating to Personhood, 2022 Idaho Sess. Laws 1038.

146. *Id.*

147. IDAHO CODE § 5-346 (2025).

148. *Id.*

Personhood Amendments.”¹⁴⁹ The bill provided that “[n]otwithstanding any other provision of law, a governmental entity may not grant legal personhood to, nor recognize legal personhood in” a variety of enumerated entities, including “artificial intelligence,” “an inanimate object,” “a nonhuman animal,” and a number of environmental entities including “a body of water,” “land,” “real property,” “atmospheric gases,” “an astronomical object,” “weather,” “a plant,” “or any other member of a taxonomic domain that is not a human being.”¹⁵⁰

At the bill’s initial hearing before the House Business and Labor Standing Committee, Representative Brooks explained that the idea for the bill came from a constituent.¹⁵¹ Representative Brooks described his reaction to the idea: “I honestly just laughed; I thought it was silly that we’d have to identify what a person is.”¹⁵² But after Googling the concept of personhood, he became aware of how “attorneys and environmentalists” were “arming themselves” with legal personhood to “beat people over with” and “get some ground.”¹⁵³ To illustrate the inappropriate use of personhood as a “weapon,” Brooks mentioned a river in Brazil (presumably the Komi Memem in the Western Amazon¹⁵⁴) that was granted personhood, an elephant in New York (Happy at the Bronx Zoo¹⁵⁵) for whom a habeas corpus petition was filed, and cows used in the dairy industry, because “if you get a cow pregnant without its [sic] consent, that’s sexual harassment [sic].”¹⁵⁶

Representative Brooks criticized environmentalists for using personhood “as a weapon to arm themselves, to be able to be more effective in their accomplishes [sic]. And it’s just not appropriate.”¹⁵⁷ He likened the debate about personhood to those about gender

149. H.B. 249, 65th Leg., 2024 Gen. Sess. (Utah 2024).

150. *Id.*

151. *Hearing on H.B. 249 Before the H. Bus. & Lab. Comm. Jan. 23, 2024*, 65th Leg., Gen. Sess. (Utah 2024, at 14:38) [hereinafter *Utah H. Comm. Hearing*] (statement of Rep. Walt Brooks), <https://perma.cc/G8YN-QGUF>.

152. *Id.* at 14:45.

153. *Id.* at 15:00.

154. See Hannah Murdock, *This River Was Just Granted Legal Personhood. Here’s Why*, DESERET NEWS (Aug. 8, 2023), <https://perma.cc/YCA8-YPXF>.

155. See Nonhuman Rts. Project, Inc. *ex rel.* Happy v. Breheny, 197 N.E.3d 921 (N.Y. 2022).

156. *Utah H. Comm. Hearing*, *supra* note 151, at 15:30 (statement of Rep. Brooks). On the forced impregnation of cows in the dairy industry, see Marya Torrez, *Combating Reproductive Oppression: Why Reproductive Justice Cannot Stop at the Species Border*, 20 CARDOZO J.L. & GENDER 265, 285 (2014); see also Kathryn Gillespie, *Sexualized Violence and the Gendered Commodification of the Animal Body in Pacific Northwest US Dairy Production*, 21 GENDER PLACE & CULTURE 1321, 1322 (2014).

157. *Utah H. Comm. Hearing*, *supra* note 151, at 37:30 (statement of Rep. Brooks).

identity,¹⁵⁸ stating, “I think we need to identify, just like we have done with ‘What is a boy?’ ‘What is a girl?’ There’s going to come a time if we don’t get ahead of this, that we’re going to have the same arguments we had in the past.”¹⁵⁹ Brooks summarized the basic goal of the bill: “A person is a human entity and that’s what we’re trying to identify.”¹⁶⁰

Six Utah residents spoke in opposition to the bill, including Nan Seymour from Save Our Great Salt Lake, an organization that advocates for legal rights and legal personhood for the Great Salt Lake.¹⁶¹ Seymour argued that personhood could be an important means of protecting and restoring the lake and that House Bill 249 “obstructs a globally proven path to restoration and public safety, which is rights of nature.”¹⁶² Seymour described the lake as “sacred” with “an inherent right to live, flourish, and be replenished.”¹⁶³ Another resident, masters student Sadie Braddock, described to the committee the results of the Utah People and Environment Poll, a survey initiated by Utah State University to track statewide opinion on environmental issues.¹⁶⁴ The survey indicated that 60 percent of Utahns either somewhat support or strongly support a rights of nature approach to protecting the Great Salt Lake.¹⁶⁵

Committee member Representative Norm Thurston spoke in support of the bill, noting that “there are ways and tools that we have to protect animals and to ensure they are treated humanely,” but that “giving them the rights of a person creates a whole morass of problems that you now have to think through: guardianship and other things.”¹⁶⁶ For Representative Thurston, such problems “get[] really complicated,” and so expanding the category of personhood “just doesn’t work.”¹⁶⁷

158. In 2024, Utah legislators introduced eleven bills targeting transgender people. See *Utah*, TRANS LEGIS. TRACKER (2026), <https://perma.cc/37JT-DCRR>.

159. *Utah H. Comm. Hearing*, *supra* note 151, at 37:45 (statement of Rep. Brooks).

160. *Id.* at 38:25.

161. *About Us*, SAVE OUR GREAT SALT LAKE (2026), <https://perma.cc/WV9X-LZFG>.

162. *Utah H. Comm. Hearing*, *supra* note 151, at 18:15 (statement of Nan Seymour).

163. *Id.* at 17:35.

164. *Id.* at 25:50 (statement of Sadie Braddock).

165. Sadie Braddock, Addressing the Great Salt Lake Desiccation: Exploring Support for Alternative Frameworks on Rights of Nature and Multispecies Justice (2024) (M.S. thesis, Utah State University) (Digital Commons), <https://perma.cc/AUU2-BC56>.

166. *Utah H. Comm. Hearing*, *supra* note 151, at 36:00 (statement of Rep. Norm Thurston).

167. *Id.* at 36:25.

The committee voted overwhelmingly in favor of the bill,¹⁶⁸ sending it to the House floor, where Representative Brooks summarized the bill as “just putting a definition into our code [of] what a human person is and what one is not.”¹⁶⁹ In Representative Brooks’ summation, he appealed to a tautological understanding of personhood and again likened the fixedness of personhood to the fixedness of gender:

[T]he reality is this: A person is a person, and a tree is not. Neither is an animal, neither is a stream, neither is the air. . . . [W]e need to use definitions that are clear. . . . I bet you if you went back ten years ago, no one had a question about what a woman was and what a man was. But we do get confused. Here it is to make it clear what a human person is and those rights that come along with it.¹⁷⁰

The House voted 58-11-6 to pass the bill and send it to the Senate.¹⁷¹

At the hearing before the Senate Judiciary, Law Enforcement, and Criminal Justice Committee, Representative Brooks described the legislation as “identif[y]ing personhood as a human being. And that’s it.”¹⁷² Representative Brooks further conflated personhood with humanness, stating that the bill “clarifies what a human being is.”¹⁷³ He characterized campaigns to established personhood for nonhuman animals as efforts to “call [them] human being[s].”¹⁷⁴

The committee heard from Utah citizen Karen Andrews, one of Representative Brook’s constituents and a supporter of the bill, who referred to the legislation as “a critical guardrail” in preserving human uniqueness and exceptionalism.¹⁷⁵ According to Andrews, “if you change the definition of . . . ‘person’ to encompass an inanimate object, animals at the zoo, lakes, puddles, swamps, rodents, then you’re going to change what humanity is.”¹⁷⁶ Conservative activist Maryann Christensen,¹⁷⁷ the executive director of Utah Legislative Watch, also spoke in support of the bill: “It’s very important that

168. *Minutes of the H. Bus. & Lab. Comm. Jan. 23, 2024*, 65th Leg., Gen. Sess. (Utah Jan. 23, 2024), <https://perma.cc/55GZ-2CK8>.

169. *Floor Debate on H.B. 249 Before the H. Jan. 30, 2024*, 65th Leg., Gen. Sess. (Utah 2024, at 41:50) [hereinafter *Utah H. Floor Debate*] (statement of Rep. Brooks), <https://perma.cc/6NV8-YMHX>.

170. *Id.* at 47:45.

171. *HB 249 Utah Legal Personhood Amendments Final Passage*, UTAH STATE LEGISLATURE (Jan. 30, 2024), <https://perma.cc/L6UJ-S8D9>.

172. *Utah S. Comm. Hearing, supra* note 16, at 51:25 (statement of Rep. Brooks).

173. *Id.* at 53:00.

174. *Id.* at 53:10.

175. *Id.* at 57:15 (statement of Karen Andrews).

176. *Id.*

177. On Christensen’s political values, see *Maryann Christensen*, BALLOTPEDIA (2026), <https://perma.cc/4NA5-UZ75>.

human beings are esteemed in the law, that they are given protections of human beings, and that they have the rights of persons,” and that humans see themselves as “stewards” of nature and not “equals” of nature.¹⁷⁸

In opposition to the bill, Sarah Woodbury, a fifth-generation Utahn and master’s student in environmental sociology at Utah State University, emphasized the analytical distinction between legal personhood and humanness, and argued that “[a]warding legal personhood to natural entities honors indigenous knowledge, meets some of the very real ecological and social challenges of our time, and supports the well-being of citizens.”¹⁷⁹ Utah citizen John Meier argued that personhood is instrumental to an entity’s interests being represented in court, a procedural entitlement that corporations already enjoy, despite their nonhumanness.¹⁸⁰

In pushing back against the testimony of the bill’s opponents, Senator Michael Kennedy asked rhetorically, “Tell me: How do you give a cow a driver’s license or the right to vote?”¹⁸¹ He also erroneously rejected the fact that corporations have legal personhood, stating that although “corporations have been granted certain rights, . . . they have not been granted personhood as far as being considered in that fashion.”¹⁸² Kennedy postulated that the legislature could, if it wanted to, grant substantive rights to nature, including the right of the Great Salt Lake to “proliferate” and “be functional,” without granting it “rights to be a person.”¹⁸³ He indicated his potential sympathy to protections—even substantive rights—for nature, but without the appellation of “person.”¹⁸⁴

The Committee voted to send the bill to the Senate floor,¹⁸⁵ where it passed 19-6-4 without discussion or debate.¹⁸⁶ Governor Spencer Cox signed the bill into law on March 20, 2024.¹⁸⁷

178. *Utah S. Comm. Hearing, supra* note 16, at 1:05:00 (statement of Maryann Christensen).

179. *Id.* at 1:00:50 (statement of Sarah Woodbury).

180. *Id.* at 1:06:45 (statement of John Meier).

181. *Id.* at 1:04:05 (statement of Sen. Michael Kennedy).

182. *Id.* at 1:07:45. In fact, corporations are recognized as legal persons under federal law and the law of every state, including Utah. *See Santa Clara County v. S. Pac. R.R. Co.*, 118 U.S. 394, 396 (1886); UTAH CODE ANN. § 68-3-12.5(23)(d) (2025).

183. *Utah S. Comm. Hearing, supra* note 16, at 1:08:00 (statement of Sen. Kennedy).

184. *Id.* at 1:03:45.

185. *Id.* at 1:18:10.

186. *Floor Debate on H.B. 249 Before the S. Feb. 15, 2024*, 65th Leg., Gen. Sess. (Utah 2024, at 14:00).

187. In January 2025, the Nonhuman Rights Project filed a lawsuit challenging the nonpersonhood statute on the grounds that it violates various state constitutional provisions, including those concerning the separation of powers. Complaint for Declaratory Relief, *Ban v. State*, No. 250900869 (Dist. Ct.

House Bill 249 was codified at Sections 63G-32-101 and 102 of the Utah Code. Section 63G-32-101 provides definitions of relevant terms, while section 63G-32-102 states the act's prohibitions:

Notwithstanding any other provision of law, a governmental entity may not grant legal personhood to, nor recognize legal personhood in: (1) artificial intelligence; (2) an inanimate object; (3) a body of water; (4) land; (5) real property; (6) atmospheric gases; (7) an astronomical object; (8) weather; (9) a plant; (10) a nonhuman animal; or (11) any other member of a taxonomic domain that is not a human being.¹⁸⁸

The statute operates upon “governmental entities,” which the law defines to include courts, the state legislature, local governments, and government agencies with adjudicatory or rulemaking authority.¹⁸⁹ Unlike the Idaho statute, the Utah law defines the phrase “legal personhood.” Legal personhood means “the legal rights and obligations of an individual under the laws of this state” or “the legal rights and obligations of a person *other than an individual* under the laws of this state.”¹⁹⁰ The statute thus prohibits animals, nature, and AI from having the rights and duties of either natural persons or artificial persons.

IV. MAKING (NON)SENSE OF (NON)PERSONS

Having described the Idaho and Utah statutes, the Article now analyzes and critiques them.

First, Section IV.A identifies themes from the legislative histories that illuminate the political ideologies and discursive techniques that the nonpersonhood statutes' proponents adopted in advocating for their bills. I explain how these advocates share a far-right conservative political and religious belief system that resists expansions of personhood. These sponsors also used apocryphal examples of the harms of nonhuman personhood while misrepresenting the goals and arguments of the nonhuman rights movements. This exposition illustrates how the denial of nonhuman personhood derives from certain theological and political values, as well as how the resistance to recognizing nonhuman interests often stems from caricature-induced anxiety rather than a serious theoretical engagement with the rationales for expanding the scope of personhood.

Utah Jan. 29, 2025). In May 2025, the trial court dismissed the complaint on justiciability grounds. Memorandum Decision and Order on Defendants' Motion to Dismiss, *Ban v. Utah*, No. 250900869 (Dist. Ct. Utah May 8, 2025). The legal arguments in the lawsuit are outside the scope of this Article.

188. UTAH CODE ANN. § 63G-32-102 (2025).

189. UTAH CODE ANN. § 63G-32-101(2) (2025).

190. UTAH CODE ANN. § 63G-32-101(5) (2025) (emphasis added).

Second, Section IV.B argues that the nonpersonhood statutes clash with the predominant theories of legal personhood. Examining the dissonance between the ways that legislators, scholars, and judges think about legal personhood illuminates the fact that personhood lacks a consistent legal meaning.

Third, and following from the second point, Section IV.C argues that the dissonance between the nonpersonhood statutes and the leading theories of legal personhood illustrate the indeterminacy of legal personhood. That is, personhood lacks a coherent and stable meaning, a point made clear by this disjunction between jurisprudential personhood theories and the nonpersonhood statutes. The statutes show how personhood is a concept used and deployed to suit other political and axiological agendas, in which the underlying values are more significant than a consistent conception of personhood. Chief amongst these values is anthropocentrism, which centers human beings and defines them in opposition to categories such as “the animal,” “the natural,” “the artificial,” and “the material.” This practice normalizes and rationalizes violence against animals, nature, and even other human beings.

Finally, Section IV.D will offer a brief, practical takeaway from the preceding discussion. It argues that courts are wrong to claim that the extension of personhood to nonhumans is properly left to the legislative branch.

A. *Politics and Rhetoric in the Nonpersonhood Statutes*

Evaluating the legislative history described above illustrates a few important themes that shed light on the politics and rhetorical strategies that animate personhood debates. First, the proponents of the nonpersonhood bills share a theological and political perspective: far-right conservatism, an ideology that tends to resist expansion of the sphere of moral and legal consideration. Second, the sponsors gave false descriptions of the current state of the law, engaging in “moral panic” rhetoric to bolster the urgency of the bills. And third, the sponsors misrepresented the goals and intentions of the animal rights and rights of nature movements to undercut the serious moral and legal issues that nonhuman personhood raises.

1. *Political Alignment and Nonhuman Personhood*

Both nonpersonhood statutes were sponsored by extremely conservative Republican lawmakers, a biographical detail that reveals a deeper link between extreme conservatism and the politics of personhood.

The sponsor of Idaho’s nonpersonhood statute, Representative Tammy Nichols (now a state senator), is widely regarded as one of the country’s most conservative lawmakers. The editorial board of the Idaho Statesman described Nichols as “vitriol[ic]” and “an extreme antagonist who’s more interested in fighting culture wars against

‘wokeism,’ demonizing ‘the Left,’ vilifying public schools, and spreading conspiracy theories about the United Nations and librarians as ‘groomers’ than she is in being a serious legislator.”¹⁹¹ Nichols has been described as a “radical right-winger” “whose politics are so extreme that they call into question [her] capacity to perform the duties of . . . her office.”¹⁹² The Southern Poverty Law Center has described Nichols as an “[e]lected extremist” who has publicly associated with white supremacists and whose legislative agenda includes attacks on public schools, vaccines, and transgender children.¹⁹³ Nichols made national news when she shared a meme on X (then Twitter) advocating violence against various groups, including a local media outlet, Boise State University, the Idaho Conservation League, and other perceived enemies of the state.¹⁹⁴ Nichols shared another meme that “employ[ed] anti-Latino bias and rhetoric,” which was “only the latest in a pattern of hateful and xenophobic espousals by Rep. Nichols.”¹⁹⁵ Nichols has supported paramilitary militias, amongst other “jaunts into far-right nationalism.”¹⁹⁶

The sponsor of Utah’s nonpersonhood statute, Representative Walt Brooks, is far less of a firebrand than Representative Nichols, but his conservative bona fides are not in doubt. Representative Brooks touts his “legislation protecting the unborn, reducing regulations, [and] securing 2nd Amendment rights.”¹⁹⁷ He has “stood firm on the conservative principles that reflect our Southern Utah values.”¹⁹⁸ In response to a survey question that asked, “Is there a book . . . you would recommend to someone who wants to understand your political philosophy?,” Brooks responded, “Bible.”¹⁹⁹

Are Nichols’ and Brooks’ religious and political beliefs relevant to their position on personhood? Is nonhuman personhood a theological and political issue? It seems the answer is yes.

191. *Our Endorsement in Race for Idaho Senate Between Tammy Nichols, Lori Bishop*, IDAHO STATESMAN: EDS. (May 16, 2024), <https://perma.cc/Q35M-EJR4>.

192. Leonard Hitchcock, *Opinion: Sen. Nichols and the Politics of Vaccines*, IDAHO ST. J. (Mar. 31, 2023), <https://perma.cc/KD4N-L4YY>.

193. Jason Wilson, *Idaho Lawmaker Tammy Nichols Pals with Extremists*, S. POVERTY L. CTR.: HATEWATCH (Mar. 15, 2023), <https://perma.cc/T36S-BMNF>.

194. Nichols for Idaho (@NicholsForIdaho), X (Oct. 12, 2021, 13:56 ET), <https://perma.cc/P3ZT-QC9U>; see also Keith Ridler, *Idaho Lawmaker Posts Meme Appearing to Advocate Violence*, ASSOCIATED PRESS (Oct. 13, 2021), <https://perma.cc/D3J8-CDGY>.

195. Arturo Dominquez, *Idaho Lawmaker Shares Anti-Latino Meme Ahead of Election*, LATINO REBELS: OP. (Sep. 28, 2022), <https://perma.cc/S49T-55CP>.

196. Center for Media and Democracy, *Here Are Five of ALEC’s Most Far-Right Members*, EXPOSED BY CMD (Aug. 5, 2022), <https://perma.cc/5L24-2X95>.

197. WALT BROOKS FOR ST. REPRESENTATIVE DIST. 75 (2026), <https://perma.cc/8Z4V-YCBX>.

198. *Id.*

199. *Walt Brooks*, BALLOTPEDIA (2026), <https://perma.cc/D5F2-WWB8>.

While personhood can be conceptualized secularly, the concept also has religious overtones and origins. It marks out the boundaries of who matters, which, for Christian fundamentalists, derives from the divine. Christian bioethicist Dennis Sullivan argues that “[t]he Christian affirmation of human personhood” constitutes “a philosophical and theological honoring of human beings made in the image and likeness of a Creator-God,”²⁰⁰ a position reflected in the Bible,²⁰¹ the book that Representative Walt Brooks says encapsulates his political philosophy.²⁰² Genesis links humanness with godliness, making it unsurprising that for politicians like Brooks, the person is exclusively human.

Exclusionary personhood has a long history on the far right. Far-right political movements have historically resisted full legal personhood for Black people, immigrants, and women.²⁰³ Inversely, the animal rights movement and the rights of nature movement are more aligned with the trajectory of progressive politics, as new frontiers in the egalitarian project of expanding moral consideration and legal entitlements to hitherto marginalized and excluded groups.²⁰⁴ (Whether the same can be said of AI rights remains to be seen. The movement for AI personhood has been characterized as both progressive and reactionary, and its politics remain ambiguous.)²⁰⁵

200. Dennis M. Sullivan, *Defending Human Personhood: Some Insights from Natural Law*, CHRISTIAN SCHOLAR'S REV. (Apr. 15, 2008), <https://perma.cc/29YL-GUBA>.

201. *Genesis* 1:27 (New Revised Standard Version) (“So God created humankind in his image, in the image of God he created them”); see Lynn White, Jr., *The Historical Roots of Our Ecologic Crisis*, 155 SCIENCE 1203, 1205 (1967) (contending that “Christianity is the most anthropocentric religion the world has seen”). *But see generally* ANDREW LINZEY, ANIMAL THEOLOGY (1994) (defending animal rights from a Christian perspective).

202. *Walt Brooks*, *supra* note 199.

203. See, e.g., COREY ROBIN, THE REACTIONARY MIND: CONSERVATISM FROM EDMUND BURKE TO DONALD TRUMP 4, 6 (2d ed. 2018); see also JASON STANLEY, HOW FASCISM WORKS: THE POLITICS OF US AND THEM 78–92 (2018) (describing how far-right fascism relies on hierarchies based on race, gender, and nationality).

204. See, e.g., Emily Atkin, *Why Animal Rights is the Next Frontier for the Left*, NEW REPUBLIC (Mar. 14, 2019), <https://perma.cc/XGE3-L9AC>; Astra Taylor & Sunaura Taylor, *If the Left is Serious About Saving Democracy, There's One More Cause to Add to the List*, VOX (Aug. 7, 2024), <https://www.vox.com/future-perfect/363069/supreme-court-chevron-loper-bright-animal-rights-meat-left>; Jim Hightower, *Vox Populist: Protecting the Rights of Nature*, PROGRESSIVE MAG. (Mar. 24, 2022), <https://perma.cc/N4RY-XMXZ>.

205. On the ambiguous profile of supporters of robot rights, see Maartje M.A. De Graaf, Frank A. Hindriks & Koen V. Hindriks, *Who Wants to Grant Robots Rights?*, 8 FRONTIERS ROBOTICS & AI 1, 11 (2023). For an argument for robot rights that sounds in liberal inclusivity, see John Danaher, *Welcoming Robots Into the Moral Circle: A Defence of Ethical Behaviourism*, 26 SCI. & ENG'G ETHICS 2023, 2025 (2020). For a progressive argument against rights for robots, see

To be sure, there are certainly conservative supporters of animal welfare and environmentalism.²⁰⁶ But empirical studies have demonstrated a strong correlation between conservatism and opposition to animal rights and environmentalism, as well as the inverse—support for animal rights correlates to liberalism.²⁰⁷ The politics of the nonhuman personhood bills offer further evidence of this phenomenon. In both Idaho and Utah, the votes split largely along party lines, with Republicans supporting nonpersonhood for nonhuman entities and Democrats opposing the bills. Cumulatively, Republicans voted 162-5 for the nonpersonhood bills, while Democrats voted 34-3 against them.²⁰⁸ This analysis suggests that

Abeba Birhane, Jelle van Dijk & Frank Pasquale, *Debunking Robot Rights Metaphysically, Ethically, and Legally*, 29 FIRST MONDAY (2024), <https://perma.cc/349N-BEWH> (“The idea of robot rights . . . acts as a *smoke screen*, allowing theorists to fantasize about benevolently sentient machines, while so much of current AI and robotics is fuelling surveillance capitalism, accelerating environmental destruction, and entrenching injustice and human suffering.”).

206. See generally MATTHEW SCULLY, *DOMINION: THE POWER OF MAN, THE SUFFERING OF ANIMALS, AND THE CALL TO MERCY* (2002); John Connor Cleveland, *Why Animal Welfare Is a Conservative Cause*, NAT’L REV. (Apr. 19, 2016), <https://perma.cc/52S3-2YKC>; BENJI BACKER, *THE CONSERVATIVE ENVIRONMENTALIST* (2024).

207. See, e.g., Yon Soo Park & Benjamin Valentino, *Animals Are People Too: Explaining Variation in Respect for Animal Rights*, 41 HUM. RTS. Q. 39, 42 (2019) (“At the individual level, we find that conservatives and more religiously active Americans are less likely to support animal rights. We also find strong evidence that support for animal rights links to support for disadvantaged or marginalized human groups, including LGBT individuals, racial and ethnic minorities, undocumented immigrants, and the poor.”); Mark R. Hoffarth, Flávio Azevedo & John T. Jost, *Political Conservatism and the Exploitation of Nonhuman Animals: An Application of System Justification Theory*, 22 GRP. PROCESSES & INTERGROUP RELS. 858, 872 (2019) (“[W]e observed that political conservatism (vs. liberalism) . . . was negatively associated with concern for animal welfare—measured in terms of support for animal rights, endorsement of speciesism, and meat consumption.”); E. Keith Smith, M. Julia Bognar & Adam P. Mayer, *Polarisation of Climate and Environmental Attitudes in the United States, 1973-2022*, 3 NPJ CLIMATE ACTION 1, 5–6 (2024) (“We find that within the contemporary citizenry, the environmental and climate change beliefs and attitudes of Americans broadly exhibit symmetric patterns of polarisation. Across seven distinct measures, Democrats are currently more likely to have heightened environmental and climate change beliefs and attitudes (in comparison to the average American), which is mirrored by decreased likelihood to have environmental and climate change beliefs and attitudes within Republicans.”).

208. See *House Bill 720*, *supra* note 131 (Idaho House and Senate votes); *HB 249 Utah Legal Personhood Amendments*, UTAH LEG. (Jan. 30, 2024), <https://perma.cc/L6UJ-S8D9> (Utah House votes); *HB 249 Utah Legal Personhood Amendments*, UTAH LEG. (Feb. 15, 2024), <https://perma.cc/SY68-ZMZZ> (Utah Senate votes).

the nonpersonhood statutes are animated by a conservative political philosophy that resists expanding personhood to new candidates.

2. *Moral Panic, Misrepresentation, and Nonhuman Personhood*

Another notable phenomenon from the passage of the nonpersonhood statutes is the rhetorical tool of exaggerating their urgency by describing misleading cases of personhood run amok. The Idaho bill even formally declared the existence of an emergency, necessitating the law's expedited effective date.²⁰⁹ In both Idaho and Utah, the sponsors mischaracterized the state of the law and fabricated scenarios to promote their legislation.²¹⁰

Such practices create what sociologist Stanley Cohen termed “moral panic,” a situation in which “[a] condition, episode, person or group of persons emerges to become defined as a threat to societal values and interests.”²¹¹ In ginning up a moral panic, opponents of an idea frame its proponents as deviant and menacing, a threat to the established order. According to Cohen, one of the methods of distortion used to construct a moral panic is “exaggerating grossly the seriousness of the events.”²¹²

In Idaho, Representative Nichols gave three examples of nonhuman personhood to illustrate its dangers: the tree that owns itself, Sandra the orangutan, and a robot brothel. All three examples mischaracterized the state of the law and the threat posed by nonhuman personhood.

First, Representative Nichols asserted that “a tree [was] planted on a property and the owner died and that tree has now been given personhood status for that property—the home and everything that goes around it.”²¹³ She was referring to, “the tree that owns itself,” a famous oak tree in Athens, Georgia.²¹⁴ According to local lore, Colonel W.H. Jackson had grown up with the tree and feared it would be cut

209. H.B. 647, 66th Leg., 2d Reg. Sess. § 2 (Idaho 2022).

210. See *infra* notes 238–243 and accompanying text.

211. STANLEY COHEN, *FOLK DEVILS AND MORAL PANICS* 1 (Routledge Classics ed. 2011) (1972).

212. *Id.* at 26.

213. *Idaho H. Comm. Hearing 1, supra* note 1, at 22:00 (statement of Rep. Nichols).

214. See *Deeded to Itself*, ATHENS WKLY. BANNER, Aug. 12, 1890; *A Tree That Owns Itself*, 5 PLANT WORLD 246, 246–47 (1902); Chase McGee & Jake Trover, *The Tree That Owns Itself: A Story Rooted in the South's Complex History*, GA. PUB. BROAD. (Aug. 21, 2020), <https://perma.cc/8X4W-UDEY>. In fact, the current tree is the “Son of the Tree that Owns Itself.” In 1942, the original tree blew down in a windstorm. The Junior Ladies Garden Club grew a sapling from an acorn that had fallen from the original tree, then planted it in the original location. See *The Tree That Owns Itself*, VISIT ATHENS, GA (2026), <https://perma.cc/W5WL-7FAW>; Andrea Simmelink, *The Story About the Tree That Owns Itself*, PARLIAMENT THINGS (Apr. 20, 2017), <https://perma.cc/6MCM-4Q32>.

down after his death, so in 1832 he reportedly placed a deed on record at the courthouse, which stated:

W.H. Jackson for and in consideration of the great affection which he bears said tree, and his great desire to see it protected has conveyed, and by these presents do convey unto the said oak tree entire possession of itself and of all land within eight feet of it on all sides.²¹⁵

By 1890, when the local newspaper made the first public mention of the tree, “[t]here [we]re only a few in the city who kn[e]w it, as it was done so long ago as to pass out of the recollection of nearly all.”²¹⁶ But in the time since then, the tree that owns itself has become an important part of the culture of Athens, Georgia.²¹⁷

Representative Nichols’ characterization of the tree, however, is inaccurate. The tree has not “been given personhood status,” nor does it own “the home and everything around it.”²¹⁸ In fact, some speculate that the story is merely a legend and no deed ever existed.²¹⁹ No one has ever challenged the enforceability of the conveyance, nor has any judge ever adjudicated the tree’s legal status.²²⁰ Instead, “the Athens community has recognized the tree’s title to the surrounding land and has taken measures to protect the tree.”²²¹ Nichols’ example of personhood run amok turns out to be a legal non-issue that illustrates how communities can collectively rethink property to foster coexistence with the natural world in a way that celebrates rather than threatens local identity.

Representative Nichols’ second example of the dangers of personhood was the case of Sandra the orangutan.²²² Sandra was born at a zoo in Germany in 1986, then moved to another zoo in Argentina in 1994.²²³ In 2014, an Argentinian animal rights group, Asociación de Funcionarios y Abogados por los Derechos de los Animales (AFADA), petitioned for a writ of habeas corpus on Sandra’s behalf, followed by a subsequent protective action.²²⁴ A federal appellate court held, “based on a dynamic, non-static legal interpretation,” that

215. *Deeded to Itself*, *supra* note 214 (purporting to quote from deed).

216. *Id.*

217. McGee & Trover, *supra* note 214.

218. *Idaho H. Comm. Hearing 1*, *supra* note 1, at 22:00 (statement of Rep. Nichols).

219. *See* Simmelink, *supra* note 214.

220. *See, e.g., Deeded to Itself*, *supra* note 214 (“As it is now no one cares how the point would be decided if carried to law, as nobody would be benefitted.”); *The Tree That Owns Itself*, *supra* note 214 (“Its property rights have never been questioned.”).

221. *The Tree That Owns Itself*, *supra* note 214.

222. *Idaho H. Comm. Hearing 2*, *supra* note 1, at 25:45 (statement of Rep. Nichols).

223. *See* Franceschini, *supra* note 79, at 115–16.

224. *Id.* at 116.

“animals must be recognized as the subject of rights” and as “holders of rights.”²²⁵ An administrative court subsequently agreed, holding that Sandra was a nonhuman person and a subject of rights.²²⁶ An appellate court vacated that portion of the decision, but Sandra was ultimately freed from the Buenos Aires Zoo and sent to live at the Center for Great Apes, a sanctuary in Wauchula, Florida, where she still resides.²²⁷

According to Representative Nichols, when Sandra was brought to Florida, there was an “agreement . . . that its [sic] personhood status would follow it [sic] into our country.”²²⁸ Again, Representative Nichols exaggerated the case. First, Sandra’s personhood was vacated by the Argentinian appellate court, so it was not the law, even in Argentina.²²⁹ Second, no “agreement” exists to maintain Sandra’s ostensible personhood, nor is it evident who could make such an agreement or on what terms it would be legally enforceable. Sandra’s recognition by the Argentinian courts as a person and subject of rights does not mean those same rights (or even her legal status as a person) travel with her to a new jurisdiction. In any event, in the years since Sandra moved to Florida, her personhood has not been at issue. This example, meant to illustrate the flaws of personhood, is simply the story of an orangutan living peacefully at a sanctuary after a lifetime of inhumane captivity.

The final example of the dangers of nonhuman personhood that Representative Nichols offered was a robot brothel in Texas.²³⁰ A robot brothel is, as the name indicates, a business where clients pay money to engage in sex acts with highly technological sex toys. Or, as one reporter put it, “[i]t’s like a video arcade, but for sex robots.”²³¹ In 2018, a Canadian company called KinkySdollS announced plans to open the first robot brothel in the United States, in Houston, Texas.²³² But once the news broke, the Houston City Council acted quickly, unanimously passing a resolution to prohibit such businesses in the

225. Juzgado de Primera Instancia [1a Inst.] [Court of First Instance], 06/07/2022, “Ledesma, Diego Alberto Chamber 1 - Animal Protection Act / Abuse or Acts of Cruelty” (July 6, 2022) (Arg.), <https://perma.cc/E4C7-AFV9> (quoting decision in Sandra’s case) (emphasis omitted).

226. Franceschini, *supra* note 79, at 117.

227. *Id.* at 118; see *Orangutan Sandra Granted Personhood Settles into New Florida Home*, GUARDIAN (Nov. 7, 2019), <https://perma.cc/29EF-WCHF>; *Sandra*, CTR. FOR GREAT APES (2026), <https://perma.cc/WS25-YTEX>.

228. *Idaho H. Comm. Hearing 2*, *supra* note 1, at 26:00 (statement of Rep. Nichols).

229. See Franceschini, *supra* note 79, at 117–18.

230. *Idaho H. Comm. Hearing 2*, *supra* note 1, at 26:25 (statement of Rep. Nichols).

231. Dan Solomon, *Everything You Should Know About the Proposed Sex Robot Brothel in Houston*, TEX. MONTHLY (Oct. 3, 2018), <https://perma.cc/6V6P-2RND>.

232. *Id.*

city, and Harris County followed suit to prevent the brothel's construction outside city limits.²³³ KinkySdolls scrapped the project and seems to have since gone out of business.²³⁴

To Representative Nichols, this incident was evidence not of the responsiveness of local governments or the complex questions of sexuality in the age of AI,²³⁵ but of the dangers of nonhuman personhood. Her primary concern was that the sex robots might have been considered “employees” who had rights.²³⁶ Nichols asserted, “they were getting ready to give workers’ rights to those robots.”²³⁷

As with the tree and the orangutan, though, Nichols was wrong. First, there is no indication that anyone had even mentioned the “rights” or “personhood” of the sex robots during the controversy in Houston. Second, it is not clear who Nichols believes was trying to “give workers’ rights to those robots” or even who would have a motive to do so. Certainly not KinkySdolls, the company that proposed the project. If its sex dolls were considered employees with workers’ rights, it would have to obtain their consent, pay them wages and overtime, and ensure safe working conditions. And there is no indication that the city wanted to confer personhood on the robots as a means to prevent the project; it had a much more direct approach, which was to ban it outright. Thus, the claim that Houston’s sex robots were about to become legal persons with labor rights is downright apocryphal.

Representative Nichols’ parade of horrors—trees that own houses, immigrant orangutans importing their personhood status, and sex robots who can sue their employers—illustrates the kind of moral panic employed to prevent serious deliberation about whether and how the legal system should entertain claims of legal inclusion on behalf of nonhuman entities. Of course, nonhuman personhood *would* have far-reaching consequences that could upend the way we use animals, nature, and AI. But legislators should honestly engage those consequences instead of fabricating outlandish ones.

In addition to misinforming their colleagues about the cases in which nonhuman personhood is at issue, the sponsors and supporters of the nonpersonhood statutes distorted the objectives of proponents of nonhuman personhood to cast them as “absurd and ridiculous.”²³⁸

233. Florian Martin, *Is This the End for a Sex Robot Brothel in Houston?*, HOUS. PUB. MEDIA (Oct. 17, 2018), <https://perma.cc/W488-UFAV>.

234. The company’s website is no longer active.

235. *See generally* ROBOT SEX: SOCIAL AND ETHICAL IMPLICATIONS (John Danaher & Neil McArthur eds., 2017).

236. *See Idaho H. Comm. Hearing 2, supra* note 1, at 26:45 (statement of Rep. Nichols).

237. *Id.* at 26:35.

238. *Idaho S. Comm. Hearing, supra* note 132, at 1:13:24 (statement of Sen. Stennett).

The primary method of distortion was to allege that those who advocate for legal personhood on behalf of animals, nature, and AI want to give those entities *the exact same rights as human beings*. In Utah, Representative Brooks claimed that the animal rights movement and the rights of nature movement promote “the idea that [animals and nature are] actually a human person.”²³⁹ During a hearing, Representative Brooks stated:

[T]his [bill] clarifies what a human being is, because it is happening right now, whether an elephant wants to get out of jail—or the zoo in New York—so they want to call it a “human being.” Or they don’t want cows to be able to give milk because that’s abusive in their point of view, so they want to call it a “human being.” . . . But calling it a human being is not the correct or appropriate way.²⁴⁰

Like Representative Brooks in Utah, Representative Nichols in Idaho also claimed that proponents of personhood for nature, animals, and AI wanted to “mak[e] my rights, your rights, our children, grandchildren’s rights co-equal to animals, artificial intelligence, and so on.”²⁴¹ Such advocates are, according to Nichols, “using the status of personhood to give co-equal rights that you and I have that are granted to us through the Bill of Rights and the Constitution.”²⁴²

Another Utah legislator, Senator Michael Kennedy, incredulously asked supporters of nonhuman personhood to explain how they would “give a cow a driver’s license or the right to vote.”²⁴³

But advocates for nonhuman personhood do not argue that animals, nature, or AI should have the exact same rights as human beings or, as Representative Brooks claimed, that elephants and cows should be reclassified as human beings. Advocates for legal personhood for animals do not even agree on which rights animals should have at all. Some argue that animals should have the right not to be property;²⁴⁴ others focus on the right to bodily liberty;²⁴⁵ others

239. *Utah H. Comm. Hearing, supra* note 151, at 15:30 (statement of Rep. Brooks).

240. *Utah S. Comm. Hearing, supra* note 16, at 53:00 (statement of Rep. Brooks).

241. *Idaho H. Comm. Hearing 2, supra* note 1, at 25:00 (statement of Rep. Nichols).

242. *Idaho S. Comm. Hearing, supra* note 132, at 1:06:36 (statement of Rep. Nichols).

243. *Utah S. Comm. Hearing, supra* note 16, at 1:03:45 (statement of Sen. Kennedy).

244. See GARY L. FRANCIONE, INTRODUCTION TO ANIMAL RIGHTS: YOUR CHILD OR THE DOG xxxi (2000).

245. See WISE, RATTLING THE CAGE, *supra* note 71, at 7.

on the right to flourish;²⁴⁶ others on procedural rights to enforce legal entitlements.²⁴⁷ Some even argue for the extension of the basic human rights framework to animals.²⁴⁸ But none argue that humans and animals should have precisely the same rights.²⁴⁹ As philosopher Steve Sapontzis puts it, “we have interests nonhuman animals do not, and vice versa, and, consequently, . . . we need protections they do not, and vice versa.”²⁵⁰ Humans have an interest in religious liberty that chickens seem to lack; chickens have an interest in stretching their wings, an interest that humans, as wingless beings, lack.²⁵¹ For this reason, advocates of animal rights endorse tailoring such rights to, as Martha Nussbaum puts it, “the shared terrain of vulnerable, striving animality that each species inhabits in its own way.”²⁵² While some animal advocates support fundamental legal rights for animals, such as rights to life, liberty, and basic needs, this is hardly the same thing as granting animals “co-equal” rights,²⁵³ designating animals “human beings,”²⁵⁴ or “giv[ing] a cow a driver’s license or the right to vote.”²⁵⁵

The same can be said for the rights of nature. The rights of nature movement has called for various substantive, procedural, and electoral rights, including the procedural right to have nature’s interests considered in decision-making processes and substantive rights for particular ecological entities to “exist, flourish, and naturally evolve.”²⁵⁶ But no one is suggesting that legal personhood for nature would give it the same fundamental rights as human beings. As Stone observed, “to say that the environment should have

246. See MARTHA C. NUSSBAUM, JUSTICE FOR ANIMALS: OUR COLLECTIVE RESPONSIBILITY 97 (2022).

247. See Liebman, *supra* note 45, at 1728.

248. See PAOLA CAVALIERI, THE ANIMAL QUESTION: WHY NONHUMAN ANIMALS DESERVE HUMAN RIGHTS 139 (Catherine Woolard trans., 2001).

249. See, e.g., FRANCIONE, *supra* note 244, at xxxi.

250. Steve F. Sapontzis, *Aping Persons—Pro and Con*, in THE GREAT APE PROJECT: EQUALITY BEYOND HUMANITY 269, 273 (Paola Cavalieri and Peter Singer eds., 1993).

251. *Id.*

252. NUSSBAUM, *supra* note 246, at 102.

253. *Idaho H. Comm. Hearing 2*, *supra* note 1, at 25:00 (statement of Rep. Nichols).

254. *Utah S. Comm. Hearing*, *supra* note 16, at 53:00 (statement of Rep. Brooks).

255. *Id.* at 1:03:45 (statement of Sen. Kennedy).

256. Warner & Lillquist, *supra* note 80, at 339, 358 (quoting Lake Erie Bill of Rights); see also Ryan, Curry & Rule, *supra* note 80, at 2512 (“[T]here is great diversity in the type of rights granted by different rights of nature initiatives. . . . [T]he laws generally fall into three categories: legal personhood, nature-specific rights, and strong environmental management obligations to protect designated natural objects.”).

rights is not to say that it should have every right we can imagine, or even the same body of rights as human beings have.”²⁵⁷

Likewise for AI. While those concerned that AI may gain consciousness and sentience argue that such systems would be entitled to moral consideration and possibly legal personhood, the substance and comparative weight of AI’s rights necessarily remains speculative and hypothetical.²⁵⁸ For those who favor rights for robots, one study “found that people are more willing to grant basic robot rights such as access to energy and the right to update to robots than sociopolitical rights such as voting rights and the right to own property.”²⁵⁹

Although advocates of nonhuman personhood propose far-reaching changes to the legal system, in some cases even demanding a degree of formal “equality” with human beings, they are not proposing identical rights, the full extension of the Constitution to nonhumans, or the wholesale assimilation of nonhuman entities into the category of the “human.” But the assertions that this is their goal, like the apocryphal examples of nonhuman personhood put forth by Representative Nichols, heightens the moral panic around the project of rethinking human exceptionalism within the legal system. Ultimately, this kind of misrepresentation has fostered the passage of legislation that firmly reinscribes the line between humans and the rest of the world.

B. The Disjunction of the Nonpersonhood Statutes with Theories of Legal Personhood

The previous Section documented the politics and rhetorical strategies of the nonpersonhood statutes’ proponents. I turn now to a deeper question: When these legislators and their bills talk about persons, what are they talking about?²⁶⁰ Are they using the concept the same way as it is used elsewhere in the law? No; in fact, there is a disjunction, a lack of coherence, between the statutes and the predominant theories of legal personhood.

257. See, e.g., Stone, *supra* note 84, at 457.

258. DAVID J. GUNKEL, *PERSON, THING, ROBOT: A MORAL AND LEGAL ONTOLOGY FOR THE 21ST CENTURY AND BEYOND* 111 (2023) (noting that AI rights and duties “can be and will most certainly be different from the set of rights and obligations we currently recognize for natural human persons”).

259. De Graaf, Hindriks & Hindriks, *supra* note 205, at 11.

260. See Dave Fagundes, Note, *What We Talk About When We Talk About Persons: The Language of a Legal Fiction*, 114 HARV. L. REV. 1745, 1747 (2001) (observing that there is an “absence of a theoretically unified judicial approach to legal personality” and describing “the theoretical unmooring and doctrinal disarray of the American law of persons”).

1. *Nonpersonhood Statutes and the Orthodox Theory*

As discussed above, the orthodox theory of legal personhood posits that persons are simply subjects of rights and/or duties.²⁶¹ As such, any entity that holds legal rights (either because some lawgiver has positively conferred them or because the subject is entitled to them under natural law) or that has legal duties (because it can be held civilly or criminally liable) is a legal person.²⁶² The Utah nonpersonhood statute in particular seems to adopt the orthodox theory of personhood. It defines legal personhood to mean “the *legal rights and obligations*” of individuals and other persons “under the laws of this state.”²⁶³

But under the orthodox theory, if animals, nature, inanimate objects, or AI have either rights or duties under the laws of the state, then they are *already* legal persons of a sort. This is where the conflict arises between the orthodox theory and the nonpersonhood statutes: the statutes deny personhood to current rights-holders, namely nonhuman animals, nature, and AI.

Animals are the most obvious case. Both Utah and Idaho already grant both positive and negative rights to animals.²⁶⁴ Utah grants some animals the positive right to “necessary food, water, care, [and] shelter” and the negative right to be free from “torture,” injury, and unauthorized killing.²⁶⁵ The same is true of Idaho. Idaho’s anticruelty law creates a positive entitlement to “wholesome food,” “clean water,” and “proper care and attention,” and a negative right for animals to be free from “cruelty” and “torture.”²⁶⁶

These anticruelty protections constitute rights, because they impose enforceable legal duties on humans to behave in a particular way towards animals, and they do so for the sake of the animals themselves.²⁶⁷ If rights make the person, as the orthodox view holds, then these statutory rights to be free from cruelty, torture, and deprivation make animals limited legal persons in Idaho and Utah. And yet the nonpersonhood statutes dictate otherwise.

261. *See supra* Section I.A.

262. *See supra* Section I.A.

263. UTAH CODE ANN. § 63G-32-101(5) (2024) (emphasis added).

264. To be clear, both states have inadequate animal protection laws. *See ANIMAL LEGAL DEF. FUND, U.S. STATE ANIMAL PROTECTION LAWS RANKING REPORT 3* (2024), <https://perma.cc/M8U4-M8RV> (ranking Utah 44th and Idaho 48th in the country).

265. *See* UTAH CODE ANN. § 76-13-202(2)(a), (c); § 76-13-203(a), (c).

266. *See* IDAHO CODE §§ 25-3504 to 3504A, 25-3510 to 3511 (2025).

267. Liebman, *supra* note 45, at 1769–72 (characterizing anti-cruelty laws as rights-conferring statutes); *see* Stucki, *supra* note 45, at 543; *see also* Cass R. Sunstein, *Standing for Animals (with Notes on Animal Rights)*, 47 UCLA L. REV. 1333, 1335 (2000) (“[I]t is entirely clear that animals have legal rights, at least of a certain kind.”).

The same argument could be made on behalf of nature, which is also subject to protections under state laws in Idaho and Utah.²⁶⁸ The supporters of the legislation curiously acknowledged that nature may be a subject of rights, but not a legal person. Senator Kennedy stated that the Utah legislature could grant the Great Salt Lake some substantive rights, including the right to “proliferate” and “be functional,” but it need not grant it “rights to be a person.”²⁶⁹ Likewise, the sponsor, Representative Brooks stated that nature is already a rights-bearing entity: “If we want to enhance the *rights* of other entities like a lake or stream, this body can do that and *we have in the past*.”²⁷⁰ They thus conceive of nature as a rights-holder, but not a person, which clashes with the orthodox theory.

Finally, the same point can be made for some AI. Although AI does not have legal rights per se, some corporations are themselves operated through AI at varying levels of integration at both the managerial and operational levels.²⁷¹ As Linda Halsey argues, “Idaho’s provision banning personhood for AI . . . conflicts with corporate personhood in the context of autonomous corporations.”²⁷²

Both statutes thus confound the orthodox view of personhood. They deny legal personhood to entities that already hold rights under positive state law. And they preclude the mantle of personhood for these entities in the future, even if they were to obtain more substantive legal rights or be bound by legal duties in the future.

2. *Nonpersonhood Statutes and the Bundle Theory*

If the nonpersonhood statutes are inconsistent with orthodox personhood, are they then consistent with its main contemporary rival, Visa Kurki’s bundle theory? The bundle theory posits that personhood is a cluster concept, a status that arises from an imprecise constellation of legal positions or “incidents of personhood” consisting of various procedural and substantive rights and obligations.²⁷³ The bundle theory does allow that an entity that holds rights might still

268. On legal protections for the environment in Utah and Idaho, see UTAH CODE tit. 19 (2025); IDAHO CODE tit. 39, ch. 1 (2025). Whether these statutes confer rights to nature in the same way that the anticruelty statutes confer rights to animals is a question beyond the scope of this Article. Such an analysis would require a close reading of the statutes and their legislative history to determine for whose benefit the statutes were enacted and whether they are motivated in part by a belief in the intrinsic value of nature. *But cf.* Liebman, *supra* note 45, at 1768–76 (analyzing whether animal protection laws create animal rights).

269. *Utah S. Comm. Hearing*, *supra* note 16, at 1:07:45 (statement of Sen. Mike Kennedy).

270. *Utah H. Floor Debate*, *supra* note 169, at 48:15 (statement of Rep. Walt Brooks) (emphasis added).

271. Halsey, *supra* note 8, at 69; *see* Reyes, *supra* note 103, at 1499.

272. Halsey, *supra* note 8, at 86.

273. *See supra* Section I.B.

not have a sufficient set of incidents to be a legal person in general terms.

But here too the nonpersonhood statutes are confounding. A key insight of the bundle theory is the idea that personhood is not a unitary status to be *granted* or *withheld* in a single judicial or legislative act, but an appellation that *emerges*, one might say epiphenomenally, from the subject's endowment "with a *significant number* of the incidents of legal personhood."²⁷⁴ These incidents include passive ones, such as the protection of fundamental interests or the capacity to own property, as well as active ones, such as the ability to engage in legal activities like contract or to be held liable for torts and crimes.²⁷⁵ Entities may have some of these incidents, but not others; thus "[t]here is no exact border between legal personhood and nonpersonhood."²⁷⁶ Yet that is precisely the border that the nonpersonhood statutes purport to establish and what they presume when they prohibit the "granting" or "recognizing" legal personhood for nonhumans.²⁷⁷

Since animals, nature, AI, and inanimate objects cannot be "granted" personhood in Idaho and Utah, what does that mean for the various incidents of personhood that the bundle theory identifies? Does it mean they are prohibited from having *any* of the incidents of legal personhood? That they are prohibited from having *all* of the incidents? That they are prohibited from having whatever the "*significant number*" of incidents is that would tip the scale from nonperson to person?

None of these options are satisfactory.

First, to say that nonhumans cannot have *any of the incidents* of legal personhood would be inconsistent with laws already passed in Idaho and Utah, for essentially the same reason discussed above regarding the orthodox theory.²⁷⁸ For example, one of the passive incidents of legal personhood is protection of life, liberty, and bodily integrity.²⁷⁹ But animals already have these protections under state law in both states, at least to a degree. In Idaho, it is illegal to kill an animal on purpose without just cause.²⁸⁰ Likewise, in Utah, it is

274. KURKI, A THEORY OF LEGAL PERSONHOOD, *supra* note 23, at 124 (emphasis added).

275. *Id.* at 97–118.

276. *Id.* at 94; *see also id.* at 121 ("I have repeatedly maintained that there is no clear-cut division between legal persons and nonpersons.")

277. IDAHO CODE § 5-346 (2025); UTAH CODE ANN. § 63G-32-102 (2025).

278. *See supra* Section IV.B.1.

279. KURKI, A THEORY OF LEGAL PERSONHOOD, *supra* note 23, at 97.

280. Idaho Code Section 25-3504 prohibits "cruelty" to animals. Section 25-3502(5) defines the terms "cruel" and "cruelty" to include "[t]he intentional and malicious infliction of . . . death" and "[t]o maliciously kill" an animal. Section 25-3502(10) defines "maliciously" as "the intentional doing of a wrongful act without just cause or excuse, with an intent to inflict . . . death."

aggravated cruelty to “kill[] an animal . . . without having a legal privilege to do so.”²⁸¹ While these statutes are riddled with exceptions (for agriculture, research, and other purposes),²⁸² they nevertheless create a duty on humans not to kill those animals to which the statutes apply. In other words, the laws confer upon some animals an incipient right to life, one of the core passive incidents of personhood.²⁸³ Similarly, another passive incident of legal personhood is the capacity to own property.²⁸⁴ In Utah, animals may be the beneficiaries of pet trusts, which gives them equitable title to the *res* of trusts created for their benefit.²⁸⁵ In that sense, they are the owners of property.²⁸⁶ Thus, at least one of the entities whose legal personhood is precluded by the nonpersonhood statutes already holds some of the bundle theory’s incidents of legal personhood. The nonpersonhood statutes do not purport to repeal or invalidate these laws.

Second, to say that the nonpersonhood statutes preclude nonhumans from having *each and every one of the incidents* of legal personhood would be a non-sequitur under the bundle theory, as one need not have every incident to qualify as a legal person. Many taken-for-granted persons lack some of the incidents of legal personhood. Young children, for example, lack some of the active legal incidents of personhood (e.g., the right to contract), yet they remain legal persons with other incidents of personhood (e.g., the right to life). In Utah, children under five cannot be held civilly liable for their negligence, and yet they are legal persons with legal rights.²⁸⁷ In Idaho, a

281. UTAH CODE ANN. § 76-13-203(2)(c) (2025).

282. See IDAHO CODE § 25-3514 (2025) (exceptions to anticruelty law); UTAH CODE ANN. § 76-13-202(7) (2025) (same).

283. These protections may fall short of the kind of fundamental right to life that the bundle theory contemplates, particularly given the somewhat low barrier to infringing the right. See Stucki, *supra* note 45, at 550. Nevertheless, in the absence of the conditions that authorize the killing, an animal has a legally recognized right to continue living, which, in my view, is quite significant, perhaps even “fundamental.”

284. KURKI, A THEORY OF LEGAL PERSONHOOD, *supra* note 23, at 103.

285. See UTAH CODE ANN. § 75-2-1001 (2025) (establishing that “a trust for the care of a designated domestic or pet animal is valid”); Rawlings v. Rawlings, 240 P.3d 754, 764 (Utah 2010) (“The fundamental nature of a trust is the division of title, with the trustee being the holder of legal title and the beneficiary that of equitable title.” (quoting 76 AM. JUR. 2d *Trusts* § 1 (2005))).

286. See Sarah Schindler, *Progressive Property and Animal Law*, 59 UC DAVIS L. REV. 657, 707 (2025) (arguing that pet trusts establish that “the thing of property [i.e., the animal] is expressly granted the ability to hold rights and property interests”); Hankin, *supra* note 61, at 362 (“The laws that create binding pet trusts have . . . gone a long way toward recognizing a new status for companion animals.”).

287. Nielsen v. Bell, 370 P.3d 925, 925 (Utah 2016) (“We hold that children under the age of five, as a matter of law, may not be held liable for negligence.”). On the legal personhood of children, see Alexis Dyschkant, *Legal Personhood:*

criminal defendant may be so beset by mental illness that he cannot form the *mens rea* to be held criminally liable.²⁸⁸ And yet, that same defendant retains his constitutional rights to due process, which protect his fundamental interest in liberty—one of the passive incidents of legal personhood.²⁸⁹ So one need not have *every* incident of legal personhood to be a rights-holding legal person under the bundle theory. Thus, to say animals, nature, inanimate objects, and AI are prohibited from holding *all* of the incidents of personhood tells us nothing about which incidents they could still hold.

Third, if we interpret the nonpersonhood statutes to prohibit nonhumans from obtaining that *significant number* of incidents of legal personhood that tips them over the imprecise threshold of becoming legal persons, we run into obvious line-drawing problems.²⁹⁰ If legal personhood is a cluster concept—a bundle of incidents that are dis severable and “none of which alone is necessary or sufficient”²⁹¹—then the nonpersonhood statutes are hopelessly vague, as they say nothing about which specific incidents of personhood nonhumans might have. Could a judge grant a sentient robot the right to a power source, but not the right to own property? Could she recognize an animal as a “victim” under the anticruelty law, but deny the animal the right to file a tort action for damages arising from cruelty? Could she grant nature the right to flourish, but not give it the right not to be owned? Could a municipality establish duties, such as taxing AI, so long as it did not also grant it rights? These questions illustrate the incongruence between the bundle

How We Are Getting It Wrong, 2015 U. ILL. L. REV. 2075, 2081 (2015) (“Children are generally presumed to be legal persons.”); *see also* *Levy v. Louisiana*, 391 U.S. 68, 70 (1968) (“We start from the premise that illegitimate children are not ‘nonpersons.’ They are humans, live, and have their being. They are clearly ‘persons’ within the meaning of the Equal Protection Clause of the Fourteenth Amendment.” (footnote omitted)).

288. *See, e.g.*, *State v. Diaz*, 507 P.3d 1109, 1115 (Idaho 2022) (holding that the defendant was entitled to introduce evidence that he believed the stabbing victim was an alien from another planet to rebut the intent requirement).

289. *See* KURKI, A THEORY OF LEGAL PERSONHOOD, *supra* note 23, at 97.

290. Kurki acknowledges this issue:

I should also touch briefly on the issue of what is a sufficient number of incidents to constitute legal personhood *tout court* for an entity that is endowed with the incidents. I have repeatedly maintained that there is no clear-cut division between legal persons and nonpersons. There are clear and central cases, such as the legal personhood enjoyed by adults of sound mind in contemporary Western jurisdictions, but the penumbra between the clear cases of legal personhood and nonpersonhood is vast. In addition, because of the cluster-property nature of legal personhood, a binary question about X’s personhood or nonpersonhood may not always be appropriate.

Id. at 121.

291. *Id.* at 93.

theory (which conceives of personhood as a cluster of specific rights and duties) and the nonpersonhood statutes (which conceive of personhood in binary terms, as something that can be granted or denied in one fell swoop).²⁹²

C. Indeterminacy, the Apparatus of Personhood, and the Abject Nonperson

What should we make of the incongruity between the nonpersonhood statutes and the leading theories of personhood—the orthodox and bundle theories? In this Section, I argue that the nonpersonhood statutes illustrate three related facts about personhood: that personhood is an indeterminate (or at least underdetermined)²⁹³ concept; that personhood is a legal construction (or “apparatus”) that serves ulterior political and axiological purposes; and that personhood as it is currently constructed relies on the exclusion and abjection of elements of existence against which humans define themselves. All of these facts coalesce in a way that justifies, normalizes, and legalizes violence.

1. Persons Unknown

The incongruity of the nonpersonhood statutes with the leading theories of legal personhood demonstrates how the concept of legal personhood is malleable, imprecise, and polysemic—it has multiple meanings that vary depending on the context.²⁹⁴ Legal scholars Toni Selkälä and Mikko Rajavuori argue that trying to identify a single, coherent meaning of personhood “clings onto a utopia of legal

292. To be clear, this does not suggest a flaw in Kurki’s theory so much as an incoherence in the legislators’ conception of personhood. While Kurki’s bundle theory is analytically descriptive in many ways, it does not account for the concept of personhood that animates the Idaho and Utah statutes.

293. On the distinction between indeterminacy and underdeterminacy, see Lawrence B. Solum, *On the Indeterminacy Crisis: Critiquing Critical Dogma*, 54 U. CHI. L. REV. 462 (1987). Solum characterizes indeterminacy as the strong claim that meaning is entirely free-floating, such that anything goes when it comes to interpretation. *Id.* at 473. Underdeterminacy is the less radical thesis that concedes that legal sources often fail to precisely answer interpretive questions, but that it is not true that *anything* goes; there are some constraints on interpretation. *Id.* at 473–74. The distinction is not significant to my argument here.

294. See KURKI, LEGAL PERSONHOOD, *supra* note 40, at 3 (“The notion of legal personhood is fraught with ambiguity.”); Solum, *supra* note 24, at 1284 (“[T]hinking about personhood for [AI] forces us to acknowledge that we currently lack the resources to develop a fully satisfactory theory of legal or moral personhood.”); Fagundes, *supra* note 260, at 1747; see also Daniel J. Hemel, *Polysemy and the Law*, 76 VAND. L. REV. 1067, 1148 (2023) (discussing personhood as a polysemic word that means different things in different contexts); Mathison, *supra* note 103, at 109 (“Legal personhood is a malleable tool deployed to regulate and otherwise act on the objects of the legal system.”).

coherence where none might be found.”²⁹⁵ Decades ago, the Critical Legal Studies (CLS) movement put forth its indeterminacy thesis—that the meaning of legal terms are often underdetermined by the tools of interpretation, leaving space for bias and ideology to fill the gaps.²⁹⁶ While the Crits focused primarily on the act of adjudication,²⁹⁷ legislative action can also reproduce indeterminacy, especially when contentious and ambiguous terms such as personhood are taken for granted and left ill-defined.

The nonpersonhood statutes embody a legislative understanding of personhood that clashes with the understandings that prevail in other spheres of law, such as the judiciary and the academy. This suggests that terms like “personhood” lack coherence and determinacy across the field of law. That the nonpersonhood statutes confound the orthodox theory of legal personhood and its chief alternative, the bundle theory, illustrates the malleability of the concept of personhood and the fact that the concept itself lacks a stable and coherent meaning across and within the domains of legislation, adjudication, and jurisprudence.

An important counterargument arises here. What if the disjunction I am identifying here stems not from indeterminacy, but from my selection of the *wrong theories* of personhood? After all, there is a third way of defining personhood outside of the orthodox and bundle theories: “Legal person” is simply synonymous with “human being.” That conceptualization of the person *is* consistent with the nonpersonhood statutes and even finds some support in judicial

295. Toni Selkälä & Mikko Rajavuori, *Traditions, Myths, and Utopias of Personhood: An Introduction*, 18 GER. L.J. 1017, 1018 (2017).

296. See generally Joseph William Singer, *The Player and the Cards: Nihilism and Legal Theory*, 94 YALE L.J. 1, 6 (1984). See Charles M. Yablon, *The Indeterminacy of the Law: Critical Legal Studies and the Problem of Legal Explanation*, 6 CARDOZO L. REV. 917, 917–18 (1985); Mark Tushnet, *Defending the Indeterminacy Thesis*, 16 QUINNIPIAC L. REV. 339, 341 (1996); Akbar Rasulov, *What CLS Meant by the Indeterminacy Thesis*, LPE PROJECT BLOG (March 27, 2023), <https://perma.cc/75UY-ATJH> (describing the concept of indeterminacy in CLS as a “feature of the contemporary legal system that arises from the common tendency of judges, lawmakers, and legal scholars to overestimate the capacity of certain types of concepts to resist interpretive cacophony” and offering the concept of “personhood” as an example). For a discussion of indeterminacy in animal law cases, see Matthew Liebman, *Who the Judge Ate for Breakfast: On the Limits of Creativity in Animal Law and the Redeeming Power of Powerlessness*, 18 ANIMAL L. 133, 139–41 (2011).

297. See, e.g., Duncan Kennedy, *Form and Substance in Private Law Adjudication*, 89 HARV. L. REV. 1685, 1732 (1976) (arguing that “the process of judicial lawmaking” can be explained by “the judge’s moral, political and economic views and in the idiosyncra[s]ies of his understanding of the character of the fact situation”).

decisions and legal scholarship.²⁹⁸ Does this confluence demonstrate that the concept of the person is, in fact, *determinate*, and that legislators, judges, and scholars have succeeded in giving personhood a fixed human referent and resolving the indeterminacy?

The answer is still “no” for three reasons.

First, I do not think I have chosen the wrong comparator theories. As explained above,²⁹⁹ the orthodox theory of legal personhood is ubiquitous and widely accepted; it remains the reference point for theories of personhood, as even the bundle theory acknowledges.³⁰⁰ That the nonpersonhood statutes clash with this theory already illustrates that there are multiple, inconsistent understandings of legal personhood circulating in the legal system, not only at the level of theory, but in legislative and judicial practice.

Second, we should not credit the “person = human” equation as a true *theory* of legal personhood. The equation designates an *extensional* characteristic of persons, but it fails to provide an *intensional* meaning of the concept.³⁰¹ In other words, this formulation tells us only the members (humans) that make up the category (person), but it does not tell us what the term *means* or what substantive characteristics its members share. The orthodox theory and bundle theory, on the other hand, tell us that persons are beings who hold rights or bear duties (or both); they offer intensional descriptions of personhood that are explanatory and conceptual, whereas the “person = human” definition defines only the class of entities who have the extensional designation. Such extensional definitions are inherently circular.³⁰² If the strictly anthropocentric definition of personhood is not properly a theory (because it fails to

298. For examples of courts holding that personhood is generally limited to humans (and their legal creations), see *Justice v. Vercher*, 518 P.3d 131, 137 (Or. Ct. App. 2022); *Nonhuman Rts. Project, Inc. v. Breheny*, 197 N.E.3d 921, 927 (N.Y. 2022). For scholars who defend strictly anthropocentric personhood, see John Finnis, *The Priority of Persons Revisited*, 58 AM. J. JURIS. 45, 53–54 (2013) (arguing that human “persons are the point of law” and positing “the ontological unity of the human race” and the “dignity of the *human* over all that is *subhuman*” (emphasis added)); Cupp, *supra* note 23, at 65 (endorsing “the centrality of humanity and human interests in the analyses of personhood”).

299. See *supra* Section I.A.

300. See KURKI, A THEORY OF LEGAL PERSONHOOD, *supra* note 23, at 5.

301. I am grateful to Visa Kurki for pointing out this important distinction to me. On extensional versus intensional designations, see Melvin Fitting, *Intensional Logic*, STAN. ENCYCLOPEDIA PHIL. (2022), <https://perma.cc/LS6Z-QMBR>.

302. See, e.g., João Marinotti, *Escaping Circularity: The Fourth Amendment and Property Law*, 81 MD. L. REV. 641, 677 (2022) (“Circularity . . . is inherent in extensional approaches; extensional concepts are defined as nothing more than their enumerated contents. In other words, extensionally, the answer to whether something falls within concept X can only be answered by looking up whether it falls within concept X.”).

actually *theorize* what makes a person a person),³⁰³ then its alignment with the nonpersonhood statute does not resolve the indeterminate *meaning* of personhood. It simply obscures the indeterminacy.

Third, and perhaps most importantly, what the “person = human” equation reveals is not determinacy, but the kind of consistency that arises when the exercise of political and cultural power tentatively stabilizes an otherwise indeterminate term. Personhood is consistently interpreted as human because it serves political ends to interpret a fundamentally ambiguous word in this way.

A nuanced understanding of the CLS indeterminacy hypothesis may help clarify this point. As Samuel Moyn notes, some CLS adherents argued for a kind of strict determinacy (legal interpretation always supports the dominant order), while others emphasized absolute indeterminacy (the meaning of legal texts is free-floating and unfixed).³⁰⁴ Neither position is entirely accurate. Moyn argues that any viable sociological account of law must allow for both the *functional* determinacy of law (that is, how the law predictably upholds prevailing ideology) *and* its *interpretive* indeterminacy (that is, how legal terms are indeterminate in their meanings and subject to interpretation).³⁰⁵ Balancing the fact that law tends to reinforce hierarchy (but not always) with the fact that legal meaning is often unstable (but not always) yields “the equipoise that remains the agenda of any credible radical theory of law.”³⁰⁶

Thus, although the anthropocentric view of personhood does obtain a degree of consensus among some legislators, some scholars, and some judges, that consensus is politically expedient for some, but credibly contested by others. At the legislative level, there was, as described above, a partisan split on the nonpersonhood statutes, with Republicans voting overwhelmingly to endorse the “person = human” equation and Democrats voting overwhelmingly against it.³⁰⁷ At the

303. Some advocates of strictly anthropocentric personhood have sought to give intensional content to the equation, arguing that all humans, and only humans, are persons because of the human capacity for rule-making and social contracting. *See, e.g.*, Cupp, *supra* note 23, at 28. But these intensional criteria collapse back into extensional designations in the face of human beings who lack these capacities, such as infants or people with significant cognitive impairments, who are nonetheless persons, even though they fail to meet the intensional content. Richard L. Cupp, *Cognitively Impaired Humans, Intelligent Animals, and Legal Personhood*, 69 FLA. L. REV. 465, 506 (2017) (arguing that humans who are incapable of social contracting are still persons because of their “kind”). For a critique of this view, see KRISTIN ANDREWS ET AL., CHIMPANZEE RIGHTS: THE PHILOSOPHERS’ BRIEF 41–59 (2018).

304. Samuel Moyn, *Reconstructing Critical Legal Studies*, 134 YALE L.J. 77, 101–02 (2024).

305. *Id.* at 91, 100–01.

306. *Id.* at 91.

307. *See supra* note 208 and accompanying text.

scholarly level, the orthodox view and the bundle theory hold, contra the “person = human” view, that the personhood slot *can* be filled by nonhumans.³⁰⁸ At the judicial level, some judges have rejected the human-centered view of personhood and endorsed the personhood of nonhumans.³⁰⁹

“The personal is political,” not only in the sense that personal issues are enmeshed in political ones, as second-wave feminists rightly pointed out,³¹⁰ but also in the sense that who counts as a person in the first place is not strictly legal, interpretive, or analytical, but political—that is, structured by relationships of power. Anthropologist Lynn Morgan argues that “all practices of personhood are political gestures, played out in a social matrix in which power is unevenly distributed.”³¹¹ Similarly, legal scholar Saru Matambanadzo argues that the concept of the person reflects who matters before the law, a question that is unavoidably laden with politics and values.³¹² As such, it has historically reflected the exclusionary, patriarchal, and racist beliefs of the society and the legal system in which it arises.³¹³ Matambanadzo describes how slavery, Jim Crow, and coverture—in which a married woman’s legal personhood was dissolved into that of her husband—have historically reified the class of archetypal persons as “white male property owning citizens.”³¹⁴ Traditional conceptions of personhood exalt the values of autonomy and rationality, but the way the legal system has conceptualized these values has bolstered race-, gender-, age-, species-, and ability-based hierarchies.³¹⁵

Personhood is thus underdetermined—it is a linguistically indeterminate word whose meaning is highly influenced by values, politics, and ideology, thus lending it a tentative determinacy that bolsters systems of power.

2. *The Functions of Nonpersonhood*

If, as I have just argued, personhood is underdetermined, how does it find meaning and what purposes does it serve?

308. See Tur, *supra* note 35, at 121.

309. See, e.g., Nonhuman Rts. Project, Inc. v. Breheny, 197 N.E.3d 921, 932–33, 967 (N.Y. 2022) (Wilson & Rivera, JJ., dissenting).

310. Carol Hanisch, *The Personal is Political*, in NOTES FROM THE SECOND YEAR: WOMEN’S LIBERATION 76, 76 (Shulamith Firestone ed., 1970), <https://idn.duke.edu/ark:/87924/r33x35>.

311. Lynn M. Morgan, “*Life Begins When They Steal Your Bicycle*”: *Cross-Cultural Practices of Personhood at the Beginnings and Ends of Life*, 34 J.L. MED. & ETHICS 8, 13 (2006).

312. Matambanadzo, *supra* note 23, at 45.

313. *Id.* at 48–51.

314. *Id.* at 49.

315. *Id.*; MANEESHA DECKHA, ANIMALS AS LEGAL BEINGS: CONTESTING ANTHROPOCENTRIC LEGAL ORDERS 88 (2021).

Here, it may help to conceive of personhood as an “apparatus,” a concept employed by philosophers Michel Foucault, Giorgio Agamben, and Roberto Esposito. An apparatus, according to Foucault, “consist[s] of discourses, institutions, architectural forms, regulatory decisions, laws, administrative measures, scientific statements, [and] philosophical, moral, and philanthropic propositions.”³¹⁶ In the context of personhood generally, and the legislative histories of the nonpersonhood statutes specifically, we see a confluence of anthropocentric discourses, legal institutions, legislative enactments, and philosophical and moral commitments coalescing to reassert the exclusivity of the category of the legal person.

Elaborating on Foucault’s concept, Agamben describes the apparatus as a way of pulling together disparate institutional discourses and phenomena that have “the capacity to capture, orient, determine, intercept, model, control, or secure the gestures, behaviors, opinions, or discourses of living beings.”³¹⁷ This is precisely what the concept of personhood does: It combines legal, ethical, scientific, and political discourses to produce a class of beings who are subjects of law. Esposito expressly identifies personhood as a kind of apparatus (or, in the French, *dispositif*) through which the human of nature becomes the person of law.³¹⁸ Personhood “is the prism through which the human species is separated in the hierarchical division between types defined precisely by their constitutive difference.”³¹⁹

The person, then, is not simply a preexisting entity to be recognized or not. Instead, as Judith Butler puts it, “[j]uridical power inevitably ‘produces’ what it claims merely to represent [T]he law produces and then conceals the notion of ‘a subject before the law’ in order to invoke that discursive formation as a naturalized foundational premise that subsequently legitimates that law’s own

316. MICHEL FOUCAULT, *The Confession of the Flesh*, in POWER/KNOWLEDGE: SELECTED INTERVIEWS AND OTHER WRITINGS, 1972–1977, 194, 194 (Colin Gordon ed., 1980).

317. GIORGIO AGAMBEN, *What Is an Apparatus?*, in WHAT IS AN APPARATUS? AND OTHER ESSAYS 1, 14 (Werner Hamacher ed., David Kishik & Stefan Pedatella trans., 2009).

318. Roberto Esposito, *The Dispositif of the Person*, 8 L. CULTURE & HUMANITIES 17, 22 (2012) (“[Personhood] doesn’t have meaning outside of the *ius* [law], which is to say that the *homines* [human beings] take on the guise of *personae* [person] only *de iure* [by law] . . . is further proof of the performative power of law [*diritto*] in general and of the notion of person in particular.”) (sixth alteration in original). Agamben similarly describes apparatuses such as personhood as “rooted in the very process of ‘humanization’ that made ‘humans’ out of the animals we classify under the rubric *Homo sapiens*.” AGAMBEN, *supra* note 317, at 16.

319. Esposito, *supra* note 318, at 22.

regulatory hegemony.”³²⁰ In other words, the law creates the legal person by exercising its political power, but erases the fact that it has done so.

We can see this invocation of the person as “a naturalized foundational premise” in the enactment of the nonpersonhood statutes. For example, Representative Brooks, the Utah sponsor, tautologically asserted on the House floor, “the *reality* is this: a person is a person, and a tree is not. Neither is an animal, neither is a stream, neither is the air.”³²¹ Brooks, even in the very act of legislatively constructing personhood, treated the concept as if it were pre-existing and self-evident, as if this highly contested and political concept were self-defining. But as the late legal scholar Gwendolyn Gordon put it, “[t]here is . . . no such thing as a plain-old person.”³²²

Framing personhood as an apparatus helps demystify the concept. Personhood is not a thing in the world to be named, but a process that happens with and through law, intersecting with other social phenomena, such as politics, economics, and culture. As such, the construction of the apparatus of personhood is a way of exercising power; it is a form of inclusion, but also of exclusion. The person is constructed in contradistinction to that which it purports not to be.³²³

320. JUDITH BUTLER, *GENDER TROUBLE: FEMINISM AND THE SUBVERSION OF IDENTITY* 5 (1990) (footnote omitted).

321. *Utah H. Floor Debate*, *supra* note 169, at 47:45 (statement of Rep. Brooks). Interestingly, Brooks uses the gender binary to illustrate his point: “I bet you if you went back ten years ago, no one had a question about what a woman was and what a man was.” *Id.* at 48:10. Judith Butler definitely had a few questions “about what a woman was and what a man was.” *See, e.g.*, BUTLER, *supra* note 320, at 10 (“Can we refer to a ‘given’ sex or a ‘given’ gender without first inquiring into how sex and/or gender is given, through what means? And what is ‘sex’ anyway? Is it natural, anatomical, chromosomal, or hormonal, and how is a feminist critic to assess the scientific discourses which purport to establish such ‘facts’ for us? Does sex have a history? Does each sex have a different history, or histories? Is there a history of how the duality of sex was established, a genealogy that might expose the binary options as a variable construction? Are the ostensibly natural facts of sex discursively produced by various scientific discourses in the service of other political and social interests?” (footnotes omitted)). The point is that while Brooks takes both personhood and gender identity to be transparent facts about the world, they are, as Butler contends, performatively constructed through legislative action, juridical power, and disciplinary power.

322. Gordon, *supra* note 80, at 50–51.

323. AGAMBEN, *supra* note 317, at 17 (“Through these apparatuses, man attempts to nullify the animalistic behaviors that are now separated from him.”); *see also* Forrest, *supra* note 103, at 1175 (“Throughout history, we, humans, have defined ourselves in contrast to other creatures on Earth. We have taken comfort in an acute sense of human exceptionalism ‘Persons,’ legally defined, stand above all other animals.”); JAMES BOYLE, *THE LINE: AI AND THE FUTURE OF PERSONHOOD* 5 (2024) (“There is a line. It is the line that separates persons—entities with moral and legal rights—from nonpersons, things, animals,

As Esposito puts it, “the category of person encompasses . . . the non-person. . . . [T]he person . . . constantly reproduces the negative.”³²⁴

The nonpersonhood statutes participate in this nullification by constructing the human person in opposition to various Others: the *material* (inanimate objects), the *animal* (nonhuman animals), the *natural* (environmental elements), and the *artificial* (AI). According to the statutes, persons cannot be strictly matter (inanimate objects), nor strictly intellect (AI), nor even the combination of matter and intellect in a nonhuman body (animals); persons cannot be strictly natural (environmental elements), nor strictly artificial (AI).

But humans are in fact material;³²⁵ we are animals;³²⁶ we are natural;³²⁷ we are artificial (or at least *artifactual*, that is, constructed in part by other humans).³²⁸

By excluding the parts of human beings that actually constitute our being as embodied creatures in nature, the nonpersonhood statutes engage in a kind of *abjection*. Abjection is the “radical[] exclu[sion]” of those things within the self that must be “jettisoned”

machines—stuff we can buy, sell, or destroy. In moral and legal terms, it is the line between subject and object.”).

324. Esposito, *supra* note 318, at 24.

325. See, e.g., Luci Attala & Louise Steel, *Introduction*, in *BODY MATTERS: EXPLORING THE MATERIALITY OF THE HUMAN BODY* 1, 2 (Luci Attala & Louise Steel eds., 2019) (“[B]eing human is a physical or material relationship . . . [that] demands constant negotiations between material entities. Indeed, we are reminded that we are not only situated within the physical world, but crucially we are part of it.”).

326. See, e.g., Karen Bradshaw, *Human as Animals*, 2021 UTAH L. REV. 185, 192 (“We know humans are animals. If pressed, we can readily acknowledge it. Then, we set that aside and operate as if it were not true. We operate within a legal fiction that we are not one of the same component parts in the larger whole.”).

327. See, e.g., Laurence H. Tribe, *Ways Not to Think About Plastic Trees: New Foundations for Environmental Law*, 83 YALE L.J. 1315, 1340 (1974) (“To recognize that humanity is a part of nature and the natural order a constituent part of humanity is to acknowledge that something deeper and more complex than the customary polarities [between ‘human’ and ‘nature’] must be articulated and experienced if the immanent and transcendent are somehow to be united.”).

328. See, e.g., Megan Zane, *Artifactual Personages: Human Persons and How They Constitute Artifacts* 71–72 (2015) (Ph.D. dissertation, UC Irvine), <https://perma.cc/3C8Y-6AZA> (“[A]rtifactual personages . . . are constituted by persons that live with other persons and are often created by groups of persons. . . . [S]ome kinds of artifactual personages can only exist as a result of groups of persons aiming to create them.”); SALLY HASLANGER, *RESISTING REALITY: SOCIAL CONSTRUCTION AND SOCIAL CRITIQUE* 88 (2012) (“We are the individuals we are today at least partly as a result of what has been attributed (and self-attributed) to us. In other words, there is a sense in which adult human beings are a special kind of artifact.”).

to preserve one's self-conception.³²⁹ As the psychoanalytic theorist Julia Kristeva put it, the abject is that which “disturbs identity, system, order. What does not respect borders, positions, rules. The in-between, the ambiguous, the composite.”³³⁰ Things that are animal, natural, artificial, or material disturb the order and identity that humanism has constructed.

Cultural theorists Barbara Creed and Jeanette Hoorn argue that “all non-human species[] have a special relationship to the abject in human culture,” because “the human subject separates itself from the non-human animal, and its culture from the cultures of animals, in order to define itself as civilised and exceptional.”³³¹ Animals are thus “the ultimate ‘other’ that enables the human and its symbolic order of law and language to come into being.”³³² We push away, even repress, the truth of our being animal, natural, material, and artificial.³³³ The nonpersonhood statutes thus abjectify and exclude those characteristics that connect us with every other part of the world, animate and inanimate, natural and artificial.

Although some acts of abjection are psychologically necessary for establishing a self with appropriate boundaries, abjection can become pathological and oppressive. Social abjection and differentiation often enable violence against those who they otherize.³³⁴ If persons are

329. JULIA KRISTEVA, POWERS OF HORROR: AN ESSAY ON ABJECTION 2 (Leon S. Roudiez trans., 1982); see also Georges Bataille, *Abjection and Miserable Forms*, in MORE & LESS 8, 11–12 (Sylvere Lotringer ed., Yvonne Shafir trans., 1993) (1934) (“The act of exclusion . . . is situated in the very domain of *things* and not, like sovereignty, in the domain of *persons*.” (emphasis added)).

330. KRISTEVA, *supra* note 329, at 4.

331. Barbara Creed & Jeanette Hoorn, *Animals, Art, Abjection*, in ABJECT VISIONS: POWERS OF HORROR IN ART AND VISUAL CULTURE 65, 65–66 (Rina Arya & Nicholas Chare eds., 2017).

332. *Id.* at 66.

333. See, e.g., Esposito, *supra* note 318, at 22 (“Man is a person if and only if he masters the more properly animal part of his nature.”).

334. See generally IMOGEN TAYLOR, REVOLTING SUBJECTS: SOCIAL ABJECTION AND RESISTANCE IN NEOLIBERAL BRITAIN 21 (2013) (extending the concept of abjection to the social realm to explain how abjection includes “the violent exclusionary forces of sovereign power,” which turn the abject into “the disposable dregs and refuse of social life”). To be fair, some opponents of nonhuman personhood recognize animals and nature as deserving of moral consideration rather than total abjection and violence. Richard Cupp, for example, opposes animal personhood but supports welfare-based legal protections for animals. Richard L. Cupp, Jr., *Edgy Animal Welfare*, 95 DENV. L. REV. 865, 868 (2018). Nevertheless, the kind of subordinated nonpersonhood status that Cupp defends is itself part of the problem. It risks rationalizing the industrial instrumentalization of animals in ways that cause immense violence and suffering, especially in the meat industry. Cupp himself worries about the implications of animal personhood for industrial exploitation. See, e.g., Richard L. Cupp, Jr., *Considering the Private Animal and Damages*, 98 WASH. U. L. REV. 1313, 1325 (2021) (“If animals capable of suffering pain were no longer classified

those who have, as Hannah Arendt put it, the “right to have rights,”³³⁵ then nonpersons are those who lack even the possibility of mattering enough to bear rights.³³⁶ They are thus rendered expendable, exploitable, and extrinsic to the community of subjects.³³⁷ It is telling that the meat industry, whose industrialized violence is well-documented,³³⁸ brought the idea for the Idaho nonpersonhood statute to Representative Nichols, and that Representative Brooks used the sexual exploitation and forced impregnation of female cows to justify the Utah nonpersonhood statute.³³⁹ Nonpersons are not subjects of law, but objects of violence.³⁴⁰

as a form of property, potential implications for food sources, scientific research, animal-based products, and the economy in general would be monumental.”).

335. HANNAH ARENDT, *THE ORIGINS OF TOTALITARIANISM* 296 (1951); *see also* STEPHANIE DEGOOYER ET AL., *THE RIGHT TO HAVE RIGHTS* 64–86 (2018). Whether animals presently have “the right to have rights” presents a conundrum. As explained above, I do think animals already have limited rights under existing laws, which would make them legal persons under the orthodox theory. *See supra* Section IV.B.1. And yet, courts have held otherwise. *See, e.g., Justice v. Vercher*, 518 P.3d 131, 141 (Or. Ct. App. 2022); *Nonhuman Rts. Project, Inc. v. R.W. Commerford & Sons*, 216 A.3d 839, 846 (Conn. App. Ct. 2019). Whether animals technically have rights or not, there is no obscuring the fact that humans dominate, exploit, and oppress other animals on a grand scale, and they rationalize that exploitation by relegating animals to a subordinate ontological category. *See, e.g.,* Lori Gruen, *The Faces of Animal Oppression*, in *DANCING WITH IRIS: THE PHILOSOPHY OF IRIS MARION YOUNG* 161, 161 (Ann Ferguson & Mechthild Nagel eds., 2009).

336. *See* Alastair Hunt, *Nonpersons*, in *POSTHUMOUS LIFE: THEORIZING BEYOND THE POSTHUMAN* 179, 182 (Jami Weinstein & Claire Colebrook eds., 2017) (arguing “that an honest and consistent radical democratic position on the legal question ‘who is a person?’ requires challenging the capture of political subjectivity within a humanist framework” and that the “reduction [of the person] to the human is less an ontological necessity than it is an ideological effect”).

337. Fagundes, *supra* note 260, at 1760 (“When the law manipulates status distinctions through the use of the metaphor ‘person,’ it necessarily expresses a conception of the relative worth of the objects included and excluded by the scope of that metaphor.”); COLIN DAYAN, *THE LAW IS A WHITE DOG: HOW LEGAL RITUALS MAKE AND UNMAKE PERSONS* xi (2011) (“It is through law that persons, variously figured, gain or lose definition, become victims of prejudice or inheritors of privilege. And once outside the valuable discriminations of personhood, their claims become inconsequential.”).

338. *See, e.g.,* GAIL A. EISNITZ, *SLAUGHTERHOUSE* 18 (2007); SUE COE, *DEAD MEAT* 1–4 (1995); MERCYFORANIMALS, *Farm to Fridge: The Truth Behind Meat Production* (YouTube, Feb. 3, 2011), <https://perma.cc/2QF2-U7QE>.

339. *Idaho S. Comm. Hearing, supra* note 132, at 1:07:30 (statement of Rep. Nichols); *Utah H. Comm. Hearing, supra* note 151, at 16:00 (statement of Rep. Brooks).

340. Some theorists see this abjection and separation as inherent in the concept of the person, such that it may not be possible to reformulate the person in a more inclusive way, as the animal rights and rights of nature movements

This violence bleeds into our treatment of other humans too. Having created the category of the subhuman, dominant culture is only too ready to deploy it against abjected humans.³⁴¹ As Theodor Adorno puts it:

The possibility of pogroms is decided in the moment when the gaze of a fatally-wounded animal falls on a human being. The defiance with which he repels this gaze—“after all, it’s only an animal”—reappears irresistibly in cruelties done to human beings, the perpetrators having again and again to reassure themselves that it is “only an animal,” because they could never fully believe this even of animals.³⁴²

The “defiance” with which we disregard the suffering of those rendered nonpersons is surely not limited to nonhumans. One need only to look at the rhetorical animalization of marginalized humans to see the human consequences of nonhuman abjection.³⁴³

Finally, it bears mentioning that the animating ideology behind the nonpersonhood statutes is not only anthropocentrism, but also capitalism. While these statutes purport to exclude the nonhuman

seek to do. Maneesha Deckha, for example, argues that the concept of personhood is irretrievably speciesist and that its anthropocentric character is so deeply part of its construction, at least in the common law tradition, that we should use another concept (*beingness*) in advocating for animals’ legal subjectivity. See DECKHA, *supra* note 315, at 89–90 (arguing that animality and personhood are mutually exclusive because the person is constructed in contrast to the animal). I am agnostic on this question. Descriptively, I agree that personhood has been constructed in opposition to its Others, as the nonpersonhood statutes illustrate, but I retain hope that personhood can be deconstructed and then non-anthropocentrically reconstructed.

341. See Maneesha Deckha, *The Subhuman as a Cultural Agent of Violence*, 8 J. CRITICAL ANIMAL STUD. 28, 29–30 (2010); Diana Fuss, *Introduction*, in HUMAN, ALL TOO HUMAN 2 (Diana Fuss ed., 1996); CAROL J. ADAMS, NEITHER MAN, NOR BEAST: FEMINISM AND THE DEFENSE OF ANIMALS 77–78 (1994); CLAIRE JEAN KIM, DANGEROUS CROSSINGS: RACE, SPECIES, AND NATURE IN A MULTICULTURAL AGE 182 (2015) (“If race is in part a metric of animality, a set of categories constituted through species distinctions, then one cannot reproduce degraded meanings of animality and nature without inflaming notions of racial difference. It may be that . . . the synergistic taxonomies of race and species will need to be dismantled together or not at all.”).

342. THEODOR ADORNO, MINIMA MORALIA: REFLECTIONS ON A DAMAGED LIFE 105 (Verso ed. 2005, trans. E.F.N. Jephcott) (1951).

343. See, e.g., Nathan Layne, Gram Slattery & Tim Reid, *Trump Calls Migrants “Animals,” Intensifying Focus on Illegal Immigration*, REUTERS (Apr. 3, 2024), <https://www.reuters.com/world/us/trump-expected-highlight-murder-michigan-woman-immigration-speech-2024-04-02/>; Shereen Marisol Meraji, *What Happens When Groups of People Are Described as Animals*, NPR (June 28, 2018), <https://perma.cc/VZT8-GDTM>; Jill Colvin, *Trump Defends ‘Animals’ Remark, Says He’ll Always Use It*, ASSOCIATED PRESS (May 17, 2018), <https://perma.cc/8GKT-NDMS>.

from the category of the person, they nevertheless *preserve* the personhood of corporations. Idaho does so explicitly, while Utah simply omits corporations from its long list of nonpersons.³⁴⁴ Corporate personhood—the personalization of a nonhuman entity—contradicts the purported rationale of the statutes to limit personhood to humans, in deference to the capitalist interests that corporate personhood serves. These interests include deregulation and the preservation of the economic and political power of the dominant class.³⁴⁵

The preceding Part sought to make sense of the nonpersonhood statutes by situating them within a broader legislative, political, social, and jurisprudential context. It argued that the statutes are animated by a far-right political conservatism that resists broadening nonhuman personhood to include other entities who merit moral consideration. It showed how the rhetorical techniques employed by the laws' proponents included “moral panic” and misrepresentation. It illustrated how the statutes clash with established theories of personhood, thus illustrating an indeterminacy (or at least underdeterminacy) within the concept of personhood. And finally, it sought to show how the apparatus of personhood abjects nonhumans and, in doing so, rationalizes exclusion and violence.

V. A CAUTIONARY NOTE ON JUDICIAL DEFERENCE TO LEGISLATURES

The preceding Part identified broad theoretical problems with the nonpersonhood statutes. The remedy to these problems—aside from the blunt conclusion that these statutes are bad policy and legislators should not pass more of them—lies in the ongoing public conversations about the scope of legal inclusion for nonhumans. I have no doubt those debates will continue.

But I also want to offer a more practical take-away from the preceding analysis, which has to do with whether judges should leave questions of animal personhood to the legislature.

344. IDAHO CODE § 5-346 (2025); UTAH CODE ANN. § 63G-32-102 (2025). Elsewhere in its code, Utah defines “person” to include corporations. UTAH CODE ANN. § 68-3-12.5(23)(d) (2025).

345. See Atiba R. Ellis, *Citizens United and Tiered Personhood*, 44 J. MARSHALL L. REV. 717, 736 (2011) (arguing that corporate personhood “creates a tiered society where those who possess political personhood in full are allowed to dominate contests between those who have full personhood and those who do not [and] . . . allows those who possess political personhood to amass capital and wealth to re-enforce and replicate their own status”); Reza Dibadj, *Reactionary Reform and Fundamental Error*, 39 W. ST. U. L. REV. 281, 289 (2012) (arguing that “treating corporations as people brilliantly serves an anti-regulatory agenda”); Nick J. Sciuillo, *Reassessing Corporate Personhood in the Wake of Occupy Wall Street*, 22 WIDENER L.J. 611, 613 (2013) (arguing that “capitalism has been enshrined in the jurisprudence of corporate personhood”).

In case after case seeking to establish legal personhood for animals under state common law, courts have framed the issue as a legislative one, to be determined through the deliberative and democratic branch of government.³⁴⁶ This Article illustrates how misguided that deference can be.

The preceding discussion demonstrates that nonhumans did not get a fair hearing. The Idaho and Utah legislatures did not deliberate in a meaningful way that engaged with the rich policy questions that nonhuman personhood raises.³⁴⁷ The committee hearings and floor debates were riven with apocryphal examples of nonhuman personhood, disingenuous mischaracterizations of the social movements for nonhuman rights, and basic misunderstandings of the legal and political stakes of the debate. Even if one takes the position that the question of who matters before the law—who counts as a person—is better resolved by legislators rather than judges (a credible position to take in the abstract), the legislative histories here should undermine confidence that legislators are in fact exercising the careful deliberation necessary to decide these extremely consequential issues.³⁴⁸

To put it bluntly, in the two instances in which the question of nonhuman personhood was before legislators, they showed a concerning lack of familiarity with the factual, legal, moral, and philosophical issues and offered false information to make their

346. *See, e.g.*, *Nonhuman Rts. Project, Inc. v. Breheny*, 197 N.E.3d 921, 932 (N.Y. 2022) (“Though beyond the purview of the courts, we appreciate that the desire and ability of our community to engage in a continuing dialogue regarding the protection and welfare of nonhuman animals is an essential characteristic of our humanity. Such dialogue, however, should be directed to the legislature.”); *Justice v. Vercher*, 518 P.3d 131, 140–41 (Or. Ct. App. 2022) (“[T]he legislature is the proper forum to determine, as a matter of policy, how the law should treat animals. . . . We emphasize that our decision does not foreclose Oregon law from ever recognizing an animal as a person or a legal entity, but also that the courts are not the proper forum to achieve that goal.” (footnote omitted)); *Nonhuman Rts. Project, Inc. v. R.W. Commerford & Sons*, 216 A.3d 839, 846 n.9 (Conn. App. Ct. 2019) (“Whether, as a matter of public policy, nonhuman animals, such as elephants, should possess individual rights and be permitted to bring a claim in a court of law are issues for the legislature to address, if it is so inclined.”).

347. *See supra* Sections III.A–III.B.

348. Legal scholar James Boyle makes this point astutely:

There are some reasons to think that legislatures are better at making complex decisions [regarding personhood], particularly in areas of rapidly changing technology and evolving public morality. As a legal academic, I am required to add that those arguments tend to be advanced most fervently by people who have little practical experience of legislatures. The comment, popularly attributed to Otto von Bismarck, that “people who like law and sausages should watch neither being made” is, in my experience, deeply unfair to sausage makers.

BOYLE, *supra* note 323, at 189 (emphasis omitted).

case.³⁴⁹ In light of this, judges should hesitate before assuming that the legislative branch is the only appropriate forum for answering questions of personhood. When judges are faced with common law claims for nonhuman personhood, they should do what common law judges do: use the normative guidance of basic common law values to decide the case before them.³⁵⁰ They should not leave the question to legislatures, which, if these two samples are representative, seem woefully unprepared to address it responsibly.

CONCLUSION

We live in an era of dramatic changes—from the unfolding climate crisis to the rapid development of AI to the growing calls to rethink the exclusionary elements of our legal system. The concept of legal personhood, this Article has argued, reflects back to us the anxieties we collectively feel about such instabilities. Social movements have begun to call for the extension of legal personhood—including fundamental legal rights and the capacity to sue—for various nonhumans, including animals, nature, and AI as ways to address our ethical and legal obligations in the midst of such transformation. At the same time, legislators have responded to these calls by enacting nonpersonhood statutes, which restrict personhood to human beings and corporations, consistent with the anthropocentric and capitalist traditions of American law.

That these nonpersonhood statutes clash with the leading theories of personhood illustrates the simmering contentiousness that animates discussions about how the legal system should recognize and name the subjects of law. Is the legal person every subject of legal rights or legal duties? Is it a constellation of specific legal rights and obligations? Is it simply a human being? Is the concept capacious enough to include new members, such as animals, nature, and AI? There is no determinate answer to these questions. Which conception of personhood wins out is ultimately a question of ideology and politics.

But we would do well as a culture to understand the consequences of our ideologies and our politics. As Max Horkheimer and Theodor Adorno observed, “Human beings purchase the increase in their power with estrangement from that over which it is exerted.”³⁵¹ The person who is constructed in opposition to animals, nature, artificiality, and materiality, finds herself estranged not only from the world at large, but also from herself.

349. See *supra* Sections III.A–III.B.

350. See generally WISE, RATTLING THE CAGE, *supra* note 71, at 270.

351. HORKHEIMER & ADORNO, *supra* note 10, at 6.