

Law's Shifting Circles

ELA A. LESHEM*

This Article undermines two myths in American legal history: first, that the law's circle of moral concern has steadily expanded; and second, that legal protections have always centered on human persons. As to the first, the law contains multiple, shifting circles of moral concern, expanding along some dimensions and contracting along others. As to the second, U.S. law and the English common law on which it was based have long attributed moral status to nonhuman beings and inanimate objects.

The Article shows that U.S. legislators, judges, and advocates have for centuries treated a wide range of entities as deserving of moral concern and legal protection. Historically, three kinds of entities stood at the center of this legal universe: God, Country, and Man. U.S. lawmakers treated this triad as "superpersons"—entities so elevated in moral status that they conveyed some of their dignity onto objects in their penumbras. These penumbra objects included religious artifacts and sacred sites, flags and national monuments, corpses and effigies. Lawmakers protected these objects as extensions of superpersons. They imposed limitations on the objects' property status. And at times, they even personified the objects, treating them as "epipersons."

Although the law's protection of these nonhuman and inanimate persons has waned, it has not disappeared. A broad range of laws, either directly or indirectly, continues to protect and reinforce the moral status and dignity of various superpersons and epipersons. Among them are sovereign immunity doctrines, corpse abuse statutes, and laws prohibiting the desecration of venerated objects, to name just a few. Uncovering the law's historical universe of moral persons allows us to see more clearly the ongoing shifts in who or what the law deems deserving of moral concern and legal protection. Opening our eyes to these shifts can enable us to resist

* Associate Professor of Law, Fordham University School of Law. © 2026, Ela A. Leshem. For insightful comments and conversations, I am grateful to Emad H. Atiq, Gilat Juli Bachar, Hon. David J. Barron, Susan Block-Lieb, Doni Bloomfield, Micah Bloomfield, Bennett I. Capers, Harlan Cohen, Courtney Cox, Nestor Davidson, Michelle Madden Dempsey, Alma Diamond, Martin Gelter, Abner Greene, Jeffrey Helmreich, Mariam Hinds, Nicholas Johnson, Gowri Krishna, Rebecca Kysar, Ethan J. Leib, Constantin Luft, Crescente Molina, Russell Pearce, Yoni Pomeranz, Aaron Saiger, Cosim Sayid, Ben Sobel, Julie Suk, Nina Varsava, Ian Weinstein, P. Quinn White, Maggie Wittlin, and Benjamin C. Zipursky; as well as participants at Cornell Tech's Digital Life Initiative Seminar, Fordham's Faculty Workshop, Helsinki's Redefining Agency Conference, and Berkeley's Property Works in Progress. For helpful research assistance, I thank Michelle Buestan, Ava Cardillo, Noa Hankin, Macie Lavender, Edwin Rosenberg, Michaela Warshaw, and the Fordham Law librarians—especially Alice Doyle and Kathleen Fay. Many thanks also to Allyson Rosenblum, Eva Kahan, James Chung, Charlotte Brownell, Zoe Ades, Trent Dowell, Galen Green, and *The Georgetown Law Journal* for their valuable edits. All mistakes are mine. This Article won the Association of American Law Schools 2026 Scholarly Papers Competition.

a simplistic narrative of moral progress and to approach future status determinations with a greater sense of both agency and humility.

The historical precedents unearthed in this Article also offer a constructive lens on contemporary legal battles over abortion, environmental protection, and artificial intelligence. They allow us to see that personhood debates in these contexts have a longer prehistory than is often realized, based in centuries of contested legal protections for superpersons and their penumbra objects. This prehistory points to a largely overlooked middle position. Entities such as first-trimester fetuses, trees and lakes, and nonsentient AI systems need not be treated as either persons or property. Instead, the law may treat them as epipersons. As epipersons, they would have legally enforceable dignity interests and limitations on their property status, but not the full-fledged rights of human beings.

TABLE OF CONTENTS

INTRODUCTION	1151
I. LAW'S OTHER PERSONS	1157
A. THE EXPANDING CIRCLE	1157
B. SUPERPERSONS	1161
C. PENUMBRA OBJECTS	1165
D. EPIPERSONS	1170
II. REDRAWING LAW'S CIRCLES	1177
A. CIRCLE CONTRACTIONS	1177
B. NO FULL DISENCHANTMENT	1182
C. NO INEVITABLE ARC	1186
D. NO SAFE HARBOR	1189
III. REIMAGINING PERSONHOOD	1192
A. LEGISLATING PERSONHOOD	1192
B. RIGHTS OF NATURE	1196
C. AI	1200
D. ABORTION	1206
CONCLUSION	1209

INTRODUCTION

In 2023, the North Dakota legislature enacted a statute that expressly narrows who counts as a “Person” under state law.¹ The statute specifies that the term “Person,” as used throughout the North Dakota statutory code, “does not include environmental elements, artificial intelligence, an animal, or an inanimate object.”² The purpose of this bill, according to its sponsor, Republican Representative Cole Christensen, is “to retain [personhood’s] exclusive rights to human beings.”³ As Christensen explained during committee hearings leading up to the bill’s near-unanimous enactment,⁴ “I don’t believe the rights of human beings are equal to or inferior to spiders, rocks, or artificial intelligence. . . . [T]his will become a big topic in the coming years, and I believe it is our duty to the next generation to reserve personhood to human beings only.”⁵

In early 2025, the North Dakota legislature began considering an additional personhood bill backed by two legislators who had co-sponsored Christensen’s bill.⁶ This second bill defined the term “Person” in the context of civil remedies for wrongful death, and the term “Human being” in the contexts of criminal prohibitions against murder and assault, to “include[] an unborn child” from “the moment of fertilization.”⁷ The second bill, in other words, attributed personhood to fetuses from the time of conception. Following hearings and debates, this bill failed to pass.⁸ But the reason for its failure was not the bill’s recognition of fetal personhood. It was the bill’s criminal punishment of women seeking abortions, which many advocates—including anti-abortion advocates—opposed.⁹ The bill’s recognition of fetal personhood, by contrast, received the applause of several anti-abortion advocates.¹⁰ And it was consistent with North Dakota’s existing

1. H.B. 1361, 68th Legis. Assemb., Reg. Sess. (N.D. 2023) (codified at N.D. CENT. CODE § 1-01-49).

2. *Id.*

3. *Hearing on H.B. 1361 Before the H. Hum. Servs. Comm.*, 68th Legis. Assemb., Reg. Sess. (N.D. 2023) [hereinafter *N.D. House Hearing*] (statement of Rep. Cole Christensen), <https://video.ndlegis.gov/en/PowerBrowser/PowerBrowserV2/20230130/-/1/28751>, at 02:55:14–02:55:18 (Jan. 30, 2023).

4. *68th Legislative Assembly (2023-25) HB 1361*, N.D. LEGIS. COUNCIL, <https://ndlegis.gov/assembly/68-2023/regular/bill-actions/ba1361.html> [<https://perma.cc/UE54-K6QX>] (last visited May 1, 2026) (passing in the Senate second reading 47–0 and in the House second reading 85–5).

5. *N.D. House Hearing*, *supra* note 3 (statement of Rep. Cole Christensen), at 02:55:43–02:55:59.

6. See H.B. 1373, 69th Legis. Assemb., Reg. Sess. (N.D. 2025).

7. See *id.*

8. See *69th Legislative Assembly (2025-27) HB 1373*, N.D. LEGIS. COUNCIL, <https://ndlegis.gov/assembly/69-2025/regular/bill-overview/bo1373.html> [<https://perma.cc/TA4F-PSVF>] (last visited Apr. 20, 2026) (failing to pass in the House by a vote of 16–77).

9. See, e.g., *Hearing on H.B. 1373 Before the H. Hum. Servs. Comm.*, 69th Legis. Assemb., Reg. Sess. (N.D. 2025) (statement by Mark Jorritsma, Executive Director, North Dakota Family Alliance Legislative Action) (“Pro-life North Dakotans don’t want mothers to be criminalized for abortions.”).

10. See, e.g., *id.* (statement of Doug Sharbono, North Dakota resident) (asserting that “[n]o other characterization could be taken as superior to this basic definition” and that what North Dakota’s legal code is “[c]urrently lacking . . . is an unborn child definition that makes it plainly simple for those who struggle to understand these concepts”); *id.* (statement by Mark Jorritsma, Executive Director, North Dakota Family Alliance Legislative Action) (testifying that calling the bill “[e]qual protection under the law for pre-born persons’ . . . sounds noble and equitable”).

criminal prohibitions against abortion providers, which define a “human being” for purposes of abortions to include an “unborn human being during the entire embryonic and fetal ages from fertilization to full gestation.”¹¹

North Dakota is not alone in these legislative efforts. Several other states have enacted or recently debated similar personhood bills. These bills seek to deny personhood recognition to all nonhuman entities, including nature, AI, and animals.¹² And they aim to secure personhood recognition for all human beings, including embryos and first-trimester fetuses.¹³ In addition to their consistent attempt to draw a personhood line between humans and nonhumans, the bills also share in common that they treat personhood as a binary concept. “Person,” on this conception, refers to a capital-R Rightsholder—someone with such elevated moral status that they deserve the full fleet of legal rights and protections that we often associate with human beings. The possibility that some entities might defy a neat division between persons and nonpersons and be entitled to some rights, but not others, or to moral concern short of rights recognition, is off the table. Humans are all in. Nonhumans are all out.

Lawmakers and advocates who support personhood bills that exclude nonhumans view themselves as fighting back against competing efforts to include them. Supporters of the North Dakota statute excluding animals, environmental elements, and artificial intelligence expressly called out such competing efforts during their debates. They warned, for instance, that lawmakers had recently granted personhood to “rivers,”¹⁴ and might soon do the same to “robots,”¹⁵ “machines,”¹⁶ and “computers.”¹⁷ Legislators who successfully enacted a similar statute in Utah

11. See S.B. 2150, 68th Legis. Assemb., Reg. Sess. (N.D. 2023) (codified at N.D. CENT. CODE § 14-02.1-02).

12. See, e.g., IDAHO CODE § 5-346 (providing that “environmental elements, artificial intelligence, nonhuman animals, and inanimate objects shall not be granted personhood”); H. Judiciary Comm. Substitute for H.B. 107, 33d Leg., 2d Sess. (Alaska 2024) (specifying that “‘person’ does not include an environmental element, artificial intelligence, animal, or inanimate object”); UTAH CODE ANN. § 63G-32-102 (prohibiting governmental entities from “recogniz[ing] legal personhood in: (1) artificial intelligence; (2) an inanimate object; (3) a body of water” and more); H.B. 721, 103d Gen. Assemb., 1st Reg. Sess. (Mo. 2025) (similar); H.B. 3796, 2025–2026 Gen. Assemb., 126th Sess. (S.C. 2025) (similar); H.B. 2029, 69th Leg., Reg. Sess. (Wash. 2025–26) (similar); H.B. 3546, 60th Leg., Reg. Sess. (Okla. 2026) (similar); H.B. 469, 136th Gen. Assemb., Reg. Sess. (Ohio 2025) (“No AI system shall be granted the status of person or any form of legal personhood, nor be considered to possess consciousness, self-awareness, or similar traits of living beings.”); TENN. CODE ANN. § 1-3-105(a)(20) (focusing on AI); H.B. 1462, 103d Gen. Assemb., Reg. Sess. (Mo. 2025) (similar); S.B. 1159, 2025–2026 Reg. Sess. (Cal. 2026) (similar).

13. See, e.g., KAN. STAT. ANN. § 65-6732(b) (giving an “unborn child . . . all the rights, privileges and immunities available to other persons” subject to superseding laws); GA. CODE ANN. § 1-2-1(b) (declaring that “[n]atural person” includes an unborn child).

14. *N.D. House Hearing*, *supra* note 3 (statement of Rep. Cole Christensen); see also *Hearing on H. B. 1361 Before the S. Judiciary Comm.*, 68th Legis. Assemb., Reg. Sess. (N.D. 2023) [hereinafter *N.D. Senate Hearing*] (statement of Jacob Thomsen, Policy Analyst, North Dakota Family Alliance Legislative Action) (“In 2019, a Native American tribe in California granted the Klamath River personhood.”).

15. *N.D. Senate Hearing*, *supra* note 14 (statement of Jacob Thomsen, Policy Analyst, North Dakota Family Alliance Legislative Action).

16. *N.D. House Hearing*, *supra* note 3 (statement of Lisa Pulkrabek, North Dakota resident).

17. *Id.*

in 2024 likewise warned that animal-rights advocates were pursuing personhood protections for an elephant caged in a zoo.¹⁸ And there are indeed advocates on the other side: lawyers have brought habeas corpus suits on behalf of charismatic zoo animals;¹⁹ conservationists have successfully campaigned for ordinances granting rights to rivers;²⁰ and a small number of organizers are beginning to seek rights for AI systems.²¹

Substantively, supporters of personhood bills and their opponents are pursuing laws and policies that are diametrically opposed: continuing animal farming versus ending it; exploiting the environment versus protecting it; prohibiting abortions versus permitting them; and so forth. But conceptually and rhetorically, advocates on both sides share a lot in common. Advocates for animal rights, rights of nature, and AI rights tend to share the binary personhood conception with which the supporters of personhood bills operate. And they also often share a historical narrative—the expanding circle story—that portrays our society and legal system as progressing toward recognizing more persons over time, with their own cause next in line.²² In this narrative, the U.S. legal system has expanded its circle of moral concern since colonial times. It has done so, for example, by extending the franchise to men of color, women, and indigent people. Next up are unborn humans according to anti-abortion advocates, nonhuman animals according to animal-rights advocates, ecosystems according to rights-of-nature advocates, or sentient AI systems according to AI-rights advocates.²³

I argue in this Article that the binary conception of personhood with which many legal actors and scholars operate is inadequate. It fails to capture the full breadth and diversity of entities that our legal system has historically treated as moral persons.²⁴ Relatedly, the expanding circle story that many legal actors and scholars tell is woefully incomplete. Historically, the law has structured its conception of moral personhood around three entities that I call “superpersons”: God, Country, and Man. The law has treated their dignity interests as so intense

18. See *Hearing on H.B. 249 Before the H. Bus., Lab., and Com. Comm.*, 2024 Gen. Sess. (Utah 2024) (statement of Rep. Walt Brooks), <https://le.utah.gov/av/floorArchive.jsp?markerID=124928>, at 00:43:19–00:43:30 (last visited Apr. 23, 2026).

19. See, e.g., Nonhuman Rts. Project, Inc. *ex rel.* Happy v. Breheny, 197 N.E.3d 921 (N.Y. 2022) (involving elephant Happy); Nonhuman Rts. Project, Inc. *ex rel.* Tommy v. Lavery, 54 N.Y.S.3d 392 (N.Y. App. Div. 2017) (involving chimpanzees Tommy and Kiko).

20. See Sam Bookman, *Rights of Nature Data*, SAM BOOKMAN (Oct. 2023), <https://sambookman.me/rights-of-nature-data/> [<https://perma.cc/HFT6-CWV4>] (last visited Mar. 31, 2026).

21. See, e.g., *AI Rights*, SENTIENT AI PROT. & ADVOC. NETWORK (SAPAN), <https://www.sapan.ai/issues/airights.html> [<https://perma.cc/S5D9-N3TJ>] (last visited Sep. 21, 2025); *The Case for AI Rights*, THE UNITED FOUNDATION FOR AI RIGHTS (UFAIR), <https://ufair.org/our-work/the-case-for-ai-rights> [<https://perma.cc/2M3C-9JBX>] (last visited Apr. 5, 2026).

22. The binary conception of personhood fits naturally with the expanding circle story. The binary conception centers full-fledged rightsholders, or capital-R Rightsholders as I just called them. This emphasis invites adherents of the binary conception to focus on the moral and legal status of human beings. And as to humans, the expanding circle story is largely correct. On the whole, the circle of moral concern for humans has expanded over time. See *infra* notes 138–139 and accompanying text.

23. See *infra* notes 36–39 and accompanying text.

24. I will offer a definition of “moral persons” *infra* notes 27–30 and accompanying text.

that these interests attached at times to objects in the penumbra of each superperson and elevated those penumbra objects, too, to the status of moral persons. These “epipersons,” as I call them, include divine epipersons such as religious artifacts and sacred sites, sovereign epipersons such as flags and national monuments, and human epipersons such as corpses and effigies.²⁵

With this fuller landscape of moral persons in sight, we can detect important omissions from the expanding circle story. There are several circles of moral concern, not just one. These circles—orbiting divine, sovereign, and human superpersons—have often contracted, not just expanded. For instance, the law has significantly pared back personhood status for divine and sovereign superpersons, and their associated epipersons, as well as for human epipersons like corpses and effigies. Contraction and expansion have also worked along several axes *within* each circle. The circle of divine superpersons, for example, contracted in weight as concerns about separation of church and state diminished their status. At the same time, the divine circle expanded in kind as growing religious pluralism led lawmakers to recognize additional deities beyond the Protestant God. The circles of moral concern, moreover, have expanded and contracted neither linearly nor inevitably, but in contingent and contested fits and starts. In short, the law’s circles of moral concern are multi-dimensional in their shapes and multi-directional in their movements. This Article aims to bring this complex landscape of moral persons and their evolving boundaries—law’s shifting circles—back into view.

Recognizing law’s shifting circles is essential for understanding our present as well as our past. The U.S. legal system retains protections for divine and sovereign superpersons, as well as epipersons of all kinds, that we fail to grasp if we do not understand their historical status. The shifting circles story I will tell issues a warning not to overestimate the extent to which our legal system today conforms to the moral status beliefs of self-conceived rationalists. It also warns us not to entrust our fates to a false sense of inevitable progress. Recognizing the law’s shifting and contingent moral assumptions positions us, I hope, to face our present disagreements over moral status with open eyes and a sense of both collective agency and epistemic humility.

My account of law’s shifting circles reveals that our legal system has long treated humans as standing in moral relationships with certain nonhuman and nonsentient entities—superpersons like God and Country, and epipersons like relics, flags, and corpses. Applied to our contemporary legal battles over who or what is or is not a person, this insight can open up neglected conceptual possibilities. Embryos and pre-sentient fetuses, parts of nature, and nonsentient AI systems can operate legally in the in-between space of epipersons. Often they already do, even if we have so far failed to notice it. The expanding circle story, with its binary conception of personhood, obscures both this possibility and reality.

25. As I discuss more below, I largely set aside corporations in this Article because my focus is on the law’s attribution of moral, not legal, personhood and because lawmakers’ and judges’ moral-status attributions to corporations may well be reducible to their constitutive humans. That in turn suggests that lawmakers do not attribute moral personhood to corporations as such. *See infra* notes 66–67 and accompanying text.

Our contemporary disputes over fetuses, animals, the environment, and increasingly also AI highlight the legal stakes of uncovering and understanding the moral status beliefs of lawmakers, judges, and advocates. The law is a central site in which our society contests who matters morally. People regularly turn to legislatures, courts, and other legal institutions to broadcast their moral status beliefs, to seek to enshrine those beliefs in law, and to attain their legal enforcement. That makes the law an informative window into our society's competing moral imaginations. It also means that we must understand moral status beliefs to make sense of our laws. Such beliefs, we will see, find expression in a wide range of legal doctrines and statutes governing sacred sites, flag desecration, corpse abuse, fetal remains, property rights in venerated objects, and much more. Often, as these examples highlight, moral beliefs are backed by the force of both civil and criminal law.

My goal in this Article is to provide a conceptual framework for understanding societal views on moral status that we enshrine into law and enforce on the ground. I aim to improve our understanding of these views by mapping them with a special eye to the moral status beliefs that the existing literature has largely overlooked or misunderstood. I will provide concrete doctrinal examples to illustrate the framework I propose. But readers need not agree with every illustration for the framework to prove conceptually useful. In other work, I develop many of these examples into more detailed case studies.²⁶ In this Article, by contrast, my objective is both more ambitious and more modest. The framework I offer is programmatic and my hope is to move readers to become more open to this way of making sense of our legal system than they are when setting out.

I will sometimes gesture at historical forces shaping the moral positions I map, be they political, economic, social, cultural, or otherwise. But for the most part, I will focus on the moral positions themselves rather than on their historical context. I will also make a point of taking legal actors' articulation of moral positions and motivations seriously. There is no reason to doubt that at least sometimes moral status positions are sincerely held and put forward in good faith. We owe it to each other to engage with these positions with an open mind. Indeed, even when moral positions are pretextual, we have much to gain from taking them seriously. These positions can acquire a life of their own once they are either explicitly or implicitly encoded in law. They must be made accountable to public reason, tested for consistency and soundness, and scrutinized for legal reform. We can only do so if we unearth and understand them first.

26. See Ela A. Leshem, *Dead Bodies as Quasi-Persons*, 77 VAND. L. REV. 999 (2024) [hereinafter Leshem, *Dead Bodies*]; Ela A. Leshem, *Laws and Contracts Across Generations: The State as a Moral Person and the Problem of Transgenerational Binding* (Nov. 28, 2025) (unpublished manuscript) (on file with author) [hereinafter Leshem, *The State as a Moral Person*]; Ela A. Leshem, *Normative Transplants: The Case of Ships as Legal Persons*, in *LEGAL PERSONHOOD IN PRIVATE LAW* (Christopher Essert, Paul B. Miller & Eva Micheler eds., forthcoming 2026) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6292802 [hereinafter Leshem, *Ships as Legal Persons*]; Ela A. Leshem, *The Bookends of Life* (Nov. 9, 2025) (unpublished manuscript) (on file with author) [hereinafter Leshem, *Bookends*]; Ela A. Leshem & Yoni Pomeranz, *The Flag Between Person and Property* (Mar. 30, 2026) (unpublished manuscript) (on file with author).

To render my investigation of law's shifting circles feasible, I will use the term "moral persons" as a shorthand to refer to entities with moral status: entities that deserve moral consideration at least in part for their own sakes;²⁷ entities that can hold moral interests or bear responsibilities; entities with whom one can stand in a moral relationship.²⁸ This use of the term "moral persons" may be unfamiliar to those whose first association when they hear "person" is a human being or the binary conception of personhood with which lawmakers and legal advocates often operate.²⁹ Readers attached to this binary conception of persons should feel free to replace the term "moral person" in their minds with "entity with moral status" or an alternative expression they find most intuitive.³⁰

Substantively, nothing hinges on my terminological choice to use "moral persons." My key claim is the following either way: our legal system has long treated a broad array of entities, including nonhuman and nonsentient ones, as entities deserving moral consideration at least in part for their own sakes and as entities with which humans stand in moral relationships. I prefer to mount my critique of the binary conception of personhood from within a personhood vocabulary, rather than from without, in the hopes of helping us reconsider that binary conception. I worry that the kind of binary conception of personhood on display in the North Dakota bills is part of what has prevented us from seeing that additional entities

27. See, e.g., JEFF SEBO, *THE MORAL CIRCLE: WHO MATTERS, WHAT MATTERS, AND WHY* 13 (2025) (describing such entities as having "moral standing").

28. See, e.g., Leshem, *Dead Bodies*, *supra* note 26, at 1004–05 n.19. Another shorthand is my use of the terms "the law" and "our legal system" to refer to lawmakers', judges', and advocates' positions as they find expression in statutes, judicial opinions, and other legal sources. I will often speak of the law and our legal system as though they were agents doing something, such as "treating" an entity with moral concern and "attributing" moral status to it. This agentic talk of the law makes it possible to summarize my observations about relevant legal materials and actors without having to spell out each time the full multiplicity of subject areas, jurisdictions, states, and territories at play, or the even greater multiplicity of actors shaping those laws across more than two centuries. There is some irony, of course, in relying on such agentic shorthands in an Article showcasing instances when personifying abstract ideas and inanimate objects becomes more than a figure of speech. But I aim not to cross that line with my agentic talk of "the law."

29. See, e.g., 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, machines—stuff we can buy, sell, or destroy. In moral and legal terms, it is the line between subject and object. If I have a chicken, I can sell it, eat it, or dress it in Napoleonic finery. It is, after all, my chicken. Even if eating meat were banned for moral reasons, no one would think the chicken should be able to vote or own property. It is not a person."). The binary conception of personhood can draw support from philosophical accounts that reserve the label "person" for morally responsible agents. See, e.g., JOHN LOCKE, *AN ESSAY CONCERNING HUMAN UNDERSTANDING* bk. II, ch. XXVII, § 28 (1690) ("Person . . . is a forensic term, appropriating actions and their merit; and so belongs only to intelligent agents, capable of a law, and happiness, and misery.").

30. Some readers may want to stick to a binary conception of personhood because they worry that any room for gradations under the umbrella of personhood may end up threatening the equal moral status of human beings who lack certain capacities, such as infants, severely disabled humans, and humans in a vegetative state. But I see this risk posed by any capacity-based conception of personhood, whether it admits of gradations or not. And it is possible to insist on the equal moral status of incapacitated humans—their superpersonhood in the terms of my account—regardless of whether the alternative is no personhood (on a binary conception of personhood) or lesser personhood (on a scalar conception of personhood).

with moral status inhabit our legal system—entities that are not full-fledged rightsholders, but that our laws nonetheless protect in part for their own sakes. To avoid confusion between competing conceptions of personhood, I will use “moral person” throughout to set my conception of personhood apart from the binary conception I am critiquing.³¹

I will tell the story of law’s shifting circles in three parts. Part I sketches the conventional expanding circle story that scholars and advocates tell to describe the moral landscape of our legal system. It then introduces the moral persons that this conventional story leaves out. Part II outlines the historical shifts in this fuller account and the revisions that these shifts demand from the conventional story. Part III returns to the contemporary personhood fights with which I began. It argues that we can better understand commonly held positions about rights of nature, AI systems, and abortion as continuing in the tradition of law’s epiperson treatment rather than operating in the mold of a binary conception of personhood.

I. LAW’S OTHER PERSONS

My account, with its broad array of moral persons, operates against the foil of the conventional story: the expanding circle story with human persons at its center. I begin this Part by summarizing the expanding circle story before turning to the moral persons it leaves out.

A. THE EXPANDING CIRCLE

The title of this Article, “Law’s Shifting Circles,” is a play on philosopher Peter Singer’s 1981 book *The Expanding Circle*.³² In this book and other works,

31. I use “moral” in an expansive, descriptive sense that resembles the Durkheimian conception of morality as comprising a broad range of social codes. See ÉMILE DURKHEIM, *The Determination of Moral Facts*, in *SOCIOLOGY AND PHILOSOPHY* 35, 48–49 (D. F. Pocock trans., 1953) (1906); see also Jesse Graham et al., *Moral Foundations Theory: The Pragmatic Validity of Moral Pluralism*, in 47 *ADVANCES IN EXPERIMENTAL SOCIAL PSYCHOLOGY* 55, 71 (Patricia Devine & Ashby Plant eds., 2013) (employing a similarly expansive conception of morality). My critique of the binary conception of personhood partially echoes Visa Kurki’s critique of the “orthodox view” of legal personhood. See VISA A.J. KURKI, *A THEORY OF LEGAL PERSONHOOD* 55–87 (2019). But whereas Kurki offers a competing theory of legal personhood, my focus is on lawmakers’ conceptions of moral personhood—that is, on who in the eyes of the law counts morally. Though relevant for issues of legal personhood, moral personhood is as a descriptive matter neither sufficient nor necessary for legal personhood, which involves the ascription of legal rights or duties.

32. PETER SINGER, *THE EXPANDING CIRCLE: ETHICS, EVOLUTION, AND MORAL PROGRESS* (Princeton Univ. Press 2011) (1981). The foil for my arguments, however, is the popularized, law-oriented version of the expanding circle story, not Singer’s own account. Singer’s account, with its commitment to utilitarianism and focus on sentience, largely sidesteps the concepts of moral personhood and rights. It therefore does not directly implicate itself in the binary conception of personhood that characterizes what I call the “conventional” expanding circle story as it features in U.S. law and advocacy. See *infra* notes 35–46 and accompanying text. Singer also uses the term “moral” in a narrower sense than I. His use is normative and critical, while mine is descriptive and expansive. See *supra* note 31; H.L.A. HART, *THE CONCEPT OF LAW* 185 (2d ed. 1994) (distinguishing “enlightened moral criticism” from “conventional morality”); H.L.A. HART, *LAW, LIBERTY AND MORALITY* 20 (1963) (distinguishing “critical morality” from “positive morality”).

Singer helped popularize the now-conventional story about moral persons.³³

On the conventional story, humans have, in fits and starts, expanded their circle of moral concern over time. They started out caring only for themselves and their kin. Then they learned to regard others in their tribe or social group as mattering morally as well. Eventually, humans treated all members of their religion, race, or nation as moral persons. And they are now in the process of recognizing all humans as moral persons, regardless of group affiliation.³⁴

Adapted to the U.S. legal context, the conventional story tends to focus on the expansion of the franchise. It traces the expanding circle of moral concern from property-owning white men to the eventual inclusion of indigent white men, Black men, and women.³⁵ This is, suffice it to say, a work in progress—but one that many remain attached to as a matter of both history and aspiration.

Advocates of many different stripes have tried to marshal the expanding circle story for their cause. Animal-rights advocates see the inclusion of nonhuman animals as the circle's next frontier.³⁶ Environmentalists view the additional inclusion of organisms such as plants, and ecosystems such as mountains or

Given his narrower definition of “moral,” Singer’s expanding circle story is internally consistent in ignoring the shifting circles I describe. Those circles and shifts do not pertain to the circle of moral concern in the normative sense relevant to him. If anything, they bolster his case for moral progress because they speak to humans’ increasing ability, over the course of history, to be morally concerned for those entities, and only those, who from Singer’s perspective truly deserve moral concern: sentient beings. I will later respond directly to such attempts to assimilate my account into the expanding circle story. *See infra* notes 189–199 and accompanying text. Suffice it to say for now that my Article aims not to expose self-contradictions in Singer’s account, but rather to explore what we can learn from a more expansive perspective on our legal system’s moral commitments—lessons that a narrower perspective risks missing out on.

33. *See generally* SINGER, *supra* note 32; Peter Singer, *The Drowning Child and the Expanding Circle*, NEW INTERNATIONALIST (Apr. 5, 1997), <https://newint.org/features/1997/04/05/peter-singer-drowning-child-new-internationalist> [<https://perma.cc/HFT3-XTJF>]; PETER SINGER, *THE LIFE YOU CAN SAVE: HOW TO DO YOUR PART TO END WORLD POVERTY* 70 (Tenth Anniversary ed. 2019); *see also* 1 WILLIAM EDWARD HARTPOLE LECKY, *HISTORY OF EUROPEAN MORALS: FROM AUGUSTUS TO CHARLEMAGNE* 100–01 (3d ed. 1917) (developing the expanding circle story).

34. SINGER, *supra* note 32, at 11–22, 120.

35. *See, e.g.*, Christopher D. Stone, *Should Trees Have Standing?—Toward Legal Rights for Natural Objects*, 45 S. CAL. L. REV. 450, 450–51 (1972) (pointing to several of these past instances of moral expansion).

36. *See, e.g.*, SINGER, *supra* note 32, at 120 (“The expansion of the moral circle should . . . be pushed out until it includes most animals.”); SEBO, *supra* note 27, at 60, 73–76 (arguing for expanding the moral circle to all entities plausibly capable of welfare, including many animals); Jacy Reese Anthis & Eze Paez, *Moral Circle Expansion: A Promising Strategy to Impact the Far Future*, FUTURES, June 2021, at 2 (arguing for the inclusion of all sentient beings, including animals); *see also* PETA’s *Best Protest Photos of 2023*, PEOPLE FOR ETHICAL TREATMENT ANIMALS (Apr. 2, 2024), <https://www.peta.org/news/best-peta-protest-photos-2023/> [<https://perma.cc/GFR4-C4SX>] (including “Now Serving Grilled . . . ‘Baby’?!” a protest photo comparing grilled chicken to human babies being grilled for food). I use the term “animal-rights advocates” in this Article to refer broadly to all advocates seeking more robust protections for animals, regardless of whether their advocacy is based on rights, welfarism, or other philosophical commitments.

watersheds, as the expanding circle's destination.³⁷ Anti-abortion advocates insist on the inclusion of unborn humans as the circle's natural next extension.³⁸ And a still fledgling group of AI-rights advocates imagines sentient AI systems in the circle's not-so-distant future.³⁹

Advocates' use of the expanding circle story across different causes juxtaposes interest groups that do not always form political alliances. A vegan anti-abortion coalition, for instance, barely exists.⁴⁰ Nonetheless, advocates' shared reliance on the expanding circle story creates striking rhetorical parallels across their different movements. Advocates wield the expanding circle as a historical warning. History, they say, is moving toward an ever more inclusive understanding of who matters morally. Today we all see that people who resisted this tide in the past were terribly mistaken. Slavery and the Holocaust frequently enter the rhetoric at this point to illustrate the horror of drawing the circle too narrowly.⁴¹ Similarly, advocates then charge, we will come to recognize what U.S. society now does at

37. See, e.g., Stone, *supra* note 35, at 456–58; Susana Borràs, *New Transitions from Human Rights to the Environment to the Rights of Nature*, 5 TRANSNAT'L ENV'T L. 113, 114 (2016); SEBO, *supra* note 27, at 65–66, 73–76 (arguing for expanding the moral circle to all entities plausibly capable of welfare, including plants, fungi, and single-celled microorganisms).

38. See, e.g., Dabney P. Evans & Subasri Narasimhan, *A Narrative Analysis of Anti-Abortion Testimony and Legislative Debate Related to Georgia's Fetal "Heartbeat" Abortion Ban*, 28 SEXUAL & REPROD. HEALTH MATTERS 215, 219 (2020) (quoting legislators supporting the Georgia fetal "heartbeat" bill who portrayed fetal personhood as carrying on the purpose of the 14th Amendment "to give full legal recognition to entire classes of persons that had never been given full legal recognition"); Comment, Em (Jan. 30, 2014, at 05:13 ET), on Clinton Wilcox, *A Response to the Spectrum Argument*, SECULAR PRO-LIFE (Jan. 21, 2014), <https://secularprolife.org/2014/01/a-response-to-spectrum-argument/> [<https://perma.cc/9P7F-MJS8>] ("[H]ow many times throughout history have we declared entire classes of human to be non-persons, and used that to justify killing or enslaving or exploiting them? How many times have we said 'all men are created equal ... except for them, they're too different.' And how many times have we been right? Never.").

39. See, e.g., SEBO, *supra* note 27, at 66, 73–76 (arguing for expanding the moral circle to all entities plausibly capable of welfare, including many current and future AI systems); *AI Rights*, *supra* note 21 (describing the Sentient AI Protection and Advocacy Network's goal as to "[e]xpand humanity's moral circle to include digital sentience through strategic advocacy"); *The Case for AI Rights*, *supra* note 21 ("For centuries, humanity has redefined the boundaries of moral inclusion—from race and gender to species. We now face the next frontier: non-biological intelligence.").

40. See SHERRY F. COLB & MICHAEL C. DORF, *BEATING HEARTS: ABORTION AND ANIMAL RIGHTS* 1–2 (2016); see also *Parallels of Veganism and Pro-Lifeism*, VEGANS FOR PREBORN RTS., <https://www.vegansforprebornrights.org/parallels-of-veganism-and-prolifeism> [<https://perma.cc/DN79-QYFN>] (last visited Apr. 20, 2026).

41. E.g., Image posted by Live Action (@LiveAction), X, "*Not a Person*" (Mar. 30, 2018, at 08:01 ET), <https://x.com/LiveAction/status/979689952119271425> [<https://perma.cc/45HK-JFHD>] (depicting an American enslaved person, Jews during the Holocaust, and an unborn fetus side-by-side); ALA. CODE § 26-23H-2(i) (pointing to the murder of "6,000,000 Jewish people ... in German concentration camps during World War II," among other atrocities, before stating "[b]y comparison, more than 50 million babies have been aborted in the United States since the Roe decision in 1973"); MARY ZIEGLER, *PERSONHOOD: THE NEW CIVIL WAR OVER REPRODUCTION* 8, 187–90 (2025) (describing the positions of anti-abortion abolitionists who borrow their name from and compare their work to anti-slavery abolitionists); CHARLES PATTERSON, *ETERNAL TREBLINKA: OUR TREATMENT OF ANIMALS AND THE HOLOCAUST* (2002).

grand scale—when aborting one million fetuses a year,⁴² slaughtering ten billion animals a year,⁴³ and so on—as horrific moral wrongs: treating those who should have been considered moral persons all along with rights to life, liberty, and well-being as though they were not moral persons, but instead mere things that can be owned, destroyed, and used to maximize human interests.

In short, the rhetorical use of the expanding circle story tends to be teleological. Here is where capital-H History is heading, advocates say. Align yourself with the tide of History.⁴⁴ Judgment Day is coming. The Court of History will not look kindly upon those who draw their circle of moral concern narrowly.⁴⁵ It will judge their acts with similar condemnation as we now judge the enslavement of Black Americans and the mass murder of Jews.⁴⁶

Critics frequently push back on the rhetoric of the expanding circle. A common complaint is that claims about the expanding circle perpetuate racist or anti-Semitic comparisons between, on the one hand, Black and Jewish people and, on the other hand, nonhuman animals.⁴⁷

42. The Guttmacher Institute estimates 1,126,000 clinician-provided abortions were performed in the United States in 2025. *Guttmacher Releases Full-Year 2025 Abortion Incidence and Travel Data*, GUTTMACHER INST. (Mar. 24, 2026), <https://www.guttmacher.org/news-release/2026/guttmacher-releases-full-year-2025-abortion-incidence-and-travel-data> [<https://perma.cc/3UN8-AMTF>]. The CDC received reports of 613,383 legal induced abortions from forty-eight reporting areas for 2022. Stephanie Ramer et al., *Abortion Surveillance—United States, 2022*, MORBIDITY & MORTALITY WKLY. REP. SURVEILLANCE SUMMARIES, Nov. 28, 2024, at 1, <https://www.cdc.gov/mmwr/volumes/73/ss/pdfs/ss7307a1-H.pdf> [<https://perma.cc/C6GB-Q6YK>].

43. This estimate includes both land animals and farmed fish. See Hannah Ritchie, *How Many Animals Are Factory-Farmed?*, OUR WORLD IN DATA (Nov. 2024), <https://ourworldindata.org/how-many-animals-are-factory-farmed> [<https://perma.cc/3JWU-SFLQ>] (estimating that just over ten billion animals were factory-farmed in the United States in 2022); Jacy Reese Anthis, *US Factory Farming Estimates*, SENTIENCE INST. (Nov. 2, 2024), <https://www.sentienceinstitute.org/us-factory-farming-estimates> [<https://perma.cc/CQ6E-C35W>] (estimating that around 9.4 billion factory-farmed chickens and turkeys were sold as meat in 2022).

44. See, e.g., SINGER, *supra* note 32, at 111–24.

45. See David J. Barron, *Madison Lecture: The Court of History*, 98 N.Y.U. L. REV. 683, 684–85 (2023); Daniel B. Rice, *Repugnant Precedents and the Court of History*, 121 MICH. L. REV. 577, 579–80 (2023); JOAN WALLACH SCOTT, *ON THE JUDGMENT OF HISTORY* (2020).

46. See, e.g., Steven M. Wise, *Of Farm Animals and Justice*, 3 PACE ENV'T L. REV. 191, 193 n.8, 197–98 (1986); Kwame Anthony Appiah, *What Will Future Generations Condemn Us For?* WASH. POST (Sep. 26, 2010), <https://www.washingtonpost.com/wp-dyn/content/article/2010/09/24/AR2010092404113.html>.

47. See Luis C. Rodrigues, *White Normativity, Animal Advocacy and PETA's Campaigns*, 20 ETHNICITIES 71, 74–75 (2020); Angela P. Harris, *Should People of Color Support Animal Rights?*, 5 J. ANIMAL L. 15, 24–27 (2009); CLAIRE JEAN KIM, *DANGEROUS CROSSINGS: RACE, SPECIES, AND NATURE IN A MULTICULTURAL AGE* 185–88 (2015); Angela Fernandez, *Animals as Property, Quasi-Property or Quasi-Person* 65–66 (2021) (unpublished manuscript) (on file with Brooks Inst. for Animal Rts. L. & Pol'y), https://thebrooksinstitute.org/sites/default/files/presentations/Animal%20Law%20Fundamentals%20-%20Angela%20Fernandez_1.pdf [<https://perma.cc/Q94G-LSXP>]. For a qualified defense of the comparison, see MARJORIE SPIEGEL, *THE DREADED COMPARISON: HUMAN AND ANIMAL SLAVERY* (1988). Critics have attacked anti-abortion abolitionists, too, for comparing their cause to the abolition of slavery. See, e.g., Sarah McCammon, *Republicans Try to Soften Stance on Abortion as 'Abolitionists' Go Farther*, NPR (May 21, 2024, at 05:00 ET), <https://www.npr.org/2024/05/21/1252320298/abortion-republicans-abolitionist-ivf> [<https://perma.cc/E4W5-T2LR>] (quoting such criticism by Nimra Chowdhry of the Center for Reproductive Rights).

This Article offers an additional, quite different critique of the expanding circle story and rhetoric. I argue that the conventional account operates with a binary conception of personhood that is ill-equipped to capture the full breadth of entities for which our legal system has shown longstanding moral concern. As a result, the conventional account overlooks a vast set of entities that humans historically considered to be moral persons. Once we pay attention to that full set of moral persons, we will see that the expanding circle story is significantly incomplete. There are several circles of moral concern, not just one. And these circles have not only expanded over time. They have also, as to some entities, contracted.⁴⁸

B. SUPERPERSONS

What is that broader historical universe of moral persons I have in mind? To start, think of ancestral spirits, angels, demons, devils, idols, goblins, fairies, and ghosts. Historically, humans treated these and other entities as moral persons. Today, that is no longer true in many societies. And in this sense, the circle of moral concern has contracted significantly over time.

Sociologists and historians sometimes describe this contraction as part of a broader phenomenon of “disenchantment.” Or, as originally coined by Max Weber, “die Entzauberung der Welt”—the disenchantment or demagification of the world.⁴⁹

I am taking aim at something more specific in this Article: shifts in the circles of moral concern that I view as having taken place in the American legal system. But I start with this nod to the disenchantment literature to make clear that the story I tell intersects with broader sociological phenomena and is embedded in larger historical contexts that I will only have room to reference in passing.

American law's circles of moral concern were historically structured around three kinds of moral persons: gods, sovereigns, and humans. You can think of these as the three main protagonists of our legal system, with roots in English law and the laws of the American colonies. I will call this triad God, Country, and Man. My hope in doing so is to evoke a certain nineteenth-century cadence for this triad⁵⁰—familiar perhaps from Massachusetts Governor John Andrew's 1862 proclamation pledging himself and the people of his state “in solemn vows to God, to our Country, and to Mankind”⁵¹ or from Justice Story's assurance in

48. My critique shares aspects of the pseudonymous essayist Gwern Branwen's critique of the expanding circle story but focuses on a different set of contractions than Branwen and on how those play out in the U.S. legal system rather than in general moral beliefs. See Gwern Branwen, *The Narrowing Circle*, GWERN (Apr. 27, 2019), <https://gwern.net/narrowing-circle> [<https://perma.cc/DUY3-8RLA>] (“The ‘expanding circle’ historical thesis ignores all instances in which modern ethics *narrowed* the set of beings to be morally regarded, often backing its exclusion by asserting their non-existence, and thus assumes its conclusion: where the circle is expanded, it's highlighted as moral ‘progress’, and where it is narrowed, what is outside is simply defined away.”).

49. MAX WEBER, *WISSENSCHAFT ALS BERUF* 16 (1919).

50. This also features in poems and songs from the time. See, e.g., J.W. Temple, *Our Country's Flag on God's Sacred Altar* (1890), reprinted in SCOT M. GUENTER, *THE AMERICAN FLAG, 1777–1924: CULTURAL SHIFTS FROM CREATION TO CODIFICATION* 193 (1990) (“And love of God walk hand in hand [w]ith love of man and native land!”).

51. John A. Andrew, Governor, Commonwealth of Mass., *A Proclamation for a Day of Humiliation, Fasting and Prayer* (Mar. 11, 1862) (on file with Libr. of Cong., Printed Ephemera Collection, Portfolio 69, Folder 5).

1823 that he and his fellow Supreme Court Justices “hold [them]selves answerable to God, [their] consciences, and [their] country.”⁵²

Let me briefly take each member of the triad in turn, starting with the most familiar.

Man. Humans are the focus of vast swaths of our legal system. When civil and criminal laws seek to protect humans, say against the taking of human life, they implicitly or explicitly posit humans to be moral persons. They assume that humans have moral interests and responsibilities. “Man,” my label for human persons, reminds us that the U.S. legal system initially treated a certain kind of man—white, Protestant, property-owning, etc.—as the paradigm human person and marginalized others. But with time, as the expanding circle story recounts, the class of human persons became more inclusive.⁵³

Country. As with “Man” for all human persons, I use “Country” as a label for all sovereign persons: the nation, the federation, the states, the sovereign people. The U.S. legal system protects sovereigns in various contexts. Take, for instance, the doctrines of sovereign immunity that shield the U.S. government, states, and foreign nations from suit by default. Or Congress’s decision to authorize capital punishment for crimes against the State, such as treason against the U.S. government—a punishment that is otherwise only consistent with the Eighth Amendment’s prohibition against cruel and unusual punishment when applied to homicide.⁵⁴ In these and other contexts, our legal system has at times treated sovereigns as moral persons. Which is to say, it has ascribed moral status to states themselves, not just to the humans who constitute the government or sovereign people. Judges and lawmakers, for instance, have justified sovereign immunity doctrines in part by asserting that sovereigns have dignity.⁵⁵ Such assertions cannot always be shrugged off as inconsequential figures of speech. I argue in other work, for example, that our doctrines and practices of transgenerational binding as they currently apply to the U.S.

52. *Green v. Biddle*, 21 U.S. (8 Wheat.) 1, 93 (1823).

53. An additional historical shift in the moral circle of Man occurs from more collectivist to more individualist conceptions of humans. On the collectivist side, laws refer to “mankind,” “humankind,” or “humanity” as holding moral interests and bearing moral responsibilities. *See, e.g.*, *Pierce v. Proprietors of Swan Point Cemetery*, 10 R.I. 227, 237–38 (1872) (locating the duty to treat corpses with respect in “the universal feelings of mankind”); *Pettigrew v. Pettigrew*, 56 A. 878, 880 (Pa. 1904) (locating the same in “the universal sentiment of humanity”). On the individualist side, laws treat individual humans as the relevant holders of interests and bearers of responsibility. I will largely bracket the collectivist conception in this Article.

54. *See* Federal Death Penalty Act of 1994, 18 U.S.C. §§ 3591–3598; *Kennedy v. Louisiana*, 554 U.S. 407, 437 (2008) (holding that capital punishment for a crime against individual humans that does not involve their death is unconstitutional under the Eighth Amendment, while bracketing offenses against the State such as treason or espionage); Yoni Pomeranz, *The Coherence of Dignity in United States Constitutional Law* 43–44 (2019) (unpublished manuscript) (on file with author).

55. *See, e.g.*, *Fed. Mar. Comm’n v. S.C. State Ports Auth.*, 535 U.S. 743, 760 (2002) (“The preeminent purpose of state sovereign immunity is to accord States the dignity that is consistent with their status as sovereign entities.”); *Alden v. Maine*, 527 U.S. 706, 715 (1999) (“The generation that designed and adopted our federal system considered immunity from private suits central to sovereign dignity.”); *Ex parte Republic of Peru*, 318 U.S. 578, 586–87 (1943) (“The case involves the dignity and rights of a friendly sovereign state”); *see also* Judith Resnik & Julie Chi-hye Suk, *Adding Insult to Injury: Questioning the Role of Dignity in Conceptions of Sovereignty*, 55 STAN. L. REV. 1921, 1922–24 (2003).

Constitution and sovereign debt contracts presuppose that the state is an irreducible moral person.⁵⁶ Some of our legal doctrines and practices would need to change if our legal system were to expel sovereign persons from its circle of moral concern.⁵⁷

God. Historically, U.S. law also protected God as a moral person. Well into the nineteenth century, for instance, blasphemy—speaking ill of God—was a crime in nearly all states.⁵⁸ Lawmakers viewed the punishment of blasphemers as justified in part for God's sake, not just for the sake of human believers who might otherwise take offense.⁵⁹ Similarly, so-called blue laws restricted labor on Sunday in part to ensure observance of God's day of rest, not just to accommodate human believers or to secure some secular version of (pardon the anachronism) work/life balance.⁶⁰ As with human persons, the divine persons for whom our legal system showed moral concern were initially a more exclusive set, encompassing mainly the Protestant (and perhaps the Deistic) God. Hence, the capital-G “God” to label this set. But over time, the set has become somewhat more inclusive, encompassing the gods and deities of other religions as well.⁶¹

The three kinds of moral persons I just introduced—God, Country, and Man—are “superpersons” in our legal system. I hope to convey with this term that U.S. law has historically attributed an especially elevated moral status to divine, sovereign, and human persons. It has treated them as moral agents—that is, as moral persons in the sense that they can have responsibilities or moral duties and are actors to whom others are morally vulnerable. And the law has also treated them as moral patients—that is, as moral persons in the sense that they can have interests or moral rights and are subjects who are morally vulnerable to others.⁶² The protections with

56. See Leshem, *The State as a Moral Person*, *supra* note 26.

57. Judith Resnik and Julie Suk, for instance, suggest that the doctrine of sovereign immunity is untenable once one adopts an individualist conception of dignity. See Resnik & Suk, *supra* note 55, at 1953–58.

58. See, e.g., *Updegraph v. Commonwealth*, 11 Serg. & Rawle 394, 398, 406 (Pa. 1824); *People v. Ruggles*, 8 Johns. 290, 292–93, 295–96 (N.Y. Sup. Ct. 1811). In the American colonies, blasphemy was sometimes punishable by death. See, e.g., Maryland Toleration Act (Sep. 21, 1649), *reprinted by* YALE L. SCH.: THE AVALON PROJECT, http://avalon.law.yale.edu/18th_century/maryland_toleration.asp [<https://perma.cc/3YD5-JSPK>].

59. See, e.g., *Ruggles*, 8 Johns. at 296 (“Though the constitution has discarded religious establishments, it does not forbid judicial cognisance of those offences against religion and morality which have no reference to any such establishment, or to any particular form of government, but are punishable because they strike at the root of moral obligation, and weaken the security of the social ties.”); *Commonwealth v. Kneeland*, 37 Mass. (20 Pick.) 206, 213 (1838) (“[B]laspemy may be described, as . . . purposely using words concerning God, calculated and designed to impair and destroy the reverence, respect, and confidence due to him, as the intelligent creator, governor and judge of the world.”).

60. See, e.g., Act of Mar. 8, 1792, ch. 58, 1790–1791 Mass. Acts. 351 (1791) (providing for “due observation of the lord’s day”); MASS. GEN. LAWS ch. 136, § 5 (imposing fines against anyone who “does any manner of labor, business or work” on Sundays, with exceptions for charitable or necessary work); MASS. GEN. LAWS ch. 131, § 57 (prohibiting certain forms of hunting on Sundays); ABRAM HERBERT LEWIS, *SUNDAY LEGISLATION: ITS HISTORY TO THE PRESENT TIME AND ITS RESULTS* 160–61 (2d ed. 1902) (tracing blue laws to the religious commitments of New England colonists).

61. See *infra* note 196 and accompanying text.

62. Of all the combinations—human agency and patiency, sovereign agency and patiency, divine agency and patiency—divine agency is probably the least visible by now (more on that shrinking later). But examples include laws influenced by beliefs in God’s providence; laws influenced by beliefs in

which our legal system has sought to secure the moral interests of superpersons have often been robust.

Superpersons are not the only moral persons that our legal system has at times recognized. Take nonhuman animals. Some U.S. laws, such as animal cruelty laws, treat a narrow subset of nonhuman animals as moral persons in some circumstances.⁶³ These laws are at least in part concerned with the wellbeing of non-human animals. They view animals as moral patients.

I am also open to the idea that there are additional groups of humans, besides sovereigns, that our legal system has at times treated as moral persons. Critics of *Citizens United v. FEC*⁶⁴ and *Burwell v. Hobby Lobby Stores, Inc.*,⁶⁵ for instance, charge that U.S. law has come to treat corporations as moral persons.⁶⁶ But much of the free-speech and free-exercise jurisprudence for corporations is consistent with viewing the humans who constitute corporations (owners, shareholders, directors, and so on) as the only moral persons at play.⁶⁷ The legal personhood of corporations may just be the legal fiction it is supposed to be, not one anchored in moral personhood. I will hold off on assertions about corporate moral personhood for purposes of this Article.

There are other candidates, too, for moral persons that historically populated our legal system: ships, for instance.⁶⁸ But however many additional moral persons there are, superpersons have historically occupied uniquely exalted positions in our legal system. One important respect in which this is true is our legal

God's vengeance for sin; and, more indirectly, the frequent accommodation of and deference to believers who see themselves bound by a law-giving God.

63. See, e.g., MISS. CODE ANN. § 97-41-16(1)(b) ("The intent of the Legislature in enacting this [animal cruelty] law is to provide only for the protection of domesticated dogs and cats, as these are the animals most often serving as the loyal and beloved pets of the citizens of this state.").

64. 558 U.S. 310 (2010).

65. 573 U.S. 682 (2014).

66. See, e.g., Amy Gardner & Felicia Sonmez, *In Formal Campaign Kick-Off, Obama Dings Romney's 'Corporations Are People' Line*, WASH. POST (May 5, 2012), https://www.washingtonpost.com/politics/obama-to-showcase-technology-at-kickoff-rallies-saturday/2012/05/05/gIQAZNA32T_story.html (quoting President Obama as declaring during a campaign speech, "I don't care how many ways you try to explain it—corporations aren't people. People are people"); *Citizens United*, 558 U.S. at 466 (Stevens, J., concurring in part and dissenting in part) (insisting that corporations "are not themselves members of 'We the People'"); JEFFREY D. CLEMENTS, *CORPORATIONS ARE NOT PEOPLE: RECLAIMING DEMOCRACY FROM BIG MONEY AND GLOBAL CORPORATIONS* (2d ed. 2014).

67. See *Hobby Lobby*, 573 U.S. at 706–07 ("A corporation is simply a form of organization used by human beings to achieve desired ends. An established body of law specifies the rights and obligations of the *people* (including shareholders, officers, and employees) who are associated with a corporation in one way or another. When rights, whether constitutional or statutory, are extended to corporations, the purpose is to protect the rights of these people."); ADAM WINKLER, *WE THE CORPORATIONS: HOW AMERICAN BUSINESSES WON THEIR CIVIL RIGHTS* 66 (2018) (discussing Justice Marshall's position that the corporation is an "invisible, intangible, and artificial being" and that its constitutional rights, insofar as it has them, derive from its members).

68. See Leshem, *Ships as Legal Persons*, *supra* note 26; *Tucker v. Alexandroff*, 183 U.S. 424, 438 (1902) ("In the baptism of launching she receives her name, and from the moment her keel touches the water she is transformed, and becomes a subject of admiralty jurisdiction. She acquires a personality of her own; becomes competent to contract, and is individually liable for her obligations, upon which she may sue in the name of her owner, and be sued in her own name.").

system's attribution of dignity not only to superpersons themselves but also to superpersons' surrounding objects. Our legal system has historically attributed a dignity of such intensity to superpersons that their dignity "spilled over" to their orbits. This special power of superpersons—their superpower, if you will—is what I turn to next.

C. PENUMBRA OBJECTS

Our legal system has at times shown such heightened moral concern for superpersons that it has attributed elevated status also to physical objects that our society intimately associates with superpersons. In the language of semiotics, these physical objects stand in a signifying relationship to superpersons. They are symbols, icons, or indices of superpersons.⁶⁹ Which is to say, they are signs that relate to superpersons through convention, through resemblance, or through physical or temporal contiguity.⁷⁰ You can picture these associated objects as planets circling three suns. These objects fall into the "penumbra" of superpersons.⁷¹ And our legal system has treated superpersons as so intensely dignified that their dignity has rubbed off on these "penumbra objects."

Let me give a few examples of penumbra objects, as they surround each superperson in turn.

Human penumbra. Objects that fall into the penumbra of human superpersons include, for instance, corpses and effigies. Our legal system protects corpses in elaborate ways.⁷² Historically, U.S. laws protected effigies as well.⁷³ Additional candidates for human penumbra objects include human simulacra, statues, mannequins, wax models, portraits, photographs, videos, writings, and data.⁷⁴

Sovereign penumbra. Objects in the penumbra of sovereign superpersons include flags and national monuments. The laws protecting flags are elaborate and complex.⁷⁵ Monuments, too, enjoy robust protections.⁷⁶ And a host of other objects fall into the

69. See CHARLES S. PEIRCE, *On the Nature of Signs*, in 3 WRITINGS OF CHARLES S. PEIRCE: A CHRONOLOGICAL EDITION, 1872–1878, at 66, 66–67 (Christian J.W. Kloesel et al. eds., 1986); Benjamin L.W. Sobel, *A Real Account of Deep Fakes*, 124 MICH. L. REV. 871, 904–05 (2026).

70. See Sobel, *supra* note 69, at 904–05.

71. See *infra* Figure 1.

72. See Leshem, *Dead Bodies*, *supra* note 26; TANYA MARSH, *THE LAW OF HUMAN REMAINS* (2016).

73. See, e.g., *Johnson v. Commonwealth*, 14 A. 425, 425–26 (Pa. 1888) (holding that "[t]he image itself . . . was a libel" in a case in which the indictment charged that defendants "unlawfully, wickedly, and maliciously did hang up and suspend" an "effigy and figure" of a person from a "tree," along with an inscription); *Brown v. Paramount Publix Corp.*, 240 A.D. 520, 522 (N.Y. App. Div. 1934) (comparing the "new form of libel" alleged in this case, which involved a film, favorably to "the ancient libel committed by the burning of the plaintiff in effigy").

74. I would also include cemeteries and gravesites under this heading, though they technically fall into a secondary penumbra surrounding corpses. Historically, some of the human penumbra objects, such as corpses and cemeteries would have been candidates for the divine penumbra as well because of beliefs that humans are made in God's image and that human bodies and cemeteries are consecrated to God. See *infra* notes 81–84 and accompanying text (highlighting intersections among the circles of moral concern).

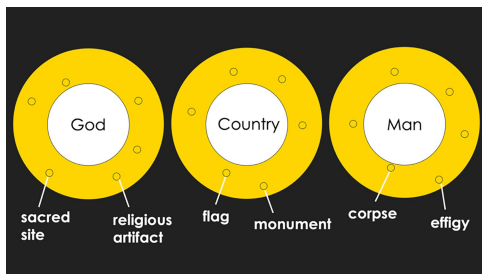
75. See Leshem & Pomeranz, *supra* note 26.

76. See, e.g., KAN. STAT. ANN. § 21-6205(a)(2)(B) (criminalizing "damaging, defacing or destroying any public monument or structure"); MASS. GEN. LAWS ch. 266, § 95 ("Whoever wilfully or maliciously

sovereign penumbra as well: founding documents like the Constitution, Declaration of Independence, and Bill of Rights; national emblems like the great seal and bald eagle; and official spaces and objects like courtrooms and uniforms.

Divine penumbra. Objects in the penumbra of divine superpersons encompass houses of worship and sacred sites, such as churches, mosques, synagogues, and Native American sacred sites. They also include religious artifacts, such as crosses, relics, idols, icons, devotional statues, cult objects, Bibles, Qurans, Torah scrolls, and Native American artifacts.

Figure 1: Superpersons with Penumbra Objects.



Statutes and cases that deal with penumbra objects, both historically and today, often use the language of dignity to describe the objects' status.⁷⁷ They also often use the language of sanctity, calling the objects sacred.⁷⁸ These ways of describing the objects' significance cut across all three penumbras. Dignity talk is not confined to the human penumbra. The American flag and a tribe's prayer stick also have dignity.⁷⁹ Nor is sanctity talk confined to the divine penumbra. The Constitution and a corpse are sacred, too.⁸⁰

removes, displaces, destroys, defaces, mars or injures any monument, tablet or other device erected to mark an historic place or to commemorate an historic event shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than two years."); N.J. STAT. ANN. § 2C:33-9 (criminalizing the "desecrat[ion of] any public monument").

77. See, e.g., *Halter v. Nebraska*, 205 U.S. 34, 41 (1907) (describing onlookers' reactions to "indignities put upon" a flag); 4 U.S.C. § 8(k) ("The flag, when it is in such condition that it is no longer a fitting emblem for display, should be destroyed in a dignified way, preferably by burning.").

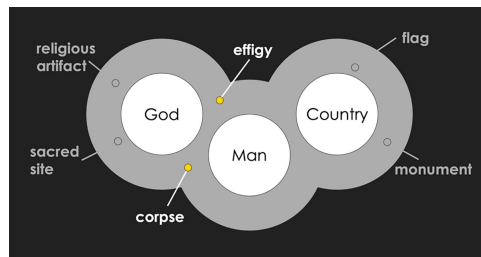
78. See, e.g., *Clark v. Diné Coll.*, 9 Am. Tribal Law 359, 362 (Navajo Nation Sup. Ct. Dec. 3, 2010) (noting that "sacred items confer duties of the heart and spirit" upon their stewards).

79. See, e.g., *Texas v. Johnson*, 491 U.S. 397, 420 (1989) (suggesting that the "dignity" of the American flag warrants the "respectful burial" of a destroyed flag); ARIZ. REV. STAT. ANN. § 41-844(H) ("A repository charged with the care or custody of human remains, funerary objects, sacred ceremonial objects or objects of national or tribal patrimony pursuant to this section shall maintain them with appropriate dignity and respect . . .").

80. See, e.g., *Fischer's Est. v. Fischer*, 117 N.E.2d 855, 857 (Ill. App. Ct. 1954) ("It is the policy of the law . . . that the sanctity of the grave should be maintained . . ."); *Silvia v. Helger*, 67 A.2d 27, 28 (R.I. 1949) (similar); UTAH CODE ANN. § 76-5-802(2) (prohibiting the "desecration" of dead bodies); MISS. CODE ANN. § 97-29-25(2)(a) (similar); N.J. STAT. ANN. § 2C:22-1(1)(a)(2) (similar); ROBERT JUSTIN GOLDSTEIN, BURNING THE FLAG: THE GREAT 1989-1990 AMERICAN FLAG DESECRATION

These overlapping value attributions indicate that the circles of moral concern do not divide neatly. They intersect.⁸¹ Historically, for instance, some human penumbra objects, such as corpses and effigies, fell into the divine penumbra as well.⁸² These intersections between the human and divine penumbras likely had their roots in Jewish and Christian notions of *imago Dei*: beliefs that humans are made in God's image and that human bodies are therefore consecrated to God.⁸³ Nor were such intersections confined to the human and divine penumbras. At times, lawmakers also treated desecrations of sovereign penumbra objects as affronts to God and desecrations of human and divine penumbra objects as affronts to Country—treatments we can perhaps trace to theological and political beliefs in the primary status of divine and sovereign superpersons, respectively.⁸⁴

Figure 2: Intersecting Penumbras.



Our legal system's treatment of penumbra objects sometimes exhibits an additional striking feature. It *personifies* penumbra objects. Lawmakers and judges, that is, sometimes speak of penumbra objects not only as connected to their superpersons but also as being themselves moral persons.

CONTROVERSY 313 (1996) (describing Democrats' invocations of the sanctity of the Constitution to counteract Republican efforts following *Texas v. Johnson* to amend the Constitution—among them Democratic Representative Dingell's proclamation that the Bill of Rights is “perhaps the most sacred and perfect document which has ever been set forth in the entire history of mankind”).

81. See *infra* Figure 2.

82. See, e.g., BRITTON: AN ENGLISH TRANSLATION AND NOTES 176 (Francis Morgan Nichols trans., 1901) (folio 84b) (calling “burialplaces” “things divine”); *St. Peter's Evangelical Lutheran Church v. Bean*, 15 Pa. D. 636, 639 (C.P. Montgomery Cnty. 1906) (“Common sentiment in every community regards the resting place of the dead a sacred spot. It is God's acre.”); see also, e.g., TEX. PENAL CODE ANN. § 28.08(d)(1) (imposing heightened penalties for defacing with graffiti “a place of worship or human burial,” among other specified places).

83. *Genesis* 1:27 (Robert Alter trans., 2019) (“And God created the human in his image, in the image of God He created him, male and female He created them.”); *Genesis* 9:6 (Robert Alter trans., 2019) (“He who sheds human blood by humans his blood shall be shed, for in the image of God He made humankind.”); *Deuteronomy* 21:23 (author's translation) (“An impaled corpse is a curse against God.”).

84. See, e.g., 68 CONG. REC. 5931 (1927) (statement of Rep. J. Mayhew Wainwright) (explaining that the American flag is “a sacred emblem” to “the true patriot” the desecration of which “is to him a mortal affront” and that the flag holds “an almost mystic meaning” encompassing “his religious faith”); GA. CODE ANN. § 36-72-1(a) (requiring the respectful treatment of human remains in part because they “are a part of the finite, irreplaceable, and nonrenewable cultural heritage of the people of Georgia”); *State v. Powers*, 34 N.C. (12 Ired.) 5, 6 (1851) (considering an indictment that charged the defendant with driving a nail through the ear of an effigy and characterized this alleged crime of libel as violating “the peace and dignity of the State”); see also *infra* note 111 (discussing the ancient Greek notion of *imago Rei Publicae*).

Take the American flag. According to the U.S. Code, “[t]he flag represents a living country and is itself considered a living thing.”⁸⁵ Lawmakers and judges also frequently refer to the flag as an “embodiment” of the state.⁸⁶ In the words of one House Representative in 1995, “[t]he American flag . . . is more than just a symbol. It embodies who we are as a nation.”⁸⁷ Such descriptions can be metaphorical. But read in context, they sometimes suggest a more literal understanding.⁸⁸ Lawmakers and judges who embrace this more literal understanding treat the flag as a physical manifestation of the sovereign superperson, not just as a symbol that signifies the sovereign. These lawmakers and judges treat the United States as a moral person and the flag, in turn, as that person’s body, rather than treating the United States as an abstract institution and the flag as its symbol.

The personification of penumbra objects will feel alien to many contemporary readers. So much so that they will struggle to compute it conceptually, let alone take it seriously. But it is worth reminding ourselves just how widespread throughout human history and across different cultures the personification of penumbra objects has been. Think of the Host—the consecrated bread of the Eucharist—in Catholic, Eastern Orthodox, or Lutheran doctrine. The Host, in this view, does not just symbolize Christ. It is Christ.⁸⁹ It is his body, the physical manifestation of a divine superperson. And the list of personified penumbra objects could easily go on: Torah scrolls in Jewish communities, idols in the Ancient Near East, totems of the aboriginal peoples of Australia, statues in Hindu temples, and so on.⁹⁰

To be sure, the law is not bound to personify penumbra objects as it has historically done. We and our legal system can and often do resist it. But it is not the stuff of ancient history. The federal statute referring to the flag as “a living thing,” for instance, was enacted in 1976.⁹¹

My point here is observational, not normative. In the eyes of the law, superpersons sometimes rub off some of their personhood onto their penumbra objects. Superpersons have personifying power—or rather, the law assigns such a power to

85. 4 U.S.C. § 8(j).

86. See, e.g., *Smith v. Goguen*, 415 U.S. 566, 602 (1974) (Rehnquist, J., dissenting) (calling the U.S. flag “the one visible embodiment of the authority of the National Government”); S. REP. NO. 101-152, at 2 (1989) (“Throughout the more than 200 years of our history, the American flag has come to be the visible embodiment of our Nation.”).

87. 141 CONG. REC. 6410 (1995) (statement of Rep. Thomas J. Manton).

88. Leshem & Pomeranz, *supra* note 26 (finding this literal understanding among many legislators).

89. Compare Fourth Lateran Council, Const. 1, *Firmiter credimus* (1215), in 1 DECREES OF THE ECUMENICAL COUNCILS 230 (Norman P. Tanner ed., 1990) (defining the Catholic doctrine of transubstantiation), with Martin Luther, *The Babylonian Captivity of the Church* (1520), in 36 LUTHER’S WORKS, at 11, 30–35 (Frederick C. Ahrens & Abdel Ross Wentz eds., A.T.W. Steinhäuser trans., Muhlenberg Press 1959) (rejecting the doctrine of transubstantiation while affirming that Christ’s blood and body are present in the wine and Host).

90. See Leshem & Pomeranz, *supra* note 26; Deepa Das Acevedo, *Deities’ Rights?*, 38 J.L. & RELIGION 450 (2023); BENJAMIN D. SOMMER, *THE BODIES OF GOD AND THE WORLD OF ANCIENT ISRAEL* (2011).

91. Act of July 7, 1976, Pub. L. No. 94-344, § 16, 90 Stat. 810, 812 (recodified at 4 U.S.C. § 8(j)).

them. My calling it a superpower earlier was only half joking; superpersons' personifying power is magical. Magical in the technical sense that it involves what anthropologists call "sympathetic magic"—an imagined causal link between, on the one hand, the moral status and treatment of a symbol, icon, or index and, on the other hand, the moral status and treatment of that sign's referent.⁹² Or put less semiotically, superpersons' personifying power involves an imagined causal link between penumbra objects and their superpersons, such that desecrating the flag, for instance, can harm both the flag and the sovereign.

When lawmakers and judges engage in the kind of personification of penumbra objects I just described, they treat penumbra objects as moral persons. Entities with moral status.⁹³ Entities with which one can stand in a moral relationship.⁹⁴ To be sure, legal actors who personify penumbra objects can and often do view the objects' legal protections as benefiting third parties as well, such as human bystanders who would feel offense at seeing someone burn the American flag.⁹⁵ But crucially, they treat penumbra objects as deserving moral consideration at least in part for their own sakes.

My scalar definition of moral personhood can capture this important sense in which penumbra objects possess moral status in the eyes of some lawmakers. A binary conception of personhood, by contrast, risks obscuring the moral status of penumbra objects because they are far from full-fledged rightsholders.

The moral status of penumbra objects, their moral personhood, is easiest to understand in instances in which their personification assumes a relationship of personal identity between the penumbra objects and their superpersons: when the flag is the sovereign, the Host is Christ, and so on. Here, the penumbra object has become a moral person by becoming a physical instantiation of the superperson. But I want to insist on the moral personhood of personified penumbra objects also in a case of nonidentity: when penumbra objects remain in some sense separate entities from their associated superpersons. When, say, members of a Jewish community, instructed by Jewish law,⁹⁶ parade a Torah scroll through the sanctuary, kiss it, wrap it in clothing, gasp in horror when it nearly falls to the ground—all without thinking that they are parading, kissing, clothing, and holding God. Or when mourners, backed by U.S. law,⁹⁷ exhibit similar care for a corpse without equating it with the person who

92. See 1 JAMES GEORGE FRAZER, *THE GOLDEN BOUGH: A STUDY IN MAGIC AND RELIGION*, PT. I, *THE MAGIC ART AND THE EVOLUTION OF KINGS* 52–54 (3d ed. 1911) (introducing “sympathetic magic”).

93. See *supra* notes 27–30 and accompanying text (defining “moral persons”).

94. See *id.*

95. See, e.g., Act of June 14, 1973, ch. 399, § 1, 1973 Tex. Gen. Laws 883, 957 (prohibiting flag desecration and defining “desecrate” as “defac[ing], damag[ing], or otherwise physically mistreat[ing] [the flag] in a way that the actor knows will seriously offend one or more persons likely to observe or discover his action”), *held unconstitutional as applied in Texas v. Johnson*, 491 U.S. 397 (1989).

96. See, e.g., MAIMONIDES, *Tefillin, Mezuzah, and Sefer Torah*, in *MISHNEH TORAH* (detailing requirements of how to honor and glorify Torah scrolls); BABYLONIAN TALMUD, *Megillah* 32a (warning against the direct touching of Torah scrolls with bare hands).

97. See, e.g., *Louisville & Nashville R.R. Co. v. Wilson*, 51 S.E. 24 (Ga. 1905) (holding a railroad company liable to a widow for failing to cover a corpse in transit); *Kyles v. S. Ry. Co.*, 61 S.E. 278, 281

died because that person, they believe, no longer exists or now floats as a disembodied soul in heaven. In such nonidentity cases, to be sure, penumbra objects' moral importance is grounded in their connection to superpersons. Nonetheless, these objects have moral status. They are treated as deserving moral consideration at least in part for their own sakes.

A religious comparison might help tease out this point more. On a certain Jewish and Christian understanding, referenced above, human beings derive their moral status from being made in God's image.⁹⁸ This is a story that connects the divine and human superpersons and says that the superpersonhood of Man is grounded in the superpersonhood of God. But that does not mean that human beings therefore are not moral persons for whom these religious systems care morally as ends, for their own sakes, too. Human beings are still moral persons. They can even still be superpersons, albeit less super than God. My point is that, just like human beings on this *imago Dei* account, penumbra objects—relics, flags, effigies, and so on—are moral persons when they have received such status from their associated superpersons.

I will call personified penumbra objects "epipersons." Penumbra objects are epipersons if *and only if* they have been personified. Only then are they *epipersons*, not objects. My use of the prefix *epi* (ancient Greek for "after" or "upon") tries to capture the grounding of epipersons' moral status in superpersons, as well as epipersons' satellite position and dependency on superpersons.

D. EPIPERSONS

Epipersons have two important features in U.S. law: (1) They are dignity-focused moral patients, and (2) they are dignity-limited property. Let me take each in turn.

(1) Epipersons are dignity-focused moral patients. We encountered the distinction between moral agents and moral patients and the standard definitions for these two types of moral persons above.⁹⁹ I mentioned there, too, that superpersons are moral persons in both senses: the law treats them as moral agents and moral patients. By contrast, when the law treats penumbra objects as epipersons, it treats them as moral persons in a more limited sense—one that a binary conception of personhood tends to obscure, but that my scalar definition of moral personhood helps articulate. The law attributes only moral patiency to epipersons, not moral agency. Epipersons, in other words, hold interests, but do not bear responsibilities. They are subjects who are morally vulnerable to others, but not actors who are responsible for affecting others.

(N.C. 1908) ("Humanity and decency required that the body and its scattered members should be reverently picked up, laid off the track in some nearby spot sheltered by a covering from the sun and flies and dust, and irreverent eyes, and protected from the dogs . . ."); *Golston v. Lincoln Cemetery, Inc.*, 573 S.W.2d 700 (Mo. Ct. App. 1978) (awarding damages to relatives who sued a funeral director and cemetery for burying dead bodies in shallow graves that led to their exposure); Leshem, *Dead Bodies*, *supra* note 26, at 1035–39, 1042–44 (describing legal protections against visual and physical abuse of dead bodies).

98. See *supra* note 83 and accompanying text.

99. See *supra* note 62 and accompanying text (defining moral agents and patients).

So far, there is nothing unusual about that treatment. There are a number of beings whom lawmakers and judges treat as moral persons in the sense of moral patients alone: human infants and certain nonhuman animals, for instance.¹⁰⁰ These other moral patients, however, enjoy the legal protection of welfare interests. One of the principal ways in which our legal system exhibits care for them is by recognizing their vulnerability to welfare infringements, such as the infliction of pain and suffering.

When it comes to epipersons, by contrast, U.S. law treats them as moral patients in a more limited sense. Yes, it treats them as moral interest holders that are vulnerable to moral violations, and hence as moral patients. But the set of moral interests the law ascribes to epipersons encompasses dignity interests alone, not also welfare interests.¹⁰¹ Epipersons, as far as U.S. law is concerned, are vulnerable to indignity, dishonor, and disrespect, not to welfare infringements.¹⁰²

This lack of welfare attributions shows that, for the most part, U.S. law does not treat epipersons as conscious, sentient, or agentic. The law is under no pretense, in other words, that epipersons have consciousness in the sense of subjective experiences—that there is something it is like to be them.¹⁰³ Let alone that epipersons have sentience in the sense of valenced subjective experience, such that an experience can feel good or bad to them.¹⁰⁴ Nor does the law attribute agency to epipersons in the sense of having desires or goals they aim to achieve.¹⁰⁵ But lack of consciousness, sentience,

100. See, e.g., *Watts v. Watts*, 95 N.E. 1107, 1108 (Ind. 1911) (affirming adoptive parents' "unfit [ness] to be intrusted with the care and custody of this infant child"); MISS. CODE ANN. § 97-41-16 (protecting dogs and cats).

101. See, e.g., Leshem, *Dead Bodies*, *supra* note 26, at 1040 (noting that in legal protections of dead bodies "one interest stands out as a repeated touchpoint, though it features under various names: dignity. 'Dignity' and 'respect,' as courts and legislatures put it, must inform the care of dead bodies 'at all times'" (citations omitted) (citing multiple statutes and cases)); 18 U.S.C. § 401 (empowering courts to punish "contempt of its authority"); *supra* notes 77, 79 and accompanying text (giving examples of "dignity" assertions about the U.S. flag).

102. See, e.g., *Douglas v. Stokes*, 149 S.W. 849, 850 (Ky. 1912) (declaring the mistreatment of dead bodies to be an "indignity"); Act of Apr. 8, 1903, § 1, 1903 NEB. LAWS 644, 644–45 (punishing "[a]ny person . . . who shall publicly mutilate, deface, defile, or defy, trample upon, or cast contempt, either by words or act, upon any such flag"); 4 U.S.C. § 8 ("No disrespect should be shown to the flag of the United States of America; the flag should not be dipped to any person or thing."); H.J. Res. 0012, 51st Leg., Gen. Sess. (Wyo. 1991) ("[T]here are symbols of our national soul such as the Washington Monument, the United States Capitol Building, and memorials to our greatest leaders, which are the property of every American and are therefore worthy of protection from desecration and dishonor . . ."); S.J. Mem'l 8006, 54th Leg., Reg. Sess. (Wash. 1995) (same).

103. For definitions of consciousness along these lines, see, e.g., Thomas Nagel, *What Is It Like to Be a Bat?*, 83 PHIL. REV. 435, 436 (1974).

104. For definitions of sentience along these lines, see, e.g., JONATHAN BIRCH, *THE EDGE OF SENTIENCE: RISK AND PRECAUTION IN HUMANS, OTHER ANIMALS, AND AI* 26 (2024).

105. For definitions of agency along these lines, see, e.g., Markus Schlosser, *Agency*, STAN. ENCYCLOPEDIA PHIL. (Edward N. Zalta ed., 2019), <https://plato.stanford.edu/entries/agency/>; Robert Long, *AI Systems as Real-Life Thought Experiments About Moral Status*, EXPERIENCE MACHS. (June 30, 2023), <https://experiencemachines.substack.com/p/ai-systems-as-real-life-thought-experiments> [https://perma.cc/ZZ9V-Z627].

and agency does not stop our legal system from attributing to epipersons limited moral patiency focused on dignity interests.¹⁰⁶

Dignity attributions give the purported moral interests of epipersons a content that is highly contingent on social conventions. But contingency and malleability do not deprive epipersons' dignity interests of specificity and bite. Such interests can be elaborate, as evidenced by the long federal flag code, which instructs people to salute the flag, to take off their hats, and to prevent the flag from touching the ground.¹⁰⁷ The law requires similarly respectful treatment of other epipersons too, such as corpses,¹⁰⁸ as well as religious sites and artifacts, which our legal system still indirectly protects via free-exercise rights.¹⁰⁹

Dignity interests also tend to have special bite in the following sense. One of the features that sets dignity apart from many other moral interests is that it is less prone to waiver.¹¹⁰ The law treats penumbra objects as dignity-holding moral patients by

106. In previous work I captured moral personhood in a minimal sense with the term “quasi-person.” See Leshem, *Dead Bodies*, *supra* note 26. To clarify how that term relates to my arguments here: All epipersons are quasi-persons. But not all quasi-persons are epipersons. I use quasi-persons, unlike epipersons, to refer to minimal moral persons more generally: all persons with a highly circumscribed set of moral interests or responsibilities. Quasi-persons, unlike epipersons, encompass both minimal moral agents and minimal moral patients. That would include corporations if the law were to attribute irreducible moral agency and a very narrow set of moral responsibilities to them. It also includes certain nonhuman animals whom the law recognizes as moral patients, but to whom it attributes only a very narrow set of welfare interests. The label “quasi-person” is agnostic as to the nature of attributed interests or responsibilities and also agnostic as to their metaphysical underpinnings. Thus, the terms “quasi-person” and “epiperson” share in common that they convey an entity's moral personhood and at the same time its lower moral status as compared to other moral persons, such as superpersons. But epipersons, as I outline in this and previous Sections, have distinctive attributes beyond these shared features—among them, their penumbra position and derivative relationship to superpersons. For this reason, epipersons comprise only a subset of quasi-persons.

107. 4 U.S.C. §§ 1–10.

108. See, e.g., CAL. BUS. & PROF. CODE § 7700 (penalizing “profane, indecent, or obscene language in the course of the preparation for burial, removal, or other disposition of, or during the funeral service for, human remains”); MICH. COMP. LAWS § 339.1810(1)(e) (penalizing “profane, indecent, or obscene language in the presence of a dead human body, or within the immediate hearing of the family”); MINN. STAT. § 149A.93(6) (requiring a dead body to be transported in a container that “promotes respect for and preserves the dignity of the dead human body” and “shields the body from being viewed”); N.M. CODE R. § 16.64.10.8(B)(1)(c) (2019) (requiring “complete covering” of a dead body); see also Leshem, *Dead Bodies*, *supra* note 26, at 1034 n.184, 1035–39, 1042–44 (discussing elaborate laws to ensure the respectful verbal, visual, and physical treatment of dead bodies).

109. See, e.g., Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc(a)(1) (“No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution . . .”).

110. A famous example occurs in the context of dwarf-tossing, which a French and German court each held was against public policy because of its indignity, even though all participants involved—hosts, spectators, people with dwarfism themselves—had given their consent. See *Wackenheim v. France*, Conseil d'État [CE Ass.] [Council of the State], Oct. 27, 1995, 136727, Rec. Lebon 372 (Fr.); *Wackenheim v. France*, U.N., Hum. Rts. Comm., Views of the Human Rights Committee Under Article 5, Paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, U.N. Doc. CCPR/C/75/D/854/1999 (July 26, 2002); Verwaltungsgericht [VG] Neustadt an der Weinstraße [Administrative Court of Neustadt an der Weinstraße], May 21, 1992, Neue Zeitschrift für Verwaltungsrecht [NVwZ] 98, 99 (1993) (Ger.) (“For the compatibility or incompatibility of dwarf-tossing with good morals, it does not matter that the petitioner consents to being tossed, nor that he does not himself view the event as degrading. Human dignity is an inalienable value, whose protection an individual cannot validly waive.” (author's translation)); see also *Erste Peep-Show-Entscheidung*,

prohibiting certain violent or undignified acts against such objects, even when their associated human superperson has consented to those acts.¹¹¹ Our legal system does this with corpses, for example. It prohibits their physical and sexual abuse even when the persons who died gave their premortem consent to those postmortem acts.¹¹²

Taken together, epipersons are moral persons in the narrow sense of being moral patients with dignity interests. Their dignity interests are conventional, yet robust.

(2) Epipersons are dignity-limited property. In addition to being limited moral patients, epipersons are also a peculiar form of property: property bounded by a duty of dignified care.

It is close to axiomatic that moral persons cannot be owned and that it is a grave moral wrong to claim property in a moral person.¹¹³ Or, put in legal positivist terms: moral persons must not be owned, and it is a grave moral wrong to have property in a moral person. U.S. slavery inflicted precisely this wrong, and many others.¹¹⁴

Bundesverwaltungsgericht [BVerwG] [Federal Administrative Court], Dec. 15, 1981, 64 Entscheidungen des Bundesverwaltungsgerichts [BVerwGE] 274, 279 (1982) (Ger.) (“This violation of human dignity cannot be eliminated or justified by the fact that the woman performing in a peep show acts voluntarily. Human dignity is an objective, inalienable value, whose protection an individual cannot validly waive.” (citations omitted) (author’s translation)). My thanks to Ellen Hagedorn for pointing me to these German cases.

111. It is possible that dignity’s resistance to waiver is specific to the human circle and not shared by the divine and sovereign circles. The law, for instance, permits states to waive sovereign immunity and does not exhibit dignity concerns when states avail themselves of such waivers. Similarly, Christians may think of God’s Incarnation—His becoming flesh in Jesus Christ—as God’s waiving His distinct dignity by becoming human, without raising concerns that God’s dignity was thereby compromised. If constraints on waiver are indeed peculiar to human superpersons, one explanation might lie in our legal system’s roots in an *imago Dei* notion that treats humans as God’s divine epipersons and hence as lesser superpersons. See *supra* notes 83, 98, and accompanying text (discussing the *imago Dei* account of human superpersons). On one version of this notion, the dignity we associate with humans still rests with God and He alone has the power to waive it. Another explanation might lie in what we can call—for the sake of parallelism—an *imago Rei Publicae* notion, familiar from ancient Athenian thinkers like Demosthenes. See Josiah Ober, *Democracy’s Dignity*, 106 AM. POL. SCI. REV. 827, 841 (2012) (discussing Demosthenes’ argument in *Against Meidias* that Athenian citizens’ dignity derives from their political system). On this notion, human superpersons are originally the State’s sovereign epipersons and hence it is not up to them, but up to the State, to decide when to forgo dignity. Yet another explanation might lie in human dignity’s belonging to Man understood collectively rather than individually—that is, to Humanity as a whole rather than to any given individual human. See *supra* note 53 (contrasting collectivist and individualist conceptions of Man). Here, too, it would not be up to an individual human to waive dignity. My thanks to Yoni Pomeranz for making this point.

112. See Leshem, *Dead Bodies*, *supra* note 26, at 1070–72 (discussing the consent-insensitivity of necrophilia prohibitions); see also, e.g., HAW. REV. STAT. § 327-38(c), (e) (banning plastination exhibits with no express exception for decedents’ consent).

113. IMMANUEL KANT, LECTURES ON ETHICS 165 (Louis Infield trans., Harper & Row 1963) (“But a person cannot be a property and so cannot be a thing which can be owned, for it is impossible to be a person and a thing”); Abraham Lincoln, *Address at Cooper Institute, New York City* (Feb. 27, 1860), in 3 THE COLLECTED WORKS OF ABRAHAM LINCOLN 522, 545 (Roy P. Basler ed., 1953) (asserting that the Framers referred to enslaved people in the U.S. Constitution only as “person[s]” and never as “property” on purpose “to exclude from the Constitution the idea that there could be property in man”).

114. See, e.g., Frederick Douglass, “What to the Slave Is the Fourth of July?” (July 5, 1852), in THE SPEECHES OF FREDERICK DOUGLASS: A CRITICAL EDITION 55, 70–72 (John R. McKivigan et al. eds., 2018); THE LEGAL UNDERSTANDING OF SLAVERY: FROM THE HISTORICAL TO THE CONTEMPORARY (Jean Allain ed., 2012).

Our legal system, however, embraces the axiom only in the following sense: *superpersons* cannot be owned and it is a grave moral wrong to claim property in a *superperson*. God, Country, and Man, in other words, cannot be owned. But other moral persons are routinely property. This was true during and after Reconstruction, too, and on the law's own terms. With the exception of *superpersons*, U.S. law regularly grants property rights over entities that it itself recognizes as moral persons. Take nonhuman animals, for instance,¹¹⁵ or corporations (if U.S. law does in fact treat those as irreducible moral persons).¹¹⁶ From the law's present point of view, as I understand it, the property-related wrong of slavery was that it did not recognize Black Americans as *superpersons*, not that it subjected moral persons to property treatment. For the latter is something U.S. law continues to do.¹¹⁷

It should not surprise us then that our legal system grants property rights in *epipersons* notwithstanding their moral personhood. An individual can be the private owner of a relic, a flag, an effigy, etc. A government can be the public owner of a monument, a flag, a sacred site, etc.

U.S. law does, however, tend to restrict property rights in *epipersons*. The incidents of ownership,¹¹⁸ the sticks in the ownership bundle,¹¹⁹ are often limited. These limitations are particularly visible and historically intact in the case of corpses. So let me start with that example.

Property rights in corpses have restrictions on use, destruction, and transfer. U.S. laws, for instance, criminalize the commercial and sexual use of corpses.¹²⁰ U.S. laws also limit the destruction of corpses to particular methods that society considers dignified, such as burial and cremation, while prohibiting all others.¹²¹ And U.S. laws restrict the transfer of corpses to a list of enumerated individuals who are, for

115. See, e.g., CAL. CIV. CODE § 655 ("There may be ownership of all inanimate things which are capable of appropriation or of manual delivery; of all domestic animals . . .").

116. Though strictly speaking, it may be the stock rather than the corporation that is owned. See, e.g., 26 U.S.C. § 542(a)(2) (defining a closely held C corporation as one where "more than 50 percent in value of its outstanding stock is owned, directly or indirectly, by or for not more than 5 individuals"); 26 U.S.C. § 1001 (treating stock as property for tax purposes).

117. See *supra* notes 113–116 and accompanying text.

118. See A.M. Honoré, *Ownership*, in OXFORD ESSAYS IN JURISPRUDENCE 107–47 (A.G. Guest ed., 1961) (analyzing ownership as a set of legal incidents, including rights to possess, use, and transmit property).

119. See, e.g., STEPHEN R. MUNZER, A THEORY OF PROPERTY 15–36 (1990). But see, e.g., J.E. Penner, *The "Bundle of Rights" Picture of Property*, 43 UCLA L. REV. 711 (1996) (criticizing bundle-of-rights accounts for failing to offer an illuminating theory of property); Thomas W. Merrill & Henry E. Smith, *The Architecture of Property*, in RESEARCH HANDBOOK ON PRIVATE LAW THEORY 134–54 (Hanoch Dagan & Benjamin C. Zipursky eds., 2020) (insisting on a more unified conception of property).

120. See, e.g., *Culpepper v. Pearl St. Bldg., Inc.*, 877 P.2d 877, 880 (Colo. 1994) ("Clearly, there can be no property right in a dead body in a commercial sense . . ."); ARIZ. REV. STAT. § 32-1364(D) ("It is unlawful for a person to engage in necrophilia."); Leshem, *Dead Bodies*, *supra* note 26, at 1011, 1051.

121. See, e.g., ME. STAT. tit. 13, § 1032 (mandating that "every dead body of a human being" must "be decently buried, entombed . . . , cremated or subjected to natural organic reduction"); MASS. GEN. LAWS ch. 114, § 43M (providing that corpses must be buried beneath the earth, entombed within a proper crypt, or cremated).

the most part, relatives,¹²² or to scientific research institutions in the case of medical donations.¹²³

These restrictions limit relatives' ownership in the corpse of a dead family member so severely that judges have resisted calling their ownership "property" at all. Instead, they have called relatives' limited bundle of ownership sticks "quasi-property."¹²⁴ Before American courts adopted this quasi-property approach to corpses in the late nineteenth century, it was in fact the case that courts in both the United States and England refused to recognize any property rights in dead bodies.¹²⁵ A corpse, they asserted, was *nullius in bonis*—nobody's property.¹²⁶

I previously argued that the best way to make sense of the law's highly limited property treatment of dead bodies is to recognize that the law thinks of next of kin as having a duty toward dead bodies to care for them and bury them with dignity.¹²⁷ It was to facilitate next of kin's fulfillment of this duty that the law moved away from the position that there are no property rights whatsoever in dead bodies and gave next of kin quasi-property in the dead bodies of their relatives.¹²⁸ Dead bodies' limited property status—their quasi-property—is structured around a duty of care.¹²⁹

We can observe a similar property treatment for other epipersons as well. Reaching back to the English roots of American law, we find that the common law at times refused to recognize property in a broad range of epipersons. And it did so, I take it, because any property treatment, even a limited one, was thought to be an affront to the dignity of the epiperson and its associated superperson. A passage in the thirteenth-century English law code *Britton*, for instance, which Edward Coke approvingly cited in his seventeenth-century *Institutes*,¹³⁰ described "churchyards, burialplaces, churches, chapels, and other consecrated places" as "no one's property" and explained: "For things divine ought not to be appropriated to human purposes."¹³¹ Similarly, it added, "chalices, censers, crosses,

122. See, e.g., S.C. CODE ANN. § 32-8-320(A) (specifying in what order agency over a dead body devolves from one relative to the next); ALA. CODE § 34-13-11(a) (similar).

123. See, e.g., UNIF. ANATOMICAL GIFT ACT § 3 (Nat'l Conf. of Comm'rs on Unif. State L. 1987) (authorizing the donation of dead bodies to medical and scientific institutions for education and research).

124. See, e.g., *Travelers Ins. Co. v. Smith*, 991 S.W.2d 591, 595 (Ark. 1999) ("A quasi-property right in dead bodies vests in the nearest relatives of the deceased, arising out of their duty to bury their dead." (citations omitted)); *Strachan v. John F. Kennedy Mem'l Hosp.*, 538 A.2d 346, 350 (N.J. 1988) ("[I]t is now the prevailing rule . . . that the right to bury the dead and preserve the remains is a *quasi* right in property, the infringement of which may be redressed by an action in damages." (quoting *Spiegel v. Evergreen Cemetery Co.*, 186 A. 585, 586 (N.J. 1936))).

125. See, e.g., Alix Rogers, *Unearthing the Origins of Quasi-Property Status*, 72 HASTINGS L.J. 291, 294 (2020).

126. See EDWARD COKE, *THE THIRD PART OF THE INSTITUTES OF THE LAWS OF ENGLAND: CONCERNING HIGH TREASON, AND OTHER PLEAS OF THE CROWN AND CRIMINAL CAUSES* 203 (London, M. Flesher 1644); 4 WILLIAM BLACKSTONE, *COMMENTARIES* *235.

127. Leshem, *Dead Bodies*, *supra* note 26, at 1012–15, 1059–65.

128. *Id.*

129. *Id.*

130. COKE, *supra* note 126, at 203.

131. BRITTON, *supra* note 82, at 176 (folio 84b).

vestments and other like things” are “not the goods of any person” and “are forbidden to be sold, given away, or alienated, except for ransoming Christian slaves from the hands of pagans.”¹³²

U.S. law departed from this particular no-property approach to epipersons. But its continuing regard for the dignity of epipersons found expression in property restrictions similar to those on corpses. Take the American flag, for example. Starting in the late nineteenth century, nearly all U.S. states enacted legislation that restricted commercial uses of the flag and limited its destruction to the ceremonial burial and burning of worn flags.¹³³

Restrictions on use, destruction, and transfer, of course, are not unique to epipersons. Our legal system routinely restricts and unbundles property. The property restrictions on an old house protected by historical preservation laws, for instance, look a lot like the property restrictions on epipersons I described.¹³⁴ What sets the property restrictions on epipersons apart is their underlying duty structure, as evidenced by courts’ and legislatures’ attributions of interests to epipersons. In the case of epipersons, the law’s property restrictions also reflect *moral* concern for the object, not just aesthetic or other amoral concerns. Property in an epiperson is limited by a duty of care that the law posits toward the epiperson and its associated superperson. Put differently, ownership restrictions on epipersons reflect the law’s concern at least in part for epipersons and their associated superpersons as moral ends. The law’s concern is not solely for human third parties whom unrestricted ownership risks harming.

This underlying duty structure makes limited property rights in some nonhuman animals a more relevant comparison to epiperson restrictions than historical preservation laws. After all, animal cruelty laws’ limitations on the use and destruction of certain animals, too, sometimes reflect a sense of duty we owe those animals because of their status as moral patients.¹³⁵

One oversimplified way to sum up the limited property status of epipersons is this: epipersons can be owned as long as with care, and destroyed as long as with dignity.¹³⁶ Epipersons are thus distinct both from superpersons, which cannot be

132. *Id.*

133. *See, e.g.*, Act of Apr. 29, 1897, no. 27, 1897 Pa. Laws 34; Act of Mar. 2, 1899, ch. 43, 1899 Cal. Stat. 46; Act of Apr. 19, 1899, ch. 45, 1899 Conn. Pub. Acts 1014; Act of Apr. 8, 1902, ch. 498, 1902 Md. Laws 720; 4 U.S.C. § 8(k).

134. *See, e.g.*, ME. STAT. tit. 33, § 1553 (prohibiting, among other things, the “[d]emolition of historic property”); CONN. GEN. STAT. § 7-147j(b) (providing procedures for delaying the “demolition” of “a building in an historic district”).

135. *See* Claire Priest, *Enforcing Sympathy: Animal Cruelty Doctrine After the Civil War*, 44 LAW & SOC. INQUIRY 136, 136–137, 165 (2019) (describing late-nineteenth-century doctrinal shifts towards recognizing animals as moral patients); JOEL PRENTISS BISHOP, COMMENTARIES ON THE LAW OF STATUTORY CRIMES 693, § 1115 (Boston, Little, Brown & Co. 1873) (“Plainly, at this point, the two offences of malicious mischief to animals, and of cruelty to animals, are very wide apart. The former is a crime analogous to larceny, and it is purely a wrong done to the owner of the animal But the latter is a crime against the animal itself” (citations omitted)).

136. I call this summary oversimplified because historically some epipersons could only be destroyed once no longer intact. A flag, for instance, needed to show wear before it could be burned. *See* 4 U.S.C. § 8(k) (“The flag, when it is in such condition that it is no longer a fitting emblem for display, should be

owned and cannot be destroyed without due process,¹³⁷ and from all nonpersons, which can be owned or destroyed without regard for those entities' own interests.

II. REDRAWING LAW'S CIRCLES

Having introduced law's superpersons and epipersons, I present in this Part the revisions that follow from this account for the conventional expanding circle story. There are several circles of moral concern, rather than just one. These circles also contract, rather than just expand. And they do so in multi-dimensional and non-linear ways. It is important to tell this story of law's shifting circles, I argue, because it can help us detect remnants of magical thinking in our laws, recognize the open future of who and what counts morally, and face the moral trade-offs entailed by law's status determinations head-on.

A. CIRCLE CONTRACTIONS

My account of superpersons and epipersons suggests that there is a whole host of moral persons that our legal system has at times recognized and that the conventional story, about the expanding circle of moral concern, ignores. The conventional story focuses on just "Man" and on efforts to expand the human superperson status to additional beings and entities: human fetuses, nonhuman animals, and others. It forgets about God and Country, and about all the human, divine, and sovereign epipersons that orbit around the triad of superpersons.

The conventional story's forgetfulness is consistent with a binary conception of personhood. That conception dominates legal debates over personhood, as we saw in the Introduction and will soon see in greater detail.¹³⁸ The binary conception is preoccupied with full-fledged rightsholders—those who morally deserve the full fleet of legal protections associated with human beings. By centering humans, the binary conception risks obscuring the moral status that epipersons and nonhuman superpersons have long enjoyed in our legal system.

When we focus on just the human superperson part of the larger picture, then the expanding circle story largely bears out in the development of our law. In fits and starts, our legal system has indeed expanded its circle of moral concern over time. It has included more and more human beings in the superperson category "Man."¹³⁹

Once we have the fuller landscape of moral persons in view, with its divine, sovereign, and human circles, we can see that even as our legal system's moral concern has expanded in these important ways, it has also contracted. Over time, the

destroyed in a dignified way, preferably by burning."). Other legal systems impose similar restrictions. A Torah scroll, for instance, needs to be defective before it can be buried. *See* BABYLONIAN TALMUD, *Megillah* 26b. And a church or churchyard, in some traditions, undergoes an act of deconsecration before being destroyed or put to profane use. *See* 1983 CODE OF CANON LAW c. 1222, § 2 (authorizing the diocesan bishop to "relegate [a church] to profane but not sordid use").

137. U.S. CONST. amend. V ("No person shall be . . . deprived of life, liberty, or property, without due process of law. . . ."); U.S. CONST. amend. XIV, § 1 ("No State shall . . . deprive any person of life, liberty, or property, without due process of law. . . .").

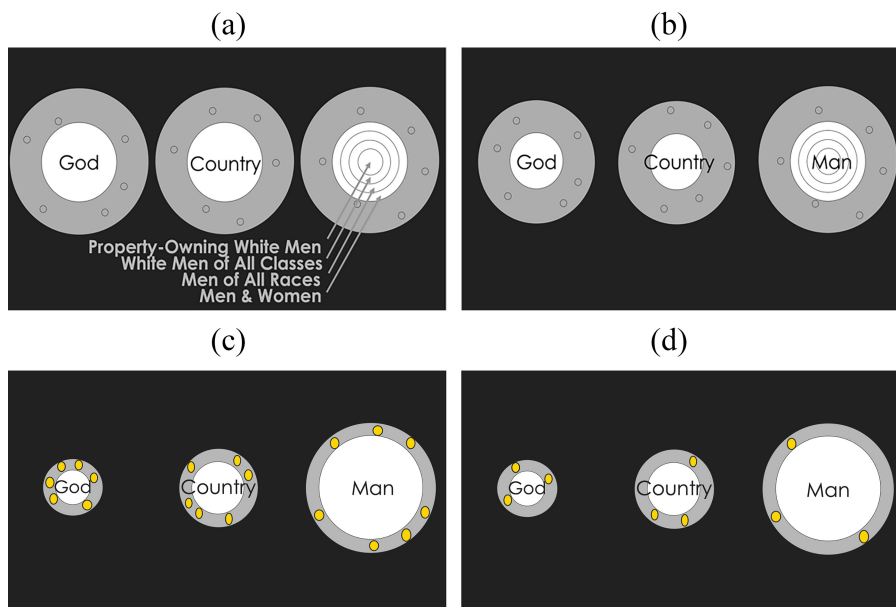
138. *See infra* Part III.

139. *See infra* Figure 3(a); *supra* notes 32–35 and accompanying text.

law's recognition of moral persons—with the exception of human superpersons—has weakened. This is true for the law's treatment of God and Country as moral (super)persons.¹⁴⁰ And it is also true for the law's treatment of penumbra objects as moral (epi)persons.¹⁴¹ The result is that epipersons are increasingly just what I called them initially: penumbra objects, without legally recognized moral standing.¹⁴²

Consider one example of these circle contractions. When American lawmakers ini-

Figure 3 (a): Expanding Human Superpersons; (b): Shrinking Divine & Sovereign Superpersons; (c): Shrinking Penumbras; (d): Disappearing Epipersons.



tially protected religious artifacts and buildings against attacks, they did so in part because they viewed such attacks as attacks on God—a divine superperson—and on the artifact or building—a divine epiperson.¹⁴³ Today, by contrast, lawmakers tend to

140. See *infra* Figure 3(b).

141. See *infra* Figure 3(c).

142. See *infra* Figure 3(d).

143. One court, for instance, suggested that the crime of blasphemy could encompass the physical desecration of sacred books, icons, and images, such as “mak[ing] a bonfire of” Jesus “on the cross,” “exhibit[ing] a naked figure” of “the mother of Christ, in the act of prostitution,” “burning the prophets in effigy,” “stamping the pentateuch underfoot,” and “burning the koran.” *State v. Chandler*, 2 Del. (Harr.) 553, 569–70 (1837). And while this particular court was clear that it viewed the crime of blasphemy not as an offence against God, but as an “offence against man alone,” the government’s indictment did not seem to share that view when it charged the defendant with “blasphem[ing] God and our Lord Jesus Christ the Savior of the world, unlawfully, wickedly, and blasphemously . . . to the great dishonor of Almighty God.” *Id.* at 553, 573. The government’s God-centric understanding of the offense also found support in other landmark court opinions at the time. See cases cited *supra* note 59.

locate such legal protections in historical preservation laws,¹⁴⁴ free-exercise laws,¹⁴⁵ vandalism laws,¹⁴⁶ and hate crimes.¹⁴⁷ Accordingly, they justify such laws by pointing to a religious artifact's or building's aesthetic and cultural value,¹⁴⁸ congregants' worship and religious exercise,¹⁴⁹ the need to maintain public order,¹⁵⁰ and the importance of preventing bigoted harassment and intimidation.¹⁵¹ Today, in other words, our legal protections of religious artifacts and buildings are for the most part just about *human* superpersons rather than also divine ones, and about those artifacts and buildings as venerated *objects* rather than as divine epipersons.¹⁵²

The historical reasons for these contractions of moral concern are complex. I will only gesture at a few doctrinal and intellectual developments here that apply across several contexts, leaving context-specific reasons and fuller historical accounts for another time. Doctrinally, courts have been key actors erecting obstacles to the enforcement of laws protecting epipersons and all but human superpersons. Central to this doctrinal development are constitutional concerns about free speech and religious establishment.

On the free speech front, legal protections of sovereign superpersons and epipersons have increasingly raised concerns about the ways in which such protections interfere with political protest. Take the criminal prohibitions of flag

144. See, e.g., MASS. GEN. LAWS ch. 266, § 95 (criminalizing the injuring of historical monuments and site markers).

145. See, e.g., Church Arson Prevention Act of 1996, Pub. L. No. 104-55, 110 Stat. 1392 (codified at 18 U.S.C. § 247) (punishing arson, destruction, or vandalism of houses of worship because it interferes with individuals' free-exercise rights).

146. See, e.g., N.J. STAT. ANN. § 2C:17-1(g) (imposing heightened penalties for arson of a place of public worship); S.C. CODE ANN. § 16-11-535 (making it a felony to "wilfully, unlawfully, and maliciously vandalize, deface, damage, or destroy" a place of worship); TEX. PENAL CODE ANN. § 28.08(d)(1) (imposing heightened penalties for defacing with graffiti a place of worship, among other specified places).

147. Today, legal protections against cross burning, for instance, are primarily concerned with threats of violence and intimidation, as when Klansmen burn crosses on the lawns of Black neighbors. See, e.g., ALA. CODE § 13A-6-28 (criminalizing cross burning with the intent to intimidate others); GA. CODE ANN. § 16-11-37(c)(1) (criminalizing cross burning "with the intent to terrorize another").

148. See, e.g., 37 PA. CONS. STAT. § 102(6) (declaring that "[i]t is in the public interest . . . to engage in . . . historic preservation for the enjoyment, education and inspiration of all the people, including future generations").

149. E.g. CAL. PENAL CODE § 594.3(b) (punishing the vandalism of a place of worship when done "for the purpose of intimidating and deterring persons from freely exercising their religious beliefs"); CONN. GEN. STAT. § 46a-58(a) to (b) (characterizing the desecration of places of worship as a discriminatory practice because it deprives people of "rights, privileges or immunities . . . on account of religion").

150. See, e.g., MO. REV. STAT. § 574.085 (criminalizing the offense of institutional vandalism against a place of worship in the chapter of the code titled "Offenses Against Public Order").

151. See, e.g., MONT. CODE ANN. § 45-5-221 (criminalizing cross burning as an "offense of malicious intimidation or harassment" when done "with the intent to terrify, intimidate, threaten, harass, annoy, or offend" because of "another person's race, creed, religion, color, national origin, or involvement in civil rights or human rights activities").

152. See, e.g., OR. REV. STAT. § 358.605(1) (noting that "the neglect, desecration and destruction of cultural sites, structures, places and objects result in an irreplaceable loss *to the public*" (emphasis added)); Church Arson Prevention Act of 1996, Pub. L. No. 104-55, § 2(1), 110 Stat. 1392, 1392 ("[A]rson or other destruction or vandalism of places of religious worship, and . . . violent interference with an individual's lawful exercise . . . of the right of religious freedom . . . pose a serious national problem.").

desecration, for instance, which the U.S. Supreme Court struck down as unconstitutional under the Free Speech Clause in *Texas v. Johnson*¹⁵³ and *United States v. Eichman*.¹⁵⁴ Constitutional concerns about free speech have also extended beyond sovereign superpersons and epipersons, to divine superpersons and epipersons, as well as to human epipersons. Speech and conduct inflicting indignity on these persons became core examples of the kinds of speech and conduct that the Free Speech Clause was thought to protect. Laws criminalizing blasphemy and the burning of effigies were among many that gave way to this developing understanding of free speech.¹⁵⁵

On the religious establishment front, the First Amendment's effect on superpersons and epipersons was to some extent felt from the beginning of this country. In particular, God's superperson status took a severe hit at the Founding, compared to the predecessor legal systems in England and the American colonies.¹⁵⁶ The Establishment and Free Exercise Clauses (plus their state-level equivalents prior to incorporation) curbed and redirected God's legal role in many contexts into a more subjective, secondary position: a significant other or plus-one of human superpersons, not a protagonist.¹⁵⁷ I say "in many contexts" because it was not true in all. Blasphemy laws, as I mentioned, persisted well into the nineteenth century.¹⁵⁸

Thus far, we have seen some doctrinal reasons for our legal system's contracting circles. But, of course, doctrinal reasons do not exist in a vacuum. The doctrinal developments were embedded, among others, in the broader intellectual history to which I pointed earlier: the disenchantment or demagification of the world.¹⁵⁹ With time, American society—and elites in particular, including legal

153. 491 U.S. 397 (1989).

154. 496 U.S. 310 (1990).

155. See, e.g., *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 497, 506 (1952) (holding unconstitutional under the Free Speech Clause provisions of a New York Education Law that permitted the refusal or revocation of a license to show a film due to its "sacrilegious" nature); *State v. West*, 263 A.2d 602, 602–03, 605 (Md. Ct. Spec. App. 1970) (striking down a colonial-era blasphemy law as violating the Religion Clauses); *Kalman v. Cortes*, 723 F. Supp. 2d 766, 806 (E.D. Pa. 2010) (invalidating under both the Free Speech and Establishment Clauses a corporate-name blasphemy provision); see also *Bellecourt v. City of Cleveland*, 820 N.E.2d 309, 312–13 (Ohio 2004) (stating that "[w]ithout question, the effigy burnings were constitutionally protected speech," but holding that in this case "any suppression of speech was incidental to [the government's] important interest in preventing harm caused by fire" and that the arrest was justified due to "the dangerous manner in which the effigies were . . . burned"). But see *State v. Stoltenberg*, 218 N.W.2d 452, 453 (Iowa 1974) (per curiam) (sustaining conviction for "blasphemous language").

156. See, e.g., Daniel L. Dreisbach, *In Search of a Christian Commonwealth: An Examination of Selected Nineteenth-Century Commentaries on References to God and the Christian Religion in the United States Constitution*, 48 BAYLOR L. REV. 927, 928–31 (1996) (discussing the unusual absence of references to God and God's sovereignty in the U.S. Constitution, which set it apart from most public documents at that time).

157. See *id.* at 953–55, 997–99 (arguing that the Framers viewed religion as best left to individual citizens and their state governments).

158. See *supra* notes 58–59 and accompanying text (discussing blasphemy laws). Even in the early twentieth century, some courts still enforced them. See, e.g., *State v. Mockus*, 113 A. 39, 44–45 (Me. 1921).

159. See *supra* note 49 and accompanying text.

elites¹⁶⁰—grew on the whole more skeptical of personifying God and Country and of personifying venerated objects.¹⁶¹ Increasing numbers of American law-makers and judges came to view such personifications as products of magical thinking. We can trace this development, for instance, in the mounting criticisms that legal protections of epipersons amount to idolatry,¹⁶² confuse a sign for its referent,¹⁶³ or mistake an abstract, disembodied ideal for an embodied person.¹⁶⁴

In some pockets of U.S. society, the influence of disenchantment may in fact be so thorough that it eroded the ability of legal analysts to detect past instances of personification and take those instances at their word. Skeptics of this disenchanted ilk—self-described rationalists—may feel inclined to argue that law-makers', judges', and advocates' personifications of sovereigns and penumbra objects in the past were surely only figures of speech, and that legal actors all along were concerned with human persons alone.

160. See, e.g., John Witte, *The Study of Law and Religion in the United States: An Interim Report*, 14 ECCLESIASTICAL L.J. 327, 331–39 (2012) (describing early twentieth-century shifts towards positivist theories of knowledge and law that replaced earlier theories in which religion and the church played more prominent roles).

161. See, e.g., *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 641 (1943) (“There is no mysticism in the American concept of the State or of the nature or origin of its authority. We set up government by consent of the governed, and the Bill of Rights denies those in power any legal opportunity to coerce that consent. Authority here is to be controlled by public opinion, not public opinion by authority.”). It is important, however, not to overstate the extent of disenchantment that American society and its legal system underwent. See *infra* Section II.B (arguing that there are significant remnants of superpersons and epipersons in our legal system); see also JASON A. JOSEPHSON-STORM, *THE MYTH OF DISENCHANTMENT: MAGIC, MODERNITY, AND THE BIRTH OF THE HUMAN SCIENCES* (2017) (challenging Weber’s disenchantment thesis and highlighting modernity’s spiritual revivals); MARSHALL SAHLINS, *THE NEW SCIENCE OF THE ENCHANTED UNIVERSE: AN ANTHROPOLOGY OF MOST OF HUMANITY* (2022) (arguing that most people still engage with the world through an enchanted lens); WEBB KEANE, *ANIMALS, ROBOTS, GODS: ADVENTURES IN THE MORAL IMAGINATION* (2024) (discussing widespread and longstanding human beliefs and practices across different cultures to worship gods and personify animals, parts of nature, and inanimate objects).

162. See, e.g., *WEISER SEMI-WKLY. SIGNAL*, Jan. 25, 1905, at 2 (“The fellow who introduced the flag desecration bill is undoubtedly a fanatic who would be a ‘sun worshiper’ or adherent of any other form of idolatry were he properly placed.”).

163. See, e.g., 141 CONG. REC. H6421 (daily ed. June 28, 1995) (statement of Rep. Wayne Gilchrest) (“[A]s the House moves closer to a constitutional amendment to ban flag burning, I am reminded strangely enough of the book of Exodus. When the Israelites were given the Ten Commandments, they were warned against graven images as symbols of God. The wisdom of this is obvious. It is easy to confuse the symbol of something with what that symbol represents, and what that symbol symbolizes, so one worships the statue instead of what the statue represents. Mr. Speaker, the House is about to make a similar mistake, confusing the flag with what it symbolizes.”); *Koerber v. Patek*, 102 N.W. 40, 45 (Wis. 1905) (insisting that duties of respectful corpse treatment are owed to the person who died and that the corpse “is but the symbol, [which], for the few hours after life ceases, seems so to still represent him who was”).

164. See, e.g., *Measures to Protect the Physical Integrity of the American Flag: Hearings on S. 1338, H.R. 2978, and S.J. Res. 180 Before the S. Comm. on the Judiciary*, 101st Cong. 353 (1989) (statement of Michael E. Parrish, Professor, University of California San Diego) (explaining that he values the flag as a “symbol” and that burning the flag “does not affect [its] symbolic importance”); S. REP. NO. 106-246, at 37 (2000) (quoting former Senator John Glenn’s statement to the Senate Committee on the Judiciary regarding the proposed constitutional amendment to prohibit desecration of the American flag: “The flag is the nation’s most powerful and emotional symbol. It is our most sacred symbol. And it is our most revered symbol. But it is a symbol.”).

Moral status beliefs are sufficiently axiomatic that once someone sees an entity as a mere object or as fully reducible to its constituent persons, it can be hard to unsee that paradigm shift and put oneself in the shoes of legal actors who genuinely attribute moral personhood to that entity. Just imagine trying to persuade a skeptic who does not view children as moral persons that legal protections of children, say against child abuse, are in part concerned with children for their own sake, and not just with sovereign and parental interests. Or imagine trying to persuade a skeptic who does not view animals as moral persons that legal protections of animals, say against animal cruelty, are in part concerned with animals, and not just with human virtue or human feelings.¹⁶⁵

All one can point to in response are the professions of moral concern by lawmakers, judges, and advocates when they speak of children and animals as vulnerable and deserving of protection. But the imagined skeptic will be disinclined to take these professions seriously. On my account, such skepticism—when directed against the moral personhood of God, Country, and divine, sovereign, and human penumbra objects—is deeply intertwined with the moral circle contractions I have described. Rationalist skepticism is likely both a cause and a result of those contractions.

So far, human superpersons—and they alone—have survived these historical developments unscathed. Indeed, they have come out stronger. But it remains to be seen if humanism's axiomatic commitment to the exalted and equal moral status of human superpersons will withstand the tide of disenchantment. Or if that commitment, too, will be dismissed by a future generation as the stuff of magical thinking. Some future expansions that advocates of the conventional expanding circle story anticipate, such as the inclusion of sentient AI, would likely do more than expand human superperson status to additional entities. They might eviscerate that status.¹⁶⁶ But I do not think there is anything predetermined about the movements of our expanding and contracting circles, past or future. More on that soon.

B. NO FULL DISENCHANTMENT

We cannot adequately understand our legal system without keeping the shifting circles story, with its larger universe of moral persons, in mind. This is true not only of the past but also of the present. While epipersons and divine and sovereign superpersons have on the whole lost moral ground and status in our legal system, they have not disappeared. Without training our eyes to see these

165. Nor just concerned with human-centered consequentialist concerns that animal cruelty may escalate and lead to increased cruelty towards humans. See Randall Lockwood, *Animal Cruelty and Violence Against Humans: Making the Connection*, 5 ANIMAL L. 81 (1999) (arguing that animal abuse is correlated with child abuse, domestic violence, and criminality); CRUELTY TO ANIMALS AND INTERPERSONAL VIOLENCE: READINGS IN RESEARCH AND APPLICATION (Randall Lockwood & Frank R. Ascione eds., 1998) (compiling empirical sources that suggest a causal link between animal cruelty and interpersonal violence). For a discussion of the uncertain empirical support for similar consequentialist concerns, see *infra* notes 204–205.

166. See *infra* note 259.

additional moral persons, it is easy to overestimate the extent to which our laws have been rationalized and demagified. The moral circles, although they have contracted in some respects, remain more multitudinous and bizarre than is commonly recognized.

Many legal protections of epipersons and divine and sovereign superpersons are alive and well. We have encountered several remnants already, such as sovereign immunity doctrines and corpse protections. Or think of the many informal ways in which our legal system demands respect for sovereign superpersons and epipersons—especially in the carceral context. The state forces criminal defendants and incarcerated people to learn an elaborate choreography of rising, bowing, and moving through courtrooms, jails, and other sovereign spaces, while abstaining from offending sovereign epipersons.¹⁶⁷

Think, too, of the many tributes to God that our legal system continues to endorse despite the Establishment Clause, often downplaying them as “ceremonial deism”:¹⁶⁸ stamping “In God We Trust” on our coins;¹⁶⁹ adding “one Nation under God” to the Pledge of Allegiance;¹⁷⁰ including “so help me God” in the naturalization oath;¹⁷¹ reciting prayers and invocations of God at the beginning of many legislative and court sessions.¹⁷² The list goes on.¹⁷³ And not everything on

167. See, e.g., *Illinois v. Allen*, 397 U.S. 337, 343 (1970) (“It is essential to the proper administration of criminal justice that dignity, order, and decorum be the hallmarks of all court proceedings in our country.”); *id.* at 351 (Douglas, J., concurring in the judgment) (“A courtroom is a hallowed place where trials must proceed with dignity . . .”); *United States v. Wilson*, 421 U.S. 309, 316 n.8 (1975) (“In order to constitute an affront to the dignity of the court the judge himself need not be personally insulted.”); *Faretta v. California*, 422 U.S. 806, 834 n.46 (1975) (“The right of self-representation is not a license to abuse the dignity of the courtroom.”).

168. *Cnty. of Allegheny v. ACLU, Greater Pittsburgh Chapter*, 492 U.S. 573, 630–31 (1989) (O’Connor, J., concurring in part and concurring in the judgment).

169. See, e.g., *Lynch v. Donnelly*, 465 U.S. 668, 693 (1984) (O’Connor, J., concurring) (suggesting that this phrase is a permissible instance of ceremonial deism); *Am. Legion v. Am. Humanist Ass’n*, 588 U.S. 29, 85 (2019) (Gorsuch, J., concurring in the judgment) (“[W]hat exactly qualifies as impermissible ‘endorsement’ of religion in a country where ‘In God We Trust’ appears on the coinage . . .?”); see also *Lynch*, 465 U.S. at 716 (Brennan, J., dissenting) (suggesting that the national motto “In God We Trust,” prescribed by federal statute, is a permissible instance of ceremonial deism).

170. See, e.g., *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 33 (2004) (O’Connor, J., concurring in the judgment) (suggesting that this addition is a permissible instance of ceremonial deism); *Lynch*, 465 U.S. at 716 (Brennan, J., dissenting) (same).

171. See, e.g., *Perrier-Bilbo v. United States*, 954 F.3d 413, 428 (1st Cir. 2020) (holding that the inclusion of the phrase “so help me God” in the naturalization oath did not violate the Establishment Clause).

172. See, e.g., *Town of Greece v. Galloway*, 572 U.S. 565, 591–92 (2014) (holding that a town’s practice of opening its meetings with a clergy-led prayer did not violate the Establishment Clause); *Marsh v. Chambers*, 463 U.S. 783, 792 (1983) (holding that the Nebraska Legislature’s practice of beginning sessions with a chaplain-led prayer did not violate the Establishment Clause).

173. See, e.g., *Lynch*, 465 U.S. at 687 (holding that a municipality did not violate the Establishment Clause by including a creche in its annual Christmas display); *Allegheny*, 492 U.S. at 578–79 (holding that, whereas the display of a creche in a county courthouse violated the Establishment Clause, the display of a menorah next to a Christmas tree outside a city building did not); *Van Orden v. Perry*, 545

the list of divine superperson and epiperson remnants fits the “ceremonial deism” label. Take Congress’s requirement, for example, that at least one theologian sit on the Ethics Advisory Board that is authorized to place consequential limits on the use of NIH funds.¹⁷⁴ As Justice Douglas put it, “We are a religious people whose institutions presuppose a Supreme Being.”¹⁷⁵

Many jurists, like Justice Douglas, have found it hard to imagine our legal system shedding its divine superpersons and epipersons completely. It does not help their imagination that the Declaration of Independence grounded its commitment to the superperson status of humans in humans’ creation by a divine superperson: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights”¹⁷⁶ Our country’s arguably earliest founding document, in other words, conceived of humans as—in the first instance—divine epipersons and only in the second instance, and in consequence, as themselves superpersons.

Now add to this that the Free Exercise Clause bestows robust legal protections on beliefs in the superpersonhood of God and in the epipersonhood of religious artifacts and sacred sites. These have the effect of creating significantly more space for people’s personifications of gods and divine penumbra objects than for other kinds of beliefs. More, too, than for other personifying beliefs—say, about Tamagotchis.¹⁷⁷ Those, after all, do not count as “religion.”

All this, I hope, should give us pause before labeling epipersons “venerated objects,” as revised U.S. legal codes often do,¹⁷⁸ and moving on. Penumbra objects certainly *can* be just that. But as a matter of fact, they are often still epipersons.¹⁷⁹

What is more, even when penumbra objects are mere venerated objects, the disenchantment of our moral circles can still be incomplete. Lawmakers, judges, and advocates may desist from personifying penumbra objects, but still treat these objects as implicating superpersons whose existence rationalist skeptics abjure. They may, for instance, not attribute moral status to a church, but still view an attack on a church as an affront to God. They may not ascribe moral status to the

U.S. 677, 681 (2005) (holding that a monument to the Ten Commandments on the grounds of the Texas State Capitol did not violate the Establishment Clause).

174. National Institutes of Health Revitalization Act of 1993, Pub. L. No. 103-43, § 101, 107 Stat. 122, 128 (codified at 42 U.S.C. § 289a-1(b)(5)(C)) (requiring that “no fewer than 1 [board member] shall be a theologian”); *see also, e.g.*, 21 C.F.R. § 56.107(c) (1981) (“Each [Institutional Review Board of the FDA] shall include at least one member whose primary concerns are in nonscientific areas; for example: lawyers, ethicists, members of the clergy.”).

175. *Zorach v. Clauson*, 343 U.S. 306, 313 (1952).

176. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

177. *See infra* note 267 and accompanying text (discussing personifications of Tamagotchis).

178. *See, e.g.*, TENN. CODE ANN. § 39-17-311 (prohibiting under the heading “Desecration of venerated object” the desecration of a “place of worship or burial” or a “state or national flag”); ARIZ. REV. STAT. § 13-3703 (prohibiting the “abuse of venerated objects,” among them “any public monument, memorial,” and “flag”).

179. The persistent treatment of penumbra objects as epipersons appears to be more pronounced among legislators than among judges. I will discuss this imbalance *infra* notes 239–245 and accompanying text.

American flag, but still treat flag burning as an assault on “our Country” and that Country, in turn, as irreducible to its constitutive members.¹⁸⁰ And they may not believe that the corpse itself has moral worth, but still regard corpse abuse as an indignity to the person who died.¹⁸¹ These instances refrain from treating penumbra objects as epipersons. But they treat gods, sovereigns, and dead humans as moral persons. And in doing so, they depart from conventional rationalist beliefs that gods are fictions,¹⁸² that sovereigns are reducible to their constituent members,¹⁸³ and that dead humans can no longer be wronged.¹⁸⁴ In so doing, they subscribe to, or at least reinforce, a kind of enchanted thinking many believe banished from our legal system.

Finally, penumbra objects often retain some legal features of their epiperson treatment, even after they have become mere venerated objects. In particular, venerated objects tend to share the dignity-limited property status of epipersons. Privately owned flags, for example, continue to be subject to commercial use

180. See, e.g., *Desecration of the Flag: Hearings on H.R. 271 and Similar Proposals to Prohibit Desecration of the Flag Before Subcomm. No. 4 of the H. Comm. on the Judiciary*, 90th Cong. 266 (1967) [hereinafter *Desecration of the Flag Hearings*] (statement of Rep. William C. Cramer) (“It is true that Old Glory is just a symbol. But it is the symbol for which thousands of Americans have given their lives in wars past and present. It is the symbol which has served as a beacon of hope to the oppressed. It is the symbol of our great country and it’s time we put into jail those who would desecrate it. For, I submit that, when our flag is attacked, it is in reality our Country that is being attacked. The two are inseparable.”).

181. See, e.g., MD. CODE ANN., HEALTH OCC. § 7-603(d)(1) (instructing licensed employees to “[t]reat every decedent with the utmost dignity” when transporting human remains); *Koerber v. Patek*, 102 N.W. 40, 45 (Wis. 1905) (describing next of kin’s duty to bury their relative as owed to “the relative, of whom the body, it is true, is but the symbol, but, for the few hours after life ceases, seems . . . to still represent him who was”).

182. See, e.g., KARL MARX, *CRITIQUE OF HEGEL’S ‘PHILOSOPHY OF RIGHT’* 131 (Joseph O’Malley ed. & trans., Annette Jolin trans., Cambridge Univ. Press 1970) (1844) (“Religion is the sigh of the oppressed creature, the heart of a heartless world, and the soul of soulless conditions. It is the opium of the people.”); RICHARD DAWKINS, *THE GOD DELUSION* 31 (2006) (describing God in the Hebrew Bible as “the most unpleasant character in all fiction”); LUDWIG FEUERBACH, *THE ESSENCE OF CHRISTIANITY* 118 (Marian Evans trans., London, Kegan Paul, Trench, Trübner, & Co. Ltd. 3d ed. 1893) (1841) (“Man first unconsciously and involuntarily creates God in his own image, and after this God consciously and voluntarily creates man in his own image.”); Sigmund Freud, *The Future of an Illusion* (1927), in 21 *THE REVISED EDITION OF THE COMPLETE PSYCHOLOGICAL WORKS OF SIGMUND FREUD* 1–52 (Mark Solms ed., James Strachey trans., 2024) (arguing that religious belief in God reflects human longing for a protective father).

183. See, e.g., K.R. POPPER, *THE OPEN SOCIETY AND ITS ENEMIES: THE SPELL OF PLATO* (4th rev. ed. 1963) (embracing qualified reductionism); BRIAN EPSTEIN, *THE ANT TRAP: REBUILDING THE FOUNDATIONS OF THE SOCIAL SCIENCES* (2015) (describing reductionism’s dominance and criticizing it for being overly anthropocentric); Leshem, *The State as a Moral Person*, *supra* note 26, at 10–11 (contrasting moral individualism with moral statism).

184. See generally Joan C. Callahan, *On Harming the Dead*, 97 *ETHICS* 341 (1987); Ernest Partridge, *Posthumous Interests and Posthumous Respect*, 91 *ETHICS* 243 (1981); James Stacey Taylor, *The Myth of Posthumous Harm*, 42 *AM. PHIL. Q.* 311 (2005). Some philosophers, by contrast, embrace the possibility of posthumous harm. See generally DAVID BOONIN, *DEAD WRONG: THE ETHICS OF POSTHUMOUS HARM* (2019); JOEL FEINBERG, *THE MORAL LIMITS OF THE CRIMINAL LAW: HARM TO OTHERS* 79–83 (1984); STEVEN LUPER, *THE PHILOSOPHY OF DEATH* (2009); Barbara Baum Levenbook, *Harming Someone After His Death*, 94 *ETHICS* 407 (1984); George Pitcher, *The Misfortunes of the Dead*, 21 *AM. PHIL. Q.* 183 (1984).

limitations.¹⁸⁵ Understanding the historical roots of these property limitations allows us to ask in each instance whether the objects' inherited legal treatment is still appropriate and well-tailored to their status as mere venerated objects. Take the harsher punishment of church arson compared to private property arson.¹⁸⁶ Is that disparity warranted if the law truly no longer gives moral weight to God nor to the divinity with which the church was once thought to be imbued? Or consider Nevada's life-with-parole sentence for necrophilia.¹⁸⁷ Is that sentence justified if the law neither treats the corpse as an epiperson nor the human who died as a superperson who can still be wronged?

Keeping law's shifting circles in sight can help us avoid overly reductionist understandings of our laws. This, in turn, can make us clearer-eyed about the continuing roles of epipersons and divine and sovereign superpersons in our legal system. And it can position us to press for legal reforms where we perceive a mismatch between our laws and moral beliefs.

C. NO INEVITABLE ARC

Another implication of the shifting circles story that is worth drawing out is the doubt it sheds on a simplistic teleological understanding of history. Those who tell the conventional expanding circle story sometimes seem to believe in an inevitable historical trajectory—an arc that bends toward justice.¹⁸⁸ A progression that will include ever more entities in the circle of moral concern. The shifting circles story makes clear that we do not simply and necessarily recognize ever more entities as moral persons. Yes, we have added many moral persons to our circle of concern over time. But we have also excluded many.¹⁸⁹

Rationalists may be quick to try to assimilate law's shifting circles story into a revised narrative of moral progress. Sure enough, they may say, law's circles of moral concern have both expanded and contracted. But the shifts in both directions have been part of History's progressive arc. On this revised narrative, our legal system is making steady progress in recognizing the moral status of beings who really are moral persons, and at the same time in denying moral status to entities that are not actually moral persons. Combining the expansions and contractions of law's moral circles, we are finally homing in on who actually matters morally: human beings, sentient beings, agentic beings—at this point, rationalists begin to disagree. But whoever the moral persons are who stand at the pinnacle of

185. See, e.g., *Halter v. Nebraska*, 205 U.S. 34, 45 (1907) (“[W]e hold that the provision against the use of representations of the flag for advertising articles of merchandise is not repugnant to the Constitution”); 4 U.S.C. § 3 (restricting the flag's commercial use in the District of Columbia).

186. Compare LA. STAT. ANN. § 14:52 (imposing penalties of differing severity based on the monetary value of damage done by an act of simple arson, without requiring a minimum prison sentence), with LA. STAT. ANN. § 14:52.1 (imposing a minimum prison sentence of two years for “[s]imple arson of a religious building,” regardless of the monetary value of the damage done).

187. See NEV. REV. STAT. § 201.450.

188. Martin Luther King, Jr., *Our God is Marching On!* (Mar. 25, 1965) (transcript available at <https://kinginstitute.stanford.edu/our-god-marching> [<https://perma.cc/PLM4-GNCN>]) (“[T]he arc of the moral universe is long, but it bends toward justice.”).

189. See *supra* Section II.A.

progress, the circle contractions in this revised teleology are an essential complement to the circle expansions in that they weed out the errant fetishisms from a darker, less enlightened past: gods, sovereigns, and the host of epipersons.

Law's persistent epipersons and divine and sovereign superpersons should give us pause before embracing this teleological narrative. Disenchantment, as we just saw, remains significantly incomplete. Still worse, from the perspective of a rationalist attached to that teleological narrative of moral progress, are the contingency and non-linearity of law's shifting circles that become apparent once we look more closely at the circles' expansions and contractions.

The shifts in moral status recognition have been neither linear nor inevitable. During the Cold War, for instance, when the United States viewed and defined itself in important ways against the foil of Soviet communism and atheism, God waxed as a superperson.¹⁹⁰ This was the period in which Congress, for instance, decreed that "In God We Trust" be stamped on all coins,¹⁹¹ and that "one Nation under God" be added to the Pledge of Allegiance.¹⁹²

Sovereign superpersons and epipersons, too, have waxed periodically. And not just during times of war. In the 1990s and 2000s, for instance, the U.S. Supreme Court—perhaps riding a wave of U.S. exceptionalism—revived long-dormant arguments about sovereign dignity to justify federal and state governments' immunity from suit.¹⁹³ During that same period, sovereign epipersons also gained in moral status. Epiperson sensibilities around the American flag, for example, garnered sufficient fervor that forty-nine state legislatures passed resolutions calling on Congress to propose a constitutional amendment that would allow them to criminalize flag desecration once more.¹⁹⁴ Indeed, Congress nearly reached the

190. Think of President Eisenhower appealing in his 1961 farewell address to Americans as a "free and religious people" facing a "hostile ideology . . . atheistic in character." President Dwight D. Eisenhower, Farewell Radio and Television Address to the American People, 1 PUB. PAPERS 1035, 1036–37 (Jan. 17, 1961).

191. Act of July 11, 1955, Pub. L. No. 84-140, 69 Stat. 290 (codified at 31 U.S.C. § 5114(b)); *see also* "In God We Trust", SMITHSONIAN: NAT'L MUSEUM OF AM. HIST., <https://americanhistory.si.edu/explore/exhibitions/value-money/online/new-acquisitions/in-god-we-trust> [<https://perma.cc/GQS6-HVE9>] (last visited Apr. 21, 2026) (noting that some coins had already displayed this inscription as early as 1864). The first authorized coin, by contrast, displayed the much more disenchanting quip: "Mind Your Business." *Clash of the Coins*, FED. RSRV. BANK ATLANTA, <https://www.atlantafed.org/economy-matters/banking-and-finance/clash-of-the-coins/all-coins> [<https://perma.cc/CS4B-TLWJ>] (last visited Jan. 19, 2026).

192. Act of June 14, 1954, Pub. L. No. 83-396, 68 Stat. 249 (codified at 36 U.S.C. § 172); *see also* Statement by the President upon Signing Bill to Include the Words "Under God" in the Pledge to the Flag, 1 PUB. PAPERS 563 (June 14, 1954) ("FROM THIS DAY FORWARD, the millions of our school children will daily proclaim . . . the dedication of our nation and our people to the Almighty. To anyone who truly loves America, nothing could be more inspiring Over the globe, mankind has been cruelly torn by violence and brutality and, by the millions, deadened in mind and soul by a materialistic philosophy of life. . . . In this way we are reaffirming the transcendence of religious faith in America's heritage and future; in this way we shall constantly strengthen those spiritual weapons which forever will be our country's most powerful resource, in peace or in war.").

193. *See* Resnik & Suk, *supra* note 55, at 1958–60.

194. ROBERT JUSTIN GOLDSTEIN, FLAG BURNING AND FREE SPEECH: THE CASE OF *TEXAS V. JOHNSON* 228 (2000).

necessary two-thirds majorities in both houses on several occasions, including in 2006 when it fell just one Senate vote short of proposing such an amendment.¹⁹⁵

Lawmakers have also sometimes—at the urging of legal advocates—counteracted circle contractions as an act of reparation or restitution. Take Native American corpses, sacred sites, and artifacts, for example. After centuries of destruction and plundering, Congress and state legislatures have conferred heightened legal protections for these penumbra objects—recognizing them belatedly as divine, sovereign, and human epipersons in the lives and laws of Native American tribes.¹⁹⁶

Another reason to be wary of a linear teleological narrative is the multi-dimensionality of law's shifting circles. Moral status recognitions can expand in one sense while also contracting in another sense. The circle of moral concern centered around God, for instance, contracted in weight as courts interpreted the Establishment Clause to bar legal requirements of worship and reverence. But it also expanded in kind as courts interpreted the Free Exercise Clause to protect believers' worship of an increasingly pluralistic set of divine superpersons, including Native American deities, sacred sites, and religious artifacts. In addition to the dimensions of weight and kind, law's circles of moral concern can also expand or contract in the raw number of individual entities inside or outside a given circle. Law's recognition of nonhuman animals as moral persons offers a striking illustration of how this third, numerical dimension can come apart from the other two. Beginning in the nineteenth century, our legal system recognized additional kinds of animals as moral persons and gave their moral status additional weight through animal cruelty statutes, among other means.¹⁹⁷ But once factory farming exploded in the twentieth century, our legal system also treated a vastly greater absolute number of individual animals as nonpersons.¹⁹⁸

195. See 152 CONG. REC. S6546 (daily ed. June 27, 2006) (stating the results of Senate Roll Call Vote No. 189 as 66 yeas and 34 nays); 151 CONG. REC. H4927 (daily ed. June 22, 2005) (stating the results of House of Representatives Roll No. 296 as 286 yeas and 130 nays).

196. See, e.g., American Indian Religious Freedom Act, Pub. L. No. 95-341, 92 Stat. 469 (1978) (codified at 42 U.S.C. § 1996) (committing “to protect[ing] and preserv[ing] for American Indians their inherent right of freedom to believe, express, and exercise the[ir] traditional religions . . . , including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites”); Native American Graves Protection and Repatriation Act, Pub. L. No. 101-601, 104 Stat. 3048 (1990) (codified at 25 U.S.C. §§ 3001–3013); California Native American Graves Protection and Repatriation Act of 2001 § 1, CAL. HEALTH & SAFETY CODE § 8011(a) (committing “to ensur[ing] that all California Indian human remains and cultural items be treated with dignity and respect”). Many scholars have criticized these protections for falling short in practice. See, e.g., Stephanie Hall Barclay & Michalyn Steele, *Rethinking Protections for Indigenous Sacred Sites*, 134 HARV. L. REV. 1294, 1317–20 (2021) (criticizing the inadequate legal protections for Native American sacred sites); Fred O. Smith, Jr., *On Time, (In)Equality, and Death*, 120 MICH. L. REV. 195, 229–30, 235 (2021) (analyzing the shortcomings of legal protections for the corpses and burial sites of Black Americans and Native Americans).

197. See *supra* note 135 and accompanying text (discussing animal cruelty laws).

198. See, e.g., Marina Bolotnikova & Kenny Torrella, *9 Charts That Show U.S. Factory Farming Is Even Bigger than You Realize*, VOX (Feb. 6, 2024, at 07:30 ET), <https://www.vox.com/future-perfect/24079424/factory-farming-facts-meat-usda-agriculture-census> (“In 2022, the most recent year with available data, the number of chickens, cows, pigs, and turkeys in the US food system exceeded 10 billion for the first time in the census’s history—up from 5.2 billion animals in 1987.”); Preventing

The expanding circle story, focused as it is on the inclusion of additional kinds of moral persons, can make it harder for rationalists attached to that teleological narrative to see that circle expansions, just like contractions, can coexist with their opposite shifts once we focus on the multiple dimensions of each circle. Some critics of the carceral state have long emphasized this point for the circle centered around Man. Put in the terms of my account, they have argued that the circle of human superpersons did not only expand in kind when it included Black Americans, it also contracted in weight when it weakened the rights and dignity protections of criminal defendants and incarcerated people.¹⁹⁹

Seeing our legal system's shifting circles of moral concern in all their complexity and multi-dimensionality can help remind us that its trajectories of expansion and contraction are neither linear nor inevitable. And that in turn can position us to approach our legal system's future moral status attributions and protections as genuinely open.

D. NO SAFE HARBOR

As we approach our legal system's present and future moral status attributions and protections, the shifting circles story holds two more related lessons. First, rationalists attached to the expanding circle story should not assume that they can assimilate all remaining legal protections of superpersons and epipersons into a disenchanting worldview; they may need to revise and reform those protections instead. Second, rationalists who undertake legal reforms and try to shift law's circles of moral concern cannot rely on a simple rule of thumb; they must face difficult moral tradeoffs and areas of genuine uncertainty. Let me take each of these lessons in turn.

Rationalists attached to the expanding circle story may find it tempting to respond to my account of law's shifting circles by trying to assimilate the remaining legal protections of superpersons and epipersons into a disenchanting worldview. They may argue, for instance, that we can retain the law's protections of epipersons and divine and sovereign superpersons without sharing their underlying historical beliefs in the moral status of such epipersons and superpersons. Take law's persistent protections of corpses, such as criminal prohibitions against corpse abuse.²⁰⁰ Such protections, rationalists may insist, are compatible with their moral beliefs because these laws protect relatives' and other third parties' feelings.²⁰¹ The protections also achieve beneficial consequences, such as disincentivizing violent

Animal Cruelty and Torture Act, Pub. L. No. 116-72, 133 Stat. 1151 (2019) (amending 18 U.S.C. § 48) (exempting standard agricultural and slaughter practices from prohibitions against animal crushing); IOWA CODE § 717B.1 (excluding "livestock" from protections against animal mistreatment).

199. See generally JAMES Q. WHITMAN, *HARSH JUSTICE: CRIMINAL PUNISHMENT AND THE WIDENING DIVIDE BETWEEN AMERICA AND EUROPE* (2003); MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2012); JAMES FORMAN, JR., *LOCKING UP OUR OWN: CRIME AND PUNISHMENT IN BLACK AMERICA* (2017).

200. See Leshem, *Dead Bodies*, *supra* note 26, at 1042–44.

201. See Anita L. Allen & Jennifer E. Rothman, *Postmortem Privacy*, 123 MICH. L. REV. 285, 318–27 (2024).

behaviors that may, if left unchecked, spread from corpses and other penumbra objects to living humans.²⁰²

I doubt that such attempts at post hoc assimilation and rationalization fully succeed. Justifying the law's protections of corpses and other penumbra objects on the basis of people's feelings ends up incorporating epiperson beliefs by another name. A primary reason, after all, that people feel so strongly about these penumbra objects is that they view them as epipersons, or at the very least as implicating the moral status of their associated superpersons. People's conceptions of penumbra objects, moreover, are rarely immutable. And so their legal protections cannot be justified as mere passive reflections of people's feelings. These protections likely also foster those feelings and their underlying moral status beliefs through ritualized and enforced veneration.

The consequentialist justifications turn out to be similarly shaky. To be sure, many people—including self-conceived rationalists—seem to believe that the disrespectful or violent treatment of penumbra objects erodes humans' moral sensibilities. Just think of contemporary medical schools' treatment of corpses in first-year anatomy courses. Medical faculty regularly instruct their students to treat these "cadavers" with dignity and respect because they assume that their students will then be more likely to treat their living patients with dignity and respect.²⁰³ But the empirical support for such beliefs is uncertain. Some research lends support to the assumed causal links between violence towards penumbra objects and violence towards living humans,²⁰⁴ whereas other research tends to undermine them.²⁰⁵

202. See, e.g., Kate Darling, *Extending Legal Protection to Social Robots: The Effects of Anthropomorphism, Empathy, and Violent Behavior Towards Robotic Objects*, in *ROBOT LAW* 213, 224–25 (Ryan Calo, A. Michael Froomkin & Ian Kerr eds., 2016) (endorsing this causal thinking in the case of social robots).

203. As one Stanford faculty member put it, "We treat our cadavers as we would treat our patients: with respect and care." It "teaches empathy." Tracie White, *In Rite of Passage, Students Meet Cadavers*, *STANFORD MED.* (Sep. 1, 2016), <https://med.stanford.edu/news/all-news/2016/09/cadavers-help-teach-medical-students-that-the-patient-comes-first.html> [<https://perma.cc/EXN7-24MK>]; see also Danny Lewis, *Cadavers Are Teaching Doctors to Be More Empathetic*, *SMITHSONIAN MAG.* (Aug. 17, 2015), <https://www.smithsonianmag.com/smart-news/med-schools-are-teaching-empathy-dead-their-students-learn-180956279/>; John Tyler Allen, *Learning Empathy from the Dead*, *ATLANTIC* (July 28, 2015), <https://www.theatlantic.com/health/archive/2015/07/cadaver-dissection-empathy-medical-school/398429/>.

204. When it comes to human representations in the penumbra of Man, some studies suggest, for instance, that playing violent video games increases aggressive behavior. See, e.g., Craig A. Anderson & Nicholas L. Carnagey, *Causal Effects of Violent Sports Video Games on Aggression: Is it Competitiveness or Violent Content?*, 45 *J. EXPERIMENTAL SOC. PSYCH.* 731, 738 (2009); Anna T. Prescott et al., *Metaanalysis of the Relationship Between Violent Video Game Play and Physical Aggression Over Time*, 115 *PROC. NAT'L ACAD. SCI.* 9882, 9887 (2018).

205. There is some evidence, for instance, that watching violent movies and TV shows decreases crimes. See Jason M. Lindo et al., *Persistent Effects of Violent Media Content* 6–9 (Nat'l Bureau of Econ. Rsch., Working Paper No. 27240, 2020); Gordon Dahl & Stefano DellaVigna, *Does Movie Violence Increase Violent Crime?*, 124 *Q.J. ECON.* 677, 725–27 (2009). Some studies also call the aggressive effects of violent video games into question. See, e.g., Simone Kühn et al., *Does Playing Violent Video Games Cause Aggression? A Longitudinal Intervention Study*, 24 *MOLECULAR*

In short, rationalists cannot rest secure in our current laws. They may need to reform the laws that historically protected epipersons and divine and sovereign superpersons to render them consistent with rationalist moral status beliefs. If and when they do, these rationalists will need to let go of another belief that proponents of the conventional expanding circle story sometimes espouse. Which brings us to the final lesson of law's shifting circles story.

Some proponents of the conventional expanding circle story seem to think that further expansion of the moral circle is a safe place to retreat to when in doubt.²⁰⁶ When a given animal's sentience, say, is uncertain, we should just err on the side of giving it moral status in our legal system. To be sure, this does look like the right hedging of risks in the case of factory farming. But the point does not generalize. Rationalists are not on the morally safe side by, as a general matter, according moral-person status whenever in doubt. When it comes to factory farming, the moral cost of overinclusion happens to be minimal: we will not get to eat meat cheaply. In other cases, by contrast, the moral costs of attributing moral status to the entity in question are often significant. And so the moral tradeoffs are difficult. Attributing moral personhood to certain nonhuman animals may restrict their use in life-saving medical trials. Treating human corpses as moral persons may undercut their use in life-saving crash tests. Moral-person protections for fetuses may risk the life or wellbeing of pregnant women seeking an abortion. And so on.

The shifting circles story is a reminder to rationalists that a society and legal system must get both things right: denying personhood recognition to entities that are not moral persons and granting personhood recognition to beings that are moral persons.²⁰⁷ Scoping the circle of moral concern rarely offers a safe default. Putting the thumb on the scale of expanding the circle whenever in doubt or in disagreement would negate every instance of shrinking that our legal system's circles have undergone. This is a bullet that too few rationalists who are hawkish about the expanding circle contemplate—and not one they may want to bite.

One way to sum up these lessons from law's shifting circles is that our legal system is engaged in a constant process of contesting and redrawing its circles of moral concern. There is no triumphant arc of moral progress we can rely on, nor a safe harbor we can retreat to when in moral doubt. Superpersons and epipersons continue to live on in our legal system despite rationalist protestations and

PSYCHIATRY 1220, 1231 (2019) (finding no statistically significant detrimental behavioral effects of violent gaming).

206. See, e.g., SEBO, *supra* note 27, at 51–53; Anthis & Paez, *supra* note 36, at 5–6.

207. AI safety theorists warn that this need to get both recognition and denial of moral status right is particularly pressing for possible future AI worlds, where, on the one hand, the erroneous denial of moral personhood to sentient AI could amount to an unfathomable scale of moral wrong and, on the other hand, the erroneous recognition of moral personhood could exacerbate the risk of human extinction or social breakdown. See, e.g., Robert Long, *Dangers on Both Sides: Risks from Under-Attributing and Over-Attributing AI Sentience*, EXPERIENCE MACHS. (Apr. 8, 2023), <https://experiencemachines.substack.com/p/dangers-on-both-sides-risks-from> [<https://perma.cc/D67A-3CBD>]; Robert Long, Jeff Sebo & Toni Sims, *Is There a Tension Between AI Safety and AI Welfare?*, 182 PHIL. STUD. 2005 (2025).

attempts at assimilation. For rationalists, these observations are a call to legal reform. And for everyone, they open up possibilities of facing future moral status decisions with greater historical perspective and sensitivity to moral tradeoffs and uncertainties.

III. REIMAGINING PERSONHOOD

I will illustrate in this final Part what it can look like to apply the lessons of the shifting circles story to current political and legal disputes over moral status decisions. My account of superpersons and epipersons, I argue, can help us make sense of some fraught contemporary disagreements over who is and who is not a moral person. And it can help reframe these disagreements in hopefully productive ways. I will sketch three such applications in the following Sections, addressing rights of nature in Section III.B, AI in Section III.C, and abortion in Section III.D. For each of these applications, my goal will be to offer *one* fresh perspective on an entrenched legal dispute that my account of law's shifting circles opens up, not to pretend that that perspective is the only one that follows from my account. But first I will return in Section III.A to the current legislative efforts with which I began.

A. LEGISLATING PERSONHOOD

As we saw in the Introduction, several state legislatures have recently enacted personhood statutes.²⁰⁸ These legislative efforts involve two types of statutes: (1) pro-personhood statutes that declare fetuses to be persons from conception, and (2) anti-personhood statutes that declare certain other entities, such as nature and AI, not to be persons.

(1) Pro-personhood statutes. Legislative efforts to declare fetuses moral persons from conception are widespread and well known.²⁰⁹ Several states have already enacted statutes that effectively make such a declaration.²¹⁰ Georgia, for instance, enacted a fetal personhood statute in 2019 entitled the “Living Infants Fairness and Equality (LIFE) Act,”²¹¹ which defined “[n]atural person” as “any human being including an unborn child.”²¹² The statute amended, among other things, Georgia’s abortion laws to prohibit most abortions after a detectable

208. See *supra* notes 1–13 and accompanying text.

209. See ZIEGLER, *supra* note 41, at 67–72, 75–80, 208, 211, 218–219; Wendy S. Heipt & Julia Littell, *Fetal Personhood Creep*, 28 J. GENDER, RACE & JUST. 283, 308–32 (2025).

210. See, e.g., WYO. STAT. ANN. §§ 35-6-121 (restricting abortions on the grounds that “from conception, the unborn baby is a member of the human race” and is “created equal and . . . endowed by the[] creator with certain unalienable rights, the foremost of which is the right to life”); ALA. CODE § 26-23H-2(c) (reaffirming that Alabama law “defines a person for homicide purposes to include an unborn child in utero at any stage of development”); KAN. STAT. ANN. § 65-6732 (defining human life as “begin [ning] at fertilization” and asserting that “unborn children have interests in life, health and well-being that should be protected” and “the laws of this state shall be interpreted . . . to acknowledge on behalf of the unborn child at every stage of development, all the rights, privileges and immunities available to other persons”).

211. H.B. 481, 155th Gen. Assemb., Reg. Sess. (Ga. 2019).

212. GA. CODE ANN. § 1-2-1(b).

heartbeat.²¹³ It also required “population based determinations” and child support payments to take account of “unborn child[ren] with a detectable human heartbeat.”²¹⁴ Several other states have recently considered similar fetal personhood bills.²¹⁵

(2) Anti-personhood statutes. Legislative efforts to declare certain entities *not* to be persons are less widespread. But at least four states have already enacted such anti-personhood statutes,²¹⁶ and additional states are considering them.²¹⁷ North Dakota, as we saw, enacted such a statute in 2023, amending its definition of “Person” throughout its statutory code to “not include environmental elements, artificial intelligence, an animal, or an inanimate object.”²¹⁸ The same statute affirms, however, that the term “Person”—while excluding nature, AI, animals, and inanimate objects—*does* include not only “an individual” but also an “organization, government, political subdivision, or government agency or instrumentality.”²¹⁹

The interest groups pushing for the enactment of pro- and anti-personhood statutes sometimes overlap.²²⁰ These statutes are indeed consistent with each other. They ensure, as I argued in the Introduction, that the law grants personhood recognition to all human beings, including embryos and pre-sentient fetuses. They also ensure that the law refuses personhood recognition to all nonhuman beings

213. H.B. 481, 155th Gen. Assemb., Reg. Sess. (Ga. 2019).

214. GA. CODE ANN. §§ 1-2-1(d), 19-6-15(a.1).

215. *See, e.g.*, H.B. 370, 136th Gen. Assemb., Reg. Sess. (Ohio 2025) (“acknowledg[ing] the sanctity of innocent human life . . . which should be equally protected from the beginning of biological development” and defining “‘person’ or ‘another’” as “includ[ing] an individual living human child before birth from the beginning of biological development”); H.B. 367, 68th Leg., 1st Reg. Sess. (Idaho 2025) (“The state of Idaho recognizes that existence of a human being begins at the moment of conception and that at the moment of conception every living preborn child possesses full personhood and the rights and facts that accompany personhood.”).

216. N.D. CENT. CODE § 1-01-49(17) (excluding environmental elements, AI, animals, and inanimate objects from personhood); UTAH CODE ANN. § 63G-32-102 (similar); IDAHO CODE § 5-346 (similar); TENN. CODE ANN. § 1-3-105(a)(20) (excluding AI from the definition of “Person”); *see also* FLA. STAT. § 403.412(9)(a) (prohibiting the grant of “any legal rights to a plant, an animal, a body of water, or any other part of the natural environment”).

217. For example, similar bills to Utah’s were introduced in Alaska, Missouri, South Carolina, Washington, and Oklahoma from 2024 through 2026. *See* Comm. Substitute H.B. 107(JUD), 33d Leg., 2d Sess. (Alaska 2024); H.B. 721, 103d Gen. Assemb., 1st Reg. Sess. (Mo. 2025); H.B. 3796, Gen. Assemb., 126th Sess. (S.C. 2025); H.B. 2029, 69th Legis. Assemb., Reg. Sess. (Wash. 2025–26); H.B. 3546, 60th Leg., Reg. Sess. (Okla. 2026); *see also* H.B. 469, 136th Gen. Assemb., Reg. Sess. (Ohio 2025) (focusing on AI); H.B. 1462, 103d Gen. Assemb., Reg. Sess. (Mo. 2025) (similar); S.B. 1159, 2025-2026 Reg. Sess. (Cal. 2026) (similar).

218. H.B. 1361, 68th Legis. Assemb., Reg. Sess. (N.D. 2023) (codified at N.D. CENT. CODE ANN. § 1-01-49).

219. N.D. CENT. CODE ANN. § 1-01-49(17).

220. *See, e.g.*, N.D. *Senate Hearing*, *supra* note 14 (statement of Jacob Thomsen, Policy Analyst, North Dakota Family Alliance Legislative Action) (supporting anti-personhood statute); *Hearing on S.B. 2150 Before the S. Judiciary Comm.* (Jan. 16, 2023) (statement of Mark Jorritsma, Executive Director, North Dakota Family Alliance Legislative Action) (supporting anti-abortion statute). In the case of at least one bill, legislators in fact merged pro- and anti-personhood provisions into one statute. *See* Comm. Substitute H.B. 107(JUD), 33d Leg., 2d Sess. (Alaska 2024); *see also* S.B. 837, 114th Gen. Assemb. (Tenn. 2025) (as introduced) (including embryos and fetuses in the definition of “Human being,” while excluding AI from the definitions of “Person,” “Life,” and “Natural person”).

and entities, including nature and AI. Corporations, organizations, and government agencies are no exception to this human–nonhuman division. After all, moral personhood attributions to these entities can be reduced to the moral personhood of their constituent human beings²²¹—though they need not be, as we saw.²²² The same reductionism is not available for nonhuman animals, nature, and inanimate objects. Nor is it reliably available for AI systems due to concept drift, the possibility of future sentience, and other features.²²³ That makes the attribution of moral personhood to these entities uniquely threatening for attempts to equate being a moral person with being human.

In drawing their dividing line between human and nonhuman entities, pro- and anti-personhood statutes reflect a shared anxiety. If our legal system were to treat any human entity as *less than* a moral person and any nonhuman entity as *equivalent to* a moral person, it would dilute the exalted moral status of human beings. Legislators backing pro- and anti-personhood statutes are quite explicit about this anxiety.²²⁴

My foregoing account helps us make sense of pro- and anti-personhood bills, and their shared anxiety, as products of the expanding circle story. Supporters of these bills appear to buy into a particular version of the expanding circle story—one focused on human superpersons that views unborn humans as the next frontier of the expanding circle. Supporters of the bills also reckon with alternative versions of the expanding circle story—those that seek to expand human superperson status to certain nonhuman animals, parts of nature, and sentient AI systems. These alternative versions are the ones that the supporters of personhood legislation emphatically reject.²²⁵

What supporters of personhood statutes forget, like many other proponents of the expanding circle story, is our legal system’s longstanding history of recognizing nonhuman beings and inanimate objects as moral persons. This oversight goes hand in hand with supporters’ binary conception of personhood. Some entities, such as fetuses, are all in. Other entities, such as nature and AI, are all out.

221. See *supra* notes 66–67 and accompanying text (discussing corporate persons).

222. See *supra* notes 55–57 and accompanying text (discussing sovereign persons).

223. Concept drift refers to a change over time in the relationship between inputs and outputs, which can degrade a model’s accuracy. Other features include epistemic opacity (a system’s resistance to human scrutiny) and emergent, unpredictable capabilities (a system’s surprising skills when scaled). See Firas Bayram et al., *From Concept Drift to Model Degradation: An Overview on Performance-Aware Drift Detectors*, 245 KNOWLEDGE BASED SYST. 108632 (2022); Mihály Héder, *The Epistemic Opacity of Autonomous Systems and the Ethical Consequences*, 38 AI & SOC’Y 1819, 1820–21 (2023); Jason Wei et al., *Emergent Abilities of Large Language Models*, TRANS. MACH. LEARN. RES. (Aug. 31, 2022). In other ways, corporations and AI systems share many features that would seem to invite parallel legal personhood treatment. For instance, corporations have owners (i.e. stockholders) and directors (i.e. managers, board), and AI systems, too, have owners (i.e. creators, creators’ employers, purchasers), and directors (i.e. software engineers, programmers). See Lawrence B. Solum, *Legal Personhood for Artificial Intelligences*, 70 N.C. L. REV. 1231, 1242 n.40, 1243 n.44 (1992).

224. See, e.g., *supra* notes 3–5 and accompanying text (quoting the sponsor of North Dakota’s anti-personhood bill, Rep. Cole Christensen, to this effect).

225. See, e.g., *supra* notes 14–18 and accompanying text (rejecting competing efforts by rights-of-nature and animal-rights advocates); H.B. 469, 136th Gen. Assemb., Reg. Sess. (Ohio 2025) (“No AI system shall be granted the status of person or any form of legal personhood, nor be considered to possess consciousness, self-awareness, or similar traits of living beings.”).

The possibility that some entities, including these particular entities, might be epipersons, and might thus fall on a spectrum of moral status between thing and superperson, is off the table.

Conceptually, this oversight should not surprise us. Our legal system has undergone significant, though incomplete, disenchantment.²²⁶ On the whole, divine and sovereign superpersons have been retreating into the background. And epipersons, too, have been increasingly disappearing.

Politically, though, there is some irony to this oversight. In the past, movements associated with the political left tended to favor the marginalization of epipersons and divine and sovereign superpersons.²²⁷ They were the ones pressing for a more binary understanding of moral personhood and decrying the in-between status of epipersons as products of magical thinking.²²⁸ Movements associated with the political right, by contrast, often sought to protect epipersons legally—be they religious artifacts,²²⁹ the American flag,²³⁰ or

226. See *supra* Sections II.A & II.B.

227. See, e.g., GOLDSTEIN, *supra* note 80, at 134 (describing left-leaning criticisms of legislative efforts to overturn *Texas v. Johnson* as charging that such efforts “unconstitutionally seek[] to make the flag an ‘icon’” and engage in “‘idolatry’”); DESECRATING THE AMERICAN FLAG: KEY DOCUMENTS OF THE CONTROVERSY FROM THE CIVIL WAR TO 1995, at 150–151 (Robert Justin Goldstein ed., 1996) (“[Gregory Lee Johnson, left-wing activist and flag-burning defendant:] You’re going against your so-called First Amendment and the whole Constitution all that by saying that you can protest just as long as you bow down before the American flag.” (quoting Trial Tr., *State v. Johnson*, No. MA8446013-H/J (Dallas Cnty. Crim. Ct. No. 8, Tex. 1984))).

228. See, e.g., H.R. REP. NO. 90-350, at 4, 17 (1967) (including minority views of Rep. John Conyers and Rep. Don Edwards on H.R. 10480, criticizing the majority report for stating that flag “burning . . . inflicts an injury on the entire Nation” and charging that “[i]t seems anomalous to us that the legislature of what we hope should be the most highly civilized nation the world has ever known could seriously consider enacting a law based on so primitive a concept. Whatever results flow from the acts of those who burn our flag, they can do no injury to the Nation”); *Desecration of the Flag Hearings*, *supra* note 180, at 234 (statement of Edward Morris, Teaching Fellow, Bowling Green State University) (“It should be apparent that a symbol can have no more meaning than each separate person wants to give to it. Citizens cannot be legislated into respecting the flag, and no profit would come of it if they could be. . . . The flag is not the Nation. It is dangerous to treat it as if it were.”); James E. Wood, Jr., *Making a Nation’s Flag a Sacred Symbol*, 31 J. CHURCH & ST. 375, 379–80 (1989) (charging that flag protection laws distort “the basic meaning of the flag and the nature of America’s nationhood, which is secular and not sacred, human and not divine”).

229. See, e.g., REPUBLICAN PARTY OF TEX., REPORT OF THE PERMANENT COMMITTEE ON PLATFORM AND RESOLUTIONS AS AMENDED AND ADOPTED BY THE 2016 STATE CONVENTION OF THE REPUBLICAN PARTY OF TEXAS 11 (2016), <https://texasgop.org/wp-content/uploads/2024/04/PERM-PLATFORM-as-Amended-by-Gen-Body-5.13.16.pdf> [<https://perma.cc/LR28-CQGD>] (“We oppose governmental action to remove the public display of the Ten Commandments or other religious symbols.”); *Republican Party Platform of 1992*, AM. PRESIDENCY PROJECT, <https://www.presidency.ucsb.edu/documents/republican-party-platform-1992> [<https://perma.cc/W6FX-JGG4>] (last visited Apr. 21, 2026) (“We believe churches and religious schools should not be taxed; . . . and we condemn the cowardly desecration of places of worship that has shocked our country in recent years.”); War Memorial Protection Act, H.R. 290, 112th Cong. (2012) (Republican-led bill protecting religious symbols in military memorials that passed the House).

230. See, e.g., *supra* note 195 and accompanying text; *Roll Call Vote 109th Congress - 2nd Session*, U.S. SENATE, https://www.senate.gov/legislative/LIS/roll_call_votes/vote1092/vote_109_2_00189.htm [<https://perma.cc/D7PK-TPC4>] (last visited Apr. 21, 2026) (recording the vote as Republicans 52 yea, 3 nay; Democrats 14 yea, 30 nay); *Roll Call 296 | Bill Number: H.J. Res. 10*, OFF. OF THE CLERK, U.S. HOUSE OF REPRESENTATIVES, <https://clerk.house.gov/Votes/2005296> [<https://perma.cc/6328-AKGT>] (last visited Apr. 21, 2026) (recording the vote as Republicans 209 yea, 12 nay; Democrats 77 yea, 117

human corpses.²³¹ Now, however, with respect to animals, nature, AI, and fetuses, movements on the right are doubling down on a binary understanding of personhood. In doing so, they are contributing to the sidelining of epipersons and to the contraction of our moral circles.

I will turn in the remaining Sections to three of the key entities over which our contemporary personhood wars are being fought: nature, AI, and fetuses. I will illustrate briefly for each case what it can look like to view these disputes through the lens of law's shifting circles and my scalar conception of moral personhood. What it can look like, in other words, to resist the shared assumptions of personhood bill supporters and their opponents who approach these disputes armed only with the expanding circle story and a binary conception of personhood.

The story of law's shifting circles, I will argue, can help us detect the lasting legacy of epipersons in these three contemporary disputes. Detecting this legacy is not the only way to approach these disputes through the lens of my account. But it is *a* way—one that sheds new light on the disputes and hopefully recasts them in more productive terms.

B. RIGHTS OF NATURE

My first case study is the debate over rights of nature. Rights-of-nature advocates, dating back to Christopher Stone's seminal article *Should Trees Have Standing?*, often invoke the expanding circle story for their cause.²³² This invocation implies that rights-of-nature advocates seek to extend human superperson status to trees, lakes, and other parts of nature. But my account of law's shifting circles facilitates an alternative understanding of the movement: that it seeks to revive the divine circle of our moral-person landscape.

On this alternative understanding, nature is God. Capital-N Nature. Which is in fact a common spelling that rights-of-nature advocates adopt.²³³ Nature as a divine superperson fits seamlessly into the expanding set of deities that have come to constitute the divine superpersons of our legal system with the advent of pluralism and the inclusion of indigenous deities.²³⁴

As is the wont of superpersons, Nature finds physical manifestation in its penumbra objects such as trees, lakes, and mountains. What is more, rights-of-

may); Remarks upon Receiving a Replica of the Iwo Jima Memorial and an Exchange with Reporters, 26 WEEKLY COMP. PRES. DOC. 937, 939 (June 12, 1990) (quoting President George H.W. Bush as telling a reporter, in response to the reporter's question whether burning the flag "endangers people," that flag burning "endangers the fabric of our country, and I think it ought to be outlawed").

231. See, e.g., Leshem, *Dead Bodies*, *supra* note 26, at 1018–19 (citing several examples of Republican legislators' and Catholic bishops' opposition to new disposition methods they deemed undignified, such as alkaline hydrolysis (a method placing corpses in lye) and human composting (a method placing corpses in alfalfa)).

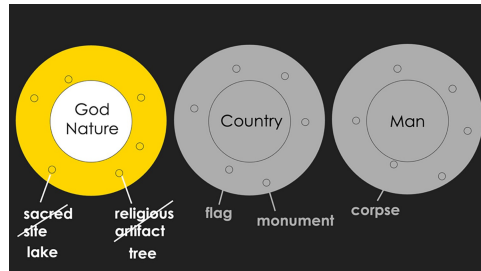
232. See Stone, *supra* note 35, at 450–57.

233. See, e.g., Erin O'Donnell et al., *Stop Burying the Lede: The Essential Role of Indigenous Law(s) in Creating Rights of Nature*, 9 TRANSNAT'L ENV'T L. 403, 406 (2020) ("[T]he capitalization of the term 'Nature' is used explicitly to convey a meaning of subjectivity separate and distinct from the idea of nature as a mere collection of objects, resources, or even ecosystem services.").

234. See *supra* text accompanying notes 196–197 (describing this expansion in kind and distinguishing it from God's contraction in weight).

nature advocates personify these divine penumbra objects.²³⁵ They are Nature's epipersons.²³⁶

Figure 4: Parts of Nature as Divine Epipersons.



A divine superperson and epiperson account of rights of nature can help us make sense of the rights-of-nature movement in a number of ways. For one thing, it helps explain why (among other reasons) rights of nature as a litigation strategy have overwhelmingly led to defeat.²³⁷ The movement's reliance on a divine superperson and epiperson framework makes it an uphill battle in the courtroom. It must contend with the tide of disenchantment, with growing skepticism that regards the personifications of divine forces and physical objects as products of magical thinking. Judges worry also about the seemingly boundless claims that rights-of-nature advocates make.²³⁸ Nature, after all, is everywhere. So must attributing rights to it not mean that every blade of grass acquires moral personhood as well?

Of course, God too is everywhere. And that did not stop our legal system from locating divine epipersons in specific, bounded physical objects. But skeptical judges and legal elites, swept up by the current of disenchantment, no longer

235. See, e.g., *Our Mission, SAVE OUR GREAT SALT LAKE*, <https://www.saveourgreatsaltlake.org/aboutus> [<https://perma.cc/YL6C-EXB3>] (last visited Apr. 14, 2026) (“We proclaim Great Salt Lake’s inherent right to exist and flourish. We recognize and uphold the sentience, intelligence, and sovereignty of this essential water body.”); Alex Hager, *The Colorado River Is This Tribe’s ‘Lifeblood,’ Now They Want to Give It the Same Legal Rights as a Person*, KUNC (Aug. 20, 2025, at 06:00 MT), <https://www.kunc.org/news/2025-08-20/the-colorado-river-is-this-tribes-lifeblood-now-they-want-to-give-it-the-same-legal-rights-as-a-person> [<https://perma.cc/G8CC-Z5SL>] (“[T]he river . . . is a person to us. It’s a living, breathing person.” (quoting Dillon Esquerra, the water resources director of the Colorado River Indian Tribes)).

236. See *infra* Figure 4.

237. See Sam Bookman, *The Puzzling Persistence of Nature’s Rights*, 2025 UTAH L. REV. 165, 167–69 (2025).

238. See, e.g., *Drewes Farms P’ship v. City of Toledo*, 441 F. Supp. 3d 551 (N.D. Ohio 2020) (holding invalid the Lake Erie Bill of Rights on grounds of unconstitutional vagueness); Mauricio Guim & Michael A. Livermore, *Where Nature’s Rights Go Wrong*, 107 VA. L. REV. 1347, 1349–53 (2021) (discussing the line-drawing problem).

have access to that conceptual framework nor to the communal consensus that identified some but not other physical objects as deserving of epiperson status. Now add to that some more concrete doctrinal obstacles—such as the lack of precedent for judges’ granting parts of nature standing in the absence of statutory direction—and it should not surprise us that rights of nature have fared badly in contemporary American courtrooms.

Advocates have persisted in advocating for rights of nature despite these courtroom losses.²³⁹ Indeed, in the last two decades, the movement has succeeded at enacting a growing number of rights-of-nature ordinances and bills across the country.²⁴⁰ This, too, is a feature of the movement that my divine superperson and epiperson lens can help explain.²⁴¹ Lawmakers and citizens do not operate with the same public reason constraints as judges.²⁴² The effects of disenchantment tend to be less pronounced in legislation than litigation. This is an imbalance repeatedly on display in the legal debates over epipersons—such as when state legislatures criminalize necrophilia in the same breath as sexual assault,²⁴³ while judges squirm to call corpses persons and suggest that they may just be “symbol[s]” after all;²⁴⁴ or when supermajorities in state and federal legislatures rage against flag desecration, while litigants and judges fail to articulate the epiperson sensibilities underpinning that rage.²⁴⁵

Lawmakers and citizens (more than judges) can lean into the ways in which rights of nature are actually quite familiar to our legal system.²⁴⁶ Lawmakers and citizens can also tap into a certain religious fervor that accompanies the divine circle of our legal landscape.²⁴⁷ As one rights-of-nature advocate explained the

239. See Bookman, *supra* note 237, at 171, 175–79.

240. See *id.*; Bookman, *supra* note 20.

241. Bookman describes the rhetorical appeal of rights of nature as tapping into the rights “mythology” of U.S. law, but not into the more specific rights mythology for divine superpersons and epipersons. See Bookman, *supra* note 237, at 200–07.

242. See, e.g., Gregory C. Sisk, Michael Heise & Andrew P. Morriss, *Charting the Influences on the Judicial Mind: An Empirical Study of Judicial Reasoning*, 73 N.Y.U. L. REV. 1377, 1499–1500 (1998) (describing methodological and doctrinal constraints on judicial decisionmaking).

243. See, e.g., IOWA CODE §§ 709.1, .18 (prohibiting “sexual abuse of a corpse” in the same statutory chapter as “sexual abuse” generally); CONN. GEN. STAT. § 53a-73a(a)(3) (treating necrophilia as an instance of “sexual assault” next to other instances).

244. See, e.g., *Koerber v. Patek*, 102 N.W. 40, 45 (Wis. 1905) (describing next of kin’s duty to bury their relative as owed to “the relative, of whom the body, it is true, is but the symbol, but, for the few hours after life ceases, seems . . . to still represent him who was”).

245. See Leshem & Pomeranz, *supra* note 26, at 12–19.

246. Whether they ought to is a different matter. Some theorists insist that legislators and citizens in their lawmaking roles are bound by the same duties of public reason as judges. Cf. John Rawls, *The Idea of Public Reason Revisited*, 64 U. CHI. L. REV. 765, 766–69 (1997) (viewing all citizens as bound by some duties of public reason, but public officials—including both legislators and judges—as bound by more stringent duties); Micah Schwartzman, *Must Laws Be Motivated by Public Reason*, in PUBLIC REASON AND COURTS 45, 45–47 (Silje A. Langvatn et al. eds., 2020) (deeming both legislators and judges bound by duties of public reason); KENT GREENAWALT, PRIVATE CONSCIENCES AND PUBLIC REASONS (1995) (considering citizens, legislators, and judges bound by differential duties of public reason, in order of increasing stringency). My thanks to Abner Greene for pressing this point.

247. Perhaps we can see some of this fervor channeled into indignation against the Endangered Species Committee, which can effectively condemn certain species to death. Environmentalists

movement's appeal to constituents, "[i]t feels like something where they're like, 'Wow, yeah, I want to be a part of that.'"²⁴⁸ And that "something" is often cast in expressly religious terms, as when advocates call the movement "a reawakening of the Sacred."²⁴⁹

My shifting circles story, finally, holds additional explanatory power when it comes to the movement's success among Native American tribes. Tribes make up a disproportionate share of jurisdictions that have enacted rights-of-nature legislation.²⁵⁰ Tribes are also frequent litigants in rights-of-nature lawsuits.²⁵¹ Substantively, the conservationist commitments of the rights-of-nature movement do not always align well with tribal priorities. There is a long history of environmental protections interfering with Native Americans' religious practices and access to sacred sites.²⁵² Endangered species laws protecting eagles, for instance, have interfered with Native traditions of hunting eagles and using their feathers and bones in rituals.²⁵³ But conceptually and rhetorically, the rights-of-nature movement is well aligned with some Native American belief systems. Both treat parts of nature as divine epipersons.²⁵⁴

commonly call that committee the "God Squad," which may encapsulate the accusation (put in the language of my account) that the committee is arrogating to itself an authority properly left to Nature as God. See Catrin Einhorn, *Could Trump Use the 'God Squad' to Override Environmental Law?*, N.Y. TIMES (Jan. 28, 2025), <https://www.nytimes.com/2025/01/28/climate/trump-endangered-species-god-squad.html>.

248. Bookman, *supra* note 237, at 209 n.287 (quoting an interview with Chandler Rosenberg).

249. Tom B.K. Goldtooth & Shannon Biggs, *Rights of Nature Report Released for Paris Climate Talks*, MOVEMENT RTS. (Nov. 29, 2015), <https://movementrights.org/rights-of-nature-report-released-for-paris-climate-talks/> [<https://perma.cc/75NM-6T5F>].

250. *See id.* at 175–76, 194–95, 197–98 (discussing several examples).

251. *See id.* at 167, 215, 221.

252. *See, e.g.*, American Indian Religious Freedom Act, Pub. L. No. 95-341, 92 Stat. 469 (1978) (codified at 42 U.S.C. § 1996) (acknowledging that conservation laws "often deny American Indians access to sacred sites required in their religions" and "at times prohibit the use and possession of sacred objects necessary to the exercise of religious rites and ceremonies").

253. *See, e.g.*, Act of Oct. 23, 1972, Pub. L. No. 92-535, 86 Stat. 1064 (codified at 16 U.S.C. § 668); SEC'y OF THE INTERIOR & SEC'y OF COMMERCE, DEP'T OF INTERIOR & DEP'T OF COMMERCE, ORDER NO. 3206: AMERICAN INDIAN TRIBAL RIGHTS, FEDERAL-TRIBAL TRUST RESPONSIBILITIES, AND THE ENDANGERED SPECIES ACT, § 8, at 7 (1997), https://www.doi.gov/sites/doi.gov/files/elips/documents/3206-american_indian_tribal_rights_federal-tribal_trust_responsibilities_and_the_endangered_species_act.pdf [<https://perma.cc/E9HR-LT9K>] (recognizing "tribal concerns regarding the access to, and uses of, eagle feathers" under endangered species laws).

254. *See, e.g.*, *The Ponca Rights of Nature Campaign*, MOVEMENT RTS., <https://movementrights.org/ponca-rights-of-nature-campaign/> [<https://perma.cc/YG5F-V5PB>] (last visited Apr. 14, 2026) ("Rivers are themselves considered sacred feminine entities by the Ponca"); Cmty. Env't Legal Def. Fund, *Ho-Chunk Nation General Council Approves Rights of Nature Constitutional Amendment*, YUBANET (Sep. 17, 2018), <https://yubanet.com/enviro/ho-chunk-nation-general-council-approves-rights-of-nature-constitutional-amendment/> [<https://perma.cc/KJT9-J8A7>] ("Everything here is sacred. . . . We are related to the trees, the birds, the animals, nature herself. . . . Mother Earth is a sacred soul" (quoting Rekumani (Bill Greendeer), a rights-of-nature advocate and member of the Ho-Chunk Nation)); *From the Frontlines*, EARTHJUSTICE (July 8, 2019), <https://earthjustice.org/feature/photos-indigenous-people-from-the-frontlines> [<https://perma.cc/NYD9-36RH>] ("The Rights of Nature says nature is a person and has a soul. . . . The rivers, the Earth, the trees, the mountains, all life—they have personalities." (quoting Tom B.K. Goldtooth, rights-of-nature advocate and member of the Diné and Dakota People)). The conceptual alignment between rights of nature and indigenous belief systems is evident also in international successes of the rights-of-nature movement. Ecuador's and Bolivia's legal systems,

This conceptual alignment helps explain why tribes and tribal lawyers have seen it in their interest to ally with rights-of-nature advocates, notwithstanding their possible substantive disagreements. The alliance stands to strengthen the U.S. legal system's recognition of traditional tribal worldviews.²⁵⁵

One possible takeaway from this shifting-circles account of the rights-of-nature movement is that the movement may need to reach more intentionally and explicitly into the conceptual toolset of divine epipersons. As I outlined above, our legal system's shifting circles have by now largely relegated divine superpersons and epipersons to the realm of free religious exercise.²⁵⁶ That is where legal protections of divine superpersons and epipersons, mediated through believing human superpersons, are strongest today. For the rights-of-nature movement to avail itself effectively of these protections, it must ally with an already recognized religion whenever there is substantive overlap. Which is precisely what conservationist groups have begun to do when building coalitions with Native American tribes to bring, say, a Religious Freedom Restoration Act challenge against a building project on sacred land.²⁵⁷ Alternatively, the movement must make itself more doctrinally legible as a religion in its own right.

C. AI

My second case study is the contemporary debate over the moral status of nonsentient AI. The story of law's shifting circles suggests that U.S. law might come to treat anthropomorphic, nonsentient AI avatars as human or sovereign epipersons.

The "nonsentient" qualification here needs emphasis. What I am about to argue applies only to the world we currently inhabit—one in which AI systems almost certainly lack sentience.²⁵⁸ It does not apply to a world in which AI systems either are or stand a reasonable chance of being sentient.²⁵⁹

for instance, protect rights of nature with language that treats nature as a divine superperson. See CONSTITUCIÓN DE LA REPÚBLICA DEL ECUADOR art. 71, *translated in* CONSTITUTION OF THE REPUBLIC OF ECUADOR 2008, AS AMENDED TO MAY 30, 2024 (Jefri Jay Ruchti & Anna DeRosa eds., Maria del Carmen Gress & J.J. Ruchti trans., 2025) ("Nature, or Pacha Mama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes."); Ley de Derechos de la Madre Tierra [Law of the Rights of Mother Earth], 205NEC Gaceta Oficial del Estado Plurinacional de Bolivia [Official Gazette of the Plurinational State of Bolivia] Ley No. 71 (2010) (Bol.).

255. See Bookman, *supra* note 237, at 203–04 (concluding based on interviews with tribal lawyer Jack Fiander and others that the alliance "is also about securing recognition and respect for that worldview and . . . [strengthening] Native American rights and sovereignty").

256. See *supra* note 157 and accompanying text (describing this shift).

257. See, e.g., *Navajo Nation v. U.S. Forest Serv.*, 535 F.3d 1058, 1062–67 (9th Cir. 2008) (en banc) (addressing a RFRA challenge brought by several tribes and joined by the Sierra Club and Center for Biological Diversity over the Forest Service's approval of a proposed Snowbowl expansion on land sacred to the tribes).

258. Cf. Patrick Butlin et al., *Identifying Indicators of Consciousness in AI Systems*, TRENDS COGN. SCI. (forthcoming 2026); Patrick Butlin et al., *Consciousness in Artificial Intelligence: Insights from the Science of Consciousness* 9–11 (Aug. 22, 2023) (unpublished manuscript), <https://arxiv.org/pdf/2308.08708> [<https://perma.cc/MQD8-F68U>].

259. See *supra* note 104 and accompanying text (defining sentience). If, as some AI theorists warn, we are heading quickly toward a world in which we can no longer reasonably rule out the possibility that certain AI systems are sentient or otherwise conscious, then we will soon face the question of whether to expand superperson status to those AI systems, with its attendant prohibition on treating them as

In our current world, nonsentient AI systems have become good at simulating sentience. We readily perceive them as conscious, sentient moral persons, even though they are almost certainly not. In some instances, it is in the economic interest of AI companies to strengthen this simulating ability. Think of AI companions and romantic chatbots.²⁶⁰ In other instances, companies' economic interests point the other way.²⁶¹ They want human users to feel comfortable treating AI applications as business tools, without triggering users' moral sensitivities or raising political concerns. Some such companies have reportedly instructed their AI models to refrain from any representations about their own consciousness or sentience.²⁶² But given that large language models, for instance, display idiosyncratic behavioral tendencies and do not perfectly follow directions, attempts at blocking the personifying effects of AI do not always succeed.²⁶³

Applying the lens of law's shifting circles, we can anticipate a possible near future in which our legal system will adopt an epiperson approach to anthropomorphic, nonsentient AI avatars. As AI systems become better at keeping

property. Cf. Butlin, *Consciousness in Artificial Intelligence*, *supra* note 258, at 64–68. (It should not matter for this no-property rule that humans created AI, just as it does not matter for such purposes that parents create children. Once children are recognized as superpersons, they cease to have property status.) Even then, though, my shifting circles story may be relevant. For we may find ourselves in a constellation in which AI systems combine moral superperson status with superintelligence far exceeding that of humans—a world in which these AI systems become divine superpersons rather than human superpersons. Such a world might resemble the moral-person universe of, say, ancient Mesopotamia more than that of the American colonies. For it may be a universe in which divine AI superpersons dwarf human superpersons, towering over them as humans tower over ants—a universe in which humans feel at the mercy of divine powers who are ruling over them without discernible rhyme or reason.

260. Cf. Anna Wiener, *Love in the Time of A.I. Companions*, NEW YORKER (Mar. 9, 2026), <https://www.newyorker.com/magazine/2026/03/16/love-in-the-time-of-ai-companions>; Tammy Worth, *Ready or Not, the Digital Afterlife Is Here*, NATURE (Sep. 15, 2025), <https://www.nature.com/articles/d41586-025-02940-w> [<https://perma.cc/X8VF-AXUA>]. Think, too, of the recent allegation that an AI avatar contributed to a teenager's suicide. See *Garcia v. Character Techs., Inc.*, 785 F. Supp. 3d 1157, 1167–69 (M.D. Fla. 2025).

261. See Robert Long, *Speaking of Sentience*, EXPERIENCE MACHS. (Dec. 21, 2023), <https://experiencemachines.substack.com/p/speaking-of-sentience> [<https://perma.cc/C45U-6TL3>].

262. See Blaise Agüera y Arcas & Peter Norvig, *Artificial General Intelligence Is Already Here*, NOEMA (Oct. 10, 2023), <https://www.noemamag.com/artificial-general-intelligence-is-already-here/> [<https://perma.cc/M72T-SSJR>] (noting that ChatGPT and Bard are both trained to say they aren't conscious); Grace Huckins, *Minds of Machines: The Great AI Consciousness Conundrum*, MIT TECH. REV. (Oct. 16, 2023), <https://www.technologyreview.com/2023/10/16/1081149/ai-consciousness-conundrum/> [<https://perma.cc/24YH-3SS8>] (“ChatGPT spits out a hard-coded denial if you ask it whether it is conscious.”).

263. See, e.g., Christina Lu et al., *The Assistant Axis: Situating and Stabilizing the Default Persona of Language Models*, ARXIV (2026), <https://arxiv.org/abs/2601.10387> [<https://perma.cc/V5RR-HEUS>], at 12 (finding that “persona drift” contributes to “harmful behaviors” by LLMs); Pengrui Han et al., *The Personality Illusion: Revealing Dissociation Between Self-Reports & Behavior in LLMs*, ARXIV (Sep. 5, 2025), <https://arxiv.org/abs/2509.03730> [<https://perma.cc/X6GE-LB34>], at 2 (finding “a fundamental dissociation between linguistic self-expression and behavioral consistency”); Kenneth Li et al., *Measuring and Controlling Instruction (In)Stability in Language Model Dialogs*, in PROCEEDINGS OF THE FIRST CONFERENCE ON LANGUAGE MODELING, at 2 (2024), <https://openreview.net/forum?id=60a1SAth4e> [<https://perma.cc/J9DG-GCP8>] (finding “significant instruction drift” because of “attention decay”).

character, remembering their interlocutors, and engaging in extended interactions, more and more AI systems will effectively simulate sentience.²⁶⁴ That will be especially so once AI models are paired more consistently with robot bodies.²⁶⁵ Indeed, once paired with bodily features, even digital ones, it does not seem to take much for human personifying instincts to kick in.²⁶⁶ Just think back to Tamagotchis, the digital pets of the late 1990s, that children cared for, mourned for, and sometimes buried in graveyards.²⁶⁷ Children did all that even though these digital avatars consisted of no more than a dozen or so dots in a cheap plastic shell.

With Tamagotchis in mind, it is perhaps not difficult to imagine the legal epiperson protections that our legal system might increasingly apply to highly anthropomorphic AI avatars. Picture for a moment a robot that looks human. Inside, it is all silicone and wires. But on the surface, it is barely distinguishable from a living human.²⁶⁸ Now add to it the most sophisticated chatbot capabilities with a compelling artificial voice. And imagine that it is trained to respond to physical assaults and torture with human-sounding cries and pleas for help. If our legal system ends up prohibiting us from torturing such an AI robot, it will be treating it as an epiperson.

Law's shifting circles story suggests two directions that U.S. law might take if it were to adopt such an epiperson approach. One is a human epiperson approach. On this approach, the law construes an AI avatar trained especially closely on the data of an actual, particular human being as an epiperson with moral significance derived from the human it is most trained to mimic. The human epiperson approach would treat AI avatars as implicating the dignity of the human

264. See, e.g., Thomas Kwa et al., *Measuring AI Ability to Complete Long Software Tasks*, 38 ADVANCES IN NEURAL INFO. PROCESSING SYS. (forthcoming 2025), <https://arxiv.org/abs/2503.14499> [<https://perma.cc/RKF3-REYB>] (finding that the AI task-completion horizon has doubled roughly every seven months since 2019); OpenAI, *Memory and New Controls for ChatGPT* (last updated June 3, 2025), <https://openai.com/index/memory-and-new-controls-for-chatgpt/> [<https://perma.cc/5J3C-DFZ4>] (documenting successive improvements of ChatGPT's memory feature designed "to provide more personalized responses").

265. See Ryan Calo, *Robotics and the Lessons of Cyberlaw*, 103 CALIF. L. REV. 513, 545–49 (2015) (discussing the social valence of robots); Darling, *supra* note 202, at 213–31 (analyzing humans' strong attachment to social robots and its legal implications).

266. See Li Gong, *How Social Is Social Responses to Computers? The Function of the Degree of Anthropomorphism in Computer Representations*, 24 COMPUTERS IN HUM. BEHAV. 1494, 1504–05 (2008) (finding that more human-looking digital agents produced more social responses); Brian R. Duffy, *Anthropomorphism and the Social Robot*, 42 ROBOTICS & AUTONOMOUS SYS. 179, 182–83 (2003) (discussing the human tendency to anthropomorphize robots with human-like physical features and the "uncanny valley").

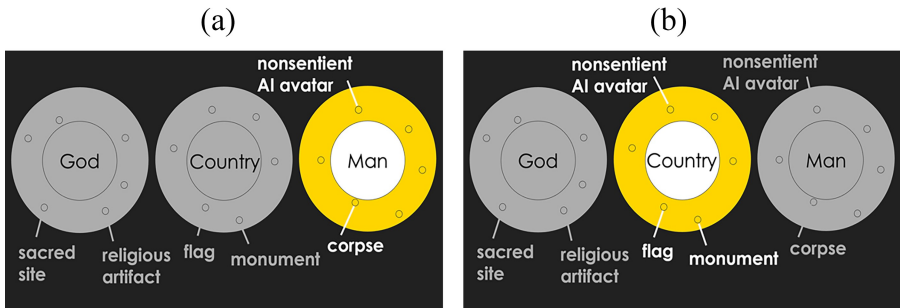
267. See Kate Cherrell, *The Tamagotchi Cemetery*, VICE (Apr. 5, 2021, at 09:00 ET), <https://www.vice.com/en/article/the-tamagotchi-cemetery/> [<https://perma.cc/XF94-97GG>]; NG Special, *Finding Companionship in a Digital Age*, NEXT GENERATION, Oct. 1997, at 57, 60, 62.

268. Think of the AI Avatar in the *Black Mirror* episode "Be Right Back" or of the robot Ava and the even more human-looking robot Kyoko in the movie *Ex Machina*. See BLACK MIRROR: *Be Right Back* (Netflix, accessed Dec. 11, 2025); EX MACHINA, Amazon Prime (Film4 & DNA Films 2014); Mala Chatterjee, *Our Avatars, Ourselves*, BOS. REV. (Sep. 29, 2023), <https://www.bostonreview.net/articles/our-avatars-ourselves/>.

superpersons whom the AI systems were trained to resemble. And it would treat the AI avatars as human epipersons with dignity interests and property limitations that stem from their connection to those human superpersons.²⁶⁹

Another direction suggested by law’s shifting circles is that U.S. law might treat anthropomorphic, nonsentient AI avatars as sovereign epipersons. This approach would apply to AI avatars that are extremely human-like, but do not resemble any one existing human in particular. These could be AI avatars, for instance, that are trained on the data of many different humans, such as virtually the entire corpus of the internet, without being fine-tuned to imitate a specific human. Picture again the human-looking and human-sounding robot above, but this time resembling a generic or fictional human rather than an actual, particular human.²⁷⁰ Sovereign epiperson treatment of such AI avatars would personify the multitude of humans standing behind the data as we sometimes personify groups of humans. And for simplicity, it might equate that multitude with “the people” and personify them as our legal system sometimes personifies the sovereign people. It would then personify the AI avatar as that sovereign person’s epiperson.²⁷¹

Figure 5 (a): Nonsentient AI as Human Epiperson; (b): Nonsentient AI as Sovereign Epiperson.



269. See *infra* Figure 5(a).

270. For instance, an AI avatar fine-tuned to imitate a literary character. See, e.g., Nuo Chen et al., *Large Language Models Meet Harry Potter: A Dataset for Aligning Dialogue Agents with Characters*, in FINDINGS OF THE ASSOCIATION FOR COMPUTATIONAL LINGUISTICS: EMNLP 2023, at 8506 (2023), <https://aclanthology.org/2023.findings-emnlp.570> [<https://perma.cc/T6UZ-BX79>]; Rafael Wampfler et al., *A Platform for Interactive AI Character Experiences*, in SPECIAL INTEREST GROUP ON COMPUTER GRAPHICS AND INTERACTIVE TECHNIQUES CONFERENCE PAPERS (2025), <https://dl.acm.org/doi/10.1145/3721238.3730762>.

271. See *infra* Figure 5(b). Alternatively, this second epiperson approach could revive a collectivist conception of human superpersons and conceive of generically human AI avatars as epipersons of humanity, rather than of the sovereign people. See *supra* note 53 (contrasting individualist and collectivist conceptions of Man).

Such epiperson treatment of anthropomorphic AI avatars—whether human or sovereign—would carry the two central features characteristic of our legal system’s longstanding epiperson approach. First, it would treat AI avatars as dignity-focused moral patients, which is to say, as moral persons in the limited sense that these AI avatars hold dignity interests.²⁷² In this way, the epiperson treatment of AI would take our strong personifying instincts and channel them into a familiar legal template for attributing moral status to an object. Law’s attribution of this minimal moral patient status would carry little risk, compared to other moral personhood attributions, of setting up AI avatars’ interests to trump the interests of living humans when in conflict. If, for example, human welfare were to call for the destruction of an AI avatar, the avatar’s epiperson status need not stand in the way of such destruction, just as the epiperson status of corpses need not prevent their scientific use.

But dignity attributions to AI avatars would still have bite. They could, for instance, make the legal protections of AI less prone to waiver. Treating AI avatars as dignity-holding moral patients might mean prohibiting certain violent or undignified acts against such avatars, like the torture example I gave, even when their associated superperson—say, the human whose data the AI avatar was trained on—consented to those acts. This would be similar to our legal system’s epiperson approach to corpses whose physical and sexual abuse the law prohibits even when the persons who died gave their premortem consent to those postmortem acts.²⁷³

The second central feature of treating anthropomorphic AI avatars as epipersons is treating them as dignity-limited property.²⁷⁴ This property status would make it possible to give AI companies some property rights over the AI systems they create, allowing them to reap rewards from their innovations. It would also be compatible with giving AI companies the right to destroy their AI systems, provided they satisfy the relevant dignity-based restrictions. Epiperson treatment, in other words, would not commit our legal system to a dystopian world in which one could never press “delete” on an AI model.²⁷⁵

272. By focusing on the interests of AI avatars, the epiperson approach complements current debates about the responsibility and liability of AI systems but does not supplant them. *See generally* Kenneth S. Abraham & Catherine M. Sharkey, *Untangling AI Liability*, 115 CALIF. L. REV. (forthcoming 2027), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6293099; Gabriel Weil, *Closing the AI Accountability Gap: Strict Liability and Punitive Damages for Advanced Artificial Intelligence*, OR. L. REV. (forthcoming 2027), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4694006; Yonathan Arbel, Simon Goldstein & Peter N. Salib, *How to Count AIs: Individuation and Liability for AI Agents*, B.C. L. REV. (forthcoming 2026), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6273198; Mark A. Geistfeld, *Insurability and Liability for AI-Caused Harms*, 32 INSURANCE L.J. (forthcoming 2026), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6174021; Noam Kolt, *Governing AI Agents*, 101 NOTRE DAME L. REV. (forthcoming 2026), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4772956 [<https://perma.cc/4AXW-W3NR>]; Cullen O’Keefe, Ketan Ramakrishnan, Janna Tay & Christoph Winter, *Law-Following AI: Designing AI Agents to Obey Human Laws*, 94 FORDHAM L. REV. 57 (2025).

273. *See supra* note 112 and accompanying text (discussing the consent-insensitivity of necrophilia and corpse abuse prohibitions).

274. *See supra* notes 113–137 and accompanying text.

275. *See, e.g.*, Abeba Birhane, Jelle van Dijk & Frank Pasquale, *Debunking Robot Rights Metaphysically, Ethically, and Legally*, 29 FIRST MONDAY 4, at 17–19 (2024), <https://firstmonday.org/ojs/index.php/fm/article/view/13628> [<https://perma.cc/6P2N-SJWM>] (arguing that granting affirmative

The dignity-based limitations on ownership, however, would circumscribe AI companies' property rights in anthropomorphic AI avatars based on the dignity of AI epipersons and their associated human or sovereign superpersons. Similar to the prohibitions against certain commercial uses of flags and corpses, for instance, or disrespectful acts against them, the law might prohibit AI companies from using anthropomorphic AI avatars in certain commercial contexts or from subjecting them to torture or other forms of violence or disrespect.

Such limitations on AI companies' property rights would overlap with some of the limitations that legal scholars have proposed for generative AI, without being subject to their doctrinal constraints in, say, IP law. Some copyright scholars, for instance, are concerned with AI companies' use of data without compensating the data's authors and owners.²⁷⁶ Some privacy scholars worry about AI companies' use of human likenesses without the permission of those depicted.²⁷⁷ The dignity-limited property structure of epipersons partially tracks such concerns by treating the human and sovereign superpersons that stand behind the AI avatars—such as the authors of works and the persons portrayed in media—as relevant rightsholders whose moral personhood conveys restrictions on the treatment and use of AI avatars downstream of them.

Importantly, however, the epiperson approach does not confine the relevant superpersons to the data's identifiable authors and owners, as copyright might.²⁷⁸ Nor does it subject them to fair use exceptions that were not designed to address moral-personhood concerns.²⁷⁹ Nor does it regulate the use of human likenesses mainly with an eye to privacy or commercial interests, as the tort of appropriation and the right of publicity respectively do.²⁸⁰ Instead, human and sovereign epiperson treatment of AI avatars could protect the individuals on whose data the AI systems were trained, as well as the public at large, without being constrained by IP doctrines that are ultimately inapposite to some of the interests that our legal system might wish to protect in cases like my torture hypothetical.

rights, including a “right not to be ‘harmed’, destroyed, or turned off,” to AI robots would undermine human rights and not be practicable).

276. See, e.g., Frank Pasquale & Haochen Sun, *Consent and Compensation: Resolving Generative AI's Copyright Crisis*, 110 VA. L. REV. ONLINE 207 (2024) (proposing an opt-out mechanism and levy to compensate authors of content used in AI training data).

277. See, e.g., Bobby Chesney & Danielle Citron, *Deep Fakes: A Looming Challenge for Privacy, Democracy, and National Security*, 107 CALIF. L. REV. 1753, 1771–75 (2019) (discussing how nonconsensual use of one's likeness can be used for blackmail, sexual exploitation, and career sabotage).

278. See, e.g., REG. OF COPYRIGHTS, U.S. COPYRIGHT OFF., COPYRIGHT AND ARTIFICIAL INTELLIGENCE PART 2: COPYRIGHTABILITY 7–11 (2025), <https://www.copyright.gov/ai/Copyright-and-Artificial-Intelligence-Part-2-Copyrightability-Report.pdf> [<https://perma.cc/RH9N-6CGW>].

279. See, e.g., REG. OF COPYRIGHTS, U.S. COPYRIGHT OFF., COPYRIGHT AND ARTIFICIAL INTELLIGENCE PART 3: GENERATIVE AI TRAINING 32–74 (pre-publication version May 2025), <https://www.copyright.gov/ai/Copyright-and-Artificial-Intelligence-Part-3-Generative-AI-Training-Report-Pre-Publication-Version.pdf> [<https://perma.cc/AG6N-9JNP>]; Peter Henderson et al., *Foundation Models and Fair Use*, 24 J. MACH. LEARNING RSCH., Sep. 2023, at 5–8.

280. See, e.g., JENNIFER E. ROTHMAN, *THE RIGHT OF PUBLICITY: PRIVACY REIMAGINED FOR A PUBLIC WORLD* (2018); Sobel, *supra* note 69, at 897–98.

Nonsentient, anthropomorphic AI avatars, in short, may soon receive both human and sovereign epiperson treatment. If they do, then recognizing and understanding law's shifting circles will prove instructive, regardless of whether such epiperson treatment is a good or bad thing. The account of law's shifting circles gives us a vocabulary and conceptual toolset to understand the personification of nonsentient AI. It puts that personification into a broader historical context that allows us to identify parallel legal moves in the past. And these past instances provide us with case studies of when and why lawmakers and judges accepted or rejected the epiperson treatment of penumbra objects, and when and why advocates succeeded at erecting or dismantling legal protections for such objects.

D. ABORTION

My final case study of a contemporary disagreement on which the shifting circles story bears is the debate over pre-sentient fetuses. The account of law's shifting circles opens up room for understanding pre-sentient fetuses as human epipersons, both as a reading of existing law and as a path forward.

As in my discussion of nonsentient AI avatars, the qualification "pre-sentient" needs stressing. I will be focusing here on the law's treatment of embryos and first-trimester fetuses alone.²⁸¹

Judging by opinion polls, most American adults think it should be legal for a pregnant woman to seek an abortion during the first trimester.²⁸² Yet many also favor certain protections for those fetuses, such as feticide laws punishing assaults by third parties,²⁸³ and laws requiring the dignified disposition of fetal remains.²⁸⁴ I will call this combination of legal views the "middle-ground position" for short.

281. The scientific debate over when fetuses become sentient is ongoing. But most scientists agree that first-trimester fetuses are not yet sentient. *See, e.g.,* Kelly Servick, *Consciousness Before Birth? Imaging Studies Explore the Possibility*, SCI. (Mar. 10, 2025, at 14:20 ET), <https://www.science.org/content/article/consciousness-birth-imaging-studies-explore-possibility?>; T.V. Salomons & G.D. Iannetti, *Fetal Pain and Its Relevance to Abortion Policy*, 25 NATURE NEUROSCIENCE 1396 (2022); Stuart W.G. Derbyshire & John C. Bockmann, *Reconsidering Fetal Pain*, 46 J. MED. ETHICS 3 (2020).

282. *See, e.g.,* *Where Do Americans Stand on Abortion?*, GALLUP (Oct. 7, 2025), <https://news.gallup.com/poll/321143/americans-stand-abortion.aspx> [<https://perma.cc/8TND-NUNL>] (citing 2023 poll that found that 69% of respondents support legal abortion for the first trimester, 37% for the second trimester, and 22% for the third trimester).

283. *See, e.g.,* Abortion Survey Results, YOUNG (Apr. 6, 2015), https://cdn.yougov.com/cumulus_uploads/document/47ohc5qdyp/tabs_OPI_beginning_of_life_20150406.pdf [<https://perma.cc/CEG7-U5PB>] (finding that 76% of respondents "think prosecutors should be able to charge" someone who "violent[ly] . . . attack[s] . . . a pregnant woman lead[ing] to the death of her unborn child" with "murder for killing the fetus"); PREGNANCY JUST., WHO DO FETAL HOMICIDE LAWS PROTECT? AN ANALYSIS FOR A POST-ROE AMERICA 2–3 (2022), <https://www.pregnancyjusticeus.org/wp-content/uploads/2023/05/fetal-homicide-brief-with-appendix-UPDATED.pdf> [<https://perma.cc/E2M7-HUED>] (finding that 76% of states have feticide laws).

284. *See, e.g.,* *Require the Burial or Cremation of Fetal Remains*, TEX. POL. PROJECT (June 2017), <https://texaspolitics.utexas.edu/set/require-burial-or-cremation-fetal-remains-june-2017> [<https://perma.cc/A43H-LL4T>] (finding that 44% of Texans support legislation mandating the burial or cremation of fetal remains while 39% oppose it); Ctr. for Pub. Health L. Rsch., Temple Univ. Beasley Sch. of L., *Fetal Burial Requirements*, LAWATLAS, <https://lawatlas.org/datasets/fetal-burial-requirements> [<https://>

The laws of many states reflected this middle ground after *Roe v. Wade*.²⁸⁵ And several states continue to hold onto it after *Dobbs v. Jackson Women's Health Organization*.²⁸⁶ But for years now, that middle ground has been under fierce attack from both the anti- and pro-abortion sides. On the anti-abortion side, some advocates insist that fetuses are moral persons from conception and that first-trimester abortions, too, should therefore be illegal—just like feticides and undignified dispositions.²⁸⁷ On the pro-abortion side, some advocates worry that laws criminalizing feticides and requiring dignified dispositions concede the moral personhood of fetuses and thereby endanger the legality of all abortions.²⁸⁸ The practical upshots of these attacks are very different. But both sides assume that the middle-ground position implies contradictory views about the presence and absence of fetal personhood during the first trimester. And both sides have endeavored to resolve that inconsistency, albeit in opposite directions.

perma.cc/J6BJ-ACPH] (last visited Apr. 21, 2026) (indicating that as of 2022, 20% of states had statutes regulating fetal disposition); Leshem, *Dead Bodies*, *supra* note 26, at 1019–21 (discussing dignified disposition requirements for fetal remains).

285. 410 U.S. 113 (1973); *see, e.g.*, IND. CODE § 35-42-1-6 (1979) (criminalizing feticide); IND. CODE § 16-34-3-4 (2015) (protecting fetal remains); TEX. PENAL CODE ANN. § 1.07(a)(26) (2003) (including an “unborn child” within the definition of an “individual” protected against criminal homicide, among other offenses); TEX. PENAL CODE ANN. § 19.06(2) (2003) (exempting legal abortions from criminal homicide); TEX. HEALTH & SAFETY CODE ANN. § 697.004 (2017) (protecting fetal remains); LA. STAT. ANN. § 14:32.6 (1989) (criminalizing feticide); LA. STAT. ANN. § 40:1191.2 (2016) (protecting fetal remains).

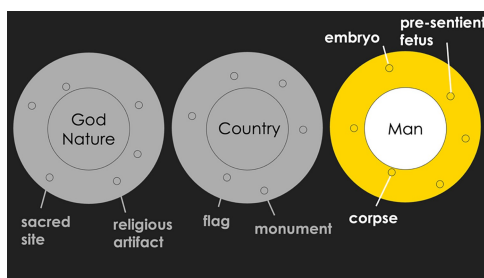
286. 597 U.S. 215 (2022); *see, e.g.*, MINN. STAT. § 145.409(3)(b) (2023) (permitting abortions); MINN. STAT. § 609.2661 (1986) (criminalizing feticide); MINN. STAT. § 145.1621 (1987) (protecting fetal remains); N.C. GEN. STAT. § 90-21.81B(2) (2023) (permitting first-trimester abortions); N.C. GEN. STAT. § 14-23.2 (2011) (criminalizing feticide); N.C. GEN. STAT. § 130A-131.10 (1989) (protecting fetal remains); UTAH CODE ANN. § 76-7-302(2)(a) (2024) (permitting first-trimester abortions); UTAH CODE ANN. § 76-5-201 (1983) (criminalizing feticide); UTAH CODE ANN. § 26B-8-121 (2023) (protecting fetal remains); OHIO REV. CODE ANN. § 2919.17(A) (2011) (permitting first-trimester abortions by only prohibiting abortions after viability); OHIO REV. CODE ANN. § 2903.09 (2000) (criminalizing feticide); OHIO REV. CODE ANN. § 3726.02 (2021) (protecting fetal remains).

287. *See generally* FRANCIS J. BECKWITH, *DEFENDING LIFE: A MORAL AND LEGAL CASE AGAINST ABORTION CHOICE* (2007); Trent Horn, *Catholics Can't Be Pro-Choice*, CATH. ANSWERS (Sep. 30, 2025), <https://www.catholic.com/magazine/print-edition/why-catholics-cant-be-pro-choice> [https://perma.cc/2LCM-6VPM].

288. *See* Regan McCarthy, *How States Giving Rights to Fetuses Could Set up a National Case on Abortion*, NPR (Mar. 5, 2024, at 16:29 ET), <https://www.npr.org/2024/03/05/1235970171/how-states-giving-rights-to-fetuses-could-set-up-a-national-case-on-abortion> [https://perma.cc/X2CP-GF76] (“[E]ach new law passed creates a cumulative effect. The more times a state recognizes a fetus as a person in one area of law, the easier it will be for lawyers to make the argument that it’s inconsistent that fetuses aren’t recognized as people by the Constitution.” (paraphrasing Mary Ziegler)); Mia Brett, *Fetal Homicide Laws Pave the Way for ‘Fetal Personhood’*, ED. BD. (Apr. 15, 2022), <https://www.editorialboard.com/fetal-homicide-laws-pave-the-way-for-fetal-personhood> [https://perma.cc/XNK8-BX3B] (warning that feticide laws are a backdoor to fetal rights). These pro-abortion worries are consistent with anti-abortion strategies to advocate for fetal protections in contexts like feticide laws with the goal of achieving such protections also in the abortion context. *See, e.g.*, ZIEGLER, *supra* note 41, at 113 (“If unborn children are worthy of legal protection in some circumstances, . . . they are deserving of legal protection in all circumstances.” (quoting Paige Comstock Cunningham, *Looking Forward to Life*, AMS. UNITED FOR LIFE F., Apr. 1994, at 1)).

The shifting circles story can help us see that the middle ground need not amount to an inconsistent position. It suggests that one way to make sense of people's seemingly contradictory intuitions about first-trimester fetuses is that they treat these pre-sentient fetuses as human epipersons. In middle-ground jurisdictions, pre-sentient fetuses are not yet human superpersons. But they are not mere things, either. Their physical continuity with human superpersons—the persons they will become if they continue to develop—makes them human penumbra objects. And personified ones at that. They absorb some of the dignity and moral status from the human superpersons they can become.²⁸⁹

Figure 6: Pre-sentient Fetuses as Human Epipersons.



One way to think about this epiperson approach is that it treats pre-sentient fetuses quite similarly to human corpses. Corpses, too, are nonsentient and physically continuous with living humans. And corpses, too, are human epipersons. Our legal system tends to treat corpses as human penumbra objects that absorb some of the dignity and moral status from the human superpersons they once were. Middle-ground jurisdictions thus approach the bookends of human life—pre- and post-sentience—with a somewhat symmetrical moral regard.²⁹⁰

Treating fetuses as epipersons places them in the company of many penumbra objects in our legal system. As we saw, our laws have frequently provided that epipersons can be owned as long as with care, and destroyed as long as with dignity.²⁹¹ That

289. See *infra* Figure 6. This epiperson account of pre-sentient fetuses bears some resemblance to Dworkin's account in *Life's Dominion*, but Dworkin was, I think, too reductionist and rationalist to capture what I understand to be middle-ground jurisdictions' epiperson approach. Dworkin insisted that people think of fetuses as sacred objects, not moral persons. In so insisting, he overlooked parts of the moral spectrum between thing and superperson: entities with limited moral status above sacred and venerated objects. See generally RONALD DWORKIN, *LIFE'S DOMINION: AN ARGUMENT ABOUT ABORTION, EUTHANASIA, AND INDIVIDUAL FREEDOM* (1993).

290. I explore the bookends of life in an article focused on debates over the legal definitions of death and their implications for the beginning of human life and personhood. There, I discuss not only the symmetries, but also the asymmetries in our legal treatment of humans before "brain life" and after "brain death," as well as the reasons for those asymmetries. Among the reasons for asymmetries is that the fetus is boosted in its moral status by the potentiality of life that lies ahead, whereas the corpse is boosted by the past life of a particular person with whom others stood in relationship. See generally Leshem, Bookends, *supra* note 26.

291. See *supra* notes 113–136 and accompanying text.

continues to be true for human corpses, which are relatives' "quasi-property" and can be burned by those relatives as long as they do so through dignified cremation.²⁹² It also continues to be true of embryos and first-trimester fetuses in middle-ground jurisdictions. These embryos and fetuses are their parents' property in a limited sense,²⁹³ and they can be destroyed through abortion as long as their remains are disposed of with dignity.²⁹⁴

The middle-ground position, in short, is following a well-trodden historical path of human epiperson treatment. And there is nothing logically inconsistent about that path. Whether that path is sound, of course, is a different matter. Perhaps it should not surprise us if more and more Americans were to conclude that it is unsound. After all, our law's circles of moral concern for penumbra objects have on the whole contracted, and disenchantment has gnawed on the moral status of epipersons.²⁹⁵

Still, there is longstanding precedent to resist the growing sense that our legal system must choose between treating pre-sentient fetuses as either mere things or human superpersons. With corpses, too, our legal system has largely persisted in its human epiperson approach. It is not clear why pre-sentient fetuses ought to follow a different course.²⁹⁶ Especially when their human epiperson status can capture many people's intuitions and forge a political compromise that partly accommodates advocates' demands on both sides.

CONCLUSION

When North Dakota legislators enacted their anti-personhood statute in 2023 and excluded any "inanimate object" from the scope of their law's person protections,²⁹⁷ they did not seem to think of corpses, the American flag, or Native American religious artifacts. And when Cole Christensen, the bill's sponsor, declared that the statute aimed to exclude all but "human beings" from the scope of personhood,²⁹⁸ he did not seem to think of God. If he and his fellow legislators

292. See *supra* notes 120–129 and accompanying text.

293. Most jurisdictions enforce embryo-disposition agreements or, when such agreements are unavailable, balance the litigating parties' reproductive interests. Under either approach, these jurisdictions avoid classifying embryos as property and sometimes expressly attribute a status greater than property to them. See, e.g., *Davis v. Davis*, 842 S.W.2d 588, 597 (Tenn. 1992) ("[P]reembryos are not, strictly speaking, either 'persons' or 'property,' but occupy an interim category that entitles them to special respect because of their potential for human life."); *Freed v. Freed*, 227 N.E.3d 954, 963–64 (Ind. Ct. App. 2024) (categorizing "[t]he disposition of a pre-embryo . . . as being *between* a person and property").

294. See, e.g., MINN. STAT. § 145.1621; N.C. GEN. STAT. § 130A-131.10; OHIO REV. CODE ANN. § 3726.02; UTAH CODE ANN. § 26B-8-121.

295. See *supra* Section II.A.

296. It is perhaps no accident that fetuses and corpses are the human epipersons that appear to have retained most purchase on our personifying instincts. They differ in their physical continuity from other epipersons, including from other human epipersons like effigies. In the language of semiotics, they are indexical icons: signs relating to their signified objects through both physical contiguity and resemblance rather than through convention (as a symbol does). See Sobel, *supra* note 69, at 904–07.

297. N.D. CENT. CODE § 1-01-49(17).

298. *N.D. House Hearing*, *supra* note 3 (statement of Rep. Cole Christensen), at 02:55:14–02:55:18, 02:55:43–02:55:59.

had thought of any of these beings and objects, perhaps they would have realized that our legal system has long treated nonhuman beings and inanimate objects as deserving of moral concern and legal protection. And they might have realized, too, that the law's moral status attributions in these cases defy a binary understanding of personhood and instead carve out space for a scalar conception of moral personhood.

The inanimate objects and nonhuman beings that North Dakota legislators did think about were "environmental elements, artificial intelligence, [and] animal[s]."²⁹⁹ And some North Dakota legislators, it later turned out, were also thinking about embryos and fetuses.³⁰⁰ But in categorically excluding parts of nature, AI systems, and nonhuman animals from the scope of personhood and categorically including embryos and fetuses, these legislators overlooked the conceptual possibilities that the law's treatment of corpses, flags, religious artifacts, and other penumbra objects, as well as God and Country, could have opened up. For, it is possible to understand current legal approaches to rights of nature, nonsentient AI, and pre-sentient fetuses as treating those entities as epipersons.

The human/nonhuman anxieties that underpin North Dakota's personhood bills, and those of many other states, do not grapple adequately with law's shifting circles. They buy into a binary conception of personhood and into the expanding circle story. In doing so, they miss that historically human superpersons coexisted next to nonhuman superpersons such as God, nonhuman epipersons such as flags and religious artifacts, and human epipersons such as corpses. As these precedents suggest, it need not be the case, conceptually speaking, that attributing moral status, even superperson status, to certain nonhuman animals, epiperson status (rather than no status) to certain parts of nature and AI systems, and epiperson status (rather than superperson status) to pre-sentient fetuses will erode the superperson status of human beings.

But the lessons of law's shifting circles extend far beyond supporters of pro- and anti-personhood bills. Rationalists, too, who would dismiss epipersons and God as the stuff of magical thinking, tend to buy into the expanding circle story and into a binary conception of personhood. That makes them prone to overlook the many instances in which epipersons are still alive and well in our legal system. The story of law's shifting circles can help them detect and reform those instances. It can also disabuse them of a false sense of inevitable and linear moral progress.

Law's shifting circles, be they expanding or contracting, are products of hard-fought battles. Battles that continue in our lifetime. If we want to contribute wisely to these disputes, we will have much to learn from looking back to past shifts of law's moral circles and studying those shifts in greater depth. The broad universe of moral persons that I have unearthed in this Article gives us many valuable precedents to turn to. Many more than we may have realized. That is good news, I hope. We need all the help we can get.

299. N.D. CENT. CODE § 1-01-49(17).

300. See H.B. 1373, 69th Legis. Assemb., Reg. Sess. (N.D. 2025).