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Legal Personhood for Nonhuman and Future Entities

Ordering the Discourse

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Abstract: *Defining and allocating legal rights, and, by implication, assigning legal personhood, is one way to protect nonhuman entities (such as animals, plants, and ecosystems) and the interests of future people. This paper aims to clarify some basic issues underlying legal and legal policy debates about such protections. I shall begin with a few remarks on what legal personhood is (including a brief comparison with similar moral notions), and on two different goals when dealing with it. The bulk of the paper is devoted to three questions concerning the legal personhood of nonhuman and not yet existing entities: the analytical question, the legal question, and the legal policy question. The first one will be answered quite definitively. Since the second question can be raised for each and every legal system, my answer will be somewhat rough and more tentative. The third question will remain unanswered. Instead, I will distinguish three types of considerations that are relevant to the analysis of legal personhood policies. At the end, I shall briefly consider the role law may or may not play in determining moral status, before I conclude with a few general principles that should be observed when discussing legal personhood for entities other than living human beings.*

Keywords: *legal person; moral status; law and morality; legal and moral rights; animal, environmental, and climate protection*

Abstract: *Die Definition und Allokation von juridischen Rechten und damit auch die Zuerkennung von Rechtspersönlichkeit ist eine Möglichkeit, nichtmenschliche Wesen (wie Tiere, Pflanzen und Ökosysteme) und die Interessen künftiger Generationen zu schützen. Dieser Beitrag soll einige Grundlagen für rechtliche und rechtspolitische Debatten über solche Schutzmaßnahmen klären. Ich beginne mit einigen Anmerkungen dazu, was Rechtspersönlichkeit ist (einschließlich eines kurzen Vergleichs mit ähnlichen moralischen Konzepten), und zu zwei unterschiedlichen Zielen, die mit Überlegungen zu Rechtspersönlichkeit verfolgt werden können. Der Großteil des Artikels widmet sich drei Fragen zur Rechtspersönlichkeit nichtmenschlicher und noch nicht existierender Wesen: der analytischen Frage, der rechtlichen Frage und der rechtspolitischen Frage. Die erste Frage wird recht eindeutig beantwortet werden können. Da die zweite Frage für jedes Rechtssystem gestellt werden kann, wird meine Antwort etwas grob und eher tentativ ausfallen. Die dritte Frage bleibt überhaupt unbeantwortet. Stattdessen werde ich drei Arten von Überlegungen unterscheiden, die für die Analyse von Politiken der Rechtspersönlichkeit relevant sind. Am Ende werde ich kurz auf die Rolle eingehen, die das Recht bei der Bestimmung des moralischen Status spielen oder nicht spielen kann, bevor ich mit einigen allgemeinen Prinzipien abschließe, die in der Diskussion über die Rechtspersönlichkeit von anderen Wesen als lebenden Menschen beachtet werden sollten.*

Schlagworte: *Rechtsperson; moralischer Status; Recht und Moral; juridische und moralische Rechte; Tier-, Umwelt- und Klimaschutz*

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I. Introduction

In modern society, political debates are largely about whether we need new laws and what laws we should create.[1] And when we talk about the law as it is or as it should be, we often, though not always, let alone necessarily, talk about legal rights, their holders, their addressees, and their contents. This is also true of legal and legal policy debates about environmental and climate protection, especially about how to protect nonhuman entities (such as animals, plants, and ecosystems) and the interests of future people.[2] Defining and allocating legal rights is one way to pursue such protection goals. In the background of arguments about the positive and ideal legal rights of various existing and not yet existing entities, there is a more abstract, threefold question: what is the nature of law and legal personhood, what is their current (contingent) reality, and which entities should be given legal personhood?

The question of legal personhood is obviously related to the similarly abstract ethical issue of moral status. Yet the relationship, as should become clear, is not as straight-forward as one might assume. Neither *do* legal and moral status always

[1] This paper is an extended version of a text written for the participants of a philosophical seminar on intergenerational justice and biodiversity, held together with Lukas Meyer at the University of Graz in fall/winter 2023/24 and 2024/25. Since there is a huge variety of legal systems, and since I am not aiming to contribute to debates among legal scholars on what the law in a particular system says about legal personhood, I largely refrain from citing legal literature. I'd like to thank Lukas Meyer and the seminar participants for illuminating and inspiring discussions. I'm also grateful to the anonymous reviewer for pointing out a need for clarification, and to Elisabeth Staudegger for suggestions on how to address this need.

[2] Throughout the paper, however, I speak (interchangeably) of "not yet existing" or "future *entities*," as the entities in question need not be (human) people. And despite my focus on nonhuman *natural* entities, most of what I say also applies to the question of legal personhood for AI-Systems. But as this paper is about fundamental jurisprudential issues of animal, environmental, and climate protection, I won't explicitly refer to AI debates in law and philosophy. On legal personhood for AI see, for example, Claudio Novelli, Luciano Floridi, Giovanni Sartor & Gunther Teubner, *AI as legal persons: past, patterns, and prospects*, J. OF LAW AND SOCIETY 1 (2025), https://onlinelibrary.wiley.com/doi/10.1111/jols.70021 (last visited October 16, 2025); Katherine B. Forrest, *The Ethics and Challenges of Legal Personhood for AI*, 133 YALE L. J. 1175 (2024), https://www.yalelawjournal.org/forum/the-ethics-and-challenges-of-legal-personhood-for-ai (last visited October 16, 2025); Lawrence B. Solum, *Legal Personhood for Artificial Intelligences*, 70 NORTH CAROLINA L. R. 1231 (1992).

correspond, nor is it clear that they *should*. As a matter of fact, one of this paper's main claims is that *moral status is neither a necessary nor a sufficient condition for legal personhood*, either as it is or as it should be granted. In the following, I won't say much about moral status. I just follow the widespread usage of the term in ethics, according to which an entity has a moral status if it counts in its own right. Thus understood, the moral status of an entity is a general and relatively stable normative profile. This profile includes *duties to take into account the entity's needs, interests, or preferences*. And they are duties we have *toward* and *not just regarding* the entity.[3] Many believe (rightly or wrongly, but not inconsistently) that plants, even if intrinsically valuable, do not have moral status, but that it can still be morally wrong to destroy or damage them. For they may be owned by other people, or their destruction may cause – directly or indirectly – serious harm to other entities with moral status. An even less controversial example would be a great piece of art, the destruction of which may be morally wrong, but not a violation of duties we have toward the object itself (as opposed to duties we have toward the owner or a general duty not to destroy, without a very good reason, things that have significant intrinsic or instrumental value).

Generality and *stability* allow for distinguishing moral status considerations from considerations of particular people about their duties and obligations resulting

[3] See Anieszka Jaworska & Julie Tannenbaum, *The Grounds of Moral Status,* in *The Stanford Encyclopedia of Philosophy § 2 (Edward N. Zalta & Uri Nodelman eds., Fall 2023),* https://plato.stanford.edu/entries/grounds-moral-status/ (last visited October 14, 2015). There is also a normatively neutral concept of moral status. By referring to the "moral status" of an entity, we need not refer to the (alleged) fact that we have some duties toward the entity. We may just mean the moral relevance of the entity, which might be zero. For example, we may speak of the moral status of a stone and argue that it consists precisely in *not* having any claims or in belonging to a person such that it would be wrong for another person to destroy it or take it away. Thus understood, "moral status" is analogous to "legal status" (the legal status of a stone can be "ownerless thing" or "property of person P," but as we shall see, it can in principle also be "person"). However, this is not the concept of moral status used in this paper. According to the concept used here and in ethics in general, a stone that has no claims has no moral status at all. And having no moral status is not itself a moral status.

from changing and highly contingent special relationships such as contractual, cooperation, or care relationships. Note that it's an open question in ethics what significance *relationships as such* have for moral status, i.e., whether moral status depends exclusively on intrinsic properties such as being alive, sentience, or agency, or if it also (or only) depends on relational properties such as being part of cooperative systems, requiring human care for flourishing, or being dangerous to humans, nonhuman animals, plants, or other valuable entities.[4] And it's quite a controversial issue whether all entities with moral status have the same moral status or whether there is a status hierarchy (for example, between human and nonhuman animals as well as within the class of nonhuman animals, with many animal ethicists at least explicitly leaning toward a nonhierarchical, "antispeciesist" view and most non-philosophers outside the academy, possibly apart from some animal rights activists, at least implicitly subscribing to some hierarchical view).[5] Here I'm neither interested in what exactly constitutes moral status, nor in further conceptual and normative issues of status equality and inequality. My focus lies on legal personhood and, to some extent, on its *relation* to moral status independent of particular status theories. I shall begin with a few remarks on what legal personhood is (including a brief comparison with similar moral notions) and on two kinds of goals in dealing with it (2). The bulk of the paper is devoted to three questions concerning the legal personhood of nonhuman and not yet existing entities: the analytical question (3), the legal question (4), and the legal policy question (5). Finally, I will briefly consider the role law may or may not play in determining moral status, rather than exploring the significance of moral status

[4] Mary A. Warren, *Moral Status: Obligations to Persons and Other Living Things* pt. 1 (Oxford Univ. Press 1997); Elizabeth Anderson, *Animal Rights and the Values of Nonhuman Life*, in *Animal Rights: Current Debates and New Directions* 277 (Cass R. Sunstein & Martha C. Nussbaum eds., Oxford Univ. Press 2004).

[5] See, among many others, Peter Singer, *Animal Liberation Now* (Harper Perennial 2023); Shelly Kagan, *How to Count Animals, more or less* (Oxford Univ. Press 2019); Christine M. Korsgaard, *Fellow Creatures: Our Obligations to the Other Animals* pt. 1 (Oxford Univ. Press 2018); Bernard Williams, *The Human Prejudice*, in *Philosophy as a Humanistic Discipline* 180 (A.W. Moore ed., Princeton Univ. Press 2006); Tom Regan, *The Case for Animal Rights* (Univ. of California Press 1983).

for legal and legal policy analysis (6), before I conclude with a few general principles that should be observed when discussing legal personhood for entities other than living human beings (7).

II. Concept and Conceptions of Legal Personhood

In legal theory as well as in philosophy more general, it is common to distinguish between concept and conception.[6] A concept is an abstract idea, whereas a conception provides a more detailed and comprehensive view of what the idea is an idea of. In many cases, a concept is sufficiently clear and widely shared allowing for meaningful disagreement at the level of conception. Sometimes, however, the concept itself is contested, and different conceptions of the concept are proposed. For example, there are different conceptions of law as well as different conceptions of the concept of law. *The concept of legal personhood* does not seem to be a particularly contested concept,[7] though there is much disagreement (less so in law than in politics) when it comes to *conceptions of legal personhood*, especially regarding nonhuman and not yet existing entities.

As for the concept, *legal personhood*, often referred to as "legal subjectivity," is predominantly understood as the legal capacity to have rights and/or duties. This capacity is attributed by the rules of a legal system, so that it is possible for an entity to count as a legal person in one system but not in the other. Legal personhood is to be distinguished from *legal agency* as the legal capacity to, intentionally or unintentionally, *create* rights and duties through one's own actions (e.g., to enter into contracts or to become liable for damages). Entities may have

[6] Peter Koller, *The Concept of Law and Its Conceptions*, 19 RATIO JURIS 180, 182-4 (2006); Ronald Dworkin, *Law's Empire* 70-2 (The Belknap Press of Harvard Univ. Press 1986); John Rawls, *A Theory of Justice* 5-6 (Harvard Univ. Press 1971).

[7] That is not to say that there is no controversy about the concept of legal personhood whatsoever. See Visa A, J, Kurki, *Legal Personhood* (Cambridge Univ. Press 2023). But this controversy is much less prominent than the jurisprudential debate about the nature of law. Most debates about legal personhood are debates at the level of conceptions.

legal rights and duties without having legal agency, so that they need a representative who acts, i.e., creates rights and/or duties, in their name (e.g., young children or corporations).

There is, as I said, broad agreement about the concept of legal personhood. Those who are familiar with (the) law generally share an understanding of what they are talking about when they talk about legal personhood, although they may disagree about which entities are or should be recognized as legal persons.[8] This is not equally true of the concept of *moral personhood* which might be regarded as the equivalent in the moral sphere. Whether or not there is disagreement, the notion is used in different ways. While some understand moral personhood, roughly analogous to legal personhood or subjectivity, as the capacity to have moral rights, others tend to think of moral personhood as entailing moral agency, i.e., the capacity to act rightly or wrongly, or to deserve moral praise or blame for one's behavior or character. Those who see moral persons as *moral agents* do so without necessarily denying entities without moral agency (the capacity to have) moral rights. In ethics, we commonly distinguish between moral agents and *moral patients*, the latter being incapable not only of *creating* moral rights and duties through their own actions, or of deserving praise and blame, but also of *being* under a moral duty.

Many believe that at least some nonhuman animals (can) have moral rights but not moral duties. For them (and presumably most other people), *the moral capacity to have duties requires moral agency* (which requires a certain reasoning ability), *whereas the* legal *capacity to have duties does not require legal agency*. A child who owns inherited property but lacks legal agency may still be under a legal obligation

[8] To be sure, in some legal systems, corporate law, as it is written and/or taught, distinguishes between entities with legal personhood and entities that are not legal persons, yet still have the capacity to have rights and duties. However, the value of this (internationally not very common) distinction is not clear. It appears to be of a didactic nature, since it does not add anything substantive to the obviously important distinction between types of companies. See (with regard to German law) Matthias Lehmann, *Der Begriff der Rechtspersönlichkeit*, 207 Archiv für die civilistische Praxis 225, 240-6 (2007).

to pay property taxes, even if this obligation can only be fulfilled through the actions of representatives (e.g., the child's parents). Thus, small children, even if incapable of having moral duties, can have legal duties. The same is true in principle of other moral patients that are legal persons, though normally, when we think about legal personhood for nonhumans or not yet existing entities, we only refer to the capacity to have legal rights. Hardly anyone who argues for granting legal rights and thus legal personhood, say, to some nonhuman animals suggests that these animals should also be bearers of legal duties and obligations (which would still seem less outlandish than the suggestion that they have moral duties as well).

Personhood in a given legal system does not entail the capacity to have each and every right and duty a person can have in that system. Legal personhood may vary. It may be *more or less limited* depending on the kinds of rights and duties an entity has the capacity to have. A corporation typically does not have the right to marry another person or to vote in elections, but it can hold constitutionally protected property rights and the right to enter into contracts, it can be a party in legal proceedings (e.g., file lawsuits and be sued), and it is under an obligation to pay taxes and to comply with standards of labor law. At least some legal systems distinguish between "natural persons" (typically, human beings) and "legal persons" (such as corporations) whose personhood is supposed to be a legal construct and not simply taken account of by the law. However, given that it is necessarily the law that ascribes legal personhood to entities and that there is considerable variance among persons commonly referred to by lawyers as "legal persons" (as opposed to "natural persons"), one may have doubts about the usefulness of these distinctions or even consider them confused. In addition, we often find a distinction between "full persons" (such as human beings and certain organizations) and "partial persons" with restricted personhood, i.e., entities (such as unincorporated partnerships) that can only have some of the rights and duties of full persons.

Not only may the legal personhood of an entity be more or less limited, the rights and duties of a legal person can also be *more or less separate* from those of other persons. For example, there may be legal rules that soften the distinction between the liabilities of a company (e.g., an unincorporated firm) and those of its shareholders such that the latter are liable for the company's obligations with their own assets, while keeping this distinction quite strict for other company types (e.g., stock corporations). At any rate, when we deal with types of legal person or the scope of the personhood of different entities, we are at the level of conceptions.

Conceptions of legal personhood come in two general varieties: as legal-doctrinal conceptions and as political conceptions. *Legal-doctrinal conceptions* tell us, more or less accurately, which entities are legal persons under existing law, or rather what criteria have to be fulfilled for an entity to count as a person in a given legal system or area of law, what types of legal person exist, and how, if at all, the scope of personhood varies. Since there are different legal systems and different areas of law, such conceptions may vary considerably without necessarily conflicting with each other. Most legal disagreements about the personhood of this or that entity are disagreements about whether the entity meets the relevant criteria (to a sufficient extent) and whether a non-natural entity that is a person can have certain rights and duties in a given system, e.g., certain basic rights other than the right to property. To some extent, legal-doctrinal arguments in such controversies correlate with political conceptions of legal personhood. Typically, there is some substantive overlap. But legal and policy arguments differ in the constraints they have to take into account (e.g., past political and judicial decisions, moral principles, or economic facts and criteria).

Political conceptions tell us which entities should be legal persons, or what the criteria for legal personhood should be, what types of legal person should exist, and how the scope of personhood may or ought to vary. Usually, they include at least implicit assumptions about moral status, though there may be good reasons to grant legal personhood to entities that arguably lack moral status, or

conversely, to deny legal personhood to entities that can plausibly be seen as moral right holders.

III. *Can* Nonhuman or Future Entities *in Principle* Be Legal Persons?

To make things easier, and because debates concerning the legal personhood of nonhuman and future entities use to be only about their rights, I shall restrict myself to this dimension of legal personhood: the capacity to have rights. So, do the concepts of law and legal personhood allow for nonhumans and future entities to be capable of holding rights? The answer to this question is quite obviously yes. It's hard to imagine any competent lawyer or legal philosopher arguing that there are purely conceptual reasons for not even considering nonhumans and nonexistent entities as candidates for legal personhood. As a justification, one could just point out that "is" implies "can," and that various rules of positive law already grant legal personhood to some nonhumans such as states, other organizations, and even certain assets such as hereditary masses. In order to reject this argument, one would have to subscribe to a pretty bizarre theory that

> (i) claims that all content of valid law is derived from morality (a), *and* assumes a morality according to which nonhuman and nonexistent entities have no rights (b),
>
> *or*
>
> (ii) claims that in order to be valid, law need only be consistent with morality (a), *and* assumes a morality that prohibits human legislators from granting rights to nonhuman and nonexistent entities (b).

Positive law that grants personhood to entities that should not have it according to some such natural law theory, is to be considered invalid, not really law at all. While there may be some reasons for (i)(b) and (ii)(a), (i)(a) and (ii)(b) seem completely absurd. One might try to make (i) or (ii) more plausible by pointing out that the legal persons mentioned above, while not being humans in themselves,

are still entities whose existence necessarily involves human minds. In contrast to nonhuman animals, plants, ecosystems, or not yet living people, they are essentially social entities, human artifacts. But then, what about national parks? Even though they consist of essentially natural entities such as trees, rivers, and mountains, for the law, they are what they are because they are socially designated as the entity they are. If such a designation constitutes a legal status and makes a difference to how we should treat entities so designated, then why not accept a social designation as *legal persons* as constitutive of legal personhood, provided that it is sufficiently clear what the entities so designated are?

To be sure, there may be good, even compelling reasons to oppose granting legal personhood to one entity or another. But these reasons need to be substantive reasons, not merely conceptual ones. There is not even a purely conceptual reason not to grant the capacity to have legal *duties* to nonhuman natural and nonexistent entities. It's only true that this capacity cannot be granted to them *exclusively*. For "law" and "legal personhood" are conceptually tied together. And whatever the details of a fully adequate concept of law may be, law at least includes some social norms that impose duties on living people that can be expected to be able to fulfill them in the world as it exists.

Law is a very flexible institution, not only in general, but also when it comes to the rules of legal personhood. It shows a lot of historical and cultural variability. It can even treat one and the same entity as a person in one respect or context and as an object in another, whether there is a coherent, let alone convincing, moral justification for it or not. And it can provide for all sorts of qualified personhood. Take as an example of an in-between case of actual and not just desirable legal personhood of nonexistent entities in Austrian civil law the case of unborn children ("in-between" because there already exists something that is on the path

to becoming an entity with legal personhood).[9] As a human, to count as a person in law one has to be born and alive. Thus, the embryo or fetus is not a legal person. But according to § 22 ABGB, if something is done to it that constitutes a disadvantage for the child after birth, the child may have a claim for damages. Similarly, if the decedent dies before the birth of an already-conceived human being (i.e., when it is still an embryo or a fetus), the latter may be their successor if born alive. If not born alive, it won't have had any rights that could be inherited by others such as the parents. I suppose that other civil and common law systems contain similar rules according to which the embryo or fetus, or even an unconceived child, is a legal person under the condition of developing into a born and living child. In legal-doctrinal analysis, this is called "conditional legal personhood" (*bedingte Rechtssubjektivität*). Obviously, such personhood does not entail a legal right to be born or not to be killed, let alone to be conceived.

To conclude, anything can be or be made a legal person, or almost anything. There might be one conceptual limit: events. It's not clear whether entities that can only be described as events or sequences of events (e.g., evolutionary processes or social conflicts) are possible candidates for legal personhood. I suppose they are (though I have no idea what *substantive* reasons there may be to grant events legal personhood). But since nobody proposes legal personhood for mere events anyway, I won't deal with the question any further.

IV. *Are* Nonhuman N*atural* or Future Entities Currently Legal Persons?

I've already mentioned that some nonhuman entities are obviously legal persons, if we have a broad understanding of "nonhuman" and think of social entities as nonhuman. But if the question is about nonhuman *natural* entities such as animals

[9] See Martin Schauer, *§ 22 ABGB*, in *ABGB-ON* (Andreas Kletečka & Martin Schauer eds., Manz 2017), https://rdb.manz.at/document/1102_abgb_102_p0022 (last visited December 16, 2025).

(individuals, populations, or species), plants, ecosystems, or not yet existing future people, things are not so clear. In most legal systems, entities such as these are most definitely not recognized as legal persons. However, there are a few states, e.g., New Zealand, India, Bolivia, Colombia, Spain, Canada, and Ecuador, that seem to grant personhood to some ecosystems.[10] At least, their legal systems include explicit statutory provisions to that effect. In some states, e.g., Spain and New Zealand, there are similar constitutional provisions for nonhuman animals of certain species such as great apes. However, I suppose, it is often far from obvious what such textual provisions mean or amount to in legal practice.[11]

To be sure, there are lots of (arguably insufficient or deficient) norms of international law as well as of national constitutional, administrative, civil, and criminal law that aim at the protection of nonhuman natural entities and impose duties with respect to them. Yet typically, while possibly grounded in the notion that such entities have *moral* rights, they do not ascribe legal personhood to them. For example, many believe that animals have a moral right not to be tortured, and that, as a consequence, there should be a legal duty not to torture animals. But such a duty, as it exists in many legal systems, does not necessarily amount to animals having a legal *right* not to be tortured. And they may not even have any legal right when the courts affirmatively refer to "animal rights." For the courts may simply be making a political statement that is neither intended to change the law by itself nor to be an interpretation of the law as it already exists. This is what the Kerala High Court (India) seems to be doing when it states that

> "it is not only our fundamental duty to show compassion to our animal friends, but also to recognise and protect their rights. … If

[10] Some interesting case studies can be found on https://www.boell.de/en/rights-of-nature#casestudies (last visited October 17, 2025).

[11] For a valuable resource see Animal and Natural Resource Law Review, https://msujanrl.org/ (last visited October 17, 2025).

> humans are entitled to fundamental rights, why not animals? In our considered opinion; *legal rights shall not be the exclusive preserve of the humans* which has to be extended beyond people thereby dismantling the thick legal wall with humans all on one side and all nonhuman animals on the other side. *While the law currently protects wild life and endangered species from extinction, animals are denied rights, an anachronism which must necessarily change."*[12]

The same applies to people who don't yet exist. In many or most legal systems, including Austria and Germany, they are currently not recognized as holders of constitutional rights. However, where people of future generations do not count as legal persons, there may well be constitutional provisions (such as in Germany and Austria) explicitly aiming at the protection of their interests. Such provisions may even be based on the assumption that yet unborn future people have *moral* claims (and are, analogous to unborn children under existing law, conditional moral persons or moral patients). Notwithstanding their questionable justiciability, such provisions in principle constitute binding law, but, again, they do not grant rights and thus legal personhood.

In order to argue against what most lawyers for most legal systems believe to be true when it comes to nonhuman animals, plants, ecosystems, or future generations, one has two options available:

> (i) to subscribe to a natural law theory according to which certain moral rights are legal rights regardless of any connection to social facts (such as past political decisions or custom), *as well as* to a morality according to which at least some of the entities in question have such rights;

[12] N.R. Nair & Ors. v. Union of India & Ors., AIR 2000 Ker. 340 (Ker. H.C. June 6, 2000), https://indiankanoon.org/doc/936999 (last visited October 16, 2015, italics C.H.)

(ii) to argue, in a Dworkinian fashion[13], that moral principles are also legal principles if they are part of the theory that best fits and justifies actually existing positive law, and that such a theory of actually existing positive law contains principles according to which at least some of the entities in question have rights.

In the eyes of many, though obviously not all legal practitioners and scholars, (i) has the disadvantage of leading legal reasoning deeper into controversial moral philosophy and even metaethics than judges should want to go, given the typical limits of their professional expertise and abilities. Defenders of such a natural law theory may acknowledge that this is unfortunate but not consider it a decisive reason to abandon their position. Still, I take it that most of the relatively few legal practitioners and scholars arguing for an already established legal personhood of entities such as nonhuman animals, ecosystems, or future people prefer the less "philosophical" option (ii), as it seems much closer to the ordinary ways of legal reasoning. However, apart from this coherentist version of legal moralism also being controversial, one might object that, for most legal systems, it seems implausible that the *underlying* moral principles grant legal personhood to (some of) these entities. For positive law still refers to nonhuman natural entities more as objects than as persons (even if a statutory text, such as § 285a ABGB or § 90a BGB, *declares* some of them, namely animals, not to be objects[14]). At least the supposedly rights-conferring principles are not sufficiently clear and uncontroversial to leave the issue to judges (as opposed to politically accountable legislators). Of course, this may change, whether or not there is a legislative intention to that effect.

[13] Dworkin, supra note 6, ch. 7; Ronald Dworkin, *Taking Rights Seriously* ch. 4 (Harvard Univ. Press 1977).

[14] Notably, none of the provisions mentioned declares animals to be persons either. They even explicitly add that animals are to be treated like *objects* (e.g., in contract law, property law, or tort law) unless special norms apply to them.

V. *Should* Some Nonhuman Natural or Future Entities Be Legal Persons Here and Now?

Many lawyers who participate in public debates about animal, environmental, and climate protection, and advocate legal rights for some nonhuman natural or future entities, do not assume that the law reasonably interpreted already contains all the rules and principles we need. Rather they engage in normative legal policy analysis. The conceptions of legal personhood they put forward are mostly political, not legal-doctrinal conceptions. Developing such a conception involves different types of consideration, most notably considerations of moral status and pragmatic and technical considerations, with considerations of justice somewhere in-between.

Considerations of moral status deal with questions such as the following. What constitutes moral status: sentience, agency, and/or something else? Is there a hierarchy of moral statuses or are all moral statuses basically equal? Does having a moral status imply having moral rights and, if so, what rights? Which and whose moral rights must be institutionalized as legal rights in order to be taken seriously? Considerations of or assumptions about moral status are obviously an important part of any elaborate political argument about legal personhood in general and legal rights (especially basic rights) in particular.

Yet, while being a strong reason in favor of a corresponding legal status, moral status is neither necessary nor sufficient for legal personhood. It may be the case that legal personhood is necessary to protect valuable entities without moral status more effectively.[15] And it may also be the case that the protection of valuable entities with moral status is equally well or even more easily secured by imposing purely objective legal duties (backed by a threat of sanctions), i.e., duties that do not correlate with rights, such as the duty to pay taxes, or the duty to

[15] See, with respect to nonhuman animals, Nina Lanzer, *Tierschutzrechtsmodelle im Vergleich: Warum die Anerkennung von Tierrechten nur der nächste folgerichtige Schritt ist*, JURIDIKUM 94, 102-3 (2024).

abstain from cutting trees on your own property without an official permit, or from releasing animals, especially of a non-native species, into the wild. Moreover, even those who assume that existing humans and some other entities share the exact same moral status, commonly do not claim that they all should have the exact same capacity to have legal rights. As I said before, the concept of legal personhood allows for gradation and variation when it comes to actual rights or the capacity to have them. That, say, the moral status of nonhuman animals does not differ from the moral status of humans does not entail that nonhuman animals should have the capacity to have all the legal rights humans can have. It only suggests that nonhuman animals should be granted some fundamental legal rights, such as the right not to be killed, tortured, kept in captivity, or deprived of their natural habitat. And even though this is a quite strong suggestion, it's not something that equal moral status as such strictly requires. For there are many ways for law to fulfill moral rights associated with a certain moral status. In law, we also make distinctions between humans regarding (the capacity to have) certain rights within a given system, even quite basic participation rights, without distinguishing in terms of moral status (as opposed to other morally relevant, yet more contingent properties such as being in certain social relationships): e.g., between children and adults, and between citizens and non-citizens. In short, no particular ethical conception of moral status as a general and stable normative profile fully determines the content of the law of legal personhood as it should be. Further considerations are needed. Conceptions of moral status are just parts of more comprehensive ethical conceptions in general and of conceptions of legal policy in particular.

Pragmatic and technical considerations, while arguably still belonging to the domain of ethics, require or involve much more non-philosophical assumptions and knowledge, in particular economic and legal expertise. But given that they can be more or less abstract and theoretical, especially social and political philosophers may also have something important to contribute. The questions pragmatic and

legal-technical considerations are about are quite diverse. The following ones only serve as the most obvious examples. How can the law be changed in a politically legitimate (e.g., sufficiently consensual) way in order to take better account of the moral status of other entities than living human beings? And how can this be accomplished without creating (i) too many complicated legal issues (e.g., issues of conflicting basic liberty rights, equality, and proportionality) and (ii) cascading needs for adaptations in many areas of the law that barely work to the advantage of the entities in question?

Not only prevailing moral attitudes, but also the nature and structure of a given legal system impose constraints when it comes to the implementation of a theory of moral status and moral rights. Thus, not only do theories of moral status and moral rights not contain all the answers to questions of legal personhood policy, there is no straightforward path from them to legal policy either. The path of reasoning leads over a huge variety of terrains, with lots of ramifications and crossroads as well as contingencies, not least contingencies of already existing law, and of distributions of political agency and power.

Both types of consideration overlap significantly with *considerations of justice*, particularly of distributive, political, and corrective justice (less so, I believe, of transactional justice). To avoid making things overly complex, suffice to say, somewhat vaguely, that justice considerations can be thought of as providing a link between the other types. They involve assumptions, claims, and arguments about the relationships between us and other candidates for legal personhood: communal, wrongness, and power relationships that already exist, but may not be adequately accounted for in terms of egalitarian, sufficientarian, prioritarian, or other principles.[16] More abstract considerations of justice tend to be directly related to arguments about moral status. On the one hand, dealing with the

[16] See Peter Koller, *Social and Global Justice*, in *Spheres of Global Justice Vol 2: Fair Distribution, Global Economic, Social and Intergenerational Justice* 433, 434-6 (Jean-Christophe Merle, Paul Cobben & Urs Marti eds., Springer 2013).

question of what is owed to whom, they imply or presuppose some general account of moral status; on the other hand, they contribute to our understanding of what does or does not follow from equality or inequality of moral status for the design of law in general, given that law quite naturally makes myriads of distinctions even within a class of entities that share the same moral status. Those who do not assume a one-way path from the abstract to the concrete, but prefer a more coherentist approach (emphasizing that a "reflective equilibrium" between our concrete moral evaluations and our more abstract theories is all that is achievable) may even allow for justice considerations to play a role in developing a theory about what grounds moral status in the first place. At any rate, they do not believe that one can arrive at a convincing theory of moral status in radical abstraction from its consequences for other areas of moral and political theory. More concrete considerations of justice, or at least assumptions about justice, are also included in pragmatic and legal-technical arguments, particularly when costs and benefits of different policy options are to be evaluated, balanced, and allocated.[17] Justice may require compensation or assistance if changing the legal status of an entity to better reflect its moral status would impose special burdens on some people. This leads to the further question of who exactly ought to contribute what to such compensation or assistance. However, for such issues to arise, the legal status change does not have to amount to granting personhood to nonhuman or nonexistent entities. They are also raised by more conventional animal, environmental, and climate protection policies. Therefore, no general justice argument against legal personhood for nonhumans and future entities follows.

[17] For a highly illuminating analysis of various justice issues raised by different conservation policies see Chris Armstrong, *Global Justice and the Biodiversity Crisis: Conservation in a World of Inequality* (Oxford Univ. Press 2024).

VI. From Legal to Moral Status?

Existing law obviously has an impact on the moral landscape. It creates, defines, and alters moral rights and obligations. This is true not only of morally perfect, but also of imperfect law. Even law that we are not morally obliged to comply with may have such an impact. In addition to moral duties to reform or participate in reform, it may trigger and focus our duties to resist the unjust structures of power and authority it constitutes or contributes to. But can law also have an impact on something general like moral status? And would the fact that law grants personhood to nonhuman natural or future entities have an impact on their moral status in particular? Much seems to depend on what we mean by "impact."

One might assume that moral status may well be derived from legal personhood, insofar as there is a moral duty to comply with the respective rules of a given legal system. Accordingly, if we are morally required to follow rules that make certain entities without prior moral status legal persons, the rules have *created* a moral status. But this seems implausible, or at least incompatible with our characterization of moral status as a general and stable normative profile. For the moral status of such entities would depend too much on historical and cultural contingencies: it would vary with legal systems, synchronically as well as diachronically. Historians and social scientists might reply that this is exactly how things are. Moral practices and attitudes, they might argue, are nothing but variable social constructs. Indeed, viewed from the perspective of a mere observer, things appear that way. But for participants in moral debate, morality is not exhausted by conventions, and reflections on moral status go beyond the attempt to capture the beliefs of others about moral status. As moral reasoners we also can and often do criticize conventions of status attribution in this or that society or social milieu (including our own). We usually do not equate social and moral status – even though many of us, when trying to be "philosophical" or "smart" or just "realistic," tend to conflate the concepts. At any rate, the question

is not whether law influences our moral beliefs including our beliefs about moral status. For the answer to that question seems all-too obvious: yes, to some extent, most people adapt their preferences and beliefs about how the world, including law, *should be* to (their perceptions of) the world, including law, *as it is*.[18] Rather the question is about the impact of law on what such beliefs are *about* or what we *should* believe.

To assume that moral status does not directly follow from legal status, given that law and morality, let alone law and *ideal* morality, are not necessarily co-extensive, is not to deny that law can be relevant to moral status. Law may well provide for or contribute to those properties that are constitutive of moral status according to some ethical theory, such as agency. Think of a group of people who together, i.e., collectively, hold moral rights. Without law the group may not even exist, or the group may exist, but not as an entity that qualifies as a candidate for something with a moral status distinct from the moral status of its members at a given time. It may just be a statistical set of people like car drivers or pensioners, not an entity we recognize as counting in its own right. I do not want to take sides here in the debate about the possibility of collective moral rights not reducible to the rights of individuals. Rather, what I am pointing out is that even *if* a group (e.g., a national or cultural group) has a moral status distinct from the status of its members and *if* the law significantly shapes the character of the group, the group's moral status is still not literally *constituted* by its legal status. Rather, law may contribute to the emergence or preservation of properties that are sufficient and/or necessary for moral status according to some ethical theory.

Now, regarding nonhuman natural and nonexistent entities, one might argue that neither does law constitute their moral status or lack thereof by itself, nor does it

[18] Also possible, though probably less common are counter-adaptive beliefs about moral status. Anti-conventionalists who, as a matter of principle, harbor deep suspicions about "hegemonic" attitudes and practices may ascribe a certain moral status to some entities precisely because it does *not* correspond to existing legal institutions.

contribute to the properties a reasonable ethical theory may require for an entity to have any moral status. Whether or not nonhuman natural or nonexistent entities have moral status seems entirely independent of their legal status, even though institutions determining legal statuses may be highly relevant to our more concrete moral duties and obligations. When it comes to such entities, law, so the argument goes, has too little impact on the properties arguably required for their having this or that moral status. For example, intelligence or the capacity to suffer from certain frustrations is influenced by social factors such as the education system or the distribution of property as organized by law, but not to an extent that these social factors increase or decrease moral status, let alone generate or preclude moral status in the first place.

This may be true, but even if it is true, it is not *obviously* true. What needs to be shown is: (i) that *relational* properties of an entity are never relevant to its moral status; or (ii) that, even if they are relevant, law only reflects but does not significantly shape (our conceptions of) the *fundamental* relations between us and nonhuman natural or future entities, i.e., relations that are pretty much the same across a variety of legal systems, as opposed to the more variable part of our practices, the profiles of our widely accepted concrete duties and obligations. (i) is a pretty common (though, as noted at the beginning, not uncontroversial) assumption in ethics, especially in animal ethics, one that is often not argued for. (ii) amounts to an empirical analysis and appears more hopeless, not because is clearly false, but rather because it involves highly controversial interpretations of the world at large and rests not only on contestable accounts of different levels of relations, but also on something arguably unavailable: an answer to the question of whether law explains widespread stable patterns of behavior and belief or is rather explained by them, which seems to be an unsolvable chicken and egg problem.

For example, capitalism, although it varies considerably from one legal system to another, might be thought of as constituting such fundamental relations, and thus

of generating or preserving relational properties (just think of capitalistically organized or structured agriculture). However, it's not clear whether the relation to nature and the future as it is characteristic of a capitalist society is notably different from the one constituted by other modern systems such as, say, state socialism as it existed in Eastern European countries after WWII. What appears to be distinctive of capitalism may in fact be a feature of industrial modernity, of which capitalism is only one manifestation among others. Furthermore, though capitalism as the currently prevailing system of production and distribution[19] certainly plays an important role in the causal explanation of certain basic features of modern law as such, the reverse seems equally true: capitalism itself can be described as a legal structure and thus be (at least partly) explained by the development of law and the spread of legal categories such as "property" and "freedom of contract." And in addition to being quite flexible and existing in quite different legal forms, capitalism allows for some (typically more small-scale) alternative ways of social organization that may, to some extent, not only change our relations to fellow humans around us[20], but also our relations to the nonhuman and future world. No matter how hopeful or optimistic we should or should not be, it's clear that even minor changes to our relationship with the nonhuman and future world will require changes of law, possibly for their inception and definitely for their continuation.

In any case, the question of whether and how law affects the moral status of nonhuman animals (individuals, populations, or species) and other nonhuman or not even yet existing entities, leads us back to some fundamental normative and analytical issues in ethics and social philosophy, issues that are theoretically interesting, but of much less practical relevance.

[19] Indeed, capitalism seems to have no serious contender at the (global) societal level. See Branko Milanovic, *Capitalism, Alone: The Future of the System That Rules the World* (The Belknap Press of Harvard Univ. Press 2019).

[20] See Erik Olin Wright, *Envisioning Real Utopias* (Verso 2010) and *How to be an Anti-capitalist for the 21st Century* (Verso 2019).

VII. Conclusion

Obviously, this is little more than a categorization of fundamental issues and types of arguments. It does not provide much insight into which entities already are or should be recognized as legal persons. Yet it suggests a few principles (actually, warnings and recommendations) for lawyers and philosophers alike, whether they are conservatives or progressives, although they are not equally prone to the same "fallacies." Though the principles may seem quite trivial, it is still worth making them explicit – especially for those who are very passionate about environmental and climate policy due to the high moral and political stakes but have a genuine interest in serious and honest debate, as opposed to an interest in merely displaying their tribal allegiances or persuading others by any means available.[21]

(1) Do not conflate the concepts of law and legal personhood with doctrinal or political conceptions of law and legal personhood, and doctrinal conceptions with political conceptions. In particular, do not conflate what is *desirable* with what the law *could* be like, or with what it actually *is* like, despite some connections, which are most obvious in teleological reasoning and balancing. And do not avoid substantive legal and political argumentation by playing around with concepts in a crypto-normative way. For example, do not put forward "theories" full of non-trivial moral assumptions that are not argued for, or not even made explicit.[22]

(2) Do not mistake (ideal) moral status theory for legal policy, despite the relevance of the former to the latter. Having shown (to one's own satisfaction at least) that an entity possesses moral status is not necessarily enough for assuming that its legal status should correspond. Conversely, having shown that an entity

[21] This does not mean that political debate does or should consist of nothing else than rational argumentation, or that the persuasive force of legal arguments is entirely independent of any ideological background including general attitudes toward nature and the future.

[22] It quite often seems as if the lack of a proper argument is supposed to be made up for by the heavy use of big but somewhat vague terms like "anthropocentrism," "biocentrism," and "ecocentrism." For a critical analysis of the popular centrism-triad (and a proposal of an alternative) see Lars Samuelson, *At the Centre of What? A Critical Note on the Centrism-Terminology in Environmental Ethics*, 22 ENVIRONMENTAL VALUES 627 (2013).

does *not* possess moral status is not necessarily sufficient to assume that it should *not* be granted legal rights and, by implication, legal personhood. As a matter of fact, not only legal policy but also animal, environmental, and climate ethics as a philosophical-academic enterprise go far beyond moral status theory. Such other ethical considerations might even be relevant for evaluating moral status theories.

(3) Do not take the fact (if it is a fact) that world would be a better place if we had a certain different conception of ourselves and our relations to the natural environment or the future, as a compelling reason to believe in such a conception.[23] At least, when doing legal or legal policy analysis (as opposed to ranting about us humans or modern society as such), make sure that you give reasons we can make sense of or even accept without a prior conversion to an alternative view of the world, let alone a view that is hardly compatible with life in a modern pluralistic society. Edifying new or new-old "narratives" may be important, but they are no substitute for arguments that connect to our prior beliefs and practices (not all of them being equally confused and wrong).

[23] Such incomplete or even pseudo-arguments are sometimes inspired by philosophies such as Richard Rorty's version of pragmatism. Rorty suggests that inventing new vocabularies is better than trying to discover how things really are, since there is nothing to be discovered, just more or less useful descriptions. See Richard Rorty, *Contingency, Irony, and Solidarity* (Cambridge Univ. Press 1989); for a critique from someone who is certainly not a narrow-minded rationalist see Bernard Williams, *Getting it right*, 11 LONDON REV. BKS. 22 (1989), https://www.lrb.co.uk/the-paper/v11/n22/bernard-williams/getting-it-right (last visited October 21, 2025). To be sure, in the context of environmental and climate protection, it's often less about inventing new vocabularies rather than adopting views from others past or present, who seem to be less alienated from nature than us modern people. In addition to betraying a questionable instrumentalist understanding of beliefs and other attitudes, such proposals are not always free from sociological and anthropological naivety and may even reflect some (well-meaning) racism in the form of "noble savage" myths.