

Legal Personhood for Artwork

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Artwork is unique and irreplaceable. It is signifier and signified. The signified of a work of art is its coherent purpose. But the signified of a work of art can be altered when not protected. The ramifications of unduly altering the signified of a work of art are consequential for both living and future generations. While the law provides protection to artists and art owners, it fails to grant rights to works of art themselves. The current legal paradigm, designed around the interest of owners and artists, also falls short of protecting Indigenous art aimed at conserving traditions and cultural identity, rather than monetizing creativity. This Article provides a theoretical framework for recognizing legal personhood for works of art, in the interests of art in and of itself as well as of current and future generations of human beings. This new paradigm protects artwork through the features of legal personhood. Legal personhood for artwork prioritizes the protection of art in and of itself and enhances intergenerational equity.

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INTRODUCTION

Artists die, but art can live forever. A piece of art and its signified are characterized by singularity and non-fungibility. Art projects a sense of self that frames the representation of things and holds values in a way that makes the artwork irreplaceable.¹ Plato theorized this in the concept of mimesis as it relates to music, poetry, and visual arts.² Mimesis involves the real-world aspects of art: how it is often likened to the soul's character and discussed as something that expresses an emotional state.³ Art captures time and expresses an intended meaning.⁴ Remarkably, art displays internally generated coherence.⁵ When the unique coherent purpose of a piece of art comes into existence through artistic creation, it cannot be replicated.⁶

A work of art often embodies a character, a *persona*.⁷ In Ancient Rome, the term *persona* was used in theater and literature to reference the “mask” or “character” played by an actor in a play.⁸ A *persona* embodied specific traits and sent a message to, or evoked an emotional connection with, the audience. A character could be aggressive, sad, funny, introspective, dramatic, or romantic. This characterization enabled the audience to empathize with the conveyed message.⁹

While having character is typically a descriptive formula used to comment on an individual's personality, it is also used to evaluate artwork's aesthetic

1. Brian Soucek, *Personifying Art*, in NEW WAVES IN AESTHETICS 224, 228 (Kathleen Stock & Katherine Thomson-Jones eds., 2008) (referencing the work of Charles Taylor and G.L. Hagberg).

2. See CHRISTOPHER JANAWAY, IMAGES OF EXCELLENCE: PLATO'S CRITIQUE OF THE ARTS 94 (2003).

3. See *id.* at 95.

4. Brian Soucek, *Personification of Art*, in ENCYCLOPEDIA OF AESTHETICS (Michael Kelly ed., 2d ed. Oxford Press University 2014) (“Works of art are personified when they are treated as autonomous; . . . said to express meaning or emotion, to speak to us . . .”). The personification of a work of art character can determine the value or beauty assigned to it from an observer. *Id.* (“[T]he experience of aesthetic value entails personification. An object's beauty, in fact, comes to depend on how ‘personifiable’ it is.” (quoting Friedrich Schiller)).

5. Soucek, *supra* note 1, at 226.

6. See Eric M. Brooks, “Tilted” Justice: Site-Specific Art and Moral Rights After U.S. Adherence to the Berne Convention, 77 CALIF. L. REV. 1431, 1434 (1989). Brooks states:

As expressed by the artist Alfred Crimi, a work of fine art “is a one of a kind creation expressing the spirit and mood of the time of its conception and the psychological characteristics of the mind that conceives it. . . . Once destroyed, its spirit cannot be recaptured, not even by the artist who conceived it.”

Id. (quoting *Visual Artists Rights Amendment of 1986: Hearing on S. 2796 Before the Subcomm. on Patents, Copyrights, and Trademarks of the Senate Comm. on the Judiciary*, 99th Cong., 2d Sess. 12 (1986) (statement of Alfred Crimi, artist)).

7. See JANAWAY, *supra* note 2, at 104 (discussing the phenomenon Plato called mimesis, the idea that we often talk of music as expressing a mood or character, and other stylistic arts such as poetry and visual arts as having a “likeness of the soul's good character”).

8. Sergio Alberto Gramitto Ricci, *Archeology, Language, and Nature of Business Corporations*, 89 MISS. L.J. 43, 53 (2019) (discussing the etymology of the term *persona* and its use in Roman law as well as the rights that the Romans recognized to *personae*).

9. LINDSAY B. CUMMINGS, EMPATHY AS DIALOGUE IN THEATRE AND PERFORMANCE 129 (2016).

value.¹⁰ A work of art can embody a spirit.¹¹ This analogizes a work of art to a sentient being having “an inner life, feeling, soul, a content and spirit,” as Georg Wilhelm Friedrich Hegel theorized.¹² As a result of these features, a work of art speaks, desires, reflects, struggles, worries, dreams, and makes other people think. The coherent purpose of a work of art is its spirit. Works of art convey messages that mirror—or contrast—the *zeitgeist*, our cultures, and our values. Further, artwork interacts with people and society.¹³

Art speaks to individuals, communities, and society at large.¹⁴ Not only does art contribute to the lives of current inhabitants of our planet, but it contributes to the lives of future generations of human beings, too. An artwork’s role as a vessel of messages and values organically intertwined with aesthetics is a coherent carrier of a heritage. To different degrees, societies acknowledge that artwork embodies a set of rights often associated with personhood.¹⁵ Society considers works of art as holders of moral and dignity interests. But our legal system fails to recognize legal personhood for artwork.

The bundle of legal traits referenced as legal personhood typically includes the capacity to own assets, bear liabilities, enter into contracts, commit torts, sue and be sued, and stand in court. Legal personhood allows individuals and entities to operate in our social, economic, and legal systems. Legal personhood allows

10. See Brian Soucek, *Aesthetic Judgment in Law*, 69 ALA. L. REV. 381, 388 (2017) (explaining how, despite efforts from the court to avoid subjective judgments, aesthetic judgment exists throughout legal history).

11. Soucek, *supra* note 4 (“[A]rtwork is ‘a physical object with whatever in the philosophy of art corresponds to the soul in the philosophy of the person.’ The artwork’s ‘soul’ is its meaning” (quoting Arthur Danto)). Similarly, Hegel described works of art as having “an inner life, feeling, soul, a content and spirit, which is just what we call [its] significance.” *Id.* A sound understanding of art as a character requires a differentiation of the product of artists from the product of artisans. The difference between an artist and an artisan is encapsulated by the maxim *ars gratia artis*, used interchangeably with *l’art pour l’art*, the French translation, which means “art for art’s sake.” Originating from French Romanticism, the phrase stands for the proposition that art need not serve any purpose other than itself. *Art for art’s sake*, ENCYCLOPAEDIA BRITANNICA, britannica.com/topic/art-for-arts-sake (last visited Mar. 24, 2025). In contrast to *ars gratia artis*, an artisan makes things which, although may rightly be considered art, nonetheless serve another purpose. *Artisan*, DICTIONARY.COM, dictionary.com/browse/artisan (last visited Mar. 24, 2025) (defining the word as “a person in a utilitarian art, trade, or craft, especially one requiring manual skill.” (emphasis added.)); see also *Artisan and Artist*, SCI. AM., Nov. 13, 1880, at 308, 308 (emphasizing the distinction between an artist and an artisan against the backdrop of the industrial revolution). Artistry and artisanship are not mutually exclusive. For example, a Duff Goldman cake, a Stradivarius violin, and a Hispano-Suiza automobile could all rightly be considered art. But none are art for art’s sake, as each exists for a practical purpose: to be eaten, to be played, and to be driven.

12. G.W.F. HEGEL, *AESTHETICS: LECTURES ON FINE ARTS* 20 (T. M. Knox trans., 1975); see also Soucek, *supra* note 1.

13. Henry Hansmann & Marina Santilli, *Authors’ and Artists’ Moral Rights: A Comparative Legal and Economic Analysis*, 26 J. LEGAL STUD. 95, 106 (1997) (arguing great works of art become “important elements in a community’s culture” and “common reference points or icons that are widely shared in social communication”); see also Soucek, *supra* note 1, at 226 (referencing the work of Charles Taylor and G.L. Hagberg).

14. See Paul M. Bator, *An Essay on the International Trade in Art*, 34 STAN. L. REV. 275, 305 (1982) (“Art speaks directly to the inner consciousness within which we resolve whether we do really feel a sense of belonging to a group or community.”).

15. Soucek, *supra* note 1, at 228 (“[W]e regard artworks as ‘invested with rights of a kind analogous to those that we normally concede to persons.’” (quoting Alan Tormey, *Aesthetic Rights*, 32 J. AESTHETICS & ART CRITICISM 163, 163 (1973))).

individuals and entities to pursue their inherent purposes and to exert their rights, while making legal persons accountable for their actions. Falling short of recognizing legal personhood for artwork is a missed opportunity to promote intergenerational equity. Failing to recognize artwork's legal personhood also exposes the signified of work of art to risks of corruption, manipulation, and alteration.

But how can we conceive legal personhood for artwork? A paradigm that can be conceptually proximate to legal personhood for works of art is legal personhood for religious objects. Certain jurisdictions and traditions recognize legal personhood for sacred objects.¹⁶ In Hinduism, Hindu idols that are consecrated and exposed to the public are legal persons.¹⁷ As legal persons, these Hindu idols have legal capacity.¹⁸

To better comprehend the role of art as a vessel of the highest forms of being, consider the veneration and protection of sacred art, even in jurisdictions that do not recognize legal personhood for artwork but provide enhanced protection for religious objects.¹⁹ Assaulting paintings and other images of the Virgin Mary is considered sacrilege.²⁰ The imagery, which is what we see with our eyes, and the image, which is the message and the concept we perceive with our intellect and psychic through the imagery, in this case, are clearly not detachable.²¹ Thus, an assault on the image of the Virgin Mary is more than an assault on her imagery, her representation; it is perceived as an assault on the Virgin Mary herself.²² In other words, it is considered an assault to the values that the work of art incorporates.

Embracing the theoretical underpinnings of the real entity theory, this Article provides a conceptual framework to recognize legal personhood for works of art. The real entity theory of legal personhood roots the recognition of legal personhood for inanimate objects in their possession of a coherent purpose—a spirit or soul.²³ In other words, the real entity theory suggests that the coherent identity that justifies legal personhood already exists before the law

16. P.W. Duff, *The Personality of an Idol*, 3 CAMBRIDGE L.J. 42, 42 (1927) (describing legal personhood for Hindu idols); Giancarlo Anello, Mohamed Arafa & Sergio Alberto Gramitto Ricci, *Sacred Corporate Law*, 45 SEATTLE U. L. REV. 413, 440–41, 448–49, 454–55 (2021) (discussing the legal personality of cathedrals, monasteries, and mosques).

17. Duff, *supra* note 16, at 44.

18. *See infra* Subpart I.C.

19. Melissa Vise, *The Matter of Personae in Medieval Italy*, 63 AM. J. LEGAL HIST. 131, 134–36 (2023). On the complexity of religious and spiritual understanding of legal persons and the extension of protection that it grants, see Richard Davis, *Loss and Recovery of Ritual Self Among Hindu Images*, 6 J. RITUAL STUD. 43, 43 (1992) (discussing whether icons that have been displaced or disused retain legal capacity outside their original habitat).

20. Vise, *supra* note 19, at 134–35.

21. *See* Marie-José Mondzain, *Can Images Kill?*, 36 CRITICAL INQUIRY 20, 29–32 (2009).

22. *See* Vise, *supra* note 19.

23. *See* OTTO GIERKE, *NATURAL LAW AND THE THEORY OF SOCIETY: 1500 TO 1800*, at lxiv (Ernest Barker trans., Beacon Press 1957) (1934).

recognizes it: the law merely formalizes its existence and legal ramifications.²⁴ Legal personhood for artwork has consequential benefits for humankind: It protects a work of art, its coherent purpose, and the artist's legacy. Legal personhood for artwork also safeguards cultural heritage in the interest of future generations.

This Article proceeds in four parts and a conclusion. Part I lays out the theoretical foundations of recognizing legal personhood for works of art. Part II surveys the key features of the real entity theory and explores its applicability to works of art. Part III discusses theoretical underpinnings of legal personhood for artwork. Part IV sheds light on the features of legal personhood for works of art.

I. THE CASE FOR ART PERSONHOOD

Art is “manifold, capable of being anything and everything.”²⁵ A renowned Plato interpreter describes “art” as a concept “which can “stand for the perpetual possibility of change[;]” a “permissive empty space traveling through history, to be filled variously according to circumstances: now ethical, now beautiful, now soothing, now harrowing, now truthful, now superficial, now deliberately ambivalent.”²⁶ The social contextualization of the work is a critical source of its meaning. Just as important, the social contextualization changes the paradigm within which art exists. The dialectical creation of meaning is at the core of the value of artistic expression. In society, art changes depending on context, position, and relation to other works of art. Sound interactions between works of art and society require that a work of art and its coherent purpose are not corrupted or altered.

A. MODERN ICONS: “CHARGING BULL” AND “FEARLESS GIRL”

To exemplify the importance of context in interpreting art, consider Wall Street's famous “Charging Bull” sculpture. The sculptor of “Charging Bull,” Arturo Di Modica, meant it to convey power and success.²⁷ Di Modica intended to praise the resilience of the American people through the sculpture.²⁸ For years, millions of tourists paid a visit to “Charging Bull” and photographed it as a symbol of New York's financial power. “Charging Bull” had a positive symbolic role in Wall Street.

On International Women's Day in 2017, the “Fearless Girl” statue was positioned in front of Charging Bull.²⁹ “Fearless Girl” is a sculpture of a young

24. *See id.*

25. *See JANAWAY, supra* note 2, at 7.

26. *Id.*

27. Katie Mettler, ‘Charging Bull’ Sculptor Says ‘Fearless Girl’ Distorts His Art: He’s Fighting Back., WASH. POST (Apr. 12, 2017), <https://www.washingtonpost.com/news/morning-mix/wp/2017/04/12/charging-bull-sculptor-says-fearless-girl-distorts-his-art-hes-fighting-back/>.

28. *Id.*

29. *Id.*

girl with her hands on her hips and a stare-down gaze.³⁰ According to Di Modica, the juxtaposition of “Fearless Girl” altered the symbolic message of “Charging Bull” and frustrated his purpose.³¹ The proximity and position of “Fearless Girl” and “Charging Bull” forced observers to encounter them together rather than as separate works of art with independent messages and purposes.³²

As a result of this juxtaposition, the coherent purpose of the “Charging Bull” character was lost.³³ To some, the essence of “Fearless Girl” sent a powerful feminist statement that women are confident and capable leaders.³⁴ In fact, had the two sculptures been conceived with that intent, the result could be considered satisfying—albeit with the risk of being perceived as a representation of the Myth of Europa.³⁵ But the sculptures were not conceived together.

Di Modica conceived “Charging Bull” to project positive strength, as its strong features had a heroic demeanor. The strength of “Charging Bull” was not conceived to contrast smaller, younger, or weaker individuals. To Di Modica, the strong features of the bull contrasted with the girl’s soft features and altered the bull’s demeanor to appear threatening and aggressive, contrary to his intended positive message.³⁶ “Charging Bull” became the unintended adversarial figure in the dialogue between the characters of the two works.³⁷

Regardless of the essence of the new message, it is beyond dispute that “Charging Bull” symbolizes something different when standing in front of “Fearless Girl.”³⁸ This juxtaposition had radical consequences. It effectively deprived “Charging Bull” of its own independent existence as a long-time venerated object with its own dignity. The juxtaposition *mischaracterized* “Charging Bull,” giving birth to a new representation, with a new signified and signifier.

The very name of the sculpture lost its significance. Names are a device to ensure individual respect.³⁹ Pieces of art have names as holders of dignity. When the essence of works of art is so consequentially altered that their names no longer convey what they signify, the original moral interests of the works of art are shattered. In the eyes of a cultured observer, the merge of the two separate

30. *Id.*

31. *Id.*

32. See Annemarie Bridy, *Fearless Girl Meets Charging Bull: Copyright and the Regulation of Intertextuality*, 9 U.C. IRVINE L. REV. 293, 305 (2019).

33. See Mettler, *supra* note 27 (mentioning Di Modica’s frustration about the changed message of his sculpture).

34. *Id.*

35. OVID, *METAMORPHOSES BOOKS I–VIII*, at 118–121 (G. P. Goold ed., Frank Justus Miller trans., 3d ed. 1994); P.B.S. Andrews, *The Myth of Europa and Minos*, 16 GREECE & ROME 60, 60–62 (1969) (recounting the myth and framing the encounter between Europa and the Bull as astronomical); Cynthia Roe, *Titian’s Rape of Europa: The Posture of The Pose*, 36 COMITATUS: J. MEDIEVAL & RENAISSANCE STUD. 93, 94–95 (2005).

36. See Mettler, *supra* note 27.

37. Bridy, *supra* note 32.

38. *Id.*

39. For more on the notion of individual respect associated to names, see Ela A. Leshem, *Dead Bodies as Quasi-Persons*, 77 VAND. L. REV. 999, 1030 (2024).

works of art, “Charging Bull” and “Fearless Girl,” generates an artistic representation of the Myth of Europa, according to traditional iconography. In the Myth of Europa, Europa is kidnapped by Jupiter, who took the shape of a bull, and the encounter of Europa and the bull gave birth to the Minotaur.⁴⁰ According to the iconography, the tradition, and the interpretation of the myth, Europa—a young woman—was lured by the bull, and the bull took advantage of her.⁴¹ The bull, in the myth, does not symbolize or convey positive values.⁴² Di Modica did not sculpt “Charging Bull” to make it a character of a symbolic representation of the Myth of Europa. Eventually “Fearless Girl” was moved to a space where she no longer interacts with another work of art, where she can stand alone fiercely and convey her message.

B. LEGAL PERSONS AND LIVING ART

Artwork conveys a message to the viewer and allows the viewer to empathize with it.⁴³ The message that artwork conveys can be more or less complex and multilayered; it can be positive or negative; it can be universal or topical. The resulting emotion from art stems from the unique message that the work of art presents.⁴⁴ The message of a work of art is what enables its spirit to exist and elicit emotion from its observers.⁴⁵ Different observers feel different responses—that characterizes the individual experience.⁴⁶

Artwork is not inert: “symphonies listen, canvases talk, novels think, and pictures want.”⁴⁷ This makes art naturally predisposed to fit into Otto von Guericke’s realist theory, which recognizes legal personhood for nonhuman entities with a coherent *spirit* as living realities.⁴⁸ According to the realist theory, legal personhood has a necessary and sufficient condition in a preexisting

40. OVID, *supra* note 35.

41. Roe, *supra* note 35, at 93–95 (explaining that Titian, for instance, painted the *Rape of Europa*, depicting a scene of Ovid’s tale from the *Metamorphoses*).

42. *See id.* at 96 (referencing the bull as a “lustful abductor” in her analysis of the Titian’s mythological painting).

43. *See* JANAWAY, *supra* note 2, at 83 (discussing the phenomenon Plato called mimesis).

44. *See* WASSILY KANDINSKY, *CONCERNING THE SPIRITUAL IN ART* 28 (Michael T.H. Sadler trans., The Floating Press 2008) (1911) (“The spiritual life, to which art belongs, and of which she is one of the mightiest elements, is a complicated but definite and easily definable movement forwards and upwards. This movement is the movement of experience.”).

45. *See* Soucek, *supra* note 1; *see also* SUSAN SONTAG, *AS CONSCIOUSNESS IS HARNESSSED TO FLESH: JOURNALS AND NOTEBOOKS 1964–1980*, at 75 (David Rieff ed., 2012) (writing in her journal on February 17, 1965, that “Art is a form of nourishment (of consciousness, the spirit)”).

46. *See* KANDINSKY, *supra* note 44, at 26.

47. Soucek, *supra* note 1, at 225. For a discussion on the life of symphonies, *see* Sara Eckerson, *The Material and “Inner Life” in Music: Beethoven, Psychological Coherence, and Meaning*, 4 HUMANS 418, 418 (2015).

48. *See* Maximilian Koessler, *The Person in Imagination or Person Ficta of the Corporation*, 9 LA. L. REV. 435, 445–46 (1949). For a comprehensive analysis of the real entity theory within a corporate law framework, *see generally* EVA MICHELER, *COMPANY LAW: A REAL ENTITY THEORY* (2021).

coherent purpose.⁴⁹ In other words, legal personhood is not created by the law. Rather, it is detected and subsequently recognized by the law. Legal personhood for a preexisting being, therefore, can be understood as a discovery, not an invention.

An artwork's preexisting coherent purpose is the essential requisite for applying real entity theory. Hindu idols' imagery is instrumental to the image they incarnate and the religious value they carry.⁵⁰ Like Hindu idols, works of art merge signifier with signified and entangle the vessel with the spirit. A work of art's coherent purpose makes Gierke's real entity theory available beyond Hindu idols, whose personhood is currently contingent upon consecration, a ritual that resembles incorporation.

C. HINDU IDOLS

Hindu idols that are consecrated and installed in a public place with open access have legal personhood in the Indian legal system.⁵¹ Just like corporations, Hindu Idols that feature legal personhood have rights, for instance they can own assets, and duties, including paying taxes.⁵² However, these idols do not have rights germane to human beings, such as fundamental or constitutional rights.⁵³ Using a Roman law taxonomy, Hindu idols do not have rights inherent to human beings by virtue of their human nature.⁵⁴ Rather, they bear rights similar to those that the Romans predicated upon *universitates*, the Roman corporate entities.⁵⁵

Under Indian common law, deities and idols founded upon the religious customs of Hindus have legal personhood.⁵⁶ This recognition serves and upholds the needs and faith of society.⁵⁷ Idols are viewed as personifications, embodying the divine's energy, values, and powers.⁵⁸ Essentially an idol is seen as a vessel for God—an incorporation of the divine that can be worshipped.⁵⁹ In fact,

49. Martin Petrin, *Reconceptualizing the Theory of the Firm—From Nature to Function*, 118 PENN STATE L. REV. 1, 7 (2013).

50. Cf. Mondzain, *supra* note 21, at 29–31 (2009).

51. See generally Yogendra Nath Naskar v. Commission of Income-Tax, AIR 1969 SC 1089 (1969) (India) (holding that Hindu idols are treated as a unit of assessment under certain sections of the Income Tax Act of 1922).

52. Umamageswari M., *Rights of a Deity*, LEGAL SERV. INDIA, <https://www.legalserviceindia.com/legal/article-1199-rights-of-a-deity.html> (last visited Feb. 26, 2023).

53. *Id.*

54. See Gramitto Ricci, *supra* note 8, at 46 (discussing the rights that only attained natural persons not deemed as monsters, in Ancient Rome).

55. See *id.* at 47–48.

56. See generally Yogendra Nath Naskar, 1969 SC 1089 (holding Hindu idols are treated as a unit of assessment under certain sections of the Income Tax Act of 1922).

57. See Kelly D. Alley, *River Goddesses, Personhood and Rights of Nature: Implications for Spiritual Ecology*, 10 RELIGIONS 502, 505–06 (2019).

58. *Id.*

59. Shuvi Jha, *What Idolatry Means in Hinduism*, HINDU AM. FOUND. (July 3, 2018), <https://www.hinduamerican.org/blog/what-idolatry-means-in-hinduism> (explaining a Hindu ritual in Mumbai of immersing clay figures in the sea and how similarly the idol only represents a tangible carrier of God); see Mondzain, *supra* note 21, at 47–48 (discussing incorporation).

Hindus believe all objects containing divine energy are worthy of worship.⁶⁰ The religious recognition of the idol's spirit allows the idol to exist as a religious entity.⁶¹

The embodiment of the values and messages into an anthropomorphic figure facilitates worshipers' abilities to appreciate and embrace the god's virtues.⁶² Protecting the idol itself serves the purpose of safeguarding its powerful religious message.⁶³ Dean Patrick William Duff suggested that there is a societal interest in supporting individuals who worship the idol.⁶⁴ More generally, there may be an interest in helping those who, while not personally dedicated to the idol's message, want the worshipping of the idol to continue.⁶⁵ Providing protection for religious observances and endowments could also reflect a broad societal desire.⁶⁶ The underlying symbolism furthers the societal interest in granting legal personhood for idols.

II. THE REAL ENTITY THEORY FOR ARTWORK

A critical argument for recognizing legal personhood for artwork is that a piece of art carries a spirit that makes it irreplaceable. This spirit comes with a purpose that plays a role in our society. The spirit of a work of art conveys values and meaning. Moreover, the spirit of artwork is distinct from that of the artist, the owner, and the observers. For these reasons, legal personhood for artwork provides a paradigm of protection that moral rights of the author cannot guarantee.⁶⁷

60. See Duff, *supra* note 16.

61. See Jha, *supra* note 59.

62. See *Anthropomorphism*, NEW WORLD ENCYCLOPEDIA, <https://www.newworldencyclopedia.org/entry/Anthropomorphism> (last visited Apr. 20, 2022) (discussing the role of anthropomorphism in shaping religious thought).

63. See Duff, *supra* note 16, at 44 (discussing the "wants" and "interests" of the idol).

64. See *id.*

65. See *id.*

66. *Id.*

67. For an overview of the moral rights of the author, see Roberta Rosenthal Kwall, *Copyright and the Moral Right: Is an American Marriage Possible?*, 38 VAND. L. REV. 1, 5 (1985) (exploring the exchange between the moral rights doctrine and the 1976 Copyright Act); Henry Hansmann & Marina Santilli, *Authors' and Artists' Moral Rights: A Comparative Legal and Economic Analysis*, 26 J. LEGAL STUD. 95, 95 (1997) (arguing that the moral rights doctrine helps control external factors pertaining to reputation); Thomas F. Cotter, *Pragmatism, Economics, and the Droit Moral*, 76 N.C. L. REV. 1, 1 (1997) (examining the moral rights doctrine through from a perspective of legal and philosophical pragmatism); Cyrill P. Rigamonti, *Deconstructing Moral Rights*, 47 HARV. INT'L L.J. 353, 355 (2006) (studying the understanding of moral rights as an authors inalienable rights through comparison of the United States and other common law countries); and Edward J. Damich, *The Right of Personality: A Common-Law Basis for the Protection of the Moral Rights of Authors*, 23 GA. L. REV. 1, 5 (1988) (discussing in-depth the moral rights doctrine in both French and American law).

A. THE ROOTS OF GIERKE'S REAL ENTITY THEORY

Gierke developed the real entity theory in the shadow of a contradiction, and then a rift, within Germany's Historical School of Law.⁶⁸ The contradiction began with the Historical School's founder, Friedrich Carl von Savigny, who applied the *Volksgeist* theory to the development of law.⁶⁹ In short, the *Volksgeist* theory asserted that law is derived not from external sources, but as an expression of the collective spirit of the people.⁷⁰ For Savigny, the law of Germany was to be an expression of the unique collective spirit of the German people.⁷¹ Yet Savigny—at the same time—embraced Roman law and supported a wide acceptance of Roman law in Germany as consistent with his *Volksgeist* theory.⁷² In Savigny's era, German law was the product of a combination of Roman and German influences, which justified the historical study of both.⁷³

To Savigny, the legal personality of inorganic entities is wholly artificial.⁷⁴ In fact, only humans organically possesses legal personality.⁷⁵ Humans can learn, intend, will, and act.⁷⁶ One could say this means that they have a spirit providing agency to them.⁷⁷ To Savigny, groups of individuals have none of these things.⁷⁸ If groups of individuals appear to act or will, it is only the acts of the human beings who make them up.⁷⁹

68. GIERKE, *supra* note 23, at liv–lvi. When Gierke began to develop a theory of group personality, he did so under the tutelage of prominent Germanist Georg Beseler, opposing Savigny and the Romanists and Savigny's fiction theory of group personality. Ron Harris, *The Transplantation of the Legal Discourse on Corporate Personality Theories: From German Codification to British Political Pluralism and American Big Business*, 63 WASH. & LEE L. REV. 1421, 1427–29 (2006); OTTO GIERKE, *POLITICAL THEORIES OF THE MIDDLE AGE*, at xxv (F.W. Maitland trans., 1900).

69. GIERKE, *supra* note 23, at liv.

70. Robert E. Rodes, Jr., *On the Historical School of Jurisprudence*, 49 AM. J. JURIS. 165, 165 (2004).

71. *Id.* at 165–66.

72. Markus Dirk Dubber, *The German Jury and the Metaphysical Volk: From Romantic Idealism to Nazi Ideology*, 43 AM. J. COMPAR. L. 227, 250 (1995).

73. GIERKE, *supra* note 23, at liv–lv. Perhaps the ensuing problem should have been obvious. If, as the Historical School contended, the source of law was *Volksgeist*, then should not the law of Germany be the “expression of a German *Volksgeist*?” *Id.* How could the study of Roman law contribute to the manifestation of the unique collective spirit of the Germans? A rift soon formed within the Historical School between Germanists and Romanists. *Id.* The Germanists sought the expulsion of Roman law and focused their attention upon an historical review of the German people's legal institutions and customs as a means of discovering a uniquely German conception of the law. Dubber, *supra* note 72, at 250–51. The Romanists, on the other hand, sought to maintain Roman law's heavy influence within modern German law, as well as its teaching in the universities. GIERKE, *supra* note 23, at lv.

74. Koessler, *supra* note 48, at 443.

75. *Id.*

76. GIERKE, *supra* note 68, at xx. The rise and diffusion of general artificial intelligence might lead to the creation of artificial agents able to mirror human beings' capacities. See Sergio Alberto Gramitto Ricci, *Artificial Agents in Corporate Boardrooms*, 105 CORNELL L. REV. 869, 870 (2020).

77. Harris, *supra* note 68, at 1429.

78. GIERKE, *supra* note 68, at xx.

79. *Id.* A milestone decision of the Supreme Court resorted to the aggregation theory of the corporation to recognize religion freedom rights to business corporations. The opinion recognizes the religious rights of business corporations as a derivative of the religious rights of the human beings who associate to form the

While it can be deemed useful to grant groups of individuals the legal technology known as legal personality; according to Savigny, legal personality has to be actively provided to inorganic entities, such as groups of individuals.⁸⁰ And the state is the only authority capable of conferring full-fledged legal personality onto an inorganic entity.⁸¹ For Savigny, the legal personality of inorganic entities—such as groups of individuals—is a fiction, and its theorization is known as fiction theory.⁸² Fiction theory predicates that legal personality for inorganic entities only exists because the state deems it to be useful.⁸³ According to this utilitarian paradigm, the state creates and grants legal personhood for inorganic entities⁸⁴ to serve governmental and public purposes.⁸⁵

Gierke countered the fiction theory of Savigny and the Romanists by showing that the Germanic conceptualization of groups throughout the Germanic tradition communicated an entirely different construction of personhood for legal entities.⁸⁶ To be sure, the fulcrum of the clash between Gierke and Savigny was legal personhood of groups. But the theoretical underpinnings are generally applicable more broadly to inorganic entities featuring legal personhood.

corporations. Deriving religious rights for business corporations from human beings is conceptually inaccurate, as the rights and existence of a corporation are separate and distinct from those of its founders, shareholders, and other stakeholders. Gramitto Ricci, *supra* note 8, at 57–58. For an understanding of how the Supreme Court treats business corporations as an aggregation of people, see Margaret M. Blair & Elizabeth Pollman, *The Derivative Nature of Corporate Constitutional Rights*, 56 WM. & MARY L. REV. 1673, 1677 (2015). The aggregate theory of the corporation conceives “the corporation as an aggregate of its members or shareholders.” Reuven S. Avi-Yonah, *Citizens United and the Corporate Form*, 2010 WIS. L. REV. 999, 1001. For a critique of the use of the aggregate theory to recognize constitutional rights to corporations, see Joshua C. Macey, *What Corporate Veil?*, 117 MICH. L. REV. 1195, 1201 (2019). See generally Daniel J.H. Greenwood, *Essential Speech: Why Corporate Speech Is Not Free*, 83 IOWA L. REV. 995 (1998) (discussing the numerous issues that perceiving a corporation as an aggregation of people raises).

80. See GIERKE, *supra* note 68, at xx–xxi. On the concept of legal personhood as a technology, see Gramitto Ricci, *supra* note 8, at 47 (describing legal capacity for inorganic legal entities as one of the most ground-breaking legal technologies ever developed by the humankind and referencing Duff’s arguments to support the statement). PATRICK WILLIAM DUFF, *PERSONALITY IN ROMAN PRIVATE LAW* 16 (1938).

81. *Id.* at xx; see also Anello et al., *supra* note 16, at 422–23 (arguing that rituals express a programmatic visibility that an entity is granted legal capacity by and in furtherance of the power of Rome as a sovereign power). To be sure, the state also determines when and to what extent human beings have legal capacity, too. The legal capacity of human beings evolves from before their birth until after their death. See Carliss N. Chatman, *If a Fetus Is a Person, It Should Get Child Support, Due Process, and Citizenship*, 76 WASH. & LEE L. REV. ONLINE 91, 93–94 (2020) (discussing right of human being before the birth); Gramitto Ricci, *supra* note 76, at 882 (describing how the legal capacity of human being evolves from birth to death just like the “human being” in the riddle of the Sphinx who “walks on four legs in the morning, on two legs at noon, and three legs in the evening”); SOPHOCLES, *OEDIPUS THE KING* 90 n.3 (Ian Johnston trans., 2004); Leshem, *supra* note 39, at 999 (analyzing the rights of dead bodies).

82. Koessler, *supra* note 48, at 442–43.

83. See *id.* at 443.

84. GIERKE, *supra* note 68, at xxx.

85. Gramitto Ricci, *supra* note 8, at 45; Anello et al., *supra* note 16, at 422–23.

86. GIERKE, *supra* note 23, at lix–lx.

To Gierke, the Germans were uniquely associative people.⁸⁷ They had a deeply rooted tradition of forming *Genossenschaften*, or German fellowships, whose cohesion was driven by the will of its own members to accomplish a shared end.⁸⁸ In this context, the shared end and purpose generate the spirit of the group as a coherent inorganic entity.

Gierke pointed out that these *Genossenschaften* were formed and acted in a way which made them socially real, as entities, prior to the state's recognition.⁸⁹ Gierke developed the real entity theory from his study of the German fellowship, appreciating that groups had legal personality not as legal fictions created by the power of the state. Rather, German fellowships were entities with a real social existence, and they featured legal personhood in and of themselves.⁹⁰ The state recognized fellowships' legal personhood, which preexisted its recognition by the law or the reigning sovereign powers. In other words, Gierke's response to Savigny was that inorganic entities, like *groups*, really intend, will, and act in and of themselves.⁹¹ The existence of entities like *groups* as agents is independent from the recognition of the state, which is essentially a sheer formality—rather, it is rooted in the distinct, preexisting coherent purpose of the very groups.⁹²

B. THE PILLARS OF GIERKE'S REAL ENTITY THEORY

Gierke's real entity theory stands on four pillars. First, legal capacity is severable from natural persons. Second, inorganic entities can bear rights and duties. Third, inorganic entities have a social existence, distinct and separate from the existence of all the individuals who have a stake in the entities.⁹³ Fourth, the state does not create an inorganic entity's legal personhood; rather, the state merely recognizes the existence of an inorganic entity and formalizes its existence through legal personhood.

First, legal personality is severable from natural persons.⁹⁴ Human beings who are able to will and act have agency. The state recognizes human beings' agency and ability to will and act. Accordingly, the state formalizes human beings' agency and ability to will and act with full-fledged legal capacity,

87. OTTO VON GIERKE, *COMMUNITY IN HISTORICAL PERSPECTIVE: A TRANSLATION OF SELECTION FROM DAS DEUTSCHE GENOSSENSCHAFTSRECHT* 4 (Antony Black ed., Mary Fischer trans., Cambridge Univ. Press, 1990) (1868).

88. Joel Friedlander, *Corporation and Kulturkampf: Time Culture as Illegal Fiction*, 29 CONN. L. REV. 31, 78–80 (1996).

89. GIERKE, *supra* note 23, at lviii.

90. GIERKE, *supra* note 68, at xxv–xxvi.

91. Petrin, *supra* note 49, at 6.

92. The debate on the agency of nonhuman entities is currently attracting the attention of scholars that investigate agency for artificial intelligence. See Gramitto Ricci, *supra* note 76, at 881–82.

93. Gramitto Ricci, *supra* note 8, at 48.

94. Koessler, *supra* note 48, at 447–48.

commonly referenced as legal personhood.⁹⁵ Natural persons' full-fledged legal capacity is contingent on state recognition or concession, which makes it severable.⁹⁶

Second, inorganic entities can bear rights and duties. An inorganic entity with its own legal significance, similar to an individual, can enter into any number of legal relationships.⁹⁷ That is, "in a vast number of cases you can make a legal statement about *x* and *y* which will hold good whether these symbols stand for two [individuals] or for two [inorganic legal entities], or for a[n inorganic legal entity] and [an individual]."⁹⁸ In other words, inorganic entities can have legal capacity, too.

Third, a nonhuman legal entity has a social existence that allows it to stand separate and distinct from the individuals who have stakes in it.⁹⁹ All who tout real entity theory point out that

"[w]hen," . . . "a body of twenty, or two thousand, or two hundred thousand [] bind themselves together to act in a particular way for some common purpose, they create a body which by no fiction of law, but by the very nature of things, differs from the individuals of whom it is constituted."¹⁰⁰

The inorganic entity has its own distinguishable existence and will, which is rooted in the coherent purpose of the entity.¹⁰¹ The socially real entity still relies on the actions of human beings to will and to act.¹⁰² Human beings make decisions on behalf of a nonhuman entity as its "organs."¹⁰³ Human beings are necessary to the functioning of legal entities that do not have inherent agency.¹⁰⁴ But the existence of the entity is shielded from the existence of human beings. An inorganic entity survives the death, departure, and turnover of the human beings who have a stake in it.

95. *Id.* at 448. For a discussion of the issues that asymmetric legal capacity for human beings raises, see generally Chatman, *supra* note 81 (problematizing the concept a fetus as a person to selectively attribute rights to the fetus). See also Gramitto Ricci, *supra* note 76, at 882 (describing the evolution of legal capacity for individuals through the myth of the sphynx); Leshem, *supra* note 39, at 999 (investigating the legal status of dead bodies).

96. Petrin, *supra* note 49, at 5. To be sure, in traditional Western legal systems rooted in Roman law, a number of rights and freedoms of individuals attain human beings for the sake of being human. These rights and freedoms are the *Ius Naturale* of individuals. See Gramitto Ricci, *supra* note 8, at 54–55.

97. Frederic William Maitland, *Moral Personality and Legal Personality*, 6 J. SOC'Y COMPAR. LEGIS. 192, 193 (1905).

98. *Id.*

99. GIERKE, *supra* note 68, at xxvi.

100. Maitland, *supra* note 97, at 193 (quoting A. V. Dicey, *The Combination Laws as Illustrating the Relation Between Law and Opinion in England During the Nineteenth Century*, 17 HARV. L. REV. 511, 513 (1904)).

101. GIERKE, *supra* note 23, at lxvi–vii.

102. Petrin, *supra* note 49, at 7. Different from artificial intelligence agents that can be dubbed artificial agents, nonhuman legal entities need human beings to make decisions, act, and operate in our legal and societal systems. Gramitto Ricci, *supra* note 76, at 892–93.

103. Petrin, *supra* note 49, at 6–7 (quoting OTTO VON GIERKE, *DIE GENOSSENSCHAFTSTHEORIE UND DIE DEUTSCHE RECHTSPRECHUNG* 603–10 (1887)).

104. Petrin, *supra* note 49. The same does not hold true for artificial agents, which can operate and exist without individuals. Gramitto Ricci, *supra* note 76, at 893.

Fourth, real entity theory asserts that the inorganic entity's status as a right-and-duty bearing unit is not created by the legal system of the state but only recognized by it. Gierke famously stated, "Legal group-personality is the shadow cast by real group-personality: it is the reflection of reality in the mirror of law."¹⁰⁵ Through law, the state attempts to "paint[], to the best of its power, a legal portrait of a real being."¹⁰⁶ The state's recognition of legal personality is the sheer legal formalization of the entity's capacity to bear rights and duties.

C. REAL ENTITY THEORY AND INDIVIDUAL FREEDOM

Gierke developed his real entity theory in service of his larger political project, the protection of freedom of association.¹⁰⁷ Gierke saw this project as necessary to mediate the socially essential, yet diametric, ideals of unity and freedom.¹⁰⁸ No society, he wrote, which had given up one for the sake of the other "has been able to withstand the tempests of history."¹⁰⁹ Gierke's aim was to avoid both absolute state sovereignty, which he viewed as the loss of freedom for total unity, and the extreme atomistic individualism of industrial capitalism, which he saw as freedom at unity's expense.¹¹⁰ The solution was to promote and protect the formation of groups in the space between the state and the individual.¹¹¹ These groups were crucial in order to promote unity without falling into despotism, and to promote freedom without falling into atomistic individualism.¹¹²

Real entity theory promotes individual freedom. To a large extent, the values that drove Gierke to protect groups through legal personhood also informed the paradigm shifts from the rights of stakeholders in a work of art to the rights and agency of the work of art itself. Gierke theorized real entity theory within an academic environment already comfortable with the concept of super-personal purpose-beings. The Historical School, within which Gierke engaged in his debate with Savigny's Romanists, adhered to the Romantic¹¹³ philosophical concept of the *Volk*.¹¹⁴ The *Volk* was the embodiment of the German people.¹¹⁵ From the *Volk* sprang a literal being separate from the actual Germans who were its constituents, the *Volksggeist*, which was the source of a shared German culture and, as an extension, law.¹¹⁶

105. GIERKE, *supra* note 23, at lxvii.

106. *Id.*

107. Harris, *supra* note 68, at 1436–37.

108. GIERKE, *supra* note 87, at 2.

109. *Id.* at 3.

110. Harris, *supra* note 68, at 1437.

111. *Id.*

112. *Id.*

113. For a more in-depth explanation of German Romanticism, see, for example GIERKE, *supra* note 23, at 211.

114. *Id.* at li.

115. Dubber, *supra* note 72, at 229 n.9.

116. Rodes, *supra* note 70, at 166.

Gierke's innovation within *Volksgeist* theory was the extension of the entity model from the entirety of society to the smaller groups or institutions that feature a coherent purpose.¹¹⁷ Recognizing legal personhood for a work of art is functionally identical: Rather than originating from the coherent purpose of a group of people, legal personhood for a work of art generates from the coherent purpose that the work of art carries as it links an image to the gaze. This theoretical conceptualization of legal personhood for artwork is corroborated by a critical functional consideration: Recognizing rights and legal capacity for artwork means protecting the coherent purpose of the piece of art forever. This benefits humankind and future generations alike.

III. MAKING THE INVISIBLE COUNT

Legal personhood cannot be touched or seen. It is an abstract concept with consequential legal and organizational ramifications. Traditionally, legal personhood is obtained or recognized through rituals that can be more or less structured and formal.¹¹⁸ Real entity theory requires that we embrace the existence of a coherent purpose that inhabits certain inorganic entities like an invisible *spirit*.¹¹⁹ Other theories consider rituals as the necessary processes through which the state creates and grants legal personhood.¹²⁰ Rituals can also be explained as figurative processes that help the everyday individual appreciate and understand invisible or abstract concepts such as private property, legal standing,¹²¹ asset partitioning, and legal capacity for inorganic legal entities.

Rituals have been used to give birth to inorganic legal entities, since the creation of the first corporation in the Western tradition, the City of Rome.¹²² A

117. GIERKE, *supra* note 23, at lxvi.

118. Davis, *supra* note 19, at 46 (describing Hindus' establishment rite); David Millon, *Theories of the Corporation*, 1990 DUKE L.J. 201, 206 (1990).

119. Max Radin, *Book Reviews*, 35 COLUM. L. REV. 469, 469 (1935) (reviewing GIERKE, *supra* note 23).

120. Reuven S. Avi-Yonah summarizes three of the main theories of the corporate form, as "the aggregate theory, which views the corporation as an aggregate of its members or shareholders; the artificial entity theory, which views the corporation as a creature of the state; and the real entity theory, which views the corporation as neither the sum of its owners nor an extension of the state, but as a separate entity controlled by its managers." Avi-Yonah, *supra* note 79. The taxonomy should probably be completed by adding the so-called concession theory, according to which legal personhood is created and provided by the state which provides authority to the legal person. See Jonathan Hardman, *The Making of Corporate Legal Concession Theory*, 44 OXFORD J. LEGAL STUD. 181, 184 (2024).

121. On the reasons for recognizing standing to nonhuman entities, see generally Christopher D. Stone, *Should Trees Have Standing?—Toward Legal Rights for Natural Objects*, 45 S. CAL. L. REV. 405 (1972). For a critique of contractarian theories of corporate personhood and more generally of the entity status, see generally Margaret M. Blair, *Corporate Personhood and the Corporate Persona*, 2013 U. ILL. L. REV. 785. For a comprehensive account of the theoretical underpinnings of legal personhood, see generally Asaf Raz, *Taking Personhood Seriously*, 2023 COLUM. BUS. L. REV. 729 (2023).

122. NUMA DENIS FUSTEL DE COULANGES, *THE ANCIENT CITY: A STUDY ON THE RELIGION, LAWS, AND INSTITUTIONS OF GREECE AND ROME* 60 (Willard Small trans., Boston, Lee & Shepard 4th ed. 1882) (1864); Anello et al., *supra* note 16, at 423. See generally Sergio Alberto Gramitto Ricci & Christina M. Sautter, *The Incorporation Ritual*, in *THE NATURE OF THE CORPORATION* (Jonathan Hardman, Billie Lythberg, Christoph Van der Elst & Susan Watson eds.) (forthcoming) (on file with author) (discussing the role of rituals in the context of the development of corporations).

ritual can be understood as demiurgic, when the ritual gives birth to a legal person. A ritual can be understood as explanatory, when the ritual facilitates the comprehension of legal personhood, which preexists the ritual, but it becomes recognizable after the ritual.¹²³ Legal personhood has clear legal, economic, social, and political ramifications, but it is essentially invisible. This requires anyone who deals with legal persons to conceptualize a relatively complex paradigm.

Sometimes rituals are also used to justify different treatment that people or things receive in light of their status. For example, a king is a person but also a sovereign.¹²⁴ A Hindu idol exposed to the public and consecrated is not just an artistic or craftsmanship expression but is also the vessel for a divinity that can own its own assets.¹²⁵ Consecration is a ritual.

A. RITUALS AND LEGAL PERSONHOOD

Rituals serve a variety of purposes, are utilized in a multitude of ways, and are found commonly within every culture. Rituals have a demiurgic power to create intangible things in our society as well as in our minds.¹²⁶ The ceremony of marriage is a ritual with significant legal ramifications.¹²⁷ The entity created by marriage brings along a new legal paradigm that includes sharing property, different tax responsibilities, along other rights and obligations.¹²⁸ There is nothing intrinsically different about the spouses before and after the wedding. But following the exchanging of rings and ceremonial actions, the two persons are bonded in a union that has legal and social ramifications. The marital ritual gives birth to an entity with a coherent purpose. This status brings along rights and obligations.

Naturalization ceremonies are another example of rituals that affect rights and duties. Naturalization ceremonies occur before a federal judge.¹²⁹ Often

123. For John Dewey, Gierke and Maitland's "discussion depends on an assumption that there are properties which any unit must antecedently and inherently have in order to be a right-and-duty-bearing unit." John Dewey, *The Historic Background of Corporate Legal Personality*, 35 YALE L.J. 655, 658 (1926). The legal realism wave witnessed some critique of the legal personhood paradigm. Dewey and Felix Cohen engaged in iconic analyses of legal personality and its theoretical underpinnings. *Id.* at 663-669; Felix S. Cohen, *Transcendental Nonsense and the Functional Approach*, 35 COLUM. L. REV. 809, 809-14 (1935).

124. ERNST H. KANTOROWICZ, *THE KING'S TWO BODIES: A STUDY IN MEDIEVAL POLITICAL THEOLOGY* 9 (7th prtg. 1997) (1957).

125. Duff, *supra* note 16, at 42-43.

126. Rituals are essential to make complex concepts available to individuals. Possibly the most iconic ritual in the Western tradition is the Eucharist in Christianity. Without engaging in a theological discussion of the Sacrament, and with the only purpose of discussing key concepts such as the *image* and *incorporation*, it useful to quote the insightful words of Marie-José Mondzain on the Eucharist. Mondzain points out how "[i]n this ritual, what is proposed not to the eyes but to the mouth is real substance of God, not his image." Mondzain, *supra* note 21, at 29.

127. Nancy Cott, *For and Against Marriage: A Revision*, 102 MICH. L. REV. 129, 146-152 (2003) (discussing how marital rights affect many different areas of the law).

128. See Carolyn J. Frantz & Hanoeh Dagan, *Properties of Marriage*, 104 COLUM. L. REV. 75, 76 (2004); Theodore P. Seto, *The Role of Marriage in the Internal Revenue Code*, 27 FLA. TAX REV. 348, 350-51 (2023).

129. See Sofya Aptekar, *Celebrating New Citizens, Defining the Nation*, 15 CONTEXTS 46, 49 (2016).

prominent individuals such as local leaders, politicians, religious persons, or other notables stand and give speeches on the importance of naturalization before the group of people who desire to become “newly created” citizens.¹³⁰ As a result of the ceremony, newly naturalized citizens receive all the legal rights and privileges afforded under the Constitution.¹³¹

Through a naturalization ceremony, people change in the eyes of the law.¹³² In the United States, at the end of the Oath of Allegiance at naturalization ceremonies, the newly created citizen says, “So help me God.” This suggests that the demiurgic and transformative power of naturalization relies on divine, spiritual, sovereign authority.¹³³

Rituals can be transformative.¹³⁴ Repeated or set actions and symbols are essential in formal rituals.¹³⁵ During a naturalization ceremony, the critical ritual is the oath.¹³⁶ The symbol of a hand to the chest and the action of speaking an oath in front of a federal judge gives birth to citizenship. Similarly, in a marital ceremony, the exchanging of rings along with other formal actions form the marital entity.¹³⁷ Although not all marriages are religious and naturalization is a temporal ritual, both ceremonies convey the sense that the transformative power is rooted in a superior source of authority. Symbols, procedures, and tools bridge the gap between human beings and this superior source of authority.

Over the centuries, religions have played a critical role in facilitating the human brain’s access to complex concepts and paradigms. Catholic baptisms and funerals are two iconic gatekeeping, transformative rituals. For a baptism, family and friends gather in happiness: Holy water, the authority of the minister, and a sacred procedure have a divine power with transformative effects. For a funeral, family and friends gather in sorrow in a ritual that marks an essential

130. *Id.*

131. *Naturalization Ceremonies*, U.S. COURTS, <https://www.uscourts.gov/about-federal-courts/educational-resources/annual-observances/naturalization-ceremonies> (last visited Mar. 18, 2025). As a commentary note: One cannot naturalize themselves or confer marriage upon themselves. These changes in status need to be accompanied by rituals to grant new citizens their powers in the eyes of society and the law.

132. Jamin B. Raskin, *Legal Aliens, Local Citizens: The Historical, Constitutional and Theoretical Meanings of Alien Suffrage*, 141 U. PA. L. REV. 1391, 1395–1396 (1993).

133. Matthew Miyamoto, *Political Legacy: John Locke and the American Government* (Jan. 2016) (B.S. thesis, University of Oregon) (on file with Scholars’ Bank, University of Oregon). The origins and nature of authority matter in rituals. CATHERINE BELL, *RITUAL THEORY, RITUAL PRACTICE* 218 (1992) (emphasizing that “the social scheme of the hegemonic order in terms of an individual redemptions, may be stronger because these acts are the very definitions of power, personhood, and the capacity to act”).

134. BELL, *supra* note 133, at 195.

135. Arif Hasan, *The Anthropology of Rituals and Symbolic Practices: Insights from Social Science Scholarship*, 2 PHYSICAL EDUC., HEALTH & SOC. SCIS. 10, 10–13 (2023) (discussing how symbols and ritual steps help people articulate their collective identity, reinforce social norms, and maintain social hierarchies).

136. BELL, *supra* note 133, at 94 (discussing how rituals can produce social order, differentiate roles, and embed authority into structured performances).

137. For example, for many cultures marriages are sanctioned by Gods and the structured performance of marriage is given power by God. Similarly, although there is separation of church and state, the oath of allegiance accompanies the words “So help me God.” Providing inference there is something greater that gives us purpose. “[T]he social scheme of the hegemonic order in terms of an individual redemptions, may be stronger because these acts are the very definitions of power, personhood, and the capacity to act.” BELL, *supra* note 133, at 218.

transition of one's soul, again relying on the power of the minister, holy water, and a divinely set procedure exert.¹³⁸

B. FROM HINDU IDOLS TO A LEGAL PERSONHOOD FOR ARTWORK PARADIGM

God(s) and deities are widely recognized as having legal capacity across different traditions and religions.¹³⁹ Ancient gods could own assets and have legal capacity as a consequence of their divine existence.¹⁴⁰ The same is true in Catholicism with respect to saints.¹⁴¹ Religions have played a key role in shaping the theory of legal personhood. A key contribution of religion lies in the theorization of legal capacity through the essence of deities, saints, and idols.¹⁴² Historically, rituals have been used by religious and temporal powers to justify and conceptualize intangible ideas such as private property.¹⁴³

Secular laws have historically relied on the normative ramifications of religious laws and drawn inspiration as well. The model that governs legal personhood for Hindu idols in the religious realm can be borrowed to generalize legal personhood for works of art, regardless of their sacredness, if they feature coherent purposes. Hindu idols come to life as legal persons through elaborate rituals of establishment.¹⁴⁴ A Hindu idol's ritual of establishment is

an instrumental and efficacious ritual, bringing about an actual transformation in the character of the object, rather than simply a symbolic ratification or display of divinity. To discuss this animation of images, medieval Hindu texts often employ the analogy of a transmigrating soul entering a human body. . . . Divinity in the form of a soul . . . animating spirit . . . life-breath . . . consciousness . . . or divine energy . . . must enter this body to bring it to life, to infuse it with divine presence, just as a soul must enter a human body to instill life into it.¹⁴⁵

Legal personhood for Hindu idols has significant ramifications both in the religious realm and in society. Remarkably, establishing legal personhood for

138. John Paul Sonnen, *Understanding the Spiritual Power of Holy Water*, TAN DIRECTION, <https://tandirection.com/pursuit-of-perfection/understanding-the-spiritual-power-of-holy-water/> (last visited June 1, 2025)

139. Anello et al., *supra* note 16, at 415.

140. The Romans attributed property to a family or to a city—rather than to individuals—by assigning it to the family's or the city's gods. As sempiternal beings, Roman gods could hold this property forever. *Id.* at 422.

141. *Id.* at 453.

142. *Id.* at 425.

143. There are religious roots even in the earliest form of asset ownership. See DE COULANGES, *supra* note 118, at 76; see also Anello et al., *supra* note 16, at 424. God was the “primitive proprietor, by right of creation, [and] delegates to man his ownership.” DE COULANGES, *supra* note 118, at 85. Divinities have legal capacities that have allowed individuals to subtract assets from human beings' ownership and commit those assets for a purpose or a cause. Ultimately, this allowed human beings to achieve asset partitioning for assets that were committed to a given religious or social purpose for eternity. This concept was so inherent to the system that to say an entity had assets, you would say that Saints Peter and Paul owned the assets, making their legal capacity an instrumental foundation for the quasi-corporate form. Anello et al., *supra* note 16, at 453.

144. Davis, *supra* note 19, at 44.

145. *Id.* at 46–47.

Hindu idols requires a religious ritual that extends its significance to the secular realm. This is a consideration that facilitates a more general reflection. The religious ritual of establishing legal personhood for Hindu idols can be transplanted to the secular realm. Similar to how the ritual of a religious marriage is transplanted to the secular realm, originating civil marriages, the legal personhood paradigm can be extended from consecrated idols to all works of art with a coherent purpose. A work of art that is created to exist with a coherent purpose satisfies a critical requirement to feature legal personhood. Moreover, the creative act of giving birth to art can amount to an implicit ritual.

The creation of art is a ritual within itself. Creation provides a frame to understand the world and make sense of the human experience.¹⁴⁶ Although art has many purposes, one of its primary designs is to help understand the complexity of life.¹⁴⁷ Art creates a story, an image, and symbolism that provokes one's thoughts to make sense of an existential question presented before them, or show the spectator something that they may wish to ignore.¹⁴⁸

Art and rituals have a close kinship. Consider the *Gudea* and *Ur-Ningirsu* statues from ancient Samaria.¹⁴⁹ These statues were physically presented as "protectors" of gateways and were accompanied by a text describing their creation.¹⁵⁰ The text described the statues as *born*.¹⁵¹ The word choice suggests that the visages had a real existence.¹⁵² Through the ritual of their creation, the visages were truly born.¹⁵³

C. THE PERSONHOOD OF NATURAL FEATURES ROOTED IN THE MAORI COSMOLOGY

The divine and spiritual essence of natural features in traditions and religions justifies recognizing legal personhood for natural features, in consideration of their inner coherence.¹⁵⁴ New Zealand became the first country to recognize a river's legal rights by qualifying the Te Awa Tupua river as a legal person.¹⁵⁵ The Kiwi government recognized the Maori cosmological tradition according to which the river is an ancestor of the local Maori tribes, the

146. Stephen Crites, *The Demiurgic Imagination in Art and Experience*, 8 BOUNDARY 2 295, 305–306 (1979).

147. *Id.* at 306.

148. *Id.* The framing of art creates "the resources for grasping the terrible rather than evading it . . ." *Id.* at 306.

149. Irene J. Winter, *Idols of the King: Royal Images as Recipients of Ritual Action in Ancient Mesopotamia*, 6 J. RITUAL STUD. 13, 21 (1992).

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

154. See Tony Angelo & Elisabeth Perham, *Let Te Reo Speak: Granting Legal Personality to Te Reo Māori*, 46 VICTORIA U. WELLINGTON L. REV. 1081, 1097–98 (2015).

155. Ashley Westerman, *Should Rivers Have Same Legal Rights as Humans? A Growing Number of Voices Say Yes*, NPR (Aug. 3, 2019, 8:02 AM ET), <https://www.npr.org/2019/08/03/740604142/should-rivers-have-same-legal-rights-as-humans-a-growing-number-of-voices-say-ye>.

Whanganui.¹⁵⁶ According to the Maori tradition, indigenous gods and spirits inhabit natural features.¹⁵⁷

Gravel extraction, the production of hydroelectric power using the Te Awa Tupua river, and other industrial activities violated the spirit of the river, also preventing the tribe to discharge its duties as the guardian of the river.¹⁵⁸ New Zealand appreciated how the activities that violated the Maori cosmology also violated the Whanganui tribes.¹⁵⁹ To allow the river to exert its rights in its own name, New Zealand established that Te Awa Tupua river has legal personhood, holds rights in its own name, and can appoint two guardians who act on its behalf.¹⁶⁰

The legal personhood of natural features has both a spiritual and a pragmatic relevance. It is a policy decision rooted in a spiritual and religious understanding of nature that relies on a sophisticated organizational and legal technology—legal personhood—to provide effective protection to nature.¹⁶¹ The same paradigm can provide protection to other universally important genres of things and beings.

On the heels of legal personhood for natural features in New Zealand, Tony Angelo and Elisabeth Perham advocated for legal personhood for the Maori language—which, different from natural features, lacks of a physical dimension.¹⁶² In the Maori tradition, the Maori language is a living being.¹⁶³ Angelo and Perham argue that legal personhood would protect the religious, spiritual, and societal value of the Maori language.¹⁶⁴ Although Angelo and Perham do not formally conceptualize legal personhood for the Maori language as a result of the application of real entity theory, they emphasize how the Maori language is a living being.¹⁶⁵ Recognizing legal personhood for the Maori

156. See Catherine J. Iorns Magallanes, *Nature as an Ancestor: Two Examples of Legal Personality for Nature in New Zealand*, VERTIGO—LA REVUE ÉLECTRONIQUE EN SCIENCES DE L'ENVIRONNEMENT (Sept. 22, 2015), <https://doi.org/10.4000/vertigo.16199> (explaining how New Zealand recognizes the Maori cosmology in law).

157. *Id.* (describing the inseparable connection between the Whanganui Iwi tribe and the Whanganui River).

158. *Id.* (“These activities would be considered breaches of normal property undertakings within Western, liberal democracies; for the Whanganui Maori it also went against their cosmology by violating the various spirits of the river as well as of the tribes’ duties as guardians.”).

159. *Id.*

160. Angelo & Perham, *supra* note 154, at 1097.

161. Magallanes, *supra* note 156 (“It reflects both the more spiritual approach to better respect for nature as well as a practical approach utilising current legal conceptions of rights and interests in order to achieve such better protection.”). On the concept of legal personhood as technology, see Gramitto Ricci, *supra* note 8, at 47 (“Legal capacity for nonhuman legal entities could be considered one of the most sophisticated legal technologies of all time.”).

162. Angelo & Perham, *supra* note 154, at 1102.

163. *Id.* at 1082.

164. *Id.*; Paolo Davide Farah and Marek Prityi, *When John Locke Meets Lao Tzu: The Relationship between Intellectual Property, Biodiversity and Indigenous Knowledge and the Implications for Food Security*, 33 DUKE ENVTL. L. & POL'Y F. 77, 78–80 (2024).

165. Angelo & Perham, *supra* note 154, at 1082.

language would be justified by the coherent purpose of the Maori language as a living being.

More generally, Joseph Sax suggested that the reasons for protecting natural treasures lie not only in the natural features themselves but also in what they contribute to our understanding of ourselves.¹⁶⁶ Sax also canvassed the question of public rights in cultural artifacts.¹⁶⁷ There is a societal interest in protecting the message sent by the object receiving legal personhood. That message, amounting to a coherent purpose, could be religious, cultural, natural, or ancestral. When something provides a meaningful message, establishing commerce with society, it needs protection. Recognizing legal personhood of natural features as well as of artwork protects natural, cultural, and artistic heritage, in the interest of humanity.

IV. THE LEGAL PERSONHOOD FOR ARTWORK PARADIGM

The singularity of a piece of art, which derives from its coherent purpose, is a compelling reason to apply Gierke's real entity theory to art. Art is not a group; it is not a collective entity. But just like how the coherent purpose that justifies recognition of legal personhood for groups does not originate from the members of the group as individuals, but *in* the group as an entity,¹⁶⁸ the physical dimension of a piece of art is only the vessel of its coherent purpose. The coherent purpose of a piece of art is intertwined with its vessel but separate, just like cotton threads and wool threads are separate as they are woven together.¹⁶⁹

There is more. While the process that creates the coherent purpose of a group is undetermined, the process that gives birth to the coherent purpose of work of art is tied to the creative processes as demiurgic aesthesis. Not only does our perception allow us to recognize a coherent purpose in work of art, but we can also recognize the ritual that gives birth to the coherent purpose of a work of art. Creative expressions capture something authentic and fundamental to the human experience and give it a physical dimension. Shielding a work of art from the vagaries of absolute ownership allows future generations to access the purpose of creative expressions, in its integrity.

166. JOSEPH L. SAX, MOUNTAINS WITHOUT HANDRAILS, REFLECTIONS ON THE NATIONAL PARKS 103 (1980).

167. JOSEPH L. SAX, PLAYING DARTS WITH A REMBRANDT: PUBLIC AND PRIVATE RIGHTS IN CULTURAL TREASURES 1 (1999).

168. As one of Gierke's translators pointed out, it is one thing to argue for the cause of freedom of association, but "it is another thing—or at any rate it is a further thing, and an added consideration—to plead that [groups] are beings or minds or real persons." GIERKE, *supra* note 23, at lx.

169. Mondzain theorized how *imagery*, *image*, and *gaze* deliver the spirit of work of art to an individual or a group. Mondzain, *supra* note 21, at 30.

A. THE ADVANTAGES OF LEGAL PERSONHOOD FOR ARTWORK

Legal personhood for artwork provides different, and better, protection for art.¹⁷⁰ Some of the reasons can be summarized as follows.

First, legal personhood for artwork prioritizes the work of art itself rather than focusing on the interests of its stakeholders, such as the artist, the owner, and the public.¹⁷¹ Even laws that prohibit the transfer of moral rights fall short of protecting a work of art from the artist.¹⁷² While the interests of stakeholders might conflict, the interest of the work of art is coherent by design. Any fiduciaries who make decisions and act on behalf of the work of art would account for their actions within a fiduciary duties framework that requires that fiduciaries put the interest of the work of art before their own and discharge their duties carefully. This is a significant difference with the current legal framework, which allows stakeholders, such as the owner or the artist, to pursue their own interests to the detriment of the work of art. Legal personhood protects the work of art from risks associated with stakeholders' adverse interests. Fiduciary duties that govern the conduct of those making decisions and acting on behalf of a work of art fill contractual gaps. They are the foundations of a model that guarantees a degree of beneficial discretion. This model allows fiduciaries to protect the work of art and its original meaning while dealing with ever-changing *zeitgeist*, opportunities, risks, and artistic trends.

Second, a work of art survives the death of the artist and of human stakeholders, including transient human owners.¹⁷³ The legal capacity of a work of art does not expire with the existence of the artist. It does not subject a work of art to the vulnerability that attends transferring rights to heirs who may lack knowledge or commitment to the original purpose of the work of art.¹⁷⁴ Rather, legal personhood makes a work of art sempiternal and facilitates the protection of its coherent purpose.

Third, legal personhood for artwork provides protection to art, artistic heritage, cultural heritage, and traditions that are left out of the current framework of legal protection. Indigenous and tribal art, for instance, does not

170. For an understanding of moral rights, see Kwall, *supra* note 67, at 1–2, Hansmann & Santilli, *supra* note 13, at 96, Cotter, *supra* note 67, Rigamonti, *supra* note 67, and Damich, *supra* note 67, at 3.

171. It is necessary that the agents of artwork are not themselves driven by specific stakeholder interests. See Duff, *supra* note 16, at 42–43.

172. Scott A. Cromar, Copyright & Moral Rights in the U.S. and France 15 (May 1, 2011) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1898326 (explaining that all of an author's rights in their own work disappear upon assignment of a copyright, but under French law, no such thing would be possible because moral rights are not assignable); see also Russell J. DaSilva, *Droit Moral and the Amoral Copyright: A Comparison of Artists' Rights in France and the United States*, 28 BULL. COPYRIGHT SOC'Y 1, 3 (1980) ("While United States copyright seeks to protect primarily the author's pecuniary and exploitative interests, French law purports to protect the author's intellectual and moral interests, as well.").

173. Legal persons are sempiternal, when they are created, they can exist forever. And so is art. See Anello et al., *supra* note 16, at 415, 422; KANTOROWICZ, *supra* note 124, at 386–87.

174. When heirs are also agents for the legal person, the heirs' interests can conflict with the purpose and will of artwork. Duff, *supra* note 16, at 42–43.

receive appropriate protection under the current intellectual property archetype.¹⁷⁵ Legal personhood would protect Indigenous and tribal art even when it is the result of collective, intergenerational, tribal efforts, instead of being the result of the work of identifiable artists. Appropriate protection for Indigenous and tribal art is essential for intergenerational equity and just retribution of tribes' artistic contribution to society.

B. LEGAL PERSONHOOD FOR ARTWORK FILLS POLICY GAPS

Indigenous groups represent themselves and express their culture through various art forms including dance, music, medicinal plants, and arts and crafts.¹⁷⁶ The various art forms embodied within Indigenous and tribal culture can be categorized as traditional knowledge and traditional cultural expression.¹⁷⁷ Both preserve the collective memory of Indigenous people.¹⁷⁸ Indigenous groups typically do not wish to commercialize their sacred traditional knowledge or cultural expression.¹⁷⁹ Rather, the goal of Indigenous and tribal art is to foster a sense of community and tradition.¹⁸⁰ For example, the Zia Pueblo are well known for their tribal sun symbol, consisting of four sets of four lines, arranged in “t” shape and forming a circle.¹⁸¹ The Zia Pueblo consider the number four to be a sacred number representing the Circle of Life, consisting of four winds, four seasons, four directions, and four sacred obligations, with the circle uniting the four vital elements together.¹⁸² Traditional cultural expressions share common characteristics: they are passed down orally or through imitation, reflect the

175. Emilie (Smith) Rohde, *A Questionable Categorization—Trademark's Struggle to Protect Tribal Cultural Property*, 28 MARQ. INTELL. PROP. & INNOVATION L. REV. 33, 36 (2024); Trey V. Perez, *Native American Intellectual Property Protection: Altering Federal IP Law and the Indian Arts and Crafts Act to Aid Tribal Economic Development*, 11 AM. INDIAN L.J. 1, 5 (2023); Nicole Martin, *Indigenous Rights: An Analysis of Intellectual Property Protections*, 13 AM. U. INTELL. PROP. BRIEF 33, 33 (2021); Chante Westmoreland, *An Analysis of the Lack of Protection for Intangible Tribal Property in the Digital Age*, 106 CALIF. L. REV. 959, 962 (2018).

176. M.K. Mrudula, *An Analytical Study of Tribal Dances and the Role of Intellectual Property Laws*, 4 INDIAN J.L. & LEGAL RSCH. 1, 2 (2022).

177. Murphy Yanbing Chen, *Safeguarding Traditional Knowledge and Traditional Cultural Expression Through Intellectual Property Systems*, ITSARTLAW (Feb. 1, 2023), <https://itsartlaw.org/2023/02/01/safeguarding-traditional-knowledge-and-traditional-cultural-expression-through-intellectual-property-systems/> (citing to Art. 1 of the Intergovernmental Committee on Intellectual Property and Genetic Resources which defines TK as “knowledge with know-how, practices, skills, innovations and cultural expression, including biological diversity, health and traditional medicine, agricultural products, genetic resources, and plant breeding to folklore, textile and more” and defines TCE as “various dynamic forms which are created, expressed, or manifested in traditional cultures and are integral to the collective cultural and social identities of the indigenous local communities and other beneficiaries”); see also Paolo Davide Farah and Marek Prityi, *supra* note 164, at 971, at 89–94.

178. Chen, *supra* note 177.

179. Westmoreland, *supra* note 175, at 971.

180. Rohde, *supra* note 175, at 34. Paolo Davide Farah and Riccardo Tremolada, *Conflict Between Intellectual Property Rights and Human Rights: A Case Study on Intangible Cultural Heritage*, 94 OR. L. REV. 125, 128–36 (2015).

181. Rohde, *supra* note 175, at 34.

182. *Id.*

culture and social identity of the community, encompass elements of community heritage, are created collectively, and evolve over time.¹⁸³

Tribes have a unique relationship with their cultural property, which is central to their sense of belonging; however, this relationship lacks a method of legal protection that does not merely seek to commercialize or individualize ownership.¹⁸⁴ While the Western paradigm of protection is focused on the economic benefit of inventors, the Indigenous and tribal focus is largely on maintaining the cultural integrity of the group.¹⁸⁵ Cultural property, often thought of as any property of importance to the cultural heritage of a people, differs from the Western understanding of intellectual property.¹⁸⁶

The various intellectual property protections offered under the United States legal system are inadequate in protecting traditional knowledge and traditional cultural expression. The current legal framework responds to a Western paradigm that does not offer effective solutions to shield traditions and culture from exploitation. Indigenous and tribal culture as well as Indigenous and tribal art need a protective framework that treats them as living beings with inherent dignity, not as commodifiable goods.

Federal copyright law presents an issue for Native American tribes as many forms of traditional cultural expression within the tribal culture are presented orally and fail to meet the requirement of being fixed in a tangible medium, offering no recourse for appropriation of tribal culture that is intangible.¹⁸⁷ Further, traditional knowledge and traditional cultural expression are not original, per se, as they are commonly passed down from generation to generation, which precludes them from being protected under copyright law.¹⁸⁸

Patent protection provides exclusive rights for inventors who can establish that their invention boasts novelty, utility and non-obviousness.¹⁸⁹ However, the costs associated with filing for a patent disproportionately disadvantage underprivileged socio-economic segments of the American population, and the United States Patent and Trademark Office grants protection to the first person to file. As a result, Indigenous and Native American tribal groups with higher rates of poverty and economic hardship are effectively excluded from patent protection, in light of the economic barrier to entry.¹⁹⁰

Although available, trademark law provides only a narrow and specific protection to tribal and Indigenous work.¹⁹¹ Moreover, Native American groups may struggle to meet the ‘use in commerce’ requirement, as their work is

183. Mrudula, *supra* note 176, at 2.

184. Westmoreland, *supra* note 175, at 971.

185. *Id.* at 970.

186. Rohde, *supra* note 175, at 34.

187. Perez, *supra* note 175, at 11–13.

188. Chen, *supra* note 177.

189. *Id.*

190. Perez, *supra* note 175, at 4.

191. Westmoreland, *supra* note 175, at 975.

typically not created for commercial purposes.¹⁹² Further, Indigenous and Native American artists seeking trademark protection could find proving that they have suffered actual damage difficult.¹⁹³ Additionally, federal trademark law does not satisfyingly specify whether traditional cultural expressions can be registered; and registration for traditional cultural expression can be refused for lack of “distinctiveness.”¹⁹⁴

The current policy framework fails to effectively protect Indigenous traditional knowledge and traditional cultural expression, with negative ramifications on the Indigenous and tribal identities. Legal personhood provides an innovative legal technology that would shield traditional knowledge and traditional cultural expression from misappropriation and misuse.

Legal personhood for artwork can also be extended to art collections that have a coherent spirit, goal, and role in society. Famously, collector Albert Barnes insisted that his collection maintained a philanthropic purpose.¹⁹⁵ He believed his collection was for educational benefit, not merely exhibitory amusement.¹⁹⁶ The relationship of the pieces in the collection to each other, in effect, created a broader meaning than each piece by itself. However, the Barnes’s collection was moved and commercialized after his passing, and a hefty legal battle over donative intent ensued.¹⁹⁷ The collection’s original purpose was abandoned. In fact, the collection is now used for a purpose in sharp contrast to Barnes’s express desires.¹⁹⁸ If the collection had legal personhood, the future use of the collection had to be decided by the fiduciary or fiduciaries of the collection, in consideration of the intended purpose of the collection when the collection was formed. Once a collection is created with a purpose, the coherent existence of the collection deserves protection from the transient preferences of its owners.

C. DELEGATED DECISION-MAKING

Legal personhood for artwork necessitates fiduciaries to operate.¹⁹⁹ It also requires a fiduciary relationship between the work of art and the decision-makers tasked to shape the will and to act on behalf of the works of art. A fiduciary

192. *Id.*

193. Nicole Martin, *Indigenous Rights: An Analysis of Intellectual Property Protections*, 13 AM. U. INTELL. PROP. BRIEF 33, 38 (2021).

194. Richard Awopetu, *In Defense of Culture: Protecting Traditional Cultural Expressions in Intellectual Property*, 69 EMORY L.J. 745, 762 (2020).

195. Brandon Millett, *Wisdom and Warnings: How the Controversial Move of the Barnes Art Collection Violated Donor Intent*, PHILANTHROPY ROUNDTABLE (Dec. 13, 2022), <https://www.philanthropyroundtable.org/wisdom-and-warnings-barnes-art-collection-violated-donor-intent> (“He was emphatic. He gave the collection to be used for education. Not a public gallery.”).

196. *Id.* (“Barnes explicitly indicated he viewed his art collection as an educational tool, not merely an exhibit.”).

197. *See id.* (explaining how power brokers wanted to exploit the collection as a financial asset and after winning the legal battle they moved the collection to the center of the city and charged entry).

198. *Id.* (“[I]t’s very clear, the last thing he wanted to happen to his art is exactly what happened.”).

199. Gramitto Ricci, *supra* note 76, at 893 (discussing how legal persons rely on human agents to operate).

framework is necessary, as the individuals tasked with making decisions and acting on behalf of a work of art ought to pursue the coherent purpose of the work of art with loyalty, care, and obedience to the law.

A fiduciary framework from which legal personhood for artwork can borrow essential elements is the law of trusts. A trust can be understood as “a fiduciary relationship with respect to property, arising from a manifestation of intention to create that relationship and subjecting the person who holds title to the property to duties to deal with it for the benefit of charity or for one or more persons, at least one of whom is not the sole trustee.”²⁰⁰ A trust is also an inorganic entity with legal capacity.²⁰¹ Trustees owe the beneficiary—which, by analogy, would be the work of art—a variety of fiduciary duties. In addition to a duty of care,²⁰² trustees must discharge an array of other duties,²⁰³ including loyalty, prudence, impartiality, obedience of the terms of the trust, and obedience of the law.²⁰⁴

Fiduciaries are required to place the interests of their principal before their own interests and to discharge appropriate diligence in making decisions and acting on behalf of the beneficiary, which would be the work of art. It is on these grounds that legal personhood for artwork outclasses the protection for art provided by the current intellectual property framework. Legal personhood for artwork, accompanied by fiduciarily delegated decision-making, prioritizes the interests of a work of art over the interests of any stakeholders. This shifts the focus of protection from the interests of the stakeholders to the interests of a work of art.

The architecture of the decision-making model governing legal personhood for a work of art could vary. This Article sets the conversation in motion to shift the paradigm from the current framework of rights *on* a work of art to a framework of rights and legal capacity *of* the work of art. Discussing details of the new framework would deviate the focus from the why to the how, which would be detrimental to the argument. Nonetheless, a few preliminary considerations help the reader appreciate the feasibility of the paradigm shift.

A relatively simple structure would consist in appointing an individual or a collective body as the fiduciary of the work of art. The fiduciary of the work of art could be an individual who makes decisions and acts on behalf of the work of art. Hindu idols, for instance, operate through an individual called a Shebait.²⁰⁵ A Shebait is a human being who acts on behalf of the idol, protecting

200. Restatement (Third) of Trusts § 2 (Am. L. Inst. 2003).

201. *Id.* cmt. a.

202. Restatement (Third) of Trusts § 81(2) (Am. L. Inst. 2003).

203. “A breach of trust is a failure by the trustee to comply with any duty that the trustee owes, as trustee, to the beneficiaries, or to further the charitable purpose, of the trust.” Restatement (Third) of Trusts § 93 (Am. L. Inst. 2003).

204. Restatement (Third) of Trusts §§ 76–79 (Am. L. Inst. 2003).

205. See Duff, *supra* note 16, at 43–46.

it, and fulfilling its legal duties.²⁰⁶ Any property gifted or offered in ritual belongs to the idol, not to the Shebait.²⁰⁷

Similar to the Shebait of Hindu idols, one individual would be responsible for acting and making decisions on behalf of the work of art. There would be a clear distinction between the work of art as an entity and the person selected as fiduciary, who would be obligated to obey their fiduciary duties. A model that relies on a single fiduciary comes with advantages, mostly related to procedure and cost efficiency. But it would lack a monitoring structure to constrain opportunism, self-dealing, and decisions that conflict with the purpose of the piece of art.²⁰⁸

Alternatively, a collective decision-making body—similar to a board of directors or trustees—could serve as a fiduciary; in this case, all the members of the collective body would owe fiduciary duties to the work of art, but the collective body itself, not the members on an individual basis, would be the fiduciary. The collective decision-making body could be a board or a committee. It would make decisions and act on behalf of the work of art. Appointing a board or a committee is functionally similar to the governance models for foundations, universities, and nonprofit organizations.²⁰⁹

The board or committee would be the fiduciary and decision-maker for the piece of art. The collective body would uphold and protect the coherent purpose of the work of art and steward it toward the future.²¹⁰ The number of members serving on the board or committee could vary, in consideration of several factors, including the social, cultural, artistic, and economic value of the work of art, costs, the existence of donors, etc. A plurality of decision-makers enhances effective monitoring. In the event of a breach by a member of a board or a committee, non-breaching members are positioned to uphold the interest of the work of art. This is similar to how, in the event of a breach by a trustee, a non-breaching co-trustee has standing to sue, and may even be obligated to do so if suing is reasonably necessary to obtain redress.²¹¹ A plurality of decision-makers also aggregates different skillsets and qualifications, similar to corporations' boards of directors. This facilitates monitoring and taps into different fields of

206. *See id.*

207. *See, e.g.,* Profulla Chorone Requitte & Ors v. Satya Chorone Requitte, AIR 1979 SC 1682 (1979) (India) (holding legal title in debutter property—any property dedicated solely to a Hindu religious or charitable purpose—vests in the idol itself).

208. An individual fiduciary for artwork could raise issues like those discussed by Duff with respect to Shebaites. *See* Duff, *supra* note 16, at 43.

209. *See* Toni Hoy, *Board of Trustees vs. the Board of Directors: What Are the Differences?*, BD EFFECT (Feb. 22, 2023), <https://www.boardeffect.com/blog/role-board-trustees-vs-board-directors> (comparing and contrasting the roles of a board of directors and board of trustees).

210. *Id.*

211. *Grede v. Bank of N.Y. Mellon*, 598 F.3d 899, 900 (7th Cir. 2010), *cert. denied*, 562 U.S. 982 (2010); Restatement (Third) of Trusts § 94 cmt. d (Am. L. Inst. 2003).

expertise. But a governance model designed around a collective body as a fiduciary tends to be procedurally more cumbersome and more expensive.²¹²

To determine whether an individual or a collective body should serve as the fiduciary for a work of art, it is essential to decide which stakeholders get a say in the selection of the fiduciaries. A thorough assessment of this important matter is beyond the scope of this Article. Nonetheless, some considerations provide a framework for the necessary analysis. The artistic, cultural, and social value of a work of art could determine not only whether the fiduciary should be an individual or a collective body, but also which stakeholders should have a say in the selection of the fiduciaries. Many additional considerations could play a role in determining which stakeholders should have a say in the selection of fiduciaries. For example: Is the artist alive? Is the work of art known by the public? Is the work of art owned by an individual or by a public entity such as a city, a nation-state, or a public museum? Is the work of art displayed to the public? Does the work of art carry spiritual or religious value? Is the work of art created in a tribe? Does the work of art require restoration? Does the work of art carry a social message? All these questions deserve a careful assessment in the making of good policies governing legal personhood for artwork.

CONCLUSION

With the goal of starting the conversation on legal personhood for artwork to provide better and lasting protection to art, this Article provides the parameters to consider something new. It recognizes that a work of art has artistic, social, and cultural value beyond economic value. It sheds light on the limits of the current paradigm of protection, which is centered on the interests of stakeholders, like the owner and the artist. It emphasizes how the current legal framework fails to protect Indigenous and tribal art created to foster a sense of community and tradition rather than for commerce.

This Article discusses how art has a coherent purpose; it exists; it carries values; it conveys a message; it is part of reality, and it interacts with individuals and society. It values that art can live forever and its coherent purpose should be protected throughout the ages. Recognizing legal personhood for artwork is consistent with the tenet of Gierke's real entity theory. Real entity theory emphasizes the relevance of a preexisting coherent purpose in recognizing legal personhood. The intertwined character and values of a work of art are the quintessential example of a preexisting coherent spirit. In addition to protecting the coherent purpose, legal personhood would enhance intergenerational equity: current and future generations of human beings secure access to the work of art as its coherent purpose intends it.

212. See generally Sergio Alberto Gramitto Ricci & Christina M. Sautter, *Corporate Disenfranchisement* (2025) (unpublished manuscript) (on file with author) (discussing drawbacks of collective decision-making, including the natural evolution of some individuals to the top of the collective decision-making body).

When artists die, art continues to express meaning because it has a life of its own. Protecting the essence of a work of art is critical for the message of the artist, our society, and future generations. A diffuse interest in art with a coherent purpose stems from its relevance for humankind, as it establishes a sempiternal dialogue between an artist and humanity. A work of art, as the vessel of a message that it conveys, moves the views and values of an artist through time. It is a time machine and a champion for intergenerational equity. Legal personhood for artwork provides the framework to best achieve all these goals while protecting a work of art itself, rather than its stakeholders. For all these reasons, shifting the paradigm to legal personhood for works of art is an endeavor worth the transition costs.