

Beyond the Cage

2015 Voiceless Animal Law Lecture Series

Why does the law permit humans to keep highly intelligent, nonhuman animals in captivity for our amusement or for scientific experimentation? What is the legal framework that permits the unquestioned enslavement of billions of nonhuman animals worldwide? And how can the law change to keep up with evolving standards of justice?

The 2015 Voiceless Animal Law Lecture Series will examine the legal status of nonhuman animals as mere “things”, and the subsequent treatment afforded to them as human property. Looking at landmark US lawsuits brought by the Nonhuman Rights Project, the series will explore what it means to be a “person” in the eyes of the law, the relevance of animal intelligence, and the fight to grant animals the right to liberty and respect.

What is the Nonhuman Rights Project?

The Nonhuman Rights Project (NhRP) is the first not-for-profit organisation petitioning courts in the United States to recognise that, based on existing scientific knowledge, certain nonhuman animals are entitled to basic “legal rights”.

These legal rights include:

- the right to “bodily liberty”, such as freedom from incarceration; and
- the right to “bodily integrity”, which includes, among other things, protection from invasive medical procedures for scientific research.

At this stage, the NhRP is focusing solely on granting legal personhood to the great apes, dolphins, whales and elephants. According to the NhRP, there is clear scientific evidence to support the complex cognitive abilities of these animals.

Who is Professor Steven Wise?

Steven M. Wise is President of the NhRP. He has written four books on the law and animal rights and has taught animal law at Lewis and Clark, Vermont and St. Thomas Law Schools, and at the Autonomous University of Barcelona, as well as at Harvard, University of Miami, and John Marshall Law Schools.

Labelled “one of the pistons of the animal rights movement” by Yale Law Journal, Steven spoke at Voiceless’s first lecture series in 2007 and joins the Voiceless Animal Law Lecture Series again in 2015 as its keynote speaker.

What will Steven be talking about?

In 2013, Steven led a team of NhRP lawyers in three strategic litigation lawsuits in New York State, demanding the courts issue common law writs of *habeas corpus* on behalf of four captive chimpanzees as legal persons. Having all been rejected on wildly different grounds, NhRP has now requested for leave to appeal to New York’s High Court.

Steven's keynote presentation at the 2015 Voiceless Animal Law Lecture Series will examine the efforts of the NhRP to establish legal personhood for nonhuman animals in the United States. He will explain why and how the NhRP chose the State of New York, the common law writ of *habeas corpus*, the four chimpanzees, why the courts have ruled in the manner they have, and where the NhRP's litigation is heading in New York, in other American states, and throughout the world – including Australia.

What cases is the NhRP currently working on?

In December 2013, the NhRP filed three separate lawsuits on behalf of four chimpanzees currently imprisoned in New York State. Those cases were, at first instance, unsuccessful on technical points of law, but the NhRP is proceeding to appeal those decisions.

The status of those cases is as follows:

- **Tommy:** Tommy is a 26-year-old chimpanzee who is currently living in a cage in a used trailer lot in Gloversville, New York. On 4 December 2014, the New York State Appellate Court decided that legal personhood could not be afforded to Tommy due to a lack of legal precedent, his supposed inability to assume legal responsibilities, and his species.¹ The NhRP is seeking further appeal.
- **Kiko:** Kiko is a 26-year-old chimpanzee who was previously used in the entertainment industry, but is currently kept caged in Niagara Falls. On 2 January 2015, the New York State Appellate Court denied *habeas corpus* on a technicality because the petitioners had sought to change the conditions of confinement (by transferring Kiko to another facility) rather than seeking his immediate release. The court did not decide on the issue of legal personhood. The NhRP is applying for leave for further review.²
- **Hercules and Leo:** Hercules and Leo are two male chimpanzees currently kept in cages at Stony Brook University in New York for use in biomedical research experiments. The Second Appellate Department in Brooklyn dismissed the most recent appeal on a technicality. The NhRP is now pursuing a new lawsuit where they will directly seek a writ of *habeas corpus* in the appellate court.³

Click [here](#) to find out more about these cases and their progress.

What is the basic premise of the NhRP's argument?

The legal argument pursued by the NhRP is complex. A useful summary can be found [here](#).

In law, "legal persons" are entitled to legal rights, whereas "legal things" are not. The absence of "legal personhood" prevents nonhuman animals from bearing rights, and so permits the continued misuse and abuse of animals under our legal system.

The NhRP is seeking to liberate the captive chimpanzees via a common law writ of *habeas corpus*. A writ of *habeas corpus* is a court order that requires the custodian of a prisoner to bring the prisoner to court in order for the court to determine whether their detainment is lawful. This is the same legal argument that was used in 1772 to free an American slave, James Somerset, from captivity.⁴

¹ A copy of the decision can be downloaded as a PDF file at <http://www.nonhumanrightsproject.org/2014/12/04/appellate-court-decision-in-tommy-case/>.

² A copy of the decision can be downloaded as a PDF file at <http://www.nonhumanrightsproject.org/2015/01/02/appellate-decision-in-the-case-of-kiko/>.

³ Nonhuman Rights Project, *Updates on Appeals for Tommy, Kiko, Hercules and Leo* (3rd June 2014) <http://www.nonhumanrightsproject.org/2014/06/03/update-on-appeals-for-tommy-kiko-hercules-and-leo/>.

⁴ *Somerset v Stewart* (1772) 98 ER 499.

Based on extensive scientific evidence supporting the complex cognitive abilities of chimpanzees, the NhRP is arguing that chimpanzees can and should be considered “legal persons” for the purposes of a court issuing a writ of *habeas corpus*. If granted the status of legal persons, it may be possible to rely on this writ to question the lawfulness of the chimpanzees’ captivity.

Why does intelligence matter?

The NhRP’s legal claims are based on the best scientific findings on genetic, mental, emotional and social characteristics of chimpanzees, showing they are self-aware and autonomous beings. These findings are supported by an international group of the world’s most respected primatologists, including Voiceless patron and world renowned primatologist, Dr Jane Goodall.

Self-determination and autonomy are selected as key cognitive factors because of the nature of the rights sought. If animals have the capacity for self-determination and autonomy, then captivity would clearly cause psychological damage. Further, the NhRP argue that these are the two “supreme common law values” which *habeas corpus* was originally designed to protect.⁵

The NhRP plaintiffs are among the nonhuman animals for whom there is clear scientific evidence of these complex cognitive abilities. Currently that evidence exists for elephants, dolphins, whales, and all four species of great apes (bonobos, gorillas, chimpanzees and orang-utans).

What does legal personhood mean?

Granting chimpanzees (or any other animal) legal personhood would not mean that chimpanzees would be regarded as human beings under the law, or that chimpanzees would be granted human rights (such as the right to vote or free speech). As legal persons, they would be entitled to such fundamental rights that are appropriate to their species – such as, the right to bodily liberty and bodily integrity.

Up until the 18th century in America, humans in the slave trade were not regarded as legal persons and were denied basic human rights, such as bodily liberty. Over time, the law began to recognise that legal personhood should not be determined by race but should rather be extended to all humans. The NhRP argues similarly that species should not be the sole determinant of personhood because there is now a mass of scientific evidence to show that some animals possess the complex emotional and intellectual capacities sufficient to elevate their legal status.

Furthermore, there are a number of nonhuman entities that are already considered persons under the law, including religious bodies and even corporations. There is no reason why this status could not also be conferred on animals.

Practically, what would granting legal personhood to chimpanzees mean for animals in the US?

The United States has close to 2,000 chimpanzees living in captivity. This includes around 850 chimpanzees held in research laboratories, 250 in accredited zoos and another 250 who are owned privately and perhaps used in entertainment, kept in roadside zoos or as domestic pets. Around 600 chimpanzees are kept in animal sanctuaries across the United States.⁶

On an individual level, achieving legal personhood for chimpanzees may assist in liberating these, and other great apes, from a life of captivity and exploitation, allowing them to live out their days in animal sanctuaries, in an environment as close to the wild as possible.

⁵ Michael Mountain, *Appellate Court Hearing in Tommy Case* (9 October 2014), <http://www.nonhumanrightsproject.org/2014/10/09/appellate-court-hearing-in-tommy-case/>.

⁶ Save the Chimps, *Chimp Facts* (2015) <http://www.savethechimps.org/about-us/chimp-facts/>.

If successful, the NhRP's lawsuits could also have far reaching implications for other animals. As the NhRP is basing its argument on the intelligence of chimpanzees, these lawsuits could set a precedent for other animals which are known to possess higher intelligence – such as dolphins, whales and perhaps (in time) even pigs. The granting of legal personhood to an animal of nonhuman species would in itself represent a dramatic shift in the way we think and act towards all nonhuman animals.

Could a similar argument be made in Australia?

There is no reason why a similar argument to that which is made by the NhRP in the United States could not also be made in Australia.

As in the United States, nonhuman animals are treated as property or things, and accordingly, they are not entitled to legal rights.

The common law writ of *habeas corpus* exists under Australian law, and has been enacted in legislation across Australian states and territories.⁷ An order in the nature of *habeas corpus* has often been sought in Australia – mainly in state and territory Supreme Courts – to question the lawfulness of prisoners in correctional facilities or asylum seekers in detention facilities.⁸

Unsurprisingly, no animal (nor other nonhuman entity) has ever been considered a “person” for the purposes of *habeas corpus* relief. A lack of precedent in this area, however, is not necessarily problematic, as the common law is expected to evolve in accordance with growing knowledge and changing societal expectations. Indeed, *habeas corpus* has over time gained increasing use by petitioners “given its great flexibility and vague scope”.⁹

Unlike the United States, Australia does not have a political culture of implementing statutory rights,¹⁰ nor do we have a Bill of Rights. Instead, our rights are protected by a combination of common law, statute and the Australian Constitution.¹¹ This lack of a rights culture may prove an impediment to courts extending legal rights to nonhuman animals.

What implications could the NhRP lawsuits have for animals in Australia?

It is difficult to ascertain the number of chimpanzees or other members of the great ape species that are presently held in captivity in Australia. Unlike in the United States, it is not legal in Australia to keep chimpanzees and other exotic animals as pets.¹² We know, however, that there is a number confined in zoos or used in circuses across the country. Dolphins and whales are also confined in water parks and aquariums, particularly along the east coast of Australia.

⁷ See *Supreme Court Act 1970* (NSW) s 71; *Supreme Court (General Civil Procedure) Rules 2005* (Vic) order 57; *Uniform Civil Procedure Rules 1999* (Qld) part 5; *Supreme Court Rules 1987* (SA) rule 99; *Supreme Court Act 1935* (WA) s 178; *Supreme Court Rules 2000* (Tas) rule 91; *Bail Act* (NT) s 43; *Supreme Court Act 1933* (ACT) s 34B.

⁸ See, for e.g., *Prisoners A to XX inclusive v New South Wales* (1995) 38 NSWLR 622; *Dien v Manager of the Immigration Detention Centre at Port Hedland* (1993) 155 FLR 416; *R v Governor of Metropolitan Gaol, Coburg; ex parte Kimball* [1937] VLR 279.

⁹ *People ex rel. Keitt v McMann* 18 NY2d at 263 as cited in *The People of The State of New York ex rel. The Nonhuman Rights Project, Inc. v Lavery* 2014 NY Slip Op 08531 [2014].

¹⁰ George Williams, 'Legislating for a Bill of Rights Now' (17 March 2000)

http://www.aph.gov.au/About_Parliament/Senate/Research_and_Education/pops/pop36/williams.

¹¹ These are the right to vote (s 41), protection against acquisition of property on unjust terms (s 51 (xxi)), the right to a trial by jury (s 80), freedom of religion (s 116) and prohibition of discrimination on the basis of State of residency (s 117). Australian courts have also implied certain rights into our Constitution, such as the implied freedom of political communication. See <https://www.humanrights.gov.au/how-are-human-rights-protected-australian-law>.

¹² Department of the Environment, *Keeping exotic (non-native) animals* (2015)
<http://www.environment.gov.au/biodiversity/wildlife-trade/exotics>.

If the NhRP is successful in the United States, it will have little immediate impact on the lives of these animals in Australia. The lawsuits would, however, establish an international legal precedent that may be influential to Australian courts, although they will be under no legal obligation to follow it.

Importantly, recognition of legal personhood will have a dramatic effect on the way Australians regard our nonhuman animals, and would hopefully inspire similar legal challenges to be brought at home.