

Personhood for animals

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The new documentary, *Unlocking the Cage*, follows Steve Wise, a lawyer from the Nonhuman Rights Project (NhRP) who argues that animals should have the legal status of persons, and his attempt to make chimpanzee “rights” acknowledged and protected by law. The endeavour failed in December 2015 when the New York appeals court rejected the premise that chimpanzee Tommy, a retired circus performer living in a cage in upstate New York, should be entitled to legal personhood. However, the NhRP subsequently filed a second case on behalf of another chimpanzee, Kiko.

The NhRP is an organization based in the United States, working to achieve legal rights for members of species other than humans. The essence of the NhRP’s argument is that animals with “human qualities”, such as chimpanzees, should have basic rights—including freedom from imprisonment. One such human quality that it highlights is apes’ supposed capacity to empathize. To name one example from the many studies on this topic, research by scientists at Kyoto University claims that “both chimpanzees’ and humans’ eyes mimic the pupil dilation of the images they were shown” (*PLoS One* 9, e104886; 2014). But is this really an indication of empathy? There is a world of difference between an instinctual connection between organisms and the ability to understand another being’s condition from their perspective—which is what empathy means. What can at first glance be seen as evidence of deliberation or empathy in animals is little more than learned behaviour, a characteristic all animals share.

Through poetry, literature, music and other works of art humans seek to make

sense of the lived experiences we share with one another. If one reduces every physical action to its simplest form—such as the involuntary matching of another individual’s pupil size—then one can, of course, find parallels between humans and other animals. But this kind of reductionism does not deepen our understanding of human beings or, indeed, animals. We are alone in being able to continually reflect on the internal life of our fellow species.

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As Helene Guldberg argues in her book, *Just Another Ape?* (Imprint Academic, Exeter, 2010), science has provided strong evidence that the differences in language, tool-use, self-awareness and insight between apes and humans are enormous. Intellectually, a human child, even one as young as two years of age, is head and shoulders above any ape. The claim that apes are cognitively more advanced than other animals is also dubious. Much has been made of chimps’ tool-using abilities, but recent discoveries show that the tool making and tool use in woodpeckers equals anything observed in chimpanzees. So should we, therefore, be granting the right of personhood to birds as well? Of course not. Birds, like apes, would be incapable of exercising those rights. Rights have been fought for by humans throughout history. They are premised on the idea that autonomous individuals should have a say in how they live their lives, how society is organized and who should be treated as equals before the law. Animals are not capable of taking responsibility for their

own actions, never mind having a say in how society is run.

Granted, the NhRP were not asking the New York courts to grant chimpanzees full human rights. Rather, they argued for Tommy to be given the right not to be imprisoned against his will (quite how we come to know Tommy’s “will” is left unsaid). On its website, the NhRP outlines its mission “to change the common law status of at least some nonhuman animals from mere ‘things,’ which lack the capacity to possess any legal right, to ‘persons,’ who possess such fundamental rights as bodily integrity and bodily liberty.”

So, were they proposing that Tommy should be given “bodily liberty” and be set free? Well, not quite. The NhRP proposed to move Tommy from the cage he currently inhabits to a chimpanzee sanctuary in Florida—where, of course, he would not be at liberty to come and go as he pleases. As one of the panel of judges quite rightly asked Wise: “Aren’t you asking that Tommy go from one form of confinement to another?” The reality is that Tommy would still be held in captivity, albeit in “a condition that is as close to the wild as is possible in North America.” A move from a cage to an outdoor sanctuary cannot, by any stretch of the imagination, be described as providing a “fundamental right” of “bodily integrity and bodily liberty.”

Really, what this case boiled down to is the quality of Tommy’s living conditions. Patrick Lavery, Tommy’s owner, has insisted that the chimp is comfortable in his environment, “a spacious \$150,000 facility with a door to an outside area.” Wise, however, repeatedly refers to Tommy as living in “solitary confinement.” Whether it would be better to move Tommy to the sanctuary is open to question. But arguing that Tommy should be entitled to legal personhood and bodily liberty was fantasy. Rights are something that only humans can understand and exercise.

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