

The slippery slopes with Tommy, Kiko, Hercules, Leo and Duke

by Paul McKellips

I confess; I have never conducted an experiment on an animal. Well, that's not entirely true. I once put a treat in my mouth and begged Duke, my 4-year-old Golden Retriever, to be gentle as he ripped the bone out of my clenched teeth before he devoured it. That's the sum total of my hands-on personal experience with animal research.

Duke is a great dog. When I come home at night, Duke greets me at the door with blanket in mouth as my voice mysteriously morphs into baby talk. "Daddy is happy to see his boy. Yes, he is." He races to sit in my favorite chair before I do but usually vacates it at the snap of my fingers. And every year, Virginia officials from Fairfax County send me a \$10 bill for his license.

Secretly, I know that Duke is not my son. He's my personal property and I am his owner.

As an animal that I own, license and care for, Duke is entitled to welfare. But unlike my three sons, Duke is not a person and he has no rights.

Our arrangement seems to be working. Duke eats as many nutritious meals as my sons do; he sees the veterinarian as often as my boys see their doctors; and he gets as much enrichment with a green tennis ball in the backyard as my children get with an Xbox or a football. Duke receives much more than animal welfare standards require, and my sons receive more than human rights demand. All of them are loved, cared for and genuinely respected.

Last December, the Nonhuman Rights Project (NhRP) filed lawsuits in three New York counties on behalf of Tommy, Kiko, Hercules and Leo. NhRP wanted judges to grant "legal personhood" to these four chimpanzees. Their stated mission

was to change the common law status of nonhuman animals from mere things to persons who possess fundamental rights such as bodily integrity and liberty.

Unlike previous "personhood" lawsuits that appealed to existing written statutes or

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even the Constitution, these new lawsuits are trying to modify common law standards. Common law tends to evolve as society evolves. Things that were once considered taboo, morally wrong and ultimately illegal become accepted as settled law under a new moral code. The real problem is that when deciding common law cases, judges can rely on their own morals.

NhRP took their suits a step further by filing them under the common law writs of *habeas corpus*. Simply put, *habeas corpus* lets a petitioner get around the roadblocks of legal standing by allowing someone else to argue on the captive's behalf—in this case, for the benefit of Tommy, Kiko, Hercules and Leo.

Well, the lower courts threw these particular cases out. And as they did, one could almost hear a collective sigh from the biomedical research community, not to mention the eye rolls from coast to coast. It'll never happen. Right? Not so fast. Hold on to your PPE for just a lab animal New York minute.

In New York, *habeas corpus* petitions are automatically sent to the higher courts, first the Intermediate Appellate Court, then the Court of Appeals. All the while,

Tommy, Kiko, Hercules and Leo continue to become international news celebrities. Media outlets from around the world are following the legal adventures of these four chimps as school children use crayons and construction paper to make greeting cards of support and solidarity. As international media attention increases, the notion of an animal gaining personhood becomes less and less novel. A new generation of people screaming "Free Willy" is growing in both volume and quantity, and certainly, one must assume, some sympathetic common law judges—who can lean on their own morals—are probably listening.

Expanding the common law of New York is exactly what the NhRP is trying to do. And here, the slippery slope for Tommy, Kiko, Hercules and Leo leads to Duke.

The NhRP website lays it all out very clearly: "Our goal is to breach the legal wall that separates all humans from nonhuman animals." If a judge can use his or her own morality as a guideline, and a chimp gets common law personhood, then why wouldn't we also grant common law personhood to rhesus monkeys, guinea pigs, rabbits, rats, genetically modified mice, zebrafish and, yes, even fruit flies?

If an Angus steer gets personhood, will this nonhuman animal grant us filet mignon or leather belts? If chicken and pigs gain common law personhood, will their *habeas corpus* lawyers grant us fried chicken and pulled pork BBQ sandwiches?

And what about Duke? Will I have the right to put a collar on him and restrict his bodily liberty with a leash? I intend to speak with him about his potential personhood just as soon as he gets out of what was once my favorite chair and is done watching his show on Animal Planet.

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