

Law and Religion for Nonhuman Persons

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Table of Contents

1. Introduction.....	1
2. Law and Religion for Nonhuman Persons.....	2
3. A Judaic Approach to the Concept of ‘Personhood’.....	3
3.1. Classic Tests.....	3
3.2. The Jerusalem Talmud’s Test.....	7
4. Conclusion.....	9

1. Introduction

On December 2, 2013, the Nonhuman Rights Project (NhRP) a national nonprofit organization working to get actual legal rights for members of nonhuman species filed a lawsuit in Fulton County, New York petitioning the judges for a writ of habeas corpus. A habeas corpus allows for a person being held captive to be brought before a court to determine if their imprisonment is lawful. Habeas corpus suits are filed all the time; what made this one historic was that it was not filed for a human being. The writ in question asked the court to formally recognize that a 26 year old chimpanzee named Tommy was a person, possessing the legal right to not be bodily detained against his will.² One day later, the NhRP filed a similar suit in Niagara Falls, and two days after that a third one on Long Island.

All three lawsuits failed,³ with all three judges declining to sign the order. One judge held a hearing to explain that while he is indeed an animal lover, he just could not or apply NY Code Article 70: Habeas Corpus to a chimpanzee.⁴ Another judge, on a phone hearing, was sympathetic to the cause, but did not want to “be the one to make that leap of faith.”⁵ Still, regardless of the outcome, the reasoning behind the lawsuit is quite simple; the NhRP and its supporters believe that the line between ‘persons’ and ‘nonpersons’ should not be as sharply

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² See Brandon Keim ‘A Chimp’s Day in Court: Inside the Historic Demand for Nonhuman Rights,’ Wired, December 6, 2013, *available online at* <http://www.wired.com/wiredscience/2013/12/chimpanzee-personhood-nonhuman-right/>

³ the NhRP has already announced that they were expecting this and that would appeal. See <http://www.nonhumanrightsproject.org/2013/12/10/press-release-on-ny-judges-decisions/> for their press release on the matter.

⁴ Statements of Judge Joseph Sise, Fulton County Court. See Brandon Keim, ‘Judge Rules Chimps Can’t Be Legal Persons But Activists Vow to Fight On,’ Wired, December 9, 2013, *available online at* <http://www.wired.com/wiredscience/2013/12/chimpanzee-personhood-claims-denied/>

⁵ Id.

drawn as it is now. They believe that the current division is artificial and superficial; a line that focuses on microscopic differences in DNA rather than on important and meaningful characteristics, qualities, and emotions that species other than humans might well share.

2. Law and Religion for Nonhuman Persons

Although this idea might seem somewhat radical at first glance, from a moral/philosophical perspective these arguments are not that novel. Animal rights and line-drawing have long been a contemplative problem for great thinkers,⁶ and legal theorists.⁷ For many, at least in theory it actually seems almost illogical to *deny* a complex, autonomous, self-aware creature, capable of communicating its desires, the ability to live as it wishes, simply because it looks different. In the words of philosopher Rosalind Hursthouse, for instance;

‘[s]peciesism ... is just like ... racism. Racists think that, for instance, the death or enslavement of someone of their own race matters, but that the death or enslavement of someone of a different race does not, despite the fact that a difference in skin colour does not make for a difference in how much one wants to live or be free, or how worthwhile one’s life might be, or anything else relevant. Similarly, ... a speciesist [thinks] that the death or enslavement of a member of their own species matter[s], but that the death or enslavement of a member of a different species ... d[oes] not, despite the (imagined) fact that the difference in species does not make for a difference in how much the two beings want to live or be free, or how worthwhile their lives might be.’⁸

What the question boils down to then isn’t whether or not animals are ‘human’; they’re not, and there is nothing wrong with that. The question is really about whether or not nonhuman beings can be ‘legal persons,’ entitled to human rights. To have legal personality is simply to be capable of having rights and duties.⁹ American courts have long held that the answer to the question of whether or not nonhuman beings can be legal persons is, at least in some instances, yes.¹⁰ In fact, the Supreme Court has just agreed to hear a case about whether or not nonhuman ‘persons.’ i.e. in this case corporations, should be entitled to *religious* legal rights and protections.¹¹ Whether we are talking about corporations or animals,¹² extending the idea of personhood requires a fundamental shift in perspective. And in dealing with such a weighty issue, core to our own

⁶ Wilson, Scott. "Animals and ethics." *Internet Encyclopedia of Philosophy*(2010).

⁷ See Regan, Tom. *The case for animal rights*. Springer Netherlands, 1987.

. see also Regan, Tom, and Peter Singer, eds. *Animal rights and human obligations*. Upper Saddle River, NJ, USA: Prentice Hall, 1989.

⁸ R. HURSTHOUSE, BEGINNING LIVES 102-03 (1987).

⁹ See Smith, Bryant. "Legal Personality." *The Yale Law Journal* 37.3 (1928): 283-299.

¹⁰ French, Peter A. "The corporation as a moral person." *American Philosophical Quarterly* 16.3 (1979): 207-215.

¹¹ See Katie McDonough, ‘Can a corporation have a religion?: Hobby Lobby challenge to contraception mandate heads to Supreme Court,’ Salon, Nov. 25, 2013, available online at: http://www.salon.com/2013/11/25/can_a_corporation_have_a_religion_hobby_lobby_challenge_to_contraception_mandate_heads_to_supreme_court/

¹² See, generally, Riard, Michael D. "Toward a General Theory of Constitutional Personhood: A Theory of Constitutional Personhood for Transgenic Humanoid Species." *UCLA L. Rev.* 39 (1991): 1425.

understanding of the world, it makes sense to at least consider what religion might have to say about the matter.

It has been argued that human rights¹³ themselves are ‘ineliminably religious’ in nature, since the idea of the human person as “sacred” -foundational to human rights thinking- is itself inescapably religiously based.¹⁴ The worth and dignity of the human being is fundamental to the Jewish, Christian, and Muslim traditions and could be illustrated in hundreds of ways, of which the pre-eminent one is the sense (and Scripturally supported assertion) that people are made in the image of God, endowed with rationality, choice, a capacity to pray, a capacity to love, and a moral consciousness.¹⁵ When asked to formulate the main principle behind all of Judaic law, Rabbi Akiba famously said that it is to “Love (and respect) your neighbor as you do yourself.”¹⁶ Challenged to sum up all of Jewish Law in just one sentence, Hillel the Elder confidently replied “That which is hateful to you, do not do to your fellow. That is the whole of Jewish law, the rest is explanation.”¹⁷ Christianity’s positive formulation of the Golden Rule,¹⁸ as well as Islam’s, “Hurt no one so that none may hurt you,¹⁹” all share the same assumption, namely the idea that people are endowed with a set of natural and reciprocal rights, and that those rights deserve to be respected and protected.

Assuming then that religion does believe in at least the most basic of ‘human’ rights,²⁰ we can now return to our original query in regard to the rights of nonhumans in particular, asking whether or not they were also given to certain animals by God, as depicted in the most common religious understandings of His word.

This article will not attempt to answer that question for all religions; it will focus only on Jewish law and lore. It also does not claim to represent the only strain of thought in Judaism or the definitive interpretation of the law; it merely sets out to revisit some of the ancient texts and understandings, and explore an authentic reading of what the tradition has to say on the subject on nonhuman ‘persons.’

¹³ Or perhaps, more accurately reflecting the nature of this question, ‘*personhood* rights.’

¹⁴ See MICHAEL J. PERRY, *THE IDEA OF HUMAN RIGHTS*, 11-41 (Oxford University Press, 1998).

¹⁵ Richard Harries *The Complimentarity Between Secular And Religious Perspective of Human Rights*, p. in *DOES GOD BELIEVE IN HUMAN RIGHTS? ESSAYS ON RELIGION AND HUMAN RIGHTS*, 19, 20 (Nazila Ghanea-Hercock, Alan Stephens, & Ralph Walden eds., 2007).

¹⁶ *Midrash Bereishit Rabbah* 24:7.

¹⁷ BABYLONIAN TALMUD, *Shabbat* 31a (Vilna Edition).

¹⁸ *Luke* 6:31. (version needed BB 15.8(c)(iii)

¹⁹ SAHIH AL-BUKHARI, *Hadith* 1623.

²⁰ *I.e.*, the rights to life, freedom from aggression and persecution, and any other rights that an individual would want for their own selves.

3. A Judaic Approach to the Concept of ‘Personhood’

3.1. Classic Tests

The line between humans and non-humans was not as clear-cut in ancient times as it appears to be now. Throughout the discussions in rabbinic literature, we encounter part-human part-animal beings, such as Bigfoot,²¹ mermaids,²² centaurs²³ and other monsters.²⁴ When you read about these creatures in the Jewish sources, however, it is important to remember that the rabbis, as legal theorists, were not scientists, and were more interested in determining how to classify these beings as *halachic* (Jewish legal) constructs if they did or would exist, than whether or not these creatures actually ever existed. From their statements and rulings across the Babylonian Talmud, the Jerusalem Talmud, and the Midrashic lore, however, one can get a sense of the criteria the rabbis used in determining what exactly it is that gives a creature that elusive thing we tend to call *humanity*, or perhaps more accurately *personhood*, with the accompanying rights and benefits.

To be sure, Judaism does recognize some of the classic tests for humanity, including but not limited to biology, moral intelligence, communicative ability, and, for lack of a better term the ‘image of God’ test.²⁵

In terms of the biological test, there are several places throughout the Bible²⁶ and the Talmud²⁷ where humans are referred to as a *yelud isha* (lit. those born of woman). In describing Eve, the *Targum Onkelos*, an early and influential commentary²⁸ notes that the verse refers to her as “the mother of all humanity,” because she, Eve, is the progenitor of mankind; anyone born from Eve or her descendants is therefore considered part of mankind.²⁹ This seems to argue for a traditional speciesist definition, and some Jewish law authorities have indeed taken that definition to be the determinative and even dispositive fact.³⁰

²¹ See discussion of the *yadua* later on in this piece.

²² See Babylonian Talmud, Bechorot 8a and Commentaries of *Rashi*, *Raavad*, *Torat Kohanim*, and *Aruch*.

²³ See discussion of Jerusalem Talmud Niddah 3:2 later on in this piece.

²⁴ See Rabbi Natan Slifkin, *Sacred Monsters: Mysterious and Mythical Creatures of Scripture, Talmud and Midrash* 19 (Zoo Torah 2007) (discussing references to mystical creatures present throughout Jewish literature); see also e.g. *The Book of Jasher* 61:15 (J.H. Parry & Co. 1887) (available at www.ccel.org/a/anonymous/jasher/ (accessed)) (“Zepho . . . came into the cave and he looked and behold, a large animal was devouring the ox; from the middle upward it resembled a man, and from the middle downward it resembled an animal . . .”).

²⁵ see below

²⁶ See e.g. *Job* 14:1 (King James) (“Man that is born of a woman . . .”) (emphasis omitted).

²⁷ See e.g. *The Babylonian Talmud* vol. III, Yoma 75b, 698 (Rabbi Dr. I. Epstein ed. & trans., Soncino Press 1938) (“[F]or is there one born of woman . . .”).

²⁸ Israel Drazin, *Targum Onkelos to Deuteronomy* 1 (KTAV Publg. H., Inc. 1982).

²⁹ *Targum Onkelos Commentary to Genesis 3:20* (Rabbi A. M. Silbermann & Rev. M. Rosenbaum, trans., Silbermann Fam. 1934).

³⁰ *Responsa Chacham Tzvi* 93 see Rabbi Michael J. Broyde, *Genetically Engineering People: A Jewish Law Analysis of Personhood*, 13 St. Thomas L. Rev. 877, 890 (2000–2001) (noting that, while there are different interpretations as to what makes one human, some groups adopt the “from a human mother” formulation as the exclusive definition of humanness (internal quotations omitted)). See e.g. Moshe Cordovero, *Pardes Rimmonim* [Orchard of Pomegranates] (Rabbi Avraham Azulai, *Chessed LeAvraham, Maayan Revi'i*) *Shut Teshuva*

Another possible test is the *'tzelem Elokim* (lit. 'image of God) test. Humans, we are told in the Bible, are created "in the image of God"³¹ which immediately raises questions from a Jewish perspective, as one of the most important theological premises in Judaism is that God has no corporeal existence. While many commentators discuss the theological implications of 'God's image,'³² linking the phrase to various non-physical aspects of the human being,³³ the problem remains that perhaps the most influential commentator in Jewish history, Rabbi Shlomo Yitzchaki, (Rashi), understands the 'image of God' language somewhat more literally. According to Rashi, "the image that was prepared for him was the image of the likeness of his Creator,"³⁴ i.e. in some way, as it were, Adam *looked* like God.³⁵ Later commentators³⁶ are quick to clarify that even Rashi did not mean that God has a body which Adam's could look like; some suggest that Adam looks not like God Himself, but like the representation of God as He appeared in the visions of some of the prophets.³⁷ The most common explanation though is perhaps best expressed by the Maharal of Prague;³⁸

...the interpretation is not that God possesses an image or form, for this is not the case at all. Rather, the verse informs us that when it comes to allude to what exists of God in a physical figure, it will illustrate a standing figure. Although certainly one cannot ascribe any figure, Heaven forbid, to God...nevertheless what exists of God is illustrated through the physical Man.

Thus for the Maharal, and for others, even though God has no body, we can indeed speak of a physical correspondence between man and his Creator. Man looks like God by resembling the image God assumes in our own minds when we talk about His attributes. And why does the verse stress the point that man resembles God? Because the external resemblance reflects an internal likeness.³⁹

Me'ahava.) They are also quick to point out that if humanity really is species driven, then any human, regardless of its personal abnormalities or deficiencies, would always be considered, human. Modern say commentators have noted that the term *born* here might also be descriptive, and that as we near the age of artificial wombs and incubators, the specieist argument might just reflect possession of human DNA, the usual way of obtaining which is to have been born from a woman.

³¹ Genesis 1:26-28; see also 5:1 and 9:6

³² See, for instance, Maimonides, *Guide to the Perplexed*, 1:1. See also the Vilna Gaon's commentary to Avot 3:14

³³ Including, for instance, speech and intelligence. See commentaries of Rashbam, Radak, and Chizkuni. See also Malbin, and Meshech Chochma, ad loc.

³⁴ Commentary of Rashi to Genesis 1:27

³⁵ See also BT Bava Basra 58a, in which God calls Abraham, who looked like Adam, 'the likeness of My likeness.'

³⁶ See, for instance, the Baalei Tosafos in Paneiach Raza. See also Rav Natan Ashkenzai, *Imrei Shefer*

³⁷ See, e.g. Yechezkel 1:26: "...and upon the likeness of the throne was the likeness as the appearance of a man above upon it."

³⁸ Maharal, *Derech Chaim*, p. 346. Perhaps, in fact, this is the reason his name became conflated with mystical creationism and the figure of a man, i.e. the Golem of Prague.

³⁹ Perhaps corresponding to another test, maybe the moral intelligence test. Recall that once Adam and Eve ate from the Tree of Life they became "like God, knowing good and evil." Genesis 3:22. Another answer, kabbalistically based, comes from Rabbeinu Bachya ibn Pakuda, who says that there is a detailed correspondence between the various organs of the human body and the ten *'sefirot'* or emanations, which God undergoes, as it were, before revealing His presence in this world. Each characteristic of man's physical being represents one emanation. See Ramchal, *Dat Tevunot* 81. See also Rav Moshe Alshich's 'Torat Moshe,' discussing the 'image of God' as referring to the fact that Man is God's representation, i.e. representative, in this world, because only man can

The resemblance between man and his Maker is taken even to legal degrees; murder is considered particularly abhorrent in the Jewish tradition because man is created in God's image, and by killing a man (and subtracting one of His likenesses) you lessen God's prestige in this world.⁴⁰ On the flipside, the Talmudic sage Hillel considers hygienic bathing to be an extremely important commandment that one must zealously perform. He compares the likeness between God and man to that of a King and the statues carved in his image, and notes that because man looks like God, he honors Him by maintaining a tidy and well kept appearance.⁴¹ If God creates humans in His image, and if murder is only 'murder' as we know it because man looks like God, then perhaps possession of human form is the simplest test for humanity.⁴²

It is important to acknowledge that the 'image of God' theme *might* be more aptly labeled a descriptive feature of humanity rather than a test for its essence; nowhere is it clear that this is a stand-alone sufficient criterion. Regardless, it is certainly the case that many of the 'great apes,' i.e. the cousin species in the biological family Hominidae, including humans, bonobos, chimpanzees, gorillas, and orangutans, look roughly the same. They also share many similar gestures, behaviors, and even personality quirks.⁴³

Still others have wanted to classify speech as possible *halachic* criteria for humanity.⁴⁴ It does not seem rational to give or take away a status of personhood based on just hollow sounds or motions, and so the idea of speech, or more generally communication, must be a linked concept. Many point to a 'moral intelligence test,' based on the verse in Genesis⁴⁵ which states that God gave man the ability to be like Him, *la'daas tov vara* [lit. to know (differentiate)

perceive Him and spread His word. Later, in the medieval kabbalistic literature, many of the Golem-making formulas include precise recitations of the sefirot combinations in order to form the specific limbs they correspond to. See Idel.

⁴⁰ See Genesis 9:6 "Whoever sheds human blood, by humans shall their blood be shed; for in the image of God has God made mankind. Similarly, Rashi regards the prohibition for a court to leave a dead body hanging overnight after an execution as a consideration which maintains God's honor. Otherwise, as a result of man's likeness to Him, an extended public display of a corpse overnight would be a dishonor to Heaven.

⁴¹ Midrash Leviticus Rabbah, 34

⁴² See also the Mishna in Niddah 3:1, implying that if a woman gives birth to a creature that does not have human form, it is not human (*despite* the fact that it is a 'yelud ishah'). But see also Raavad *Issurei Biah* 11:12 (noting that we do not follow this in practice since 'we are not experts on forms'), and *Shut Teshuva MaiAhava* 53 (noting that the offspring is not called a human only in regard to matters of ritual uncleanness.) See also BT Niddah 23b discussing a creature with human form born of an animal mother.

⁴³ Marks, Jonathan. "98% alike (what our similarity to apes tells us about our understanding of genetics)." *Chronicle of Higher Education B 7* (2000): 12. See also Uher, Jana, Jens B. Asendorpf, and Josep Call. "Personality in the behaviour of great apes: temporal stability, cross-situational consistency and coherence in response." *Animal Behaviour* 75.1 (2008): 99-112. Matsuzawa, Tetsuro, and Masaki Tomonaga, eds. *Cognitive development in chimpanzees*. Springer, 2006. de Waal, Frans. "Social roles, alternative strategies, personalities, and other sources of individual variation in monkeys and apes." *Journal of Research in Personality* 36.6 (2002): 541-542. King, Barbara J. "What Can Great Apes Tell us about Human Behavioral Evolution?." *Teaching Anthropology: SACC Notes* (2010): 25

⁴⁴ Indeed kabbalistically the world has been classically divided into groups called *domen* (silent; i.e. minerals) *tzomeach* (growing; i.e. plants) *chai* (alive; i.e. animals) and *medaber* (speaking; i.e. humans). Still, that raises some age-old considerations; a human who cannot speak is still human, and there are in fact already (and have been for a while) robots that can talk.

⁴⁵ *Genesis* 3:22 (King James).

between good and evil].⁴⁶ When we talk about speech as a characteristic of humanity then, what it means the ability to not just know, but to *express* to others the differentiation between good and evil. In this understanding the element of vocal speech specifically may not even be entirely necessary; the ability to speak may just be a practical test for knowledge of and ability to express and communicate moral intelligence, which is the real goal. A goal, by the way, that at least some animals are in fact quite capable of reaching.

In *The Bonobo and the Atheist*,⁴⁷ Professor Frans de Waal, C.H. Candler Professor of Primate Behavior at Emory University and Member of the National Academy of Sciences, argues that ethical behavior may in fact be biological, but it certainly isn't only human. Indeed, his research in the Netherlands and at the Yerkes National Primate Research Center has shown that animals engage in such 'human' behaviors as altruism, conflict resolution, cooperation, and empathy. Elephants recruit friends to help them pull heavy objects, while chimpanzees refuse to take undeserved rewards. Bonobos comfort the loser in a fight, others animals kiss and make up after a disagreement, and many display gratitude and take revenge, paying back in kind for things done to them.⁴⁸

De Waal is not really the first to make these kinds of claims. Judaism has always known that animals demonstrate moral behavior,⁴⁹ even noting that man could learn a lot from the animal kingdom in this regard.⁵⁰ Darwin once wrote that, "any animal whatever, endowed with well-marked social instincts ... would inevitably acquire a moral sense or conscience, as soon as its intellectual powers had become as well developed, or nearly as well developed, as in man."⁵¹ All that de Wal has done is gone ahead and proved it, demonstrably, by putting on a firm evidential basis the fact that the roots of moral social behavior can be seen in other animals.⁵² The other major development, of course, is that we have learned to communicate much more clearly with animals.⁵³ It is one thing to ignore the fact that an animal looks and sounds distressed in a cage; it is quite another thing to be able to have a sign language conversation with another intelligent being that is asking you for help.⁵⁴

⁴⁶ *Commentary of Rashi to Genesis 2:7* (available at http://www.chabad.org/library/bible_cdo/showrashi/aid/8166#showrashi=true (accessed)).

⁴⁷ de Waal, F. *The Bonobo and the Atheist: In Search of Humanism among the Primates* New York: WW Norton, 2013

⁴⁸ *Id.*

⁴⁹ See e.g. Proverbs 6:6 (King James) ("Go to the ant, though sluggard; consider her ways and be wise[.]").

⁵⁰ See Babylonian Talmud Eruvin 100b (Rabbi Yochanan said: Had the Torah not been given, we would have learned modesty from the cat, [aversion to] theft from the ant, chastity from the dove, and [conjugal] manners from fowl.)

⁵¹ (Descent of Man).

⁵² <http://www.theguardian.com/science/the-lay-scientist/2013/apr/26/1>

⁵³ Hillix, W.A. and Duane Rumbaugh. *Animal Bodies, Human Minds*

⁵⁴ See Wise, Steven M. *Rattling the cage: Toward legal rights for animals*. Basic Books, 2000. See also Gardner, R. Allen, and Beatrice T. Gardner. "Teaching sign language to a chimpanzee." *Science* 165.3894 (1969): 664-672. ; Premack, David. *Intelligence in ape and man*. Lawrence Erlbaum, 1976. See also Premack, David. "Language and Intelligence in Ape and Man: How much is the gap between human and animal intelligence narrowed by recent demonstrations of language in chimpanzees?." *American Scientist* 64.6 (1976): 674-683.

3.2. The Jerusalem Talmud's Test

Perhaps the most convincing test for humanity, and one that is often overlooked, is another Judaic test, the test developed in Chapter Three of Tractate Niddah in the Jerusalem Talmud. The Talmud states:

Rabbi Yasa states in the name of Rabbi Yochanan: if [a creature] has a human body but its face is of an animal, it is not human; if [a creature] has an animal body, but its face is human, it is human.

[And so it seems that, at first glance, what we look for are human features. But the Talmud continues;]

Yet suppose it is entirely human, but its face is animal like, and it is studying Jewish law? Can one say to it "come and be slaughtered"? [Rather one cannot]. Or consider if it is entirely animal like, but its face human, and it is plowing the field [acting like an animal] do we come and say to it, "come and perform levirate marriage and divorce"? [Rather, one cannot.]⁵⁵

The Talmudic conclusion seems to be simple. When a "creature" does not conform to the simple definition of humanness, i.e. born from a human mother, or even possessing human DNA, but it looks somewhat human, and act somewhat human, one examines the context to determine if it is a person. Does it study Jewish law – or, because this isn't a matter of 'Jewishness' or not, this is a matter of general humanity, does it do differential equations, or some other act involving serious mental contemplation? Or is it at the pulling end of a plow?

Even if biology remains the *general* default definition for the status of personhood, when it does not apply, and yet we still aren't sure, then we make use of the contextual definition. Maybe communication, or moral intelligence, is not even a separate test at all, and is just one prong in the contextual question; i.e. does the creature in question exhibit human intelligence; for instance, does it communicate, and have knowledge? For all of the great apes, bonoboes, and other primates, our physical cousins who sign, and communicate, and interact like, and with, people, the answer here would seem to be yes.

Again the idea that nonhumans may in fact be considered persons in some ways may at first seem radical, but at the end of the day it really is not. The United States has been giving corporations rights under the legal fiction called "corporate personhood" since 1936 when the Supreme Court in *Grosjean v. American Press Co.*⁵⁶ held that a newspaper corporation was protected by the First Amendment. As of the time of this writing, the Supreme Court has granted certiorari to hear an appeal in the case of *Hobby Lobby v. Sebelius*,⁵⁷ a Tenth Circuit decision in which the Appellate Court below agreed to extend religious rights to a nonhuman corporation. If

⁵⁵ JT Niddah 3:2

⁵⁶ 297 U.S. 233, 244-45 (1936)

⁵⁷ *Hobby Lobby Stores, Inc. v. Sebelius*, 2012 US App. LEXIS 26741 (10th Cir. 2012)

the law can extend religion to nonhuman persons, it should not be surprising that religion can extend rights to nonhumans as well.

This idea is also not that far-fetched from an internal Jewish law perspective either. Although the early Rabbis did not have bonobos that could sign, they *did* deal with what they felt were border cases of humanity. The classic example is a Mishna in Tractate Kilayim,⁵⁸ which discusses the creatures called ‘*adnei hasadeh*,’ also known as a ‘*yadua*.’⁵⁹ While the rabbinic descriptions are terse, classic commentators describes the creature as having the form of a man while really being an animal of the field.⁶⁰ Maimonides notes that their speech is similar to that of human, but is unintelligible. Most importantly, he refers to them in his commentary to the Mishna as ‘*al nasnas*,’ which is in fact an Arabic word for monkey.⁶¹ The Tiferet Yisrael explicitly writes that these sources refer to what we call an orangutan.⁶²

The Talmud quotes two opinions as to whether or not, from a Jewish law standpoint the *yadua* is human. While it is unclear if the two positions are in conflict (with one saying yes and one saying no,) or if the status is simply that these beings are somewhere in between, (i.e. everyone agrees that for some things they are considered people and for other things they are not, similar to the current status of corporations) according to at least some important commentators,⁶³ this creature, is a full human being. In the language of the Jerusalem Talmud the creature is in fact referred to as a ‘*bar nosh d’tor* (lit. ‘a man of the mountain’).⁶⁴ Presumably, this fits our earlier definition (also from the Jerusalem Talmud): it looks sort of human, and contextually exhibits characteristics that make it seem like a person, so we consider it a person, at least for some things. What we see clearly from the discussion of the *adnei hasadeh* is that, just as we established before, humanness need not be defined solely with reference to a human parent; it also has a clear, independent, functionality test, and either biology *or* context is sufficient to make one a person, at least for some things, according to Jewish law.⁶⁵

4. Conclusion

In conclusion then, there really is nothing new under the sun.⁶⁶ While trial judges in the year 2013 may be hesitant to apply the norms of personhood to animals, the rabbis of the Talmud crossed that line a long time ago. In Judaism, the impulse for ethical behavior often focuses not

⁵⁸ 8:5

⁵⁹ Leviticus 20:6

⁶⁰ See Commentary of Rashi to Job 6:23

⁶¹ Maimonides, Commentary to the Mishna, Kilayim 8.

⁶² Tiferet Yisrael- Yachin to Kilayim 8

⁶³ See, for instance Rash Mishantz and Rav Ovadia Bartenura to the Mishna Kilayim

⁶⁴ BT Jerusalem 8

⁶⁵ See R. Akiva Eiger to Yoreh Deah 2, who says that monkeys cannot perform ritual slaughter not because they are not human, but because they are not observant Jews. Going back to our *golem* for a moment, see also the Maharasha, Chidushei Aggadot to TractateSanhedrin, who implies that if something is alive, like an animal, and exhibits human characteristics, we would in fact consider it human.

⁶⁶ Ecclesiastes 1:9

only on the one being acted upon but also on the actor;⁶⁷ the rabbis were perhaps more concerned about us becoming unmerciful people who treated intelligent beings like animals than about possibly extending rights too far. If the test for humanity is, as some claim, the ability to demonstrate and express moral intelligence, than extending legal rights to animals will not only make them persons- it will arguably also make all of *us* better persons as well.

⁶⁷ See Tur Orach Chaim 271 and commentaries ad locum.