

NOTE

The Nonhuman Rights Project: Coming to a Country Near You

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Introduction

After seven years of intense research, study, theorizing, and preparation, the Nonhuman Rights Project, Inc. (NhRP), a U.S. based nonprofit organization, launched its historic strategic litigation campaign aimed at changing the way the U.S. legal system, and beyond, classifies nonhuman animals.

During the week of December 2, 2013, the NhRP filed petitions for common law writs of *habeas corpus* on behalf of all four chimpanzees who were being held in New York State.³ What set these lawsuits apart from every lawsuit that has been filed to protect animals is that the NhRP's lawsuits are not animal protection, animal welfare, or animal law cases; they are instead true animal *rights* cases.

In filing these three cases, the NhRP has begun directly to address the problem that faces the advocate for any nonhuman animal anywhere in the world: all nonhuman animals are considered “things” that lack the capacity for any legal rights. Legal rights, instead, are reserved for “persons,” which is often erroneously believed to be a synonym for human beings.

“Personhood” designates an entity that has the capacity to possess one or more legal rights. “Persons” are understood to possess inherent value under the law, while “things” possess only instrumental value, and are understood to exist solely for the sake of “persons.” Legal personhood is not a synonym for human being; it is not even a biological concept. It may designate an entity broader or qualitatively different than a human being, and has often done so in the common law world, including corporations, ships, and states in the United States, mosques, Hindu idols, and the holy books of the Sikh religion in India, even a river in New Zealand.

The NhRP is challenging the “thinghood” of all nonhuman animals by demanding that courts declare such nonhuman animals as great apes, elephants, and cetaceans to be “legal persons,”

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³ Our appeal on behalf of “Tommy,” a chimpanzee living in a cage on a used-trailer lot, was heard on October 8, 2014, before the New York Supreme Court, Appellate Division, Third Judicial Department. If we win, the case will likely be remanded to the trial court for further proceedings. If we lose, we will seek further review from the New York Court of Appeals. Our appeal on behalf of “Kiko,” a chimpanzee living in a cement storefront in Niagara Falls, is scheduled to be argued on December 2, 2014, before the New York Supreme Court, Appellate Division, Fourth Judicial Department. Earlier this year, our appeal on behalf of “Hercules” and “Leo,” two chimpanzees being used for biomedical research at the State University of New York at Stony Brook, was dismissed on a procedural technicality. We are refiled their case within the next few weeks.

who possess the fundamental right to bodily liberty that is protected by the common law writ of *habeas corpus*. In our initial lawsuits, we paired our legal arguments with half-a-century's worth of scientific evidence proving that chimpanzees are self-aware and autonomous submitted by nine of the most respected chimpanzee cognition scientists from around the world, including England, Scotland, Germany, Sweden, Japan, and the U.S, who cited more than 400 articles about chimpanzee cognition. Accordingly, we argued that chimpanzees should be recognized as "persons" with certain fundamental legal rights, at least for the purpose of a common law writ of *habeas corpus*.

Branching out globally

The NhRP's arguments constitute a practical legal solution to attaining certain fundamental legal rights for the most cognitively complex species, autonomous, and self-determining of nonhuman animals. Not only were these lawsuits the first salvo of our strategic litigation campaigns in the U.S., they announced the beginning of similar strategies the NhRP is helping to evolve in other countries. Instead of working to bolster animal protection laws in the U.S. and other countries, the NhRP is hacking at the root of the problem and seeking ways to attain actual legal rights for certain nonhuman animals. As we branch into other countries, we are focused solely on our mission to move toward the goal of personhood or its functional equivalent.

To begin, we have chosen six countries in which there is a deep level of commitment from professionals and advocates in the legal and legislative world: Switzerland, Argentina, England, Spain, Portugal, and Australia.

Our focus

In each country, we are working with organizations and lawyers to conduct detailed and focused research on legal and legislative questions that go to the heart of our mission to gain legal rights for at least some nonhuman animals. One of the foundational questions is whether legal personhood in each country means the same as it does in the U.S. If it does not, we are exploring what analogous concepts are available that might bestow the capacity to have legal rights in those countries. Once we, and those with whom we are working, determine that a country recognized legal personhood or its functional equivalent, we will all work to determine the legal pre-requisites for attaining it. For example, a sufficient determinant of personhood in the U.S. – we argue – is the possession of certain complex cognitive abilities like the possession of autonomy and self-determination.

Another crucial area we are studying is the forums that would be most advantageous to use to gain legal personhood, or its functional equivalent, in each jurisdiction. For instance, what legal system or legal systems are in place? Is there a robust common law? If the country has a common law system, we are researching the available legal strategies and legal vehicles for attaining legal personhood or its functional equivalent such as the ancient writ of *habeas corpus* or its sister writ of *de homine replegiando*.

If the country has a civil law system that relies more heavily on codification than do common law jurisdictions, its court system may be less receptive to judicial innovation and therefore

unlikely to be a viable forum for litigation. Then we will work with our partners to explore such avenues as legislation and referendums.

Conclusion

The NhRP is moving beyond animal protection laws and symbolic gestures to attacking the core problem for nonhuman animals everywhere: their classification as “things” that lack any capacity for legal rights. Soon the NhRP and the organizations with which we are working may be making headlines in other countries, as we continue to file serious and well-prepared lawsuits, or become involved in legislation or referendums that will allow at least some nonhuman animals finally to enjoy some basic fundamental rights.