

**Progress on Animal Rights Across the World:
India and Argentina Recognize “Non-Human” Persons**

by Nick Gier

*If a human four-year-old has what it takes for legal personhood,
then a chimpanzee should be able to be a legal person, too.*

—Harvard Lecturer Steven Wise

Many cracks have appeared in the hard shell that has enveloped, for centuries, the claim of human uniqueness. All the claims have fallen away: some animals are self-conscious, some (even crows and parrots) have cognitive skills, whales and dolphins have their own languages, and the great apes, crows, dolphins, and elephant painters use tools.

Animals are now Sentient Beings in 30 Countries

The European Union’s Lisbon Treaty recognizes animals as sentient beings, and New Zealand and the U.S. have joined these 28 countries in this view. Three American states now allow the interests and feelings of pets to play a role in any divorce settlement. As I show below, Austrian scientists have proved that dogs have a sense of fairness.

The Animal Legal Defense Fund has been instrumental in the passage of an Alaskan statute that explicitly empowered judges with the authority to award joint custody of pets to a divorcing couple. They are treated more as children rather than property.

Dolphins Have Language and Self-Consciousness

Dolphins have 40 percent more neo-cortical area in their brains than we do, and they have rich emotional and mental lives. Dolphins have passed the “mirror self-recognition test,” which proves that join the great apes, whales, elephants, and humans in possessing self-consciousness. Dolphins are tool users: they take sponges in their mouths to dig out food in the sea floor.

At the Dolphin Institute in Hawaii, Louis Herman has taught his four dolphins to understand sign language. One day Herman asked two of them to make up a new trick on their own. The two dolphins dove and within seconds exploded out of the water, circling on their tails, and spouting water like synchronized fountains.

Noc the Whale Plays Trick on Divers

For decades we have known that whales communicate with one another, going beyond just a simple call and response. For examples, male humpback whales from Alaska change their mating songs each year as they return to Hawai’i for breeding.

Noc was a male beluga whale who died in 1999, and after carefully re-analyzing recordings of Noc’s utterances, scientists are now convinced that he had become an expert in mimicking human speech. One day, for instance, while divers were doing

routine maintenance of the whale enclosures, Noc butted in on their “wet phone” communications system. He effectively enunciated the word “out” several times, and the divers thought that their supervisor had told them to get out of the water.

India Recognizes Whale and Dolphin Rights

In 2013 India’s environmental ministry proposed that dolphins and whales were “non-human persons with their own specific rights,” and performances by them in such venues such as Sea World would be prohibited. Following up in 2014, India’s Supreme Court ruled that “every species has a right to life and security, and life means something more than mere survival or instrumental value for human beings.”

Higher Apes Display Qualities of Persons

The mental and emotional achievements of our primate cousins are well known and so impressive that the Chimpanzee Collaboratory has formed to promote chimp personhood. As Harvard lecturer Steven Wise argues: “If a human four-year-old has what it takes for legal personhood, then a chimpanzee should be able to be a legal person [too].”

In addition to learning sign language (including making up new words) and teaching it to their young, chimps have been observed making tools and using herbal medicines. In a computer memory game, a chimp, seemingly without much concentration, can remember all nine numbers in a random sequence while the sharpest human subjects remember only one or two.

In 1986 Koko the Gorilla was interviewed in *Playboy* magazine, and she signed enthusiastically about the interviewer’s “fake (gold) tooth.” She also insisted that she was a person and that her non-signing mate Michael was just an animal.

Some Progress on Chimpanzee Rights

In July 2015 Manhattan Supreme Court Judge Barbara Jaffe ruled that two chimpanzees were not legal persons. Attorneys for the Nonhuman Rights Project had argued that Hercules and Leo, retired lab chimps at the State University of New York, should be freed from their cages and allowed to live in a sanctuary in Florida. Chimps and elephants in confinement are known to suffer from depression and even Post Traumatic Stress Syndrome.

In a previous ruling it appeared that Judge Jaffe had granted the chimps a writ of *habeas corpus*, an age-old legal instrument that bars arbitrary imprisonment and that, in this case, would assume chimp personhood. In her final brief Judge Jaffe corrected that implication, but she did concede that this campaign “may someday succeed.”

After a hearing in the New York County Supreme Court in May 2018, a claim of *habeas corpus* for chimps Tommys and Kiko is now pending. In response to the argument that these apes could not “carry out legal duties or be accountable for their

actions,” one of the justices responded that “the same is true for human infants and comatose human adults,” who have a right not be imprisoned arbitrarily.

Some judges on this issue fear that the boundary between chimpanzees and humans will be erased, but they have been given evidence to show that on essential respects (self-consciousness and cognitive abilities) this boundary no longer exists. With no argument other than bias against non-human persons, this position is a form of discrimination called “speciesism.”

Courts in Argentina Protect Apes

In 2014 a court in Argentina ruled that Sandra, an organutan in a Buenos Aires zoo, “was a non-human person.” This was an animal welfare case and not a request for *habeas corpus*. In another case, however, a judge did find that a chimpanzee named Cecila was a non-human person who had been illegally imprisoned. Unlike Leo and Hercules, Cecila was allowed to live the rest of her life in a sanctuary in Brazil.

Mourning Elephants Pay Their Respects

Although the idea was rejected for many years, scientist Caitlin O'Connell finally convinced her colleagues that African elephants do in fact transmit complex signals over long distances by means of low frequency seismic waves. They are able to orient themselves “in the direction that the vibrations come from and even to respond to them appropriately.”

In March 2015 two separate herds of elephants travelled for 12 hours to mourn the death of Lawrence Anthony at his home in South Africa. He was known as the “Elephant Whisper,” and he saved the lives of dozens of aggressive elephants who had been slated for euthanasia.

Elephants As Self-Conscious Painters

Dozens of unemployed Asian logging elephants now have second career as painters. Most of the paintings are abstract, but trainers have taught them to depict natural scenes as well. Most amazingly, some have actually done self-portraits, indicating that they are conscious of themselves as unique individuals. Selling for \$350-\$750 each these pachyderm painters have raised \$100,000 for elephant rehabilitation.

Happy the Elephant Goes to Court

On December 14, 2018, Steven Wise filed a writ of *habeas corpus* on behalf of Happy, an Asian elephant, in a New York court. Happy had passed the “mirror self-recognition” test, and Wise argued that “the zoo’s imprisonment of Happy deprives her of her ability to exercise her autonomy in meaningful ways, including the freedom to choose where to go, what to do, and with whom to be.” Wise’s organization the

Nonhuman Rights Project is also appealing a decision to deny *habeas corpus* to three elephants in the Connecticut Superior Court.

Parrots are People, Too

Pepperberg's African Grey parrot Alex had the proverbial bird brain—the size of a peeled walnut—but over 31 years she carefully documented an amazingly rich mental and emotional life. Under strict laboratory conditions Alex, when asked to combine seven colors, five shapes, and four materials, could identify 80 different objects.

Just like Washoe the Chimp, who called ducks “water birds,” Alex made up “yummy bread” for cake. Because one needs lips to say a “p,” Alex improvised for an apple calling it “banerry,” a combination of banana and cherry. While in the laboratory with other parrots, he was constantly criticizing the others for their poor pronunciation, repeatedly saying “speak more clearly!”

Emotionally, Alex would respond to Pepperberg, not repetitively or arbitrarily, but specifically and appropriately, such as “What's your problem?” and “I'm going to go away now.” His last words to the love of his life were “You be good, I love you.”

Dogs Have a Sense of Fairness

A recent experiment with dogs did not require language for scientists to conclude that they had a sense of fairness. At the Clever Dog Lab at the University of Vienna, scientists placed two dogs side by side and commanded them to offer a paw. Initially, one received a piece of sausage for the correct response, and the other got a piece of bread. When the reward was withdrawn from one dog, she not only stopped offering her paw, but turned away from the scientist in disgust.

As opposed chimps placed in the same circumstances, the Austrian dogs did not perceive the vegetarian option as a slight. Primatologist Frans de Waal has also found that a capuchin monkey refused to trade pebbles for pieces of cucumber when his companion was given a grape instead for the same task.

Giving up the Myth of Human Uniqueness

In 1992 while on sabbatical in India I gave up eating beef, pork, and chicken. My decision was based primarily on a choice of a healthier diet rather than any strong belief in animal rights. This new evidence for animal personhood should force all of us to rethink what is now become the myth of human uniqueness.

Those who cannot conceive of non-human persons should expand their thinking just a bit. If God exists, God would be a person. If ETs exist, they would be persons. The children, but not the adults, in the movie *ET* recognized this.

Expanding legal protection beyond the living realm, the U.S. Supreme Court has, wrongly I believe, recognized corporations as persons. In 2017, a lower court in India bestowed personhood on the Ganges and Jamuna Rivers, but this was overruled by a

higher court. In same year, however, the New Zealand government recognized the Whanganui River, sacred to the indigenous Maoris, as a person.

The Ability to Feel Pain and Abortion Rights

I believe that the criterion for a legal right to life should be, in contrast to the traditional requirement of rationality, the ability to feel pain. Laws pertaining to the humane treatment of animals recognize this, and, significantly, the medical consensus is that human fetuses do not feel pain until 22-28 weeks. Therefore, women should have a right to an abortion before that time.

I challenge all those who claim to be “pro-life” to be consistent, and join me in my vegetarian diet and my moral commitment to all creatures great and small.

Nick Gier taught philosophy at the University of Idaho for 31 years. For some of the information in this column, he is indebted to an article in *The Economist* (12/28/18). Read his article on abortion at webpages.uidaho.edu/ngier/abortion.htm. Email him at ngier006@gmail.com.