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## **The Work of the Nonhuman Rights Project: Progress Towards Personhood**

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# The Nonhuman Rights Project

Founded in 1996 by Steven Wise, the NhRP is the only civil rights organization in the United States working through **litigation**, **legislation**, and **education** to secure fundamental legal rights for nonhuman animals.

The NhRP filed the world's first common law habeas corpus petitions for chimpanzees in 2013 in New York.

The *fundamental problem* the NhRP is attacking is the legal thinghood of all nonhuman animals.

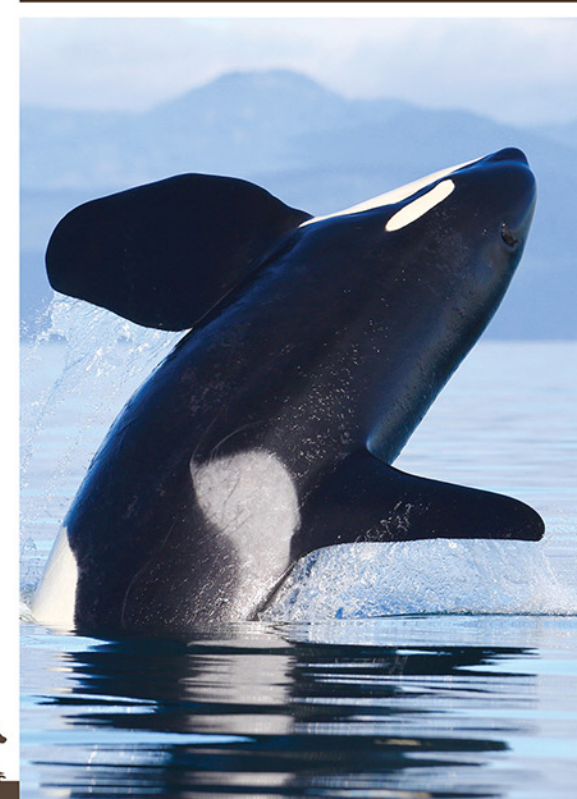


# Why Legal Personhood?

The common law divides the world into two broad categories: “thing” and “person”.

A person, be it a human, a corporation, a ship, or a city, to name a few, can possess **rights and/or duties**; a thing can possess neither, and may be the property of persons (be they individual humans, corporations, or otherwise).

The idea is 2,000 years old, at least, and for most of that time, *most human beings were not persons*.





# Why Legal Personhood, *con't*

Many judges *want* to advance rights for animals, but are handcuffed by their categorical legal thinghood:

*See Finn v Anderson*, --- N.Y.S.3d \*2-3, 2019 N.Y. Slip Op. 29131 (City Court of Jamestown, Chautauqua County 2019) (“Under New York Law, irrespective of how strongly people feel about their pets, cats and dogs have been viewed as “personal property--sometimes referred to as “chattel”--just like a car or a table . . . **this Court concludes that it is time to declare that a pet should no longer be considered ‘personal property’ like a table or car.”**).



# Autonomy and the Science Behind the Legal Argument

There is no “formula” for creating a legal person—it has always been a complex social process influenced by many factors outside the strict confines of the law.

The argument of the Nonhuman Rights Project is that the common law of habeas corpus was created to protect autonomy, and that the common law has always been blind to the “container” in which that autonomy is found, whether that is with respect to race, gender, creed, place of birth, or other arbitrary characteristic, *including species*.





# Autonomy and the Science Behind the Legal Argument, *con't*

What is meant by autonomy? A “self-initiating being who performs intentional, adequately informed actions, free of controlling influences.”

Which species are autonomous? At least great apes, cetaceans, and elephants, and likely others.

Is autonomy morally significant? No.

**Is autonomy required for legal personhood and/or rights? NO.**



# Autonomy and the Science Behind the Legal Argument, *con't*

The NhRP argues that autonomy is a **sufficient but not necessary** basis for legal rights/personhood.

Autonomy has an established legal and philosophical pedigree, and a solidified place of prominence in the common law. See, e.g., *Rivers v. Katz*, 67 N.Y.2d 485, 493, 495 N.E.2d 337 (1986) (New York common law values autonomy over human life itself, permitting competent adults to decline life-saving treatment, thus “insur[ing] that the greatest possible protection is accorded [their] autonomy.”).





# Opposition to Personhood for Animals



“Reciprocity between rights and responsibilities stems from principles of **social contract**, which inspired the ideals of freedom and democracy at the core of our system of government. . . . Under this view, society extends rights in exchange for an express or implied agreement from its members to submit to social responsibilities. In other words, “rights [are] connected to moral agency and the ability to accept societal responsibility in exchange for [those] rights.”

*The Nonhuman Rights Project, Inc., on Behalf of Tommy v. Lavery, et al.*, 124 A.D.3d 148, 998 N.Y.S.2d 248 (Supreme Court, Appellate Division, Third Department, New York 2014) (the court cites only two law review articles by Richard Cupp).





# Opposition to Personhood for Animals, *con't*

“Petitioner argues that the ability to acknowledge a legal duty or legal responsibility should not be determinative of entitlement to habeas relief, since, for example, infants cannot comprehend that they owe duties or responsibilities and a comatose person lacks sentience, yet both have legal rights. **This argument ignores the fact that these are still human beings, members of the human community.**”

*Nonhuman Rights Project, Inc. ex rel. Tommy v. Lavery* (“*Lavery II*”), 152 A.D.3d 73, 54 N.Y.S.3d 392 (Supreme Court, Appellate Division, First Department, New York 2017).



# Opposition to Personhood for Animals, *con't*

“There are profound implications for a court to conclude that an elephant, **or any nonhuman animal for that matter**, is entitled to assert a claim in a court of law. In the present case, we have little difficulty concluding that the elephants—who are **incapable of bearing legal duties, submitting to societal responsibilities, or being held legally accountable for failing to uphold those duties and responsibilities—do not have standing** to file a petition for a writ of habeas corpus because they have **no legally protected interest that possibly can be adversely affected.**”

*Nonhuman Rights Project v. R.W. Commerford and Sons, et al.*,  
AC 41464, 2019 WL 3886852 (Aug 20, 2019).





# Opposition to Personhood for Animals, *con't*

***It goes too far.*** Extending rights and legal personhood to animals could “upend the legal system,” lead to a slippery slope of “all animals” getting rights, wreak economic havoc (New York Attorney General, Bronx Zoo, opposition amicus briefs; “welfare and other protections are enough, human responsibility is more important than pretending animals are persons with rights”)

***It doesn't go far enough.*** The argument from autonomy leaves out animals that are not sufficiently “intelligent” or “like us,” and it therefore makes it *harder* for “less intelligent” species to ever achieve status of rights-holders.



# Judge Fahey's Concurrence



“Even if it is correct, however, that nonhuman animals cannot bear duties, the same is true of human infants or comatose human adults, yet no one would suppose that it is improper to seek a writ of habeas corpus on behalf of one's infant child (see *People ex rel. Wehle v Weissenbach*, 60 NY 385 [1875]) or a parent suffering from dementia (see e.g. *Matter of Brevorka ex rel. Wittle v Schuse*, 227 AD2d 969 [4th Dept 1996]). **In short, being a “moral agent” who can freely choose to act as morality requires is not a necessary condition of being a “moral patient” who can be wronged and may have the right to redress wrongs** (see generally Tom Regan, *The Case for Animal Rights* 151-156 [2d ed 2004]).

*Nonhuman Rights Project, Inc., on Behalf of Tommy v. Lavery et al.* (“*Lavery II*”), 31 N.Y.3d 1054, 100 N.E.3d 846 (New York Court of Appeals 2018)





# Judge Fahey's Concurrence, *con't*

“Does an intelligent nonhuman animal who thinks and plans and appreciates life as human beings do have the right to the protection of the law against arbitrary cruelties and enforced detentions visited on him or her? This is not merely a definitional question, but a deep dilemma of ethics and policy that demands our attention. To treat a chimpanzee as if he or she had no right to liberty protected by habeas corpus is to regard the chimpanzee as entirely lacking independent worth, as a **mere resource** for human use, a thing the value of which consists exclusively in its usefulness to others. Instead, we should consider whether a chimpanzee is an individual with **inherent value** who has the right to be treated with respect (see generally Regan, *The Case for Animal Rights* 248-250).”



# Judge Fahey's Concurrence, *con't*

“The reliance on a paradigm that determines entitlement to a court decision based on whether the party is considered a “person” or relegated to the category of a “thing” amounts to a refusal to confront a manifest injustice. Whether a being has the right to seek freedom from confinement through the writ of habeas corpus should not be treated as a simple either/or proposition. The evolving nature of life makes clear that chimpanzees and humans exist on a continuum of living beings. Chimpanzees share at least 96% of their DNA with humans. They are autonomous, intelligent creatures. To solve this dilemma, we have to recognize its complexity and confront it.”





# Fahey, *con't* & *People v. Graves*



“The issue whether a nonhuman animal has a fundamental right to liberty protected by the writ of habeas corpus is profound and far-reaching. It speaks to our relationship with all the life around us. Ultimately, we will not be able to ignore it. While it may be arguable that a chimpanzee is not a “person,” **there is no doubt that it is not merely a thing.**”

“[I]t is **common knowledge** that personhood can and sometimes does attach to nonhuman entities like ... animals[.]” *People v. Graves*, 163 A.D.3d 16, 21 (4th Dept. June 15, 2018).



# NhRP on behalf of Happy v. Wildlife Conservation Society, et al.

In Oct 2018, the NhRP filed a habeas corpus petition on behalf of Happy, an Asian elephant who has been confined at the Bronx Zoo for over 40 years, the last 13 years of which she has spent alone without the company of other elephants.

On Nov. 16, Justice Tracey Bannister of the Orleans County Supreme Court issued an Order to Show Cause and on Dec 14 heard oral argument over whether Happy should be released from her imprisonment at the Bronx Zoo, marking the **second time in United States legal history** and the first time anywhere on behalf of an elephant that a habeas corpus order has been issued on behalf of a nonhuman animal.





# NhRP on behalf of Happy v. Wildlife Conservation Society, et al., *con't*

Following the Dec hearing, Justice Bannister transferred venue in the case to the Bronx. On **September 23, 2019**, Justice Alison Y. Tuitt of the Bronx County Supreme Court heard nearly 5 hours of argument from both sides in the case.

**On Sept 29**, Justice Tuitt issued a TRO enjoining the Bronx Zoo from moving Happy out of the state of New York.

**On Oct 21**, the NhRP will appear before Justice Tuitt again, and argue the merits of Happy's habeas petition.



# Chucho, Cecilia & the Colombian Amazon

Courts and legislatures around the world are embracing nonhuman personhood, both for animals as well as parts of the environment. Examples:

- Cecilia (and to some extent, Sandra)
- Chucho
- Colombian Amazon
- India River cases
- New Zealand River Treaty/Nat'l Park Pronouncement





A large orca is captured in the middle of a powerful breach from the water. The animal's dark, sleek body is angled upwards, with its head and dorsal fin visible above the surface. A massive, white, frothy splash of water erupts from the point of exit, partially obscuring the lower part of the orca's body. The water around the splash is a deep blue, and the background shows a hazy, mountainous coastline under a clear sky.

Legislation: Los Angeles City Council, state and federal legislation.

Culture change: Books, graphic novels, collaborations with artists, philosophers, and other social movements.

***To learn more and to support our work please visit  
nonhumanrights.org or text “nonhuman” to 44-321***

