

When is an animal — or even an AI — a person?

New York's highest court ruled Happy the elephant isn't a legal person. Here's what that says about us.

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Last week, New York state's highest court ruled that an elephant isn't a legal person.

The elephant in question is Happy, who's been kept at the Bronx Zoo for the last 45 years and in isolation for the last 15. The Nonhuman Rights Project, the animal rights nonprofit that brought the case on behalf of Happy, sought to transfer her from the zoo to a roomier elephant sanctuary by invoking a common-law writ of [habeas corpus](#) — the right to stop illegal detainment.

To win Happy's release, Nonhuman Rights Project had to persuade a seven-judge panel in New York that she's a "legal person," a term for an entity with rights. No animal in the US has ever been granted legal personhood, so Happy's case was always a long shot, but other countries have granted aspects of legal personhood to [forests](#) and [bodies of water](#), as well as an [orangutan](#). And as Mitt Romney famously told a heckler at the Iowa State Fair in 2011, "[corporations are people, my friend.](#)" (Corporations indeed [benefit from legal personhood](#) in the US.)

Nonhuman Rights Project argued that because elephants suffer in the [confinement of zoos](#) and there's significant evidence that elephants like Happy are autonomous and self-aware, they too should be eligible for release under the "great writ" of habeas corpus. (In 2006, Happy became the first elephant to ever pass the [self-recognition mirror test](#), demonstrating the capacity to distinguish herself from other elephants.)

But writing the court's majority [5-2 decision](#), Chief Judge Janet DiFiore argued that granting habeas corpus to a nonhuman animal has never been done in the US and that doing so "would have an enormous destabilizing impact on modern society."

"The other side has always tried to frighten the courts and make them think that if we won a habeas corpus case on behalf of an elephant, that meant that we would end agriculture ... and then we'd start taking your dogs away," Steven Wise, Nonhuman Rights Project's founder and president, told me. But Wise says "Habeas corpus focuses on one thing: the single entity who is being imprisoned. In our case that was Happy."

New rights for new times

To be fair, it's not hard to imagine that if a judge one day deems an animal a legal person, it'll open the floodgates with petitions to free other animals. But our lack of legal protections for animals has already had a destabilizing impact on modern society, given that our factory farming of them is a leading cause of [climate change](#), [air](#) and [water pollution](#), [biodiversity loss](#), and [pandemic risk](#). We should worry more about the harms of hoarding rights, not expanding them.

However, I do worry a little about what effect granting legal personhood for individual animals would have on society's views about animal protection. If it happens, it would be a watershed moment for animal law. But only invoking habeas corpus for species "for whom there is robust, abundant scientific evidence of self-awareness and autonomy" like elephants and chimpanzees, as Nonhuman Rights Project's [website states](#), could also further entrench the [commonly held belief](#) that the more intelligent an animal is, the more worthy they are of protection (a belief that leads to rather dark places when applied to humans).

When I asked Wise about that worry, he said "We're not arguing for any more [than Happy's release], we're not arguing for any less."

The Wildlife Conservation Society, which manages the Bronx Zoo, declined to be interviewed for this story, but pointed me to its [May 2022 statement](#) issued on the day of oral arguments in the Happy case, which read in part: "[The Nonhuman Rights Project] are not 'freeing' Happy as they purport, but arbitrarily demanding that she be uprooted from her home and transferred to another facility where they would prefer to see her live. This demand is based on a philosophy and does not consider her behavior, history, personality, age and special needs."

Given that animals are primarily [property under the law](#) and the kinds of systemic [mistreatment](#) that classification [permits](#), Nonhuman Rights Project wasn't surprised by the outcome of Happy's case. One line in the decision, one that much of the argument hinged on and has been repeated by other judges, helps explain why: "... the great writ [habeas corpus] protects the right to liberty of humans *because* they are humans with certain fundamental liberty rights recognized by law." In other words, Happy can't be freed from confinement for the basic fact that she is not human.

The idea that a right can only apply to a human simply because they are a human goes by many names: human exceptionalism, anthropocentrism, speciesism. It's the subtext to our relationship with all other animals: We humans (however unevenly) enjoy certain rights merely because we're human, while the millions of other species with whom we share the Earth are subject to our whims.

In his [dissent](#), Judge Rowan Wilson called on his colleagues to challenge that exceptionalism: "The majority's argument— 'this has never been done before'— is an argument against all progress, one that flies in the face of legal history. Inherently, then, to whom to grant what rights is a normative determination, one that changes (and has changed) over time." Wilson added, "The correct approach is not to say, 'this has never been done' and then quit, but to ask, 'should this now be done even though it hasn't before, and why?'"

Five of the seven judges did quit at “this has never been done before,” though two didn’t, and Wise says that’s a major sign of progress unto itself. Nonhuman Rights Project filed its first habeas corpus litigation in 2013, and back then, “I don’t think there was any [judge] who had any agreement with us at all for the first four years,” Wise told me. “And now we’ve had six judges in New York [who’ve] agreed with us.”

They may pick up more support in the coming years: Last month, Nonhuman Rights Project filed a lawsuit on behalf of three elephants in California and has plans to file similar litigation for elephants in a couple of other states, as well as India and Israel.

Sentience beyond the animal kingdom

A few days before Happy lost in court, the status of another nonhuman entity was also called into question. A Google engineer named Blake Lemoine was [put on leave](#) for raising alarm bells about his belief that an artificial intelligence (AI) language model that he worked on, called LaMDA, had become sentient.

As my colleague Dylan Matthews [wrote](#), in its exchanges with Lemoine, “LaMDA expresses a deep fear of being turned off by engineers, develops a theory of the difference between ‘emotions’ and ‘feelings’ ... and expresses surprisingly eloquently the way it experiences ‘time.’”

The expert consensus is that no, LaMDA is not sentient, even if it’s really good at acting as if it is, though that doesn’t mean we should totally rule out the possibility of AI eventually becoming sentient.

But making that determination would require us to have a deeper understanding of what consciousness really is, notes Jeff Sebo, a philosopher at New York University who studies animals and artificial intelligence.

“The only mind that any of us can directly access is our own and so we have to make inferences about who else can have conscious experiences like ours and what kinds of conscious experiences they might be having,” Sebo told me. “I think the only epistemically responsible attitude is a state of uncertainty about what sorts of systems can realize consciousness and sentience, including certain types of biological and artificial systems.”

While there was an outpouring of sympathy for Happy on [social media](#), there was also plenty of derision — and in the court’s decision — directed toward the idea that an elephant should be deemed a legal person. Lemoine endured even more scorn for claiming that an AI is conscious.

I felt a little of that scorn myself — call it biological exceptionalism. We have such little concern for many of our fellow humans, let alone animals, that fretting over an AI’s feelings seems a bit rich. But while reading the dissenting opinions in the Happy case, I was reminded that I probably shouldn’t hold that view too tightly. The circle of who and what is deserving of

moral consideration has continually expanded, and a widely held view today could be a foolish view, or even monstrous one, decades from now.

The day that an elephant is freed from a zoo using a centuries-old human rights law will only help one elephant, but it'll be a milestone in the fight for expanding humanity's moral and legal circle, and it might happen much sooner than you think. It might also make concerns for the well-being of less cognitively complex animals, even artificial intelligence, just a little less foreign — and perhaps prepare us for a future where sentience is far more widely recognized than it is today.

Correction, June 22, 10:20 am: Corrected to state that Happy's case hinged on a common-law writ of habeas corpus, not a constitutional one.