

ANIMALS—ARE THEY ‘THINGS’ OR ‘PERSONS’?



THE QUEST FOR LEGAL RIGHTS FOR ANIMALS

If you know one thing about animals and the law, it is probably that **animals are property**. They are not ‘persons’.

If you’re not a person under our law, you can’t have rights.

Animals can’t have rights under our law while our law treats them as property, or ‘things’.

Many animal lawyers are trying to change this.

One of the most famous is **Steven Wise**.

WHO IS STEVEN WISE?

Steven Wise is an animal rights lawyer in the United States of America and the founder and President of the Nonhuman Rights Project (NhRP).

Steven Wise’s main focus as an animal lawyer is the pursuit of ‘animal personhood’—that is, **changing the law** so that it recognises **animals as beings who can have rights**, rather than as mere things.

Steven Wise believes that the law needs to change because animals deserve certain rights and protections.



Steven Wise in Canberra with the first edition of this Fact Sheet, May 2015

NONHUMAN RIGHTS PROJECT (NHRP)



The NhRP is an animal law organisation that aims to achieve legal rights for animals, or ‘nonhumans’, by bringing cases to **court** (rather than lobbying for new legislation). If successful, the court judgements could give legal rights to nonhumans. As well, the judgements would act as precedents for future courts that look at similar cases.

Recognising animals as ‘persons’ under the law would not mean animals have the same rights as human beings. The law already recognises different classes of ‘persons’. For example, corporations and ships are considered to be legal persons.

The NhRP aims to change the status of nonhuman animals to ‘persons’, so that animals may hold:

...such fundamental rights as bodily integrity and bodily liberty, and those other legal rights to which evolving standards of morality, scientific discovery, and human experience entitle them.¹

The NhRP is currently working to gain ‘personhood’ for animals such as chimpanzees, elephants, dolphins, and whales.

The NhRP focuses on these animals because they are ‘like us’. That is, they are ‘complex individuals’ capable of emotional and cognitive intelligence.

The closer they are to ‘us’, the easier it should be to have these animals recognised as persons by courts.



HAS A COURT EVER RECOGNISED AN ANIMAL AS A PERSON, ANYWHERE?

Meet Sandra the Orangutan.



Sandra lives in the Buenos Aires Zoo. In November 2014 a local animal law organisation tried to have Sandra released from captivity by going to court.

How did they do it?

They used an old legal process called *habeas corpus*. This Latin phrase literally means ‘You shall have the body’. It is used when a person is imprisoned or captured, and another person asks a court to examine the lawfulness of the first person’s imprisonment. It protects a person’s right not to be unlawfully deprived of his or her freedom.

But if you’re an animal, you don’t have this right because you are a thing and not a person!

In Argentina, however, the animal lawyers filed a habeas corpus petition for Sandra the Orangutan.

They argued that Sandra had been unlawfully deprived of her basic right to freedom, as she had been held captive at Buenos Aires Zoo since 1994. They argued that Sandra was capable of both emotional and cognitive intelligence, and therefore should be granted legal personhood.

¹ Nonhuman Rights Project: www.nonhumanrights.org.

Initially it seemed to many observers that the court decision had gone in favour of Sandra, with the court agreeing that Sandra was a person under the law. However, while animal protection organisations have heralded Sandra’s case as a landmark ruling in animal rights, it is unclear what the outcome of the case actually was.

The NhRP has pinpointed what it regards as the most significant statement in the (translated) transcript of the decision:

It is necessary to recognise the animal as a subject of rights, because non-human beings (animals) are entitled to rights, and therefore their protection is required by the corresponding jurisprudence.²



While this statement appears to recognise an animal as a ‘legal person’, it does not refer to any past cases or laws. Nor does it refer directly to Sandra. In addition, the courts did not expand on what type of ‘rights’ an animal such as Sandra may be entitled to.

It is therefore not clear whether Sandra’s case did in fact overturn the law and declare animals, or at least orangutans, to be persons.

HABEAS CORPUS IN AMERICA, THE LAND OF THE FREE!



The NhRP has launched several habeas corpus cases in America regarding chimpanzees in captivity, and future cases are planned for animals such as elephants.

The first chimpanzee case involved Tommy (pictured). Tommy has been kept in a cage on his owner’s property for many years.

The NhRP argued that Tommy should be freed because he is a person entitled to the bodily freedom that habeas corpus protects. The NhRP has pursued Tommy’s case up to the New York Supreme Court, where it filed a new lawsuit on 2 December 2015.

In August 2015 another New York court reluctantly refused to issue a habeas corpus order in favour of two chimpanzees named Hercules and Leo. These two animals are kept in captivity for biomedical research at a New York University. Despite ‘winning’ the case, the University has since declared it will no longer use Hercules and Leo for experimentation.

The NhRP has appealed the decision of the court to deny the petition for a writ of habeas corpus in relation to Hercules and Leo.

² www.nonhumanrightsproject.org/2014/12/24/reviewing-the-case-of-sandra-the-orangutan-in-argentine/

COULD AN NHRP-STYLE CASE BE BROUGHT IN AUSTRALIA?

Habeas corpus is a recognised legal procedure in Australia.

Great apes are held in captivity in Australia, including for breeding purposes.³

A Code of Practice governs their use in scientific research: *Policy on the care and use of non-human primates for scientific purposes (2003)*.⁴

Depending on the jurisdiction, habeas corpus could be used to try to secure the release of a chimpanzee or other great ape held in captivity.

If Australian animal rights lawyers were to apply the NhRP approach, they would have to address three main issues.

1. They would need to find ‘suitable animals’ who are seen as ‘complex individuals’, such as apes. Elephants, whales, or dolphins may also be suitable.
2. They would need to show that the relevant animal has certain cognitive capabilities to qualify as a ‘legal person’. These cognitive capabilities would include being self-aware, using language, having empathy, being able to retain and store information, reason, solve problems, and so on.
3. They would need to find a suitable jurisdiction by examining the relevant judicial decisions and laws of every state and territory in Australia, and how they may affect a court’s ruling on whether a nonhuman animal is a legal ‘person’ entitled to legal personhood and certain fundamental rights. They may also need to show how habeas corpus could be applied to cases of animal personhood in Australia.



Chimpanzees at Taronga Zoo in Sydney

Animal Defenders Office 2016

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³ National Health and Medical Research Council (NHMRC), *Principles and guidelines for the care and use of non-human primates for scientific purposes*, Public Consultation Draft 2015, page 5; available at: <http://consultations.nhmrc.gov.au/files/consultations/drafts/draftprinciplesguidelinescareusenonhumanprimates150327.pdf>.

⁴ At the time this fact sheet was published, this Code was being revised by the NHMRC—see footnote 3.