





## CHAPTER 8



### The Campaign for Nonhuman Rights and the Status of Captive Apes

#### Introduction

This chapter is divided into two sections. Section I explores the fight for personhood and rights for nonhuman animals and Section II provides an update and broadening of the captive ape statistics that are included in each volume of the *State of the Apes* series.

Two millennia ago, Roman law differentiated two main categories of legal status: “person” and “thing.” In more recent times, “persons” have been understood to possess the capacity for either legal rights or duties. Persons have inherent value and are visible to civil judges; they “count” in the legal system. In contrast, “things” lack the capacity for legal rights and duties. Their value is what persons give them. Things are invisible to

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civil judges and do not “count.” In that sense, persons and things stand in complete opposition to one another, separated by a great metaphysical wall (*Byrn v. NYCHHC*, 1972, p. 201; Trahan, 2008).

This dichotomy between things and persons mirrors the dichotomy between welfare and rights as they presently apply to nonhuman animals.<sup>1</sup> Rules that govern welfare stipulate how human beings *should* treat other animals. If humans fail to abide by such rules, however, nonhuman animals lack a civil remedy. While it may be weak on its own, welfare becomes vital when combined with rights. Rights focus on how humans *must* treat other animals, and they provide nonhuman animals with a civil remedy if humans fall afoul of the law (Wise, 2017b).

The Florida-based Nonhuman Rights Project (NhRP) situates the fight to obtain fundamental legal rights for nonhuman animals in the larger context of struggles for social justice. Specifically, the NhRP utilizes a legal strategy modeled on previous and ongoing struggles in the United States: that of the abolitionists of the 18th and 19th centuries; that of the National Association for the Advancement of Colored People (NAACP) Legal Defense and Educational Fund, which began the state-by-state fight for equal rights for African Americans in 1940; and that of gay marriage advocates of the 21st century (Cole, 2016, pp. 17–93; Greenberg, 2004, pp. xi, 5; Wise, 2005).

In the United States, the NhRP has been fighting for the rights of great apes in captivity under the common law system. In a number of other countries, the same struggle is taking place under civil law. This section discusses current legal strategies and provides details on cases brought on behalf of individual apes, including Sandra, an orangutan at the Palermo Zoo in Buenos Aires, Argentina; Cecilia, a chimpanzee at Argentina’s Mendoza Zoo; Hiasl, a wild-caught chimpanzee in Austria; and Suiça, a

chimpanzee in the Zoological Garden of Salvador, in Bahia, Brazil. The section goes on to explore the idea of rights at the taxonomic level. The key findings include:

- In the United States, the Nonhuman Rights Project has influenced the understanding of personhood through a concerted, long-term strategic litigation campaign that argues for acknowledgment of chimpanzees’ complex cognition and autonomy.
- The NhRP assumes that fair-minded judges who are persistently exposed to compelling expert evidence of chimpanzee autonomy, coupled with powerful legal arguments derived from the values and principles the judges themselves routinely espouse, will ultimately decide that nonhuman animals deserve fundamental rights that protect their fundamental interests.
- The NhRP has expanded its campaign beyond chimpanzees to include elephants, furthering unprecedented consideration of nonhuman rights in the United States beyond species that are the most closely related to humans.
- In a few civil law jurisdictions, the consideration of “personhood” for great apes has resulted in more explicit acknowledgment of rights, demonstrating value in pursuing legal campaigns.

Section II updates captive ape population statistics and discusses the regulatory landscape affecting captive apes. The key findings include:

- Details on the number, origin and welfare status of captive apes are only available for some captive settings and the quality of the data varies widely.
- Available data suggest that the number of captive apes in zoos is relatively static, although there are notable exceptions.

- Insufficient sanctuary space for seized and voluntarily released apes is a critical barrier to enforcement and compliance in many countries.
- In ape habitat countries, rescue centers and sanctuaries are taking in apes at an unsustainably high rate, indicating that urgent measures are needed to tackle the killing and capture of apes, as well as the trade in live apes.

## The Struggle to Obtain Legal Rights for Non-human Animals

### Background

Nowadays, under the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, every human on Earth is considered a “person” (UN, 1948, art. 6; UN, 1966, art. 16).<sup>2</sup> That was not always the case. Edith Hamilton, arguably the leading classicist of the mid-20th century, reminds us of the first major turning point in the two-millennium struggle to abolish slavery. She describes slavery in ancient Greece:

When the Greek achievement is considered, what must be remembered is that the Greeks were the first to think about slavery. To think about it was to condemn it and by the end of the second century, two thousand years before our Civil War, the great school of the Stoics, most widely spread of Greek philosophies, was denouncing it as an intolerable wrong (Hamilton, 1964, p. 24).

In the past, millions of humans—including slaves, women, children, Jews, indigenous peoples and the developmentally disabled—were treated like things. The civil rights work of the past centuries has been slow to move these humans from the “thing” side of the metaphysical wall to the “person”

side.<sup>3</sup> The manner in which personhood for all humans was finally established is a model for the work of the Nonhuman Rights Project (NhRP, n.d.-e). Today, all humans are legal persons, while nonhuman animals have generally remained things. For that reason, many people, judges included, erroneously believe that the metaphysical wall divides humans from other animals, rather than persons from things.

The UK’s passage of the Slave Trade Act of 1807 and the Slavery Abolition Act of 1833 marked an attack on the form of slavery that rested on the “thinghood” of certain human beings (UK Parliament, 1807, 1833). The first of these acts built on a milestone judgment in the famous *Somerset* case, delivered 35 years prior by Lord Mansfield, who essentially abolished slavery in England (*Somerset v. Stewart*, 1772). The formal anti-slavery struggle did not end until 1957, with the entry into force of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, which supplemented the League of Nations’ Slavery Convention of 1926 (League of Nations, 1926; UN, 1956).

In 1976 the International Covenant on Civil and Political Rights entered into force (UN, 1966). Article 16 of the Covenant states: “Everyone shall have the right to recognition everywhere as a person before the law.” It gives force to Article 6 of the Universal Declaration of Human Rights, which provides: “Everyone has the right to recognition everywhere as a person before the law” (UN, 1948).

But humans are not the only persons. Numerous kinds of nonhumans have long been considered persons in countries that use legal systems based on common law, many of which are English-speaking (*The Economist*, 2013). Well-known examples include corporations, ships and states, although the list does not end there. In 2017, the parliament of New Zealand designated the Whanganui River a person that owns its

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**Photo:** Decades of extensive research on chimpanzees' highly complex cognition have revealed them to be autonomous as well as similar—and therefore more understandable—to humans. © Slobodan Randjelovic/ Arcus Foundation

riverbed (New Zealand Parliament, 2017, cl. 19). It had previously designated the Te Urewera protected area a legal entity, with “all the rights, powers, duties, and liabilities of a legal person” (New Zealand Parliament, 2014, s. 11(1)). Pre-independence Indian courts designated certain Punjab mosques and a Hindu idol as “persons” with the capacity to own property or sue (*Masjid Shahid Ganj and others v. Shiromani Gurdwara Parbandhak Committee*, 1938; *Pramatha Nath Mullick v. Pradyumna Kumar Mullick*,

1925). Civil law countries, whose legal systems are derived from Roman law, are moving in similar directions (*AFADA v. Mendoza Zoo and City*, 2016; Tello, 2016). In 2018, the supreme court of Colombia designated the Amazon rainforest “an entity subject of rights”—that is, a “person” (Colombian Supreme Court of Justice, 2018).

Over the years, the NhRP has made numerous decisions regarding how best to mount the world's first sustained, strategic campaign for the legal rights of nonhuman



animals. The NhRP chose chimpanzees as the first plaintiffs, mainly because decades of extensive research on their highly complex cognition have revealed them to be autonomous as well as similar—and therefore more understandable—to humans. The NhRP then decided to argue that chimpanzees have legal rights under common law, which common law judges typically use while deciding cases whose outcomes are not mandated by statutes, constitutions or treaties (*NhRP ex rel. Tommy v. Lavery*,



2013). The NhRP anticipated that such judges would interpret the word “person” in the context of a statute or constitution and thus conclude, at least initially, that the term had not been intended to encompass non-human animals. Flexibility is touted as the glory of common law, however, and judges are required to create law in the interstices of statutes and constitutions to keep the law current with scientific discovery and the evolution of societal mores and human experience (Morrow, 2009, p. 158). The judges would need to be persuaded that, as a matter of justice, at least some nonhuman animals should be seen as persons entitled to at least some rights.

The NhRP decided that its initial lawsuits would focus on a chimpanzee’s right to bodily liberty, since science has demonstrated that apes, as autonomous beings, have a fundamental interest in this freedom, and since humans can easily relate to this interest (*NhRP ex rel. Tommy v. Lavery*, 2013). The next step involved identifying persuasive legal arguments. To that end, the NhRP first studied the judicial values and principles that courts of the potential target jurisdictions—including every US jurisdiction and most other common law jurisdictions throughout the world—claimed constituted justice. Once the NhRP had decided in which jurisdictions it would first litigate, it fashioned its legal arguments accordingly.

It turns out that nearly every common law judge anywhere embraces the paramount importance of autonomy—that is, one’s liberty to freely choose, within wide parameters, how one wishes to live one’s life. In referring to decisions about medical treatment, for instance, New York’s highest court, the Court of Appeals, states:

In our system of a free government, where notions of individual autonomy and free choice are cherished, it is the individual who must have the final say in respect to decisions regarding his medical treatment in order to

insure that the greatest possible protection is accorded his autonomy and freedom from unwanted interference with the furtherance of his own desires (*Rivers v. Katz*, 1986, p. 493).

The NhRP does not claim that autonomy is a necessary condition for rights, only that it is sufficient (*NhRP ex rel. Tommy v. Lavery*, 2013). Following the legal analysis, the NhRP gathered every scientific fact that supports chimpanzee autonomy from respected experts in chimpanzee cognition and behavior worldwide. These scientists—including James Anderson, Christophe Boesch, Jennifer Fugate, Jane Goodall, Mary Lee Jensvold, James King, Tetsuro Matsuzawa, William C. McGrew, Mathias Osvath and Emily Sue Savage-Rumbaugh—filed supporting affidavits in each case (NhRP, n.d.-c).

The judicial values and principles included several senses of *equality*; the NhRP emphasizes two from the 1996 case of *Romer v. Evans*. It was in that case that the United States Supreme Court struck down an amendment to the Colorado Constitution that repealed existing legislation prohibiting discrimination based on sexual orientation. The Court said that, as a matter of equal protection, a classification that used a single trait to deny a class protection across the board was “at once too narrow and too broad. It identifies persons by a single trait and then denies them protection across the board” (*Romer v. Evans*, 1996, p. 633). Using a similar line of reasoning, the NhRP planned to argue that the inappropriate single trait was *species*. The Supreme Court also said that the amendment violated the requirement that a classification must bear a rational relationship to some “legitimate legislative end” (p. 633). The NhRP thus planned to argue that the arbitrary imprisonment of an autonomous being of any species is not a legitimate end for any government.

Finally, the NhRP decided to bring writs of habeas corpus on behalf of its plaintiffs

(*NhRP ex rel. Tommy v. Lavery*, 2013). Habeas corpus is Latin for “you have the body” and is referred to as the “great writ” (*Hamdi v. Rumsfeld*, 2004, p. 536). In a case the NhRP brought on behalf of two chimpanzees, Hercules and Leo, the New York County Supreme Court found:

“The great writ of habeas corpus lies at the heart of our liberty” [...] and is deeply rooted in our cherished ideas of individual autonomy and free choice [...]. As “[t]he remedy against illegal imprisonment,” the writ is described as “the greatest of all writs” and “the great bulwark of liberty.” [...] The writ of habeas corpus “has been cherished by generations of free men [sic] who had learned by experience that it furnished the only reliable protection of their freedom” (*NhRP ex rel. Hercules and Leo v. Stanley*, 2015, p. 903).

As habeas corpus writs may only be issued on behalf of a person, and not a thing, a paradox has existed whenever the writ has been wielded to demand that a thing—whether a human slave or a chimpanzee—be recognized as a person. In 18th-century England, Lord Mansfield assumed that James Somerset *might be* a person and issued the writ (*Somerset v. Stewart*, 1772). In the United States, however, antebellum Southern courts unanimously refused to do so whenever slaves alleged they were persons, arguing that they were things (Finkelman, 2012). The NhRP confronts this paradox whenever it demands that a court issue the writ on behalf of a nonhuman animal. It responds by urging the court to follow the example of Lord Mansfield, namely to issue the writ and then conduct the hearings, which, in Somerset’s case, led Lord Mansfield to declare slavery so “odious” that common law would not support it and to order Somerset’s release, thereby implicitly abolishing human slavery in England (*Somerset v. Stewart*, 1772, p. 19).



To alter the thinghood of a nonhuman animal, a judge must first be able to imagine that a thing could possibly be a person. Otherwise, how could a judge distinguish the claim of a chimpanzee from the claim of a chair? Lord Mansfield understood that a slave could possibly be a person. Likewise, some judges can imagine that a chimpanzee might be a person; others cannot.

## Establishing Chimpanzees' Complex Cognition and Autonomy

Having established the framework for a legal strategy, the NhRP identified the above-mentioned experts, who agreed to file affidavits in which they demonstrate that chimpanzees are autonomous (NhRP,

**Photo:** Humans and chimpanzees demonstrate self-awareness through mirror self-recognition, alongside capacities that stem from self-awareness, such as self-reflection. Negra, CSNW © Chimpanzee Sanctuary Northwest





n.d.-c). One of them, psychology professor James King, helpfully defines autonomy as:

behavior that reflects a choice and is not based on reflexes, innate behavior or on any conventional categories of learning such as conditioning, discrimination learning, or concept formation. Instead, autonomous behavior implies that the individual is directing the behavior based on some non-observable internal cognitive processes (King, 2013, para. 11).

“To alter the thinghood of a nonhuman animal, a judge must first be able to imagine that a thing could possibly be a person.”

This is unsurprising, as humans and chimpanzees share almost 99% of their DNA and are evolutionarily more closely related than chimpanzees are to gorillas (IUCN SSC, n.d.; Smithsonian Institute, n.d.; Varki and Altheide, 2005; see the Apes Overview). That being the case, humans and chimpanzees share a number of attributes and traits (Anderson, 2013; Boesch, 2013; Fugate, 2013; Jensvold, 2013; King, 2013; Matsuzawa, 2013; McGrew, 2013; Osvath, 2013; Savage-Rumbaugh, 2013):

- The brains and behavior of both humans and chimpanzees are plastic, flexible and heavily dependent on learning. The brains develop and mature in similar ways, indicating that humans and chimpanzees pass through similar cognitive developmental stages.
- Both species develop “increasing levels of consciousness, awareness and self-understanding throughout adulthood, through culture and learning” (Savage-Rumbaugh, 2013, p. 6).
- Chimpanzees and humans share the “fundamental cognitive processes” that underlie their sense of being an independent agent, which is a fundamental component of autonomy (Matsuzawa, 2013, p. 7).
- Both species demonstrate self-awareness through mirror self-recognition, alongside capacities that stem from self-

awareness, such as self-monitoring and self-reflection; both are also aware of what they know and do not know.

- Chimpanzees demonstrate purposeful communication, conversation, imagination, humor and perspective-taking.
- Chimpanzees may display a sense of humor and laugh under many of the same circumstances in which humans laugh.
- Chimpanzees point and vocalize when they want another individual to notice something and can “adjust their gesturing to insure they are noticed” (Anderson, 2013, p. 5). They can communicate what they are about to do, where they are going and what assistance they want from others. They can comment on others and how they feel, answer questions about their companions’ likes and dislikes, and tell researchers what other apes want. Those who understand spoken English can answer “yes/no” questions about their thoughts, plans, feelings, intentions, dislikes and likes.
- Both language-using captive chimpanzees and wild chimpanzees understand conversational give-and-take and adjust their communication to the attentional state of the other participant, using visual gestures towards an attentive partner and using more tactile and auditory gestures towards inattentive partners.
- Chimpanzees can engage in at least six forms of imaginary play, including animation, which involves pretending that an inanimate object is alive; substitution, which involves pretending that an object is something else; and imaginary private signing, in which chimpanzees lend a sign or its referent a different meaning.
- Since they possess mirror neurons that allow them “to share and relate to another’s emotional state,” chimpanzees can be attuned to others’ experiences,

visual perspectives, knowledge states, and emotional expressions and states (Fugate, 2013, p. 5). This forms the basis for empathy—the ability to place oneself in another’s situation and to identify with and understand “another’s situation, feelings and motives”—which is linked to self-recognition. Thus, chimpanzees show concern for others in risky situations (Anderson, 2013, p. 4).

- Both in the wild and in captivity, chimpanzees may engage in sophisticated tactical deception, an ability related to imaginary play. This behavior, which requires attributing mental states and motives to others, allows them to devise strategies and counter-strategies designed to outwit others.
- Chimpanzees can engage in toolmaking, which implies the possession of complex problem-solving skills and evidences understanding of means–ends relations and causation. They use “tool sets”—that is, two or more tools in an obligate sequence—to achieve a goal. They might use a set of five objects—a pounder, perforator, enlarger, collector and swab—to obtain honey, for instance. Such sophisticated tool use involves choosing appropriate objects in a complex sequence to obtain a goal they keep in mind throughout the process; the sequencing and mental representation are hallmarks of intentionality, self-regulation and autonomy (McGrew, 2013, p. 6).
- At least 40 wild chimpanzee cultures exist across Africa and use combinations of more than 65 identified behaviors. Each wild chimpanzee cultural group makes and uses a unique “tool kit,” which indicates that chimpanzees form mental representations of a sequence of acts aimed at achieving a goal (McGrew, 2013, p. 7). A tool kit is a unique set of

about 20 different tools that chimpanzees often use in a specific sequence, such as for foraging and processing food, making comfortable and secure sleeping nests in trees, and for personal hygiene and comfort. These tool kits vary across groups; chimpanzees learn them by observing others using them.

- With respect to social culture, chimpanzees pass on widely variable social displays and social customs from one generation to the next. Thus, in one chimpanzee group, “arbitrary symbolic gestures” may communicate the desire to have sex, while in another group an entirely different symbolic gesture expresses the same desire (McGrew, 2013, p. 10).
- The most important mental abilities for culture are imitation and emulation, each of which requires learning by observation. Chimpanzees use both. They also engage in “deferred imitation,” which involves copying actions that they have seen in the past. This behavior relies on capacities that are more sophisticated than direct imitation, as chimpanzees must remember the actions of another individual while replicating them in real time. These capacities for imitation and emulation are necessary for the “cumulative cultural evolution” that allows chimpanzees to build on—and maintain—customs within a group (McGrew, 2013, p. 11).
- Chimpanzees have a conscious awareness of “numerosity,” which gives them a grasp of numbers.

Chimpanzees’ cognitive capabilities, separately and together, have proven to be important to judges who honestly struggle to determine whether, and to what extent, chimpanzees should be legal persons with certain fundamental rights (Anderson, 2013;

“Chimpanzees demonstrate purposeful communication, conversation, imagination, humor and perspective-taking.”



Boesch, 2013; Fugate, 2013; Jensvold, 2013; King, 2013; Matsuzawa, 2013; McGrew, 2013; NhRP, n.d.-c; NhRP ex rel. *Tommy v. Lavery*, 2018, pp. 1057–8; Osvath, 2013; Savage-Rumbaugh, 2013).

## Engaging the Values and Principles of US Judges

“The NhRP’s long-term strategy assumes that if fair-minded judges are persistently exposed to compelling expert evidence of a chimpanzee’s complex cognition and autonomy, coupled with powerful legal arguments derived from the values and principles that the judges themselves routinely espouse, they will struggle in good faith to overcome their implicit biases.”

The NhRP grounds its legal arguments in the values and principles of the judges in any jurisdiction in which it litigates, with the aim of leaving judges with four potential responses. The NhRP has grouped judges into four corresponding categories.

The “evenhanded judges” are the ones who apply their jurisdiction’s fundamental values and principles of justice to the claims brought on behalf of chimpanzees. They recognize these great apes as persons with a capacity for rights, and then they fairly consider which rights chimpanzees should be entitled to.

The second category—the “temporizing judges”—are the ones who would argue that justice in their jurisdiction only *appears* to be constituted by certain fundamental values and principles, but that it actually is not. This position would have the benefit of allowing the NhRP to file new lawsuits calling for updated values and principles. To date, no US court has taken this position.

“Implicitly biased judges” may undermine their own fundamental values and principles of justice by basing their decisions on implicit bias, thereby enacting “prejudice in the form of law” (Yankwich, 1959, p. 257). Indeed:

Present judges have been raised in a culture that pervasively views all nonhuman animals as “things.” As are most of their fellow citizens, most judges are daily and routinely involved in the widespread exploitation of nonhuman animals, eating them, wearing them, hunting them, and engaging in other of the numerous

exploitive ways that the culture has long accepted. When thinking about humans, different clusters of neurons are subconsciously triggered depending upon the degree to which one identifies with the subject. Imagine how differently a judge is likely to view even such a close relative to humans as a chimpanzee (Wise, 2017a, pp. 13–14).

Many judges are therefore likely to be implicitly biased against the arguments the NhRP presents, just as they are, like everyone else, likely to be biased about race, gender, sexuality, religion, weight, age and ethnicity (Eberhardt, 2019; Project Implicit, n.d.). This bias shows that “our minds have been shaped by the culture around us. In fact, they have been invaded by it” (Banaji and Greenwald, 2014, pp. 138–9).

Implicitly biased judges bypass their own fundamental values and principles of justice to insist, *ad hoc or through the misapplication of precedent or principle*, that these cannot apply to a nonhuman animal. Rights, they say, apply only to human beings, just because they are human beings. Yet, as Martin Luther King Jr. noted, “Injustice anywhere is a threat to justice everywhere” (King, 1963). It follows that undermining the rationale for attributing rights to nonhuman animals inevitably undermines the rationale for human rights. As Robert Cover observes of judges who upheld human slavery in the 19th century, theirs is “the story of earnest, well-meaning pillars of legal respectability and of their collaboration in a system of oppression” (Cover, 1975, p. 6).

Decisions that deprive all nonhuman animals of rights merely because they are not humans are examples of biased judging. The implicit bias of US judges has long led them to undermine their own fundamental values and principles, rather than applying them to those excluded from justice. These judges once refused to grant legal rights to black people. The US Supreme Court once

limited the legal right to have sex to heterosexuals, just as it allowed US citizens of Japanese descent to be interned in camps solely because of their ancestry (*Bowers v. Hardwick*, 1986; *Korematsu v. United States*, 1944). Courts limited personhood to men or refused to grant equal rights to women just because they were women. A case in point is that of Lavinia Goodell, who in 1875 sought admission to the Wisconsin bar, only to be refused access by the state's supreme court, on the sole grounds that she was a woman (Wisconsin Supreme Court, 1875). The court held that:

The law of nature destines and qualifies the female sex for the bearing and nurture of the children of our race and for the custody of the homes of the world and their maintenance in love and honor. And all life-long callings of women, inconsistent with these radical and sacred duties of their sex, as is the profession of the law, are departures from the order of nature; and when voluntary, treason against it (Wisconsin Supreme Court, 1875, p. 245).

Judges in the fourth category—"deflecting judges"—want the NhRP's cases to end without being judged on their merits. They may dismiss a lawsuit seeking legal rights for chimpanzees on a procedural point or refuse to hear its arguments or issue the writ.

The NhRP's long-term strategy assumes that if fair-minded judges are persistently exposed to compelling expert evidence of a chimpanzee's complex cognition and autonomy, coupled with powerful legal arguments derived from the values and principles that the judges themselves routinely espouse, they will struggle in good faith to overcome their implicit biases. The expectation is that they will arrive at the legally, historically, politically and morally correct decision that autonomous nonhuman animals deserve the fundamental rights that can protect their fundamental interests.

## The Legal Campaign Focus on Chimpanzees in New York State

In December 2013, after 28 years of preparation, the NhRP commenced its long-term strategic litigation campaign. It filed its first habeas corpus lawsuit on behalf of Tommy, a chimpanzee long imprisoned a few miles from the courthouse on a used trailer lot in Fulton County, in central New York State. There the NhRP encountered its first implicitly biased judge, who, without further explanation, stated at the hearing's conclusion:

Your impassioned representations to the court are quite impressive. The Court will not entertain the application, will not recognize a chimpanzee as a human or as a person who can seek a writ of habeas corpus under Article 70. I will be available as the judge for any other lawsuit to right any wrongs that are done to this chimpanzee because I understand what you are saying. You make a very strong argument. However, I do not agree with the argument only insofar as Article 70 applies to chimpanzees (NYS Supreme Court, 2013c, p. 26).

The following day, the NhRP sued on behalf of a chimpanzee named Kiko, who was imprisoned in a storefront in Niagara County, New York, near the Canadian border. There it encountered its second implicitly biased judge. He desired to review the voluminous documents before holding oral argument by telephone the following week, when he concluded:

I have to say your papers were excellent [...]. However, I'm not prepared to make this leap of faith and I'm going to deny the request for a petition for writ of habeas corpus. I think personally this is more of a legislative issue than a judicial issue (NYS Supreme Court, 2013b, p. 15).





**Photo:** In 2013, the NhRP filed its first unlawful imprisonment lawsuit on behalf of Tommy, a chimpanzee long caged on a used trailer lot in New York State. © “Unlocking the Cage” Pennebaker Hegedus Films

When the judge unexpectedly tried to halt the NhRP’s appeal by refusing to take a necessary ministerial action, the NhRP was forced to seek action from the appellate court that oversaw this judge. Specifically, the NhRP asked for a rare writ of mandamus, a request for an order to require public officials—in this case, the judge—to do their nondiscretionary duties (*NhRP ex rel. Kiko v. Boniello and Presti*, 2014). The trial court judge then took the required action and the appeal proceeded.

Two days later, the NhRP filed suit in Suffolk County on Long Island, New York, on behalf of Hercules and Leo, two young chimpanzees who had been removed from their Louisiana-based mothers when they were two years old and then imprisoned in a cage in the basement of a Stony Brook University computer building for about six years. At the university, they were placed under general anesthesia almost monthly and had wires inserted into their muscles, all to help researchers better understand how chimpanzees develop bent legs. In this case, the judge did not see or hear the

NhRP lawyers; instead, he scrawled a two-sentence dismissal (*NhRP, n.d.-d; NYS Supreme Court*, 2013a).

New York State has four intermediate appellate courts that hear appeals according to geographical area. The first judicial department covers Manhattan and the Bronx; the second is responsible for the rest of New York City and the state’s southern counties; the third hears appeals from central and northern counties; and the fourth deals with the western counties (*NYCourts.gov, n.d.*). In early 2014, the NhRP appealed Hercules and Leo’s dismissal to the second judicial department, where it encountered its first deflecting court, which took the extraordinary step of dismissing the appeal without allowing the NhRP to file a brief or argue. This ruling was clearly a mistake, albeit no accident; the court affirmed its mistake even after the NhRP pointed out that it had an absolute right to appeal (*NhRP, n.d.-d; NYS Supreme Court*, 2014). In response, the NhRP decided to refile the case in another court at another time.

The NhRP now appealed Tommy's case to the third judicial department, which proved to be the paradigm of an implicitly biased court. The judge's disagreement with the NhRP turned mostly on whether a "person" must have the capacity to possess *either rights or duties*, or *both rights and duties*. In ruling the latter, the court partially relied upon the definition of "person" found in *Black's Law Dictionary*, the most widely used US law dictionary, which states that a person has to be able to bear both rights and duties (*People ex rel. NhRP v. Lavery*, 2014, p. 151; Garner, 2014). Had the court checked Black's sole source, it would have recognized that the source actually supported the NhRP. When the NhRP brought the error to the attention of the dictionary's editor-in-chief, he immediately promised that the next volume would carry the correct definition (B. A. Garner, personal communication, 2018; NhRP, n.d.-c).

But that was too late for Tommy. The Tommy court, without explanation or supporting scientific evidence, claimed that chimpanzees lack the capacity for duties and did not give the NhRP the opportunity to dispute its conclusion (*People ex rel. NhRP v. Lavery*, 2014, p. 152). The NhRP proceeded to prove the court wrong, again too late for Tommy. Most seriously, the Tommy court never offered any considered explanation of why the ability to bear legal duties should influence whether an autonomous being, of any species, should have the right not to be arbitrarily imprisoned; it failed to grapple with the obvious problem presented by the millions of New York infants, children, the severely cognitively disabled and other individuals who cannot bear duties, yet possess legal rights, including habeas corpus. Instead, the court disposed of the issue in a brief footnote:

To be sure, some humans are less able to bear legal duties or responsibilities than others. These differences do not alter our analysis,

as it is undeniable that, collectively, human beings possess the unique ability to bear legal responsibility. Accordingly, nothing in this decision should be read as limiting the rights of human beings in the context of habeas corpus proceedings or otherwise) (*People ex rel. NhRP v. Lavery*, 2014, p. 152, n. 3).

The result was that, for the first time in the thousand-year history of common law, a court ruled that the only type of entity that could have rights of any kind was one that could assume duties or, even more bizarrely, one that was part of some arbitrarily defined collection of entities, some of which could assume duties.

A month later, a court in the fourth judicial department ruled against Kiko. It recognized the NhRP's right to appeal and ignored the Tommy court's ruling by twice assuming, without deciding, that a chimpanzee could be a "person." The court's judges—who were both implicitly biased and deflecting—inexplicably based their decision on a fundamental misunderstanding of the NhRP's purpose and objectives. They referred to the NhRP as "an organization seeking better treatment and housing of [. . .] nonhuman primates" and one that "seeks only to change the conditions of confinement rather than the confinement itself" (*NhRP ex rel. Kiko v. Presti*, 2015, p. 1334). Consequently, the judges repeated in their ruling that "habeas corpus does not lie where a petitioner seeks only to change the conditions of confinement rather than the confinement itself" (p. 1335).

Even the Tommy court had not made this error, noting: "We have not been asked to evaluate the quality of Tommy's current living conditions in an effort to improve his welfare" (*People ex rel. NhRP v. Lavery*, 2014, p. 149). The following year, New York County Supreme Court Justice Barbara Jaffe agreed: "The conditions under which Hercules and Leo are confined are not challenged by petitioner [. . .] the sole issue



**Photo:** Chimpanzee communities shoulder duties, cooperate, help and tend to injured or vulnerable community members, and share hunting duties and food. Bossou chimpanzees cracking oil palm nuts using a stone anvil and hammer.  
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is whether Hercules and Leo may be legally detained at all” (*NhRP ex rel. Hercules and Leo v. Stanley*, 2015, p. 901).

Unsurprisingly the New York high court declined to hear either Tommy’s or Kiko’s appeal, as that court hears just a small percentage of the requests to appeal brought to it. New York high court judge Eugene M. Fahey voted “no” at the time of Kiko’s appeal to the fourth judicial department. He would come to regret his vote.

The NhRP refiled Hercules and Leo’s habeas corpus petition in Manhattan in April 2015. Then, for the first time, a judge issued an order under a habeas corpus statute on behalf of a nonhuman animal. That order—issued by Justice Barbara Jaffe—required Stony Brook University to appear in court and present a legally sufficient reason for imprisoning the chimpanzees. Two months after that hearing, Justice Jaffe released a lengthy opinion that turned back each procedural attack on the ability of the NhRP to bring its claim. The opinion agrees that “person” is not a synonym for “human” (*NhRP ex rel. Hercules and Leo v. Stanley*, 2015, p. 911), that the NhRP had sought the release of Hercules and Leo and not just a change in their conditions of confinement (p. 917), and that it could choose to file a second petition on their behalf (p. 910). However, Justice Jaffe felt bound by the Tommy holding:

Courts [...] are slow to embrace change, and occasionally seem reluctant to engage in broader, more inclusive interpretations of the law, if only to the modest extent of affording them greater consideration. As Justice Kennedy aptly observed in *Lawrence v. Texas*, albeit in a different context, “times can blind us to certain truths and later generations can see that laws once thought necessary and proper in fact serve only to oppress.” [...] The pace may now be accelerating [...]. For now, however, given the precedent to which I am bound, [...] the petition for a writ of







“Chimpanzees make tools to catch insects; they recognize themselves in mirrors, photographs, and television images; they imitate others; they exhibit compassion and depression when a community member dies; they even display a sense of humor.”

habeas corpus is denied and the proceeding is dismissed (*NhRP ex rel. Hercules and Leo v. Stanley*, 2015, pp. 917–18).

The NhRP now gathered numerous additional scientific affidavits that demonstrated that chimpanzees routinely shoulder duties within wild chimpanzee communities, engage in lawful and rule-governed policing, cooperate, help and tend to injured or vulnerable community members, share hunting duties and food, and inform other community members about danger. These documents also testified that captive chimpanzees shoulder duties among themselves and within mixed chimpanzee–human communities, while engaging in promise-making and promise-keeping, doing chores and moral behavior (Anderson, 2015; Boesch, 2015; Goodall, 2015; Jensvold, 2015; McGrew, 2015; NhRP, n.d.-b; Savage-Rumgaugh, 2015).

The NhRP refiled Tommy and Kiko’s cases in Manhattan and both were sent to Justice Jaffe, who said that the Tommy Court was the proper place to address the legality of Tommy’s detention and that the NhRP could not file a second Tommy petition. When the NhRP appealed to the first judicial department, it refused to allow the appeal, just as the second department had done in 2014. This time the NhRP fought back, twice demanding its right to appeal over the next year. When its demands were refused, it took the unprecedented step of suing the first department *in* the first department and demanding that the court order *itself* to follow the law. And it did (NhRP, n.d.-b).

The price for that success was steep: the justice’s questioning during oral arguments in March 2017 was unrelentingly hostile. The NhRP pointed out in vain that a 1972 New York high court decision had made clear that “human” and “person” are not synonyms and that personhood is “not a question of biological or ‘natural’ correspondence” (*Byrn v. NYCHHC*, 1972, p. 201). The court ruled that the lower court had the right to dis-

miss the NhRP’s case on the grounds that it was a successive petition, then noted in passing, without explanation, that Tommy and Kiko could never have any rights because rights were reserved for humans (*NhRP ex rel. Tommy v. Lavery*, 2017). This decision was so flawed that the NhRP extensively annotated its errors, sentence by sentence (Wise, 2017c). The NhRP again sought to appeal to the high court and the appeal was denied once more, without comment, in May 2018. Then something extraordinary happened.

Judge Eugene M. Fahey, who had voted in 2015 to deny Tommy and Kiko’s first appeals, now became the first US high court judge to opine on the merits of the NhRP’s arguments and on the merits of the adverse decisions of the first, third and fourth departments. His view was that all their decisions were incorrect (NhRP *ex rel. Tommy v. Lavery*, 2018).

In his opinion, Judge Fahey singles out for special rebuke the courts’ argument that chimpanzees cannot be persons simply “because they lack ‘the capacity or ability . . . to bear legal duties, or to be held legally accountable for their actions’” (NhRP *ex rel. Tommy v. Lavery*, 2018, p. 1056). His opinion goes on to say:

Petitioner and amici law professors Laurence H. Tribe, Justin Marceau, and Samuel Wiseman question this assumption. 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 [. . .] or a parent suffering from dementia [. . .]. 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]) (NhRP *ex rel. Tommy v. Lavery*, 2018, p. 1057).



Fahey reasons that the first department's "conclusion that a chimpanzee cannot be considered a 'person' and is not entitled to habeas relief is in fact based on nothing more than the premise that a chimpanzee is not a member of the human species" (NhRP ex rel. *Tommy v. Lavery*, 2018, p. 1057). He goes on:

I agree with the principle that all human beings possess intrinsic dignity and value, and have [...] the constitutional privilege of habeas corpus, regardless of whether they are United States citizens [...], but, in elevating our species, we should not lower the status of other highly intelligent species (NhRP ex rel. *Tommy v. Lavery*, 2018, p. 1057).

Fahey recognizes that the NhRP presented evidence that chimpanzees "are autonomous, intelligent creatures" and urges his fellow judges to address the "manifest injustice" involved in determining whether a nonhuman animal such as a chimpanzee has the right to habeas corpus when deprived of liberty (NhRP ex rel. *Tommy v. Lavery*, 2018, p. 1059). Fahey warns that "the question will have to be addressed eventually" and asks, "Can a nonhuman animal be entitled to release from confinement through the writ of habeas corpus? Should such a being be treated as a person or as property, in essence a thing?" (p. 1056). Referring to a "dilemma," he notes that judges will "have to recognize its complexity and confront it" (p. 1059).

Fahey further points out that the answer to the question of whether a being has the "right to liberty protected by a writ of habeas corpus":

will depend on our assessment of the intrinsic nature of chimpanzees as a species. The record before us in the motion for leave to appeal contains un rebutted evidence, in the form of affidavits from eminent primatologists, that chimpanzees have advanced cognitive abilities, including being able to remember the

past and plan for the future, the capacities of self-awareness and self-control, and the ability to communicate through sign language. Chimpanzees make tools to catch insects; they recognize themselves in mirrors, photographs, and television images; they imitate others; they exhibit compassion and depression when a community member dies; they even display a sense of humor. Moreover, the amici philosophers with expertise in animal ethics and related areas draw our attention to recent evidence that chimpanzees demonstrate autonomy by self-initiating intentional, adequately informed actions, free of controlling influences (NhRP ex rel. *Tommy v. Lavery*, 2018, pp. 1057–8).

Next, he chastises both the first and fourth departments in Tommy's and Kiko's cases for mistakenly insisting that the NhRP, in the appellate division's words, "does not challenge the legality of the chimpanzees' detention, but merely seeks their transfer to a different facility" (NhRP ex rel. *Tommy v. Lavery*, 2018, p. 1058). He concludes that:

In the interval since we first denied leave to the Nonhuman Rights Project [...], I have struggled with whether this was the right decision [...]. I continue to question whether the Court was right to deny leave in the first instance. 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 (NhRP ex rel. *Tommy v. Lavery*, 2018, p. 1059).

A second extraordinary event followed one month later. The fourth department, which had dismissed Kiko's first case in 2014, was presented with a criminal defendant convicted of vandalizing cars owned by a car dealership. The criminal mischief statute

made it a crime to damage the property of a “person” and the defendant argued only a human could be a “person.” Upholding the conviction, the court cited two cases that are discussed above. One of the cases had made clear that “human” and “person” are not synonyms and that personhood is “not a question of biological or ‘natural’ correspondence” (*Byrn v. NYCHHC*, 1972, p. 201). The other case was *Kiko’s*, which the court now cited to support the proposition that it was “*common knowledge* that personhood can and sometimes does attach to nonhuman entities like corporations or *animals*” (*People v. Graves*, 2018, p. 617, emphasis added).

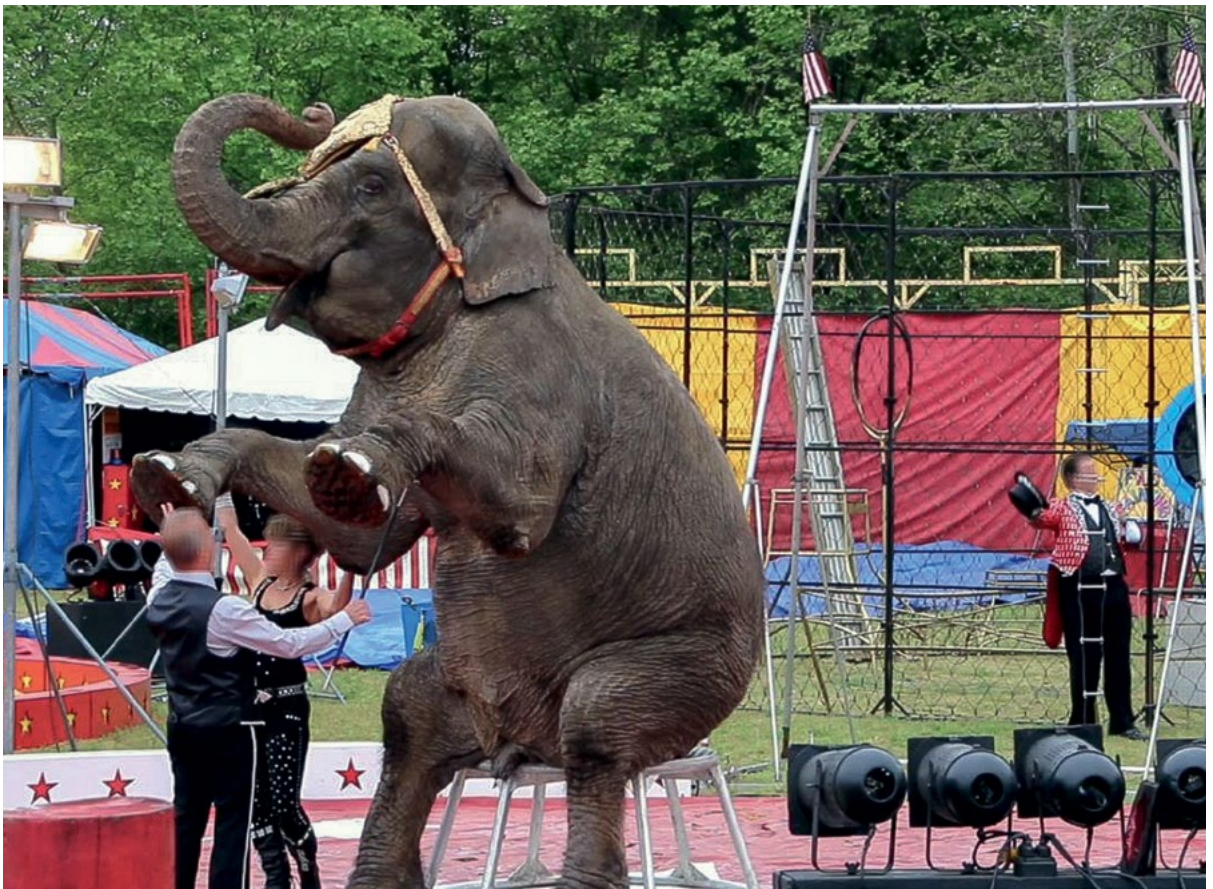
## Expanding the US Legal Campaign to Include Elephants

In October 2018, backed by affidavits filed by renowned elephant researchers Lucy Bates, Richard Byrne, Karen McComb, Cynthia Moss and Joyce Poole, which demonstrate that elephants, like chimpanzees, are extraordinarily cognitively complex and autonomous beings, the NhRP sought a writ of habeas corpus on behalf of an elephant named Happy, who had been imprisoned in the Bronx Zoo for decades (Bates, 2017; Byrne, 2016; McComb, 2016; Moss, 2017; NhRP, n.d.-a; Poole, 2016, 2018).

In New York, it is possible to file a writ of habeas corpus in any of the state’s supreme courts. The NhRP filed its case in Albion, near Niagara Falls, because its appeals go to the fourth department, which had been relatively receptive to NhRP’s line of argumentation. A month later, that court issued the second order under a habeas corpus statute on behalf of a nonhuman animal in New York State and the first ever on behalf of an elephant (NYS Supreme Court, 2018). After another month, however, over the NhRP’s objection, the court reassigned the case to the Bronx Supreme Court.

On February 18, 2020, after hearing three hours of argument over three days, Bronx Supreme Court Justice Alison Tuitt rejected the Bronx Zoo’s claim that “Happy is happy” at the Bronx Zoo and found instead that “the arguments advanced by the NhRP are extremely persuasive for transferring Happy from her solitary, lonely one-acre exhibit at the Bronx Zoo to an elephant sanctuary.” Justice Tuitt also found that Happy is “an extraordinary animal with complex cognitive abilities, an intelligent being with advanced analytical abilities akin to human beings.” Judge Eugene Fahey noted that he believes that a chimpanzee is likely a legal person and is certainly not a thing, and wrote that Happy “is more than just a legal thing, or property” and “is an intelligent, autonomous being who should be treated with respect and dignity, and who may be entitled to liberty” (Nonhuman Rights, 2020). Justice Tuitt, however, “regrettably” found that she could not order Happy’s release to a sanctuary because she felt bound by the decision of the first department, which “held that animals are not ‘persons’ entitled to rights and protections afforded by the writ of habeas corpus” (*NhRP ex rel. Tommy v. Lavery*, 2017).

Meanwhile, in November 2017, the NhRP—backed by affidavits filed by the same preeminent elephant experts as in Happy’s case—had sought a writ of habeas corpus on behalf of three elephants, Beulah, Karen and Minnie, who had for decades been forced to perform in a traveling circus in Connecticut (NhRP, n.d.-a). Under that state’s law, the court was required to issue the writ of habeas corpus unless it lacked jurisdiction or the petition was frivolous on its face (Nonhuman Rights, 2018). The court refused to issue the writ on both grounds. Ignoring centuries of common law that permits a stranger to seek a writ of habeas corpus on behalf of an individual who is being privately detained, the court said the NhRP lacked the required standing because it did not have a preexisting relationship



with the imprisoned elephants and because it had not alleged that a pre-existing relationship was not necessary. The court also said the case was “frivolous on its face as a matter of law” as no one had ever filed such a case before; it thereby conflated “novel” with “frivolous,” ignoring the fact that every new common law rule had once been sought for the first time (Choplin, 2017; NhRP, n.d.-a).

On appeal, in August 2019, the Connecticut Appellate Court affirmed the judgment of the lower court, but on entirely different grounds. It held that the NhRP lacked standing not because it had no pre-existing relationship with the elephants, but because elephants were not persons and lacked the capacity for duties required to form such relationships (*NhRP v. R. W. Commerford and Sons, Inc.*, 2019). As the NhRP had no

notice that the Appellate Court’s decision would turn on these issues, it had not adequately briefed the court or argued the case. During the appeal, Karen died; two months later, so did Beulah.

While the appeal was pending, the NhRP sought a second writ of habeas corpus on behalf of the same three elephants, this time arguing that a pre-existing relationship with the elephants was not necessary. The lower court dismissed this second case on the grounds that it did not fundamentally differ from the first case the NhRP had litigated. The NhRP appealed that decision, contending that it had not been given the required opportunity to fully and fairly litigate anything in the first case. Only after the NhRP filed its brief in the second case did the decision in the first case issue.

**Photo:** In 2017, the NhRP went to court on behalf of three elephants, Beulah, Karen and Minnie. The case continues on behalf of Minnie, but both Beulah and Karen have since died. Minnie at work.

© Gigi Glendinning



In October 2019, the NhRP asked the Appellate Court for permission to file a supplemental brief in the second case, so as to be able to attack the reasoning of the court's decision in the first case. This permission was granted and the NhRP filed its supplemental brief in November 2019. The decision in the case is pending.

Until 2013, no US court had ever been presented with the claim that a nonhuman animal could be a person with the capacity for fundamental legal rights as part of a long-term, sustained, strategic litigation campaign focused on gaining personhood and rights for nonhuman animals. That year, the Nonhuman Rights Project embarked on just such a campaign to secure personhood and certain fundamental legal rights—first for chimpanzees and then for elephants, in New York and subsequently in Connecticut. It intends to file further cases in California and Colorado in 2020. This campaign is beginning to see success and the NhRP intends for it to alter the legal relationship between humans and other animals, both in captivity and in the wild.

## International Paths to Personhood: Beyond the Common Law System

In the United States, the NhRP has attempted to capitalize on the common law system, in which courts can make new laws if no prior legislation exists (Garner, 2014). Should a single court uphold a writ of habeas corpus on behalf of a nonhuman animal, for example, its decision would set a new precedent for judging future applications on behalf of other nonhuman animals. While this might constitute a victory for the personhood movement, it is arguably much more difficult to secure, as the weight and scope of such a precedent in common law will be clearly apparent to judges.

In contrast, the civil law system presents more disparate challenges. In these jurisdictions, courts have no authority to act outside of preexisting and codified core principles (Garner, 2014). Consequently, if civil courts recognize only “humans” and “property,” then there is no legal mechanism by which to acknowledge anything in between. Such was the case in France, where—under the 1804 Napoleonic civil code—“animals” held the same status as “furniture,” and thus shared the same legal rights as an armchair (French Parliament, 1804, art. 528). Only in February 2015 did France recognize non-wild nonhuman animals as “living beings capable of sensitivity” (French Parliament, 2015, art. 2). Reportedly, this was the first time a national regulation differentiated nonhuman animals from property (Forte, 2015, p. 4).

## Circumventing Civil Code for Sandra

The French decision would soon inform an Argentine judge's ruling. In November 2014, on behalf of Sandra, an orangutan at the Palermo Zoo in Buenos Aires, the Association of Officials and Attorneys for the Rights of Animals (AFADA) argued a writ of habeas corpus against the city government and zoo. Although AFADA lost the case on appeal, the nation's Federal Chamber of Criminal Cassation recognized that Sandra had limited rights and remanded the case to a lower criminal court to evaluate allegations of animal cruelty (CCC, 2014). A subsequent *amparo* legal action—an extraordinary legal remedy for the protection of constitutional rights—was considered by Judge Elena Amanda Liberatori, who proved sympathetic to Sandra's plight. Unable to change her legal recognition in the civil code, which recognizes only “people” and “possessions,” Judge Liberatori categorized Sandra as a “non-human person,” acknowledging antecedent

in the French decision of 2015 (*AFADA v. GCBA sobre amparo*, 2015). In doing so, she made it possible for Sandra to be offered new rights beyond those awarded under civil designations. She circumvented, rather than contravened, Argentina's civil code.

Since it was issued as part of a decision in a criminal hearing, Judge Liberatori's categorization had no binding effect on Sandra's legal status. Still, the judge was empowered not only to order a committee to determine what would constitute "adequate" conditions for Sandra, but also to rule that the government must guarantee those conditions (*AFADA v. GCBA sobre amparo*, 2015). In practice, "adequate" conditions were found

neither in Argentina, nor in the Brazilian sanctuary to which Sandra was to be relocated, such that Judge Liberatori rejected the proposed transfer (GAP, 2017). Further, Liberatori's recognition of Sandra as a "non-human person" was revoked by an appellate court in 2016. The judges did not go so far as to rule that Sandra is *not* a nonhuman person; rather, they considered her status to be irrelevant, on the basis that, irrespective of the "positions that could be adopted in this regard [...] there is no dispute whatsoever in this case that this animal must be protected [and that] the suffering of animals must be proscribed" (*AFADA v. GCBA appeal*, 2016, pp. 1, 8).

**Photo:** At the age of 33, Sandra was finally transferred to the Center for Great Apes in Wauchula, Florida.  
© Center for Great Apes



Nonetheless, for four years, Sandra continued to exist in conditions that were legally “inadequate” under all of the judges’ terms. Following the Palermo Zoo’s closure in 2016, these conditions were arguably inferior to those in which she had lived at the time of AFADA’s filing (Fraundorfer, 2017). Sandra’s legal limbo therefore posited practical questions for other pursuits of personhood—specifically, those that call for the “release” of captive great apes. In November 2019, at the age of 33, Sandra was finally transferred to the Center for Great Apes in Wauchula, Florida (Shenoy, 2019).

### Sandra Sets the Stage for Cecilia

“In a few civil law jurisdictions, the consideration of ‘personhood’ for great apes has resulted in more explicit acknowledgment of rights, demonstrating value in pursuing legal campaigns.”

Although AFADA did not secure habeas corpus for Sandra, her case did set the stage for the group’s legal argument in a later court filing. In 2016, AFADA’s attorneys applied for habeas corpus—and won—on behalf of Cecilia, a chimpanzee at Argentina’s Mendoza Zoo. In her landmark decision, Judge María Alejandra Mauricio stressed that her recognition of personhood could not afford Cecilia human rights; indeed, when speaking to the press, she clarified that she had not referenced “the civil rights enshrined in the civil code” (Tello, 2016). Rather, she recognized Cecilia’s status as “in between” humans and objects, citing “rights specific to her species: to development, to life in her natural habitat” (*AFADA v. Mendoza Zoo and City*, 2016; Tello, 2016). For Cecilia, the Brazilian sanctuary to which Sandra’s transfer was blocked qualified as “natural habitat”; by Mauricio’s order, Cecilia was promptly transferred there (*AFADA v. Mendoza Zoo and City*, 2016, pp. 44–5).

It is noteworthy that neither AFADA’s petitions, nor the judges’ decisions, aimed to secure “human rights” for Sandra. The objectives of these cases are therefore fundamentally different from those of the

NhRP. They are, conceivably, a reasonable compromise.

### Personhood as a Means to an End

Civil code also presented novel challenges in Austria in February 2007, when a sanctuary that was housing Hiasl, a wild-caught chimpanzee who had been the subject of pharmaceutical research, declared bankruptcy. An Austrian businessman offered to donate “a large sum of money” to Hiasl and the Association Against Animal Factories, known by the German acronym VGT, on the condition that its president, Martin Balluch, could reach an agreement with Hiasl as to how the money should be spent. As Hiasl was incapable of reaching an agreement, VGT petitioned the Mödling district court for Balluch to be appointed as Hiasl’s legal guardian. Under Austrian law, this required Hiasl to be recognized as a “person” (Balluch and Theuer, 2007).

As the funds could simply have been donated to VGT, the provision requiring Hiasl’s agreement suggests that the donor may have had an additional motive, such as pushing a personhood petition. As Fraundorfer (2017) notes—and as the petitioners themselves later acknowledged—personhood would also pave the way for Hiasl to sue the pharmaceutical company responsible for capturing him from the wild in 1982, when he was an infant, and transferring him to a laboratory and later a “windowless basement” (Balluch and Theuer, 2007). Nonetheless, Eberhart Theuer, counsel for VGT, argued that the petition was simply a means to an end: “We’re not talking about the right to vote here.” Instead, the petition sought recognition of more basic legal rights, namely “the right to life, the right not to be tortured, the right to freedom under certain conditions” (AP, 2007).

At the first of two hearings, Judge Barbara Breit expressed frustration that Hiasl had no documents to prove his identity. After



humans testified to his origins on Hiasl's behalf, Breit ruled in a second hearing that since Hiasl was neither mentally impaired nor in imminent danger, a guardian could not be appointed. As rationale for her decision, Breit also cited potential public perception that humans with court-appointed legal guardians might be considered nonhuman (Balluch and Theuer, 2007). An appeal by VGT was denied by the district court in May 2007, on the basis that only a guardian—who could not be appointed—could appeal. Citing Austria's civil code, three other courts denied subsequent appeals for the same reason: the district court did so in May 2007, the provincial court in the Wiener Neustadt in September 2007 and the Supreme Court in Vienna in January 2008 (AP, 2008; Balluch and Theuer, 2007). In all cases, technical interpretations of Austria's civil code afforded no provision to address the central question, namely whether Hiasl, as the appellant, was entitled to any legal standing (Fasel *et al.*, 2016).

A review of Hiasl's case notes that Judge Breit left open the question as to whether Hiasl is a person: “in all her decisions and correspondence, she continuously wrote as if Hiasl was a person,” (Balluch and Theuer, 2007, p. 339). Indeed, the review and media reporting suggest that Breit was sympathetic to the cause, but that her hands were tied by civil code, with no potential to establish a common law precedent (Balluch and Theuer, 2007).

Historically, civil code has secured “personhood”—or at least equivalent status—when nonhuman animals were defendants. Criminal trials of farm and domestic animals were especially abundant in medieval times. In one such case, a pig was tried and convicted of murder in France in 1266, then sentenced to death by burning (Evans, 1906). In Switzerland in 1474, a chicken was tried in a “solemn” judicial proceeding and burned for the “heinous” crime of laying an egg (Walter, 1984). What has changed is

that nonhuman animals are plaintiffs, not defendants, as in these personhood cases of great apes. Yet, in civil code, such precedents do not apply. As Judge Liberatori showed in Argentina, the pursuit of personhood in civil jurisdictions will require creative solutions in the face of codified legal parameters.

## Not All Cases Advance the Cause

Not all cases in civil law came as far as Sandra's or Cecilia's. In October 2005, several animal welfare organizations filed for habeas corpus on behalf of Suiça, a female chimpanzee in the Zoological Garden of Salvador, in Bahia, Brazil, in pursuit of transferring her to the Great Apes Sanctuary of Sorocaba in São Paulo. Judge Edmundo Cruz recognized that, under the law, he could terminate the proceedings immediately, but instead he chose to admit the debate “in order to provoke discussion around the event” (Cruz, 2006, p. 282). Judge Cruz even made a surreptitious visit to the zoo as part of his own research, which he documented in a lengthy opinion with intent to “arouse jurists all over the country” to address the central controversy: “Can a primate be equated with a human being or not?” (p. 284). In this case, the habeas corpus claim expired upon Suiça's unexpected death in September 2005; Judge Cruz, who had ambiguously indicated he would rule in favor of Suiça, was thus released from the obligation to issue a ruling (Cruz, 2006).

As Judge Cruz was not able to set a precedent in civil law, local justices twice took an opposite view in determining a case of habeas corpus for Jimmy, a chimpanzee in a private zoo in Niterói, Brazil. Jimmy's case was rejected outright on the basis that chimpanzees were not entitled to personhood rights. Coincidentally, before a federal appeal could be filed, the zoo was closed due to poor conditions and Jimmy was transferred to the Sorocaba sanctuary (Fraundorfer, 2017).

“Although the government entirely ceased using chimpanzees in November 2015, invasive research on these beings is still technically legal in the United States.”

## Beyond Individual Cases: Rights at the Taxonomic Level

Given that the NhRP aims to establish a common law precedent in the United States, its cases are focused on specific individuals and writs for habeas corpus on their behalf. This approach is based on an understanding that—under US law—recognition of broader rights at the taxonomic level has lagged far behind that in other nations. It was the US government, by order of Congress in 1960, that first authorized the large-scale capture and importation of wild chimpanzees for invasive research (Grimm, 2017). By 1999, following intensive captive breeding after the AIDS epidemic, their numbers had reached an all-time high of 1,500 individuals, most of whom were kept in government-run or federally sponsored laboratories (US Congress, 2000). Although the government entirely ceased using chimpanzees in November 2015, invasive research on these beings is still technically legal in the United States. Since the US Fish and Wildlife Service designated captive chimpanzees endangered in June 2015, however, permits must be obtained for such research—and no researcher is known to have applied for one (Collins, 2015).

It was a ruling effective April 2018 that truly measured how slowly US law has come to afford protections to apes (US Fish and Wildlife Service, 2018). That decision, by the US Fish and Wildlife Service, recognized two species of orangutan—a full 22 years after the two were formally accepted by the scientific community, and six months after a third new species was described in the scientific literature (Nater *et al.*, 2017; Xu and Arnason, 1996). The challenge before the NhRP is therefore significant. If US law does not acknowledge species in a timely fashion—and if invasive studies on chimpanzees are technically still legal—is it conceivable that US legislation might award specific rights to named individuals?

By contrast, many other countries are closer to recognizing personhood. With the possible exception of Gabon, the United States stood alone in its use of chimpanzees in invasive research in 2008 (Knight, 2008). By then, a number of countries had either ceased or banned such research in all great ape taxa, via law or policy. Specifically, the United Kingdom banned the use of great apes in invasive research in 1997 (having ceased using them in 1986); New Zealand in 1999; Australia and Sweden in 2003; the Netherlands in 2004; Austria and Japan in 2006; and Germany in 2013 (having ceased using them in 1992) (Federal Ministry of Food and Agriculture, n.d.; Knight, 2008). Among these bans, Austria's is the only one that explicitly prohibits experimentation on gibbons (Knight, 2008). In some nations, exceptions apply for non-invasive behavioral research, or invasive work that is intended to benefit the individual; Knight (2008) presents a useful summary of the legislation. In 2010, the European Union introduced a union-wide ban, following an earlier parliamentary declaration signed by 433 of 786 members of the European Parliament (ADI, 2007; EU, 2010). The number of signatories was the third highest recorded for any declaration, of any kind, since 2000 (ADI, 2007). This single co-decision-based legislative procedure has since advanced rights across all member states of the European Union, including in nations with no prior domestic legislation on the use of great apes in research (EU, 2010).

Some nations have arguably gone much further. Since 1999, New Zealand's Animal Welfare Act has prohibited the use of "non-human hominids" in any "research, testing, or teaching" deemed not to be in the individual's best interests, or in those of their species, limiting their use to circumstances under which the likely harm would not outweigh the overall benefits (Brosnahan, 2000, p. 190; New Zealand Parliament, 1999; see Section II of this chapter). In 2008, the

Spanish parliament approved resolutions to afford some “statutory rights” to great apes, criminalizing their killing and banning their use in medical experiments, in entertainment and in most for-profit activities, excluding zoos (*Nature*, 2008). These resolutions evolved from similar legislation passed in the Balearic Islands, an autonomous community of Spain, in 2007 (Knight, 2008).

Nonetheless, the efficacy and the value of such legislation must be appropriately weighed. Just 28 chimpanzees and six orangutans lived in New Zealand at the time the Animal Welfare Act was passed; none were used for research, testing or teaching, and there was no proposal to do so (Elder, 2019). Further, the act does not prohibit their commercial exploitation: just two months after it came into force, two chimpanzees were sold to a Pacific Island circus, and one later died in her transport cage following unforeseen delays (Brosnahan, 2000). While the precise number of great apes in Spain and the Balearic Islands a decade ago is unclear, it is known to have been a fraction of those in US biomedical laboratories.

## The Status of Captive Apes: A Statistical Update

While data on the number, location, origin and welfare status of apes in captivity are needed to inform effective policies, such information cannot be obtained for all captive settings. Some detailed data are available in the form of studbooks; voluntary reporting by organizations, such as users of Species360’s Zoological Information Management System (ZIMS) (Species360, n.d.); Japan’s Great Ape Information Network (GAIN, n.d.); and open government records. In other cases, captive facilities themselves voluntarily publish data in reports or present them at conferences. Data on under-regulated or illegal forms of captivity are generally lacking; estimates from related activities, such as law enforcement, proxy measures, statistical models and other emerging technologies contribute to the knowledge base, but they cannot fill all of the gaps (Clough and May, 2018; Stiles *et al.*, 2013). The dearth of data is especially acute in habitat countries and surrounding

**Photo:** Given their social needs and capabilities, apes in captivity adjust to their surroundings better if they are part of groups of compatible individuals. Gorilla Rehabilitation and Conservation Education Center. © GRACE





areas, where captivity is more closely related to killing.

The number and status of captive apes vary in response to intrinsic and extrinsic drivers. Regulations continue to shift in a number of ways that affect how apes may be kept and used in captivity, as well as what risks they face in their natural habitats. The welfare status of captive apes varies as a function of the type of captive environment and biological traits of individuals in question. In some cases, demography can also play a role; for example, adult and geriatric individuals experience an increased risk of morbidity and mortality and might need different housing, or additional or specialized care. A range of other external factors, such as crime, corruption and income inequality, can play indirect roles as well (Clough and May, 2018; Morris, 2013).

In practice, using animal-based measures and outcomes to assess welfare and quality of life for individuals and groups is the most rigorous approach (Hemsworth *et al.*, 2015; Mellor, Hunt and Gusset, 2015;

Mellor and Webster, 2014; OIE, 2019). For broader comparisons, uniform or harmonized measures are used. The Animal Protection Index (API), a national measure that addresses risk and protective factors, is one such approach (WAP, n.d.-a). The API scores indicators under five categories that are significant to the protection and welfare status of animals: recognition, governance, standards, education and awareness. The scores are then combined into an overall API score from A to G, where A represents the highest score (WAP, n.d.-b). This section reports API scores alongside other data whenever possible.

## Captive Apes in Selected Regions

### Europe

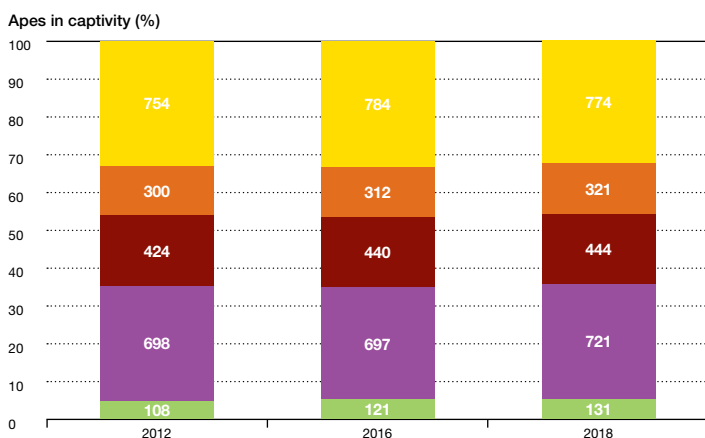
In total, the European data set for 2018 contains information on 2,391 apes in 226 member institutions, whose holdings range from 1 to 54 apes per site (see Figure 8.1). Compared to the data reported in the previous volume of *State of the Apes*, the overall increase in the number of captive individuals was around 100 individuals, or less than 2% (Durham, 2018). In 2018, gibbons were the most common taxon in the sample, followed by chimpanzees, gorillas, orangutans and bonobos. The number of solitary apes in the sample was small: 23 apes, or less than 1% of the total. Given their social needs and capabilities, apes in captivity adjust to their surroundings better if they are part of groups of compatible individuals.

The API score for European countries in the data set varied considerably, from B to F (see Table 8.1). In some countries with high API scores, “white lists” are used to designate which species may be kept, and in no known cases are apes on such lists (Durham and Phillipson, 2014). A growing number of European countries have explicit bans on circuses and similar performances

**FIGURE 8.1**

**Apes in Selected European Zoos, by Taxon, 2012, 2016, and 2018**

**Key:** ■ Bonobo ■ Chimpanzee ■ Gorilla ■ Orangutan ■ Gibbon



**Note:** Figures are drawn from aggregate data presented in species-holding reports submitted to Species360 in 2018. Some figures may reflect holdings from prior years.

**Data sources:** Durham (2015, fig. 8.1; 2018, fig. 8.3); Species360 (n.d.)

**TABLE 8.1**  
**API Score for Selected European**  
**Countries, 2020**

Country	API score
Austria	B
Belarus	F
Denmark	B
France	C
Germany	C
Italy	C
Netherlands	B
Poland	C
Romania	D
Russia	D
Spain	C
Sweden	B
Switzerland	B
Turkey	D
Ukraine	E
United Kingdom	B

Source: WAP (n.d.-a)

(ADI, n.d.; Tyson, Draper and Turner, 2016). In Germany, courts initially ordered that a chimpanzee named Robby should be moved to live with other chimpanzees after his live performances in a circus were stopped, but an appeal later permitted the owner to keep him (BBC, 2018; Deutsche Welle, 2017).

## Latin America

Zoos and private menageries have been maintained across Latin America for many decades (Horta Duarte, 2017). Poor welfare for captive animals is a widespread concern among the region's veterinarians and welfare groups, which cite weak regulation and enforcement as primary barriers to improve-

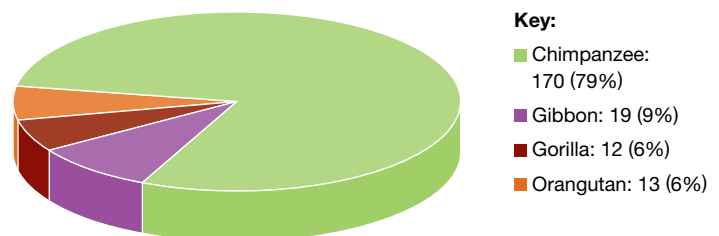
ment (Huertas, Gallo and Galindo, 2014; Larkin, 2010). In certain areas, however, efforts to improve protections are gaining momentum. Some countries have adopted circus and performance bans, for example, and certain courts have heard arguments for and even granted some rights for individual apes, including transfer to a sanctuary (ADI, 2019; Henao and Calatrava, 2016; Román, 2015; Samuels, 2016; Shenoy, 2019; see Section I of this chapter).

A limited number of sanctuaries operate throughout Latin America, where most captive apes are kept in zoos and other forms of exhibition. In Brazil, four sanctuaries associated with the Great Ape Project are home to 76 chimpanzees and 1 orangutan (J. Ramos, personal communication, 2018). In the absence of strong mandates for reporting and enforcement, and in view of the lack of comprehensive official figures on the number of apes in Latin America, estimates of the number of apes in captivity in this region relied on voluntarily reported data and direct inquiries (see Figure 8.2).

The API scores for Latin American countries in the data set ranged from a C in Mexico to an E in Venezuela (see Table 8.2).

**FIGURE 8.2**

**Estimated Number of Apes in Captivity in Latin America, by Taxon, 2018**



**Note:** Some figures are drawn from aggregate data presented in species-holding reports submitted to Species360 in 2018, which may reflect holdings from prior years.

**Data sources:** Species360 (n.d.); personal communication in 2018 with C. Alzola; H. Castelán; C. Fernandes Cipreste; L. Fernández; A. Gabriella Ioli; M.V. Josué Ránel; H. Khoshen; E. Padrón Ramos; J. Ramos; M. Rodríguez González; E.J. Sacasa; C. Silva; Zoológico Nacional del Parque, Santiago, Chile

**TABLE 8.2**  
API Score for Selected Latin American  
Countries, 2020

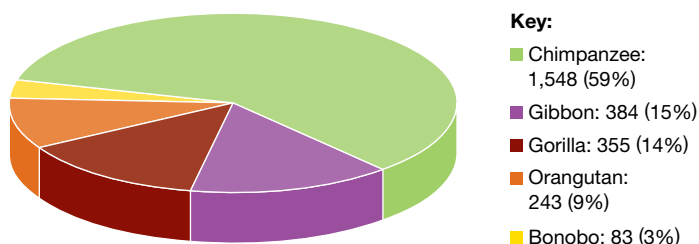
Country	API score
Argentina	E
Brazil	D
Chile	D
Colombia	D
Mexico	C
Peru	D
Uruguay	D
Venezuela	E

Source: WAP (n.d.-a)

## United States

More than 2,600 apes live in captivity in the United States, where chimpanzees and gibbons are more numerous than gorillas and orangutans (see Figure 8.3). Reflecting the slow life history of apes, overall numbers for 2018 show little variation compared to the numbers reported in prior volumes (Durham, 2018). The API score for the United States is D (WAP, n.d.-a).

**FIGURE 8.3**  
Number of Apes in Captivity in the United States,  
by Taxon, 2018



**Note:** Some figures are drawn from aggregate data presented in species-holding reports submitted to Species360 in 2018, which may reflect holdings from prior years.

**Data sources:** Center for Great Apes (n.d.); ChimpCARE (n.d.); Durham (2015, fig. 8.3); Durham and Phillipson (2014, table 10.6); Species360 (n.d.); personal communication in 2018 with B. Malinsky, A. Ott, B. Richards, A. Whitely and K. Zdrojewski; author visit to the International Primate Protection League, South Carolina, 2018; author review of documents for the Bonobo Species Survival Plan (2018), Gorilla Species Survival Plan (2017), Orangutan Species Survival Plan (2017)

The majority of the apes accounted for in this data set are kept in zoos; however, disaggregation by taxon reveals that the majority of chimpanzees and gibbons are kept in other settings. With respect to chimpanzees, significant new regulatory restrictions decreased the number of individuals in US laboratories and other forms of captivity (Durham, 2015, 2018). As a result, for the first time ever in the United States, the number of chimpanzees in sanctuaries now exceeds that in any other captive setting (see Table 8.3). In 2018, the US government issued guidance on the process of transfers, which will sustain the shift from labs to sanctuaries (NIH, 2018). A small number of US ape sanctuaries, not all of which have accreditation status, provide care for chimpanzees, housing as few as 2 to more than 260. Among them is the Center for Great Apes, which is also the sole US sanctuary to house orangutans—21 were in residence as of July 2019 (Center for Great Apes, n.d.).

Although 384 captive gibbons were accounted for in the data, as reflected in Figure 8.3, an even greater number are estimated to be undocumented, mostly as pets, but also in unaccredited exhibits or roadside zoos. Nearly 300 privately owned gibbons accounted for in the first volume of *State of the Apes* fell out of the data set when the US Department of Agriculture placed new restrictions on access to records (Durham, 2018, p. 257, box 8.3). Beyond accounting for individual numbers, the restricted records include Animal Welfare Act inspection and violation details (Brulliard, 2017). Public interest is a key point in new and ongoing lawsuits to restore access (ALDE, 2018; Durham, 2018; Wadman, 2017).

## Asia-Pacific

### Oceania

Australia has an API score of D (WAP, n.d.-a). Its Animal Welfare Strategy and National Implementation Plan, which



**TABLE 8.3****Number of Chimpanzees in Different Forms of Captivity in the United States, 2011–November 2018**

Captivity type	2011 <sup>a</sup>	2014 <sup>b</sup>	2016 <sup>c</sup>	2018 <sup>d</sup>	% change 2011–18
Biomedical labs	962	794	658	464	–52%
GFAS sanctuaries*	522	525	556	585	+12%
AZA zoos**	261	258	259	236	–10%
Exhibition***	106	196	111	192	+81%
Dealer or pet owner	60	52	37	61	+2%
Entertainment	20	18	13	10	–50%
<b>Total</b>	<b>1,931</b>	<b>1,843</b>	<b>1,634</b>	<b>1,548</b>	<b>–20%</b>

**Notes:** \* GFAS stands for Global Federation of Animal Sanctuaries. \*\* AZA stands for Association of Zoos and Aquariums. \*\*\* Exhibition comprises non-AZA zoos and other facilities that may or may not be open to the public. This category includes apes in sanctuaries that were not accredited during at least some reporting periods.

**Data sources:** a) Durham and Phillipson (2014, fig 10.2); b) Durham (2015, table 8.4); c) Durham (2018, table 8.1); d) ChimpCARE (n.d.)

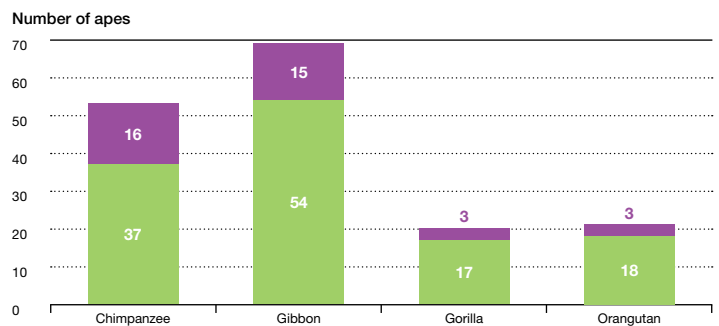
covers all sentient animals, is informed by the Regional Animal Welfare Strategy for Asia, the Far East and Oceania (Australian Government, 2011; OIE, n.d.; WAP, n.d.-a). Laws at the territory and state levels provide greater protections for animals, in part by stipulating exhibition standards and well-being guidelines on pain, distress and positive welfare (WAP, n.d.-a). Australia is home to one of the most well-studied zoo populations of chimpanzees and, until very recently, the oldest-known orangutan in captivity lived at Perth zoo (Hart, 2018; Littleton, 2005).

New Zealand, which has an API score of C, was among the first nations to adopt legislation regarding the use of apes in laboratory experiments (Knight, 2008; Taylor, 2001; WAP, n.d.-a). New Zealand's Animal Welfare Act 1999 generally restricts research on “non-human hominids”—that is, great apes. Under the act, authorities may approve applications for proposed research on great apes only if it meets strict ethical criteria, following mandatory review by the National Animal Ethics Advisory Council and proof that the research is in the best interest of either the apes involved or their species, and so long as the benefits derived are not outweighed

by the likely harm to the individuals (New Zealand Parliament, 1999; see Section I of this chapter). The latter stipulations reflect modern bioethical principles of beneficence and justice (Beauchamp, Ferdowsian and Gluck, 2014). In 2013, a regulatory review considered how applications to exhibit apes and other animals were handled; the process was undertaken in response to concerns that

**FIGURE 8.4****Apes in Captivity in Australia and New Zealand, by Taxon, 2018**

**Key:** ■ Australia ■ New Zealand



**Note:** Figures are drawn from aggregate data presented in species-holding reports submitted to Species360 in 2018; additional data come from the media sources cited below. Some figures may reflect holdings from prior years. No bonobos were reported.

**Data sources:** Durham (2015, fig. 8.1; 2018, fig. 8.3); Species360 (n.d.)

included safety and animal welfare outcomes (Environmental Protection Authority, 2013).

Overall conditions for captive apes in Oceania are stable because the numbers are small and regulations well established. The only available records for apes were for zoos and wildlife parks in Australia and New Zealand. Given the nature and scope of the region's zoo regulations and standards, few welfare risks exist beyond those associated with long-term captivity—and the occasional escape or high-profile transfer (Hart, 2018; Johnston, 2015; Lee, 2013; Mager, 2000; Pasley, 2017). Figure 8.4 shows numbers of apes in each taxon for zoos in Australia and New Zealand.

### Asia

In Asia, zoos hold many captive apes. Not counting Japan, database figures for 2018 indicate that 25 gorillas, 436 gibbons, about 220 chimpanzees and 170 orangutans resided in zoos (Species360, n.d.). As noted earlier in this chapter and in prior editions of *State of the Apes*, the availability and quality of data on the number of apes in captivity and their welfare vary across countries and regions, in part because of uneven rates of access and participation in reporting and membership databases. One extensive review identified 466 orangutans in Asian zoos, considerably more than reported in the studbooks or databases (Banes *et al.*, 2018). As the study emphasizes, issues with the collection and sharing of information can be impediments for zoos, as they are for this review and other research (Banes *et al.*, 2018; Durham and Phillipson, 2014).

Detailed data have been reported for Japan in prior volumes of *State of the Apes*. The latest data show that populations in captivity in Japan are nearly static (less than 3% change since 2016): 6 bonobos, 311 chimpanzees, 21 gorillas, 47 orangutans and 178 gibbons (Durham, 2018; GAIN, n.d.; Species360, n.d.). In Japan, as in other coun-

tries where reporting is mandatory, data coverage is superior and consistent across sources (Banes *et al.*, 2018; Durham, 2018; GAIN, n.d.).

In addition, sanctuaries in Asia hold well over 600 gibbons and 1,200 orangutans (Durham, 2018; see also Table 1.1). As Chapter 1 of this volume shows, the number of apes held as pets, in amusement parks and as tourist props throughout the region appears to be on the rise, but more research is needed to produce accurate estimates per taxon (see also Chapter 4).

### Africa

Zoos house a small proportion of Africa's captive apes—just over 5%. Altogether, data for the continent's zoos accounted for only 74 apes in 2018: 46 chimpanzees, 5 gorillas, 22 gibbons and 1 orangutan (Species360, n.d.). As noted earlier, the data reported here were obtained in 2018, meaning that some figures could reflect earlier reporting periods. Another consideration is data coverage; the database lists relatively few institutions for Africa, in part because participation is voluntary and may involve dues, such that reported values are likely to be underestimates.

Sanctuaries and rescue centers thus account for nearly 95% of all apes reported to be in captivity in Africa. The numbers of bonobos and gorillas held in sanctuaries are similar to those reported in the previous volume of *State of the Apes*: about 70 and 118, respectively (Durham, 2018). In contrast, the number of chimpanzees known to be in African sanctuaries has risen by more than 5% since the previous volume (see Table 8.4). That increase reflects both changes in reporting to data sources such as Species360 and a higher number of rescues, translocations and facility changes, including the following cases.

In Ivory Coast, efforts to save a lone chimpanzee named Ponso prompted planning

**TABLE 8.4****Number of Chimpanzees in African Sanctuaries, 2011, 2015 and 2018**

Country	Number of sanctuaries	2011	2015	2018
Cameroon	4	244	246	247
DRC	6	85	109	117
Gabon	3	20	20	20
Gambia	1	77	106	101
Guinea	1	38	50	46
Ivory Coast	1	4	1	2
Kenya	1	44	39	39
Liberia	2	76	63	99
Nigeria	1	28	30	28
Republic of Congo	3	156	145	161
Sierra Leone	1	101	75	74
South Africa	1	33	13	33
Uganda	1	45	49	49
Zambia	1	120	126	120
<b>Total</b>	<b>27</b>	<b>1,071</b>	<b>1,072</b>	<b>1,136</b>

**Data sources:** Akatia (n.d.); Chimfunshi (n.d.); CSWCT (n.d.); Durham (2018, table 8.6); Durham and Phillipson (2014, table 10.7); HELP Congo (n.d.); J.A.C.K. (n.d.); JGI South Africa (n.d.); LCRP (n.d.); Ol Pejeta Conservancy (n.d.); Projet Primates (n.d.); SYCR (n.d.); personal communication with K. Conlee, 2018; J. Desmond, 2019; G. Le Flohic, 2018

for a sanctuary (Akatia, n.d.). The sanctuary site has been selected and, while other formalities are still in process, Akatia is currently caring for one chimpanzee and three other primates (E. Raballand, personal communication, 2020).

More than 60 chimpanzees were rescued when a research laboratory was converted into a sanctuary in Liberia (Lange, 2017; K. Conlee, personal communication, 2018). Subsequently, a new and distinct initiative, Liberia Chimpanzee Rescue and Protection (LCRP), was established to accept infants and others in need of care, regardless of origin (LCRP, n.d.; J. Desmond, personal communication, 2019). The LCRP sanctuary now has more than 25 residents (J. Desmond, personal communication, 2019).

A chimpanzee from Iraq was translocated to the Sweetwaters Chimpanzee Sanctuary in Kenya, and an airlift rescue of an infant chimpanzee from Virunga National Park to the Lwiro Primates Rehabilitation Center in the Democratic Republic of Congo (DRC) also received international media attention (Brulliard, 2018; Ohanesian, 2018).

## Statistical Update Conclusion

While registration and reporting practices vary considerably around the globe, available data suggest that the number of captive apes in zoos remains relatively static. The demographics of captive populations in non-habitat countries are changing, such that breeding and reproductive rates are lower



overall and, as a result, the average age could increase over time.<sup>4</sup>

In both non-habitat and habitat countries, regulatory changes can lead to increases the number of apes in sanctuaries in the short and intermediate term. Sanctuary capacity can thus be a critical consideration for those who make and enforce laws and for the many stakeholders with an interest in the welfare and protection of apes. A shortage of sanctuary capacity can negatively affect facility operations and practices, such as by encouraging re-release and translocation under suboptimal conditions. Increases in the size or number of sanctuaries are often followed by surges in arrivals, highlighting that insufficient space for seized and voluntarily released apes is a critical barrier to enforcement and compliance.

The past decade has seen an increase in attention to the rights of individual apes, growing scientific knowledge of the needs and capabilities of apes, and changing views on the ethics surrounding the lives of apes. These factors will continue to drive changes in welfare standards and captive care practices. They may also provide context and increase the sense of urgency around the demand for sanctuary capacity and the critical need to curb the killing and capture of apes, and the trade in apes that fuels high, often unsustainable intake rates in habitat country rescue centers and sanctuaries.

## Acknowledgments

**Principal authors:** Steven M. Wise, Esq.,<sup>5</sup> Debra Durham<sup>6</sup> and Graham L. Banes<sup>7</sup>

## Endnotes

- 1 This section uses the term “nonhuman animal” to underscore that humans are also animals and, correspondingly, to avoid implying that only nonhuman animals are “animals.”
- 2 In practice, however, some indigenous and minority groups are regularly denied the personhood

rights accorded to all humans under these international treaties.

- 3 In practice, however, some indigenous and minority groups are regularly denied the personhood rights accorded to all humans under these international treaties.
- 4 Among the main drivers of these demographic changes are the US moratorium on breeding in labs, which was followed by a major shift to sanctuaries, where sterilization and other forms of contraception are the norm. Moreover, zoos are breeding more selectively, for example by focusing on the most endangered species and excluding hybrids, as noted in prior editions of *State of the Apes* (Durham, 2015, 2018).
- 5 Nonhuman Rights Project ([www.nonhumanrights.org/](http://www.nonhumanrights.org/)).
- 6 D3 Theorem (<https://d3theorem.com/>).
- 7 Wisconsin National Primate Research Center ([www.primate.wisc.edu/](http://www.primate.wisc.edu/)).