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WILL THE GREAT PRIMATES BE RECOGNIZED AS NON-HUMAN PERSONS IN THE 21ST CENTURY?

¿Se reconocerán los grandes primates como personas
no humanas en el siglo XXI?

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“Legally, persons count; things don’t.”
(Wise 2004, p. 25.)

RESUMEN: Los grandes primates han sido una especie en peligro de extinción durante más de cincuenta años. La presión continua que ejercen los humanos sobre los habitantes y las selvas tropicales alrededor del guante ha llevado a chimpancés, bonobos, orangutanes y gorilas al límite de su bienestar. Hoy en día existe una gran presión internacional, que tiene como objetivo liberar a los primates de sus entornos de cautiverio en los zoológicos, o promover el desarrollo de leyes que protejan a estos animales del sufrimiento, la caza y el cautiverio. Para lograr esta búsqueda, sería un gran avance reconocer las cuatro especies de grandes simios (aparte de los humanos) como personas no humanas, otorgándoles derechos bajo los cuales la ley los protegería de las actividades humanas en sus hábitats naturales y la situación de cautiverio que viven en muchos países alrededor del mundo.

PALABRAS CLAVE: Grandes primates · zoos · personas no humanas · personabilidad · Habeas Corpus · bienestar · cautiverio.

ABSTRACT: Great primates have been an endangered species for more than fifty years. The continued pressure that humans make in the habitants and rainforests around the glove have pushed chimpanzees, bonobos, orangutans, and gorillas to the very limits of their well-being. Nowadays there exists a big international pressure, which

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aims to release primates from their captive environments in zoos, or to promote the development of laws that protect these animals from suffering, hunting, and captivity. In order to accomplish this pursuit, it would be a great movement ahead to recognize the four species of great apes (aside of humans) as non-human persons giving them rights under which the law would protect them from human activities in their natural habitats and the captive situation they live in many countries around the globe.

KEYWORDS: Great primates · zoos · non-human persons · personhood · Habeas Corpus · welfare · captivity.

1. Introduction

For a few years there has been a profound swift in how we comprehend not only the lives of invertebrate animals like octopuses or insects as sentient beings (Smith 1991; Broom 2014; Paul y Mendl 2016; Barachi y Baciadonna 2020), but also the most complex ones till the point we are starting to see and recognize them as persons (Varner 2012; Rowlands 2019). Since the famous work of Paola Cavalieri and Peter Singer, *The Great Ape Project*, came out in 1993, a great number of philosophers, lawyers, and advocates defended the lives of the great four species of non-human apes (chimpanzees, orangutans, bonobos, and gorillas) as non-human persons with the right of freedom, the life, and not being tortured physically or mentally.¹

The reality is that in the last thirty years the world and the natural habitats of these species have changed dramatically. Since Indonesia in the Asiatic southeast from the forests of the Congo in Central Africa the life and biodiversity of these places is being deeply threatened by hunting, deforestation, and the climate change that humans are inflicting upon chimpanzees, orangutans, bonobos, and gorillas. Nowadays, Borneo (Indonesia) stands as the country with the biggest rate of deforestation in all the planet threatening biodiversity in its rainforests by the loss of the habitat, downgrading the lands, and fragmenting also the habitat that inhabit non-human primates and other animals (Moate 2023, s.p.). The continuous plantations of palm oil in countries with such amount of biodiversity produces the degradation of the soil structure eroding the very base of fertility that animals and plants need for their survival (Ibíd., s.p.).

Additionally, several species of non-human primates as gorillas or chimpanzees in the rainforests of the Congo are equally being established as endangered species by the pressure that humans inflict on their habitats. The threat against these animals does not only come from the bushmeat consumption or the growing of many cities that provokes the invasion of more savage territory where primates live. The reduction of their numbers also comes from climate change, hunting, and even zoonotic diseases that inflict a great danger into the wellbeing of non-human primates in the present and towards the future survival of these animals (Eba'a Atyi et al. 2022).

¹ By “*great primates*” I will refer to orangutans, gorillas, bonobos, and chimpanzees. They, alongside humans, form the five species of great primates that inhabit planet Earth (<https://www.projetogap.org.br/en/primate/the-five-great-primates2/>).

The present evidence shows perfectly that till the definitive halt of deforestation by the year 2030 (Raji 2023, s.p.), there is still a lot of work to do regarding not only the protection of the rainforests of Amazonia, Borneo, or the Congo; but to equally protect the non-human primates that inhabit these forests as the greatest source of biodiversity that exist in planet Earth. For this reason, I will argue that in order to truly protect the four species of non-human primates (chimpanzees, orangutans, bonobos, and gorillas) it is crucial for them to be recognized as non-human persons under the law of the country that allows third person parties to inflict pressure on their habitats. By now more countries are advancing in the modification of their legislations in order to cease definitely with hunting, illegal transportation, and the captivity that is still being carried in most countries like China, central Africa, or Indonesia (Qomariah 2022; Daltion 2021; Boyle 2020; Dingfei 2014; Shepherd 2010).

Having said so, in the first section of this paper it will be exposed the meaning of the concept of “*person*” that we inherited from the Lockean perspective and we adapted to philosophy under a metaphysical or psychological interpretation. This psychological understanding of the concept not only has had a great influence in the philosophy of mind in which philosophers have argued about the possession of a cluster of necessary and sufficient conditions in order to be considered as a person (Dennett 1976). But, also, in bioethics and applied philosophy where many have argued also about the difficulties of considering a being (human or non-human) as such under this interpretation of the concept and its applicability in different stages of the development of a living entity (Singer 1993; DeGrazia 1997, 2006; Varner 2012; Rowlands 2019).

At the same time, it will be highlighted that the concept of “*person*” and “*human*” are not the same and refer to different kind of beings. The misunderstanding between these two words has led to a favoritism of humans and the rights that a human being hold because, in most of the declarations of courts that dealt in the past with the attribution of rights to non-human primates, they have stated that only humans can be persons (in a legal interpretation²), and chimpanzees or bonobos cannot be recognized as subjects of legal rights because they are not human (Montes Franceschini 2021).³

In the second section will be stated that hunting and trapping now endangered species of animals has been a constant by humanity for hundreds of years and that the theological interpretations about its existence in this planet conditioned the way we saw them in the past. Then I argue that despite this theological perspective, that was discarded mostly in favor of the Cartesian interpretation of animals as automata, this point of view did not favor neither the welfare of non-human animals as are the great apes. Since here I contend that this ‘mechanical’ philosophy influenced profoundly in how law understood the lives of animals and denies that great primates can endorse legal rights.

² The legal scholar Hans Kelsen (1992) has argued that a legal person can be understood as “a personifying expression for the unity of a bundle of legal obligations and legal rights, that is, the unity of a complex of norms.” (p. 47).

³ A “*legal person*” and a “*subject of rights or legal rights*” will be taken as equivalent in the following.

In the third section will be explicated the constancy that humans have held capturing and caging a lot of non-human animals that in the past we considered as “exotic”, and that led to a kind of attitude in which humans feel comfortable at zoos observing them from the distance. Likewise, it is stated that to causes a shift in this kind of attitude it is important to refer to the mental capacities that great primates possess by which they can reexperience the past and imagine possible futures. And this last assumption may help to change the way we perceive and treat these endangered species of animals.

Finally, I conclude that in order to protect the four species of great apes, that were initially defended in the Great Ape Project (1993) with the addition of gorillas, it is absolutely necessary to recognize them as non-human persons from a legal perspective and to recognize them, at the same time, a set of legal laws that protect great primates and secure their release from zoos in which they experience stress, anxiety, and a disconnection from their natural habitat to which they belong.

2. Persons, great primates and welfare

The idea of an animal being recognized as a person has been an issue extendedly discussed in philosophy and law for more than forty years. Philosophers and academics on the subject have theorized around the sufficient and necessary conditions under which an animal should be considered as a person according to the Lockean description of the word. Starting with his initial interpretation about this concept, a person was considered by John Locke as “a thinking intelligent being, that has reason and reflection, and can consider itself the same thinking thing, in different times and places, which it does only by that consciousness that is inseparable from thinking and seems to me to be essential, to it; it being impossible to perceive without perceiving that he does perceive” (Locke 1979, p. 188).

First of all, this definition of a person is a psychological one. It implies that in order to qualify as such one must have a high level of consciousness by which he or she can consider itself as a living being whose mental life endures through space and time. If this was the case most humans would not be considered in this way. For example, a comatose person whose life has been hopelessly reduced to a constant dependency of an assisted machine (because of its permanent coma condition), has not a mental life at all and could not be considered as a person under these terms (Rogers 1992).⁴ Similarly, a human who is suffering the progressive advancement of dementia will probably lose its identity until the total loss of a self-concept (DeGrazia 2005, p. 159).

At this point it is important to highlight that it is not the same to be a person that to be a human. In the first case we are describing a psychological being with certain level of consciousness. Meanwhile, by human we refer to a biological being with a

⁴ In a recent research (Claassen and Edlow 2022) about the subject it has been demonstrated that comatose patients might have a type of “*covert consciousness*” by which they would be able to communicate with the persons in charge of their recovery. This is something that the authors admit will have implications in how personhood and autonomy are understood.

precis DNA configuration that refers to the *Homo sapiens* lineage. Attending to this interpretation all humans are entities that share a common DNA between them, and a person is an entity with a complex mental life with also some remarkable mental capacities that allows it to project its mental states backward in time and forward into the future. This last phenomenon allows the person to create an extended concept of his or her own life through the constant continuity of the several mental states of the subject.

Initially this one was referred as the psychological or metaphysical interpretation of personhood and was largely discussed by many philosophers during the last fifty years. Among them some claimed that alongside this metaphysical definition of a person (like a being with a self-concept and an extended sense of its identity), there was also a moral or normative conception about this concept that cannot be underestimated by philosophers, especially if we are dealing with the possible conditions under which great primates might be considered as persons. This last assumption refers to the idea that a person, as he or she can remember facts about its own past and imagines possible futures, might be accused by them making the person totally responsible for the past actions and the possible ones that might be done by him or herself.

Attending to the argumentation given by Mark Rowlands in his book *Can Animals Be Persons?* (2019) the metaphysical interpretation about persons will have undoubtedly as moral as legal implications in the consideration of animals under this concept, especially the great primates which have demonstrated along the years its remarkable mental capacities. This last assumption is very important to the consideration of chimpanzees, orangutans, bonobos, or gorillas as non-human persons (or legal persons) because if it is proved that these entities can be considered as persons under the metaphysical or psychological interpretation given by Locke, and extended till modernity in philosophy and bioethics; it means that there is not a theoretical obstacle that forbids us to consider these animals as non-human persons under the law.

Precisely, the experiments and observations that have been done with great primates in the last twenty years have proved that the four-great species of non-human primates have the capacity to mentally travel backwards and forwards in time (orangutans, gorillas, chimpanzees, and bonobos). This capacity that was pointed out initially by Endel Tulving (1972, 1983) and lately by Thomas Suddendorf and Michel C. Corballis (1997) refers to a kind of attitude by which a human or a non-human animal can make plans in the present in anticipation of future events that have not been yet taken place. This “mental time travel” implies not only a dissociation of a present mental state into a future one, but to a continuity between a present state like “*I am hungry*” to a future state in the form of “*I will be hungry tomorrow for sure*”. This continuity between the here and now and a future situation in which a non-human primate can imagine himself allows him or her to create an extended self-concept whose content are the distinct mental representations of the individual in different times and places.

This last assumption has important implications in terms of welfare attending to the fact that great primates are a kind of beings that comprehend that their lives extend from the past to the future. And if we take in consideration this idea it would not

be permissible to inflict damage to these complex animals that understand the extension of their necessities, desires, and feelings beyond the present moment (Rowlands 2019). If this is the case we humans are putting under captivity, and mostly inhuman conditions, several species of non-human primates whose episodic capabilities of recalling and imagine distant events are quite similar, if not the same, as those of the human species.

3. Beyond property and captivity

For hundreds of years humanity has captured and put in captivity, and in abhorrent conditions, most of the ‘exotic’ animals against which we were confronting during the discovery of new tropical forests, lands, and continents around the globe in the past centuries. This means that most if not the majority of primates that were discovered were forced to abandon their natural habitats to fill the empty cages of the ships that had as a destination the zoos of the modern countries that were in great technological and cultural development. Citing Paula Casal’s last post on <https://www.eldiario.es/>, the absence of a Law that protects great primates from captivity at zoos produces the perfect conditions to make a *pact with the devil* (Casal 2022). In this situation the zoo (aka: *the devil*) shows perfect pictures of happy families gathering together as if everything at the lives of all animals with the devil were the best life they could possibly achieve.

On the other hand, the abduction that great primates suffered, and are still suffering nowadays, was made under the idea that all living beings on the realm made by God were created exclusively to serve primordially to humans, not only so to entertain and promote a spectacle in zoos and circuses, but also to feed mankind (Steck 2019). This theological interpretation was mostly displaced by the Cartesian view of the animal as a mechanical object moved just by the most fundamental desires and volitions in absence of a rational part by which to decide and select the best choices in life to continue living (Harrison 1992).

This kind of philosophy influenced tremendously by the technological developments of the 19th and the 20th century, was rotted deeply in the legal constitutions and the laws that governed the way we view, treat, and dealt with non-human animals, especially those with the closest genetical familiarity with humans: the great primates. According to Steven M. Wise (2004) these animals, and others, are considered nowadays as things in most countries of the world. And that is the main reason why they cannot be considered as “legal persons” (p. 4). They are just “legal things” according to the majority of legislations (p. 4). That’s why mental capabilities are so important in order to cease this kind of “philosophy” which aims yet to see primates as things that are ready to be used and caged in zoos:

Minds are critical for legal rights. It would be hard to persuade a reasonable man that a chimpanzee with the mind of Aristotle should be denied every legal right (Wise 2004, p. 179).

If we, as the presumed more advanced species on this planet, were able to recognize that great primates are able to comprehend that their lives have a temporal and a spatial continuity across the four dimensions we know, by remembering and imagining possible futures, we would be able to place a step ahead in the welfare consideration of these beings and their inclusion in the legal realm of the persons.

Maybe this case need not to be so complicated and it requires only a bit of attention, as Ganeri (2017) might say, of our past unpleasant experiences, the bad ones that we could relive in the present, and the expectation of sensing them again in the future if we continue living under the same conditions that provoked them. This is the case of primates living in captivity. Under these conditions they could experience stress, anxiety, discomfort, anger, and stereotypes that are greatly influenced by the space in which they might live the rest of their lives if we do not start firmly to recognize them as non-human persons or “legal persons” (Wise 2004, p. 4) with the rights initially exposed by Paola Cavalieri and Peter Singer in their famous book *The Great Ape Project* (1993).

Here both philosophers stated that it is very important to pay a close attention to the mental capabilities of primates and to recognize them the right to live freely in their natural environments, to not experience physical or mental pain, or just to live without the aggressive pressure of humans to their natural interests:

We now have sufficient information about the capacities of chimpanzees, gorillas and orangutans to make it clear that the moral boundary we draw between us and them is indefensible. Hence the time is ripe for extending full moral equality to members of other species, and the case for so doing is overwhelming (Cavalieri and Singer 1993, p. 1).

Thanks to this ethological and cognitive endeavor started in past decades we now know that the great primates not only can make a strong bonding between their companions, with emotional relationships with members of the same family, but they can feed themselves in ways that we thought was unique of our own species (Sanz, Call, y Boesch 2013). Non-human primates select tools and keep them until the moment to be moved to another place where they will use them as sticks to obtain termites or as hammers to break nuts (Boesch y Boesch 1981, 1982, 1984). If this is so it can be stated without hesitation that chimpanzees, bonobos, orangutans, and gorillas are able to plan their feeding forward in time and anticipate necessities of the future (Osvath y Osvath 2008; Osvath 2010; Osvath y Karvonen 2012; Sanz, Call, y Boesch 2013).

4. The non-human persons of our present time

Attending to the evidence already presented and the great effort made by other organizations besides the *Great Ape Project*, like the *Non-Human Rights Project*, a few steps have been done to ensure the recognizance of many primates as bearers of legal

rights or non-human persons. One of the most paradigmatic cases that were carried out in the last decade was the trial made in favor of Cecilia, a chimpanzee captive in a zoo with deplorable conditions until the judge María Alejandra Mauricio from Buenos Aires freed Cecilia attending to the filed writ of *Habeas Corpus* presented by Pablo Buompadre, president of the AFADA (Asociación de Familias Adoptivas de Aragón; *Association of Adoptive Families of Aragon*) by which an individual must be liberated from slavery or the indecent captivity that rested upon him or her.

The judge María Alejandra argued in the File N° P-72.254/15 (2016) that it is not intended to equate all the sentient and living beings with the human species, and neither it is necessary to all sentient creatures known to be recognized as legal persons. Rather, it is intended to affirm and recognize that “primates are people as subjects of non-human rights and that they have a catalog of fundamental rights that must be studied and enumerated by the corresponding state bodies” (pp. 36-37). By doing so it is stated that it was not the main intention to give directly the rights that humankind possess, but to recognize that these animals are something more than just sentient beings with beliefs, intentions, and desires; they are non-human persons endorsed with legal rights.

A similar case occurred to an orangutan named Sandra to whom was requested her freedom through an *Habeas Corpus*. She was born in 1986 in the Rostock Zoo of Germany being lately sold to another Zoo located in Argentina. Under captivity she experienced nothing more than an artificial environment with very few elements that resemble her original environment in nature (González 2016). At the end of the trial in which was stated that Sandra deserved to live the rest of her life in a Sanctuary she was finally recognized as a non-human person and as a bearer of legal rights (Federico de Baggis 2015).

Nonetheless, and despite this success with Cecilia and Sandra, complete freedom to all primates living in captivity in zoos or research facilities is far away from ending. Almost ten years ago another petition for the freedom of four chimpanzees (Kiko, Tommy, Hércules, y Leo) was presented by the *Non-Human Rights Project* in the Supreme Court of New York. The reason of such a demand was that these chimpanzees with a unique personality, interests, and desires into the future, was that they were being used for the biomedical benefit of some companies that saw in these animals a way of making profit testing new products and substances in their bodies. The Supreme Court rejected the petition in 2018 arguing that these beings cannot be recognized as non-human persons or holders of legal rights because they were not, primarily, humans (Murcia 2018; Pallotta 2021).

Likewise, in the year 2022 was rejected the writ of *Habeas Corpus* filed in favor of the orangutan Sandai that lives currently at the Buin Zoo of Chile. After evidencing the poor conditions under which Sandai was living at the facility it was defended that he is a non-human person and a subject of rights by which he would not be ever tortured physically or emotionally, deprived of his liberty and his life (Casanova et al. 2022). Unfortunately, the Court of San Miguel did not accept the writ of *Habeas Corpus* by

which it was intended to free Sandai to the Sanctuary of Great Primates of Sorocaba in Brazil (Mondaca et al. 2022; Casanova et al. 2022).

These four examples reflect the ups and downs of a long journey for the recognition of legal rights to the closest animals to our species. A few of these trials have been carried out successfully, but the resolution of others was conditioned by anthropological and speciesist arguments of a tradition that finds its roots in the philosophy and law interpretations that belonged to the 18th or the 19th century. If we are going to add more pressure under this change of paradigm that not only affect the great primates but dolphins, whales, and elephants, it is a must to pay close attention to the mental capacities of these beings summing more arguments from cognitive ethology and cognitive sciences in favor of the legal recognizance of primates as bearers of legal rights.

5. Final remarks

Since Paola Cavalieri and Peter Singer started the *Great Ape Project* in 1993 a lot of philosophical, scientific, and law debates were made regarding the way human societies were treating non-human primates being kept under captivity in zoos or research centers. Thankfully many improvements have been made in the last thirty years. Cecilia and Sandra were just the first steps in a long journey that has as a main purpose to free all living beings that live in captivity in zoos with artificial environments made of iron bars and concrete, or the pools in dolphinariums were dolphins suffer of several illnesses because of the treated water and the direct contact with humans.

To finally halt the cruelty and harass that suffer our closest relatives on this earth it is not sufficient to just consider them as sentient beings. They are more than that. They are first of all persons according to the philosophical interpretations of the concept that is commonly taken from the Lockean work about the metaphysical identity of the person through space and time. If we consider and declare at the end that great primates are persons in this sense then there would not be any reason why they could not be considered as non-human animals with rights legally recognized by the laws of a country. Just if human beings awake from the cartesian dream of the animal as a blank machine just driven by pure instinct and starts to consider primates as beings as mentally complex as humans, it might be possible to consider deeply the possibility to fulfill the work started thirty years ago with the *Great Ape Project* in the 21st century.

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