Case Commentary: *Nonhuman Rights Project, Inc. v Breheny 2022*

By Dr Joe Wills, University of Leicester

Introduction

The law is a Janus-faced phenomenon. On the one hand, it concerns order. Law as order emphasises the legal system's role in upholding stability, predictability and, generally, maintaining an orderly society. On the other hand, law is about justice. This entails, amongst other things, the vindication of individual's rights and ensuring that disputes are resolved in a fair and reasonable manner before impartial tribunals.[1] To be sure, these two modalities of law are not mutually exclusive, but they can come apart. In a legal system that has injustice woven into its very fabric, order stands opposed to justice.

Legal orders have largely been inequitable to nonhuman animals: 'Their most basic and fundamental interests – their pains, their lives and their freedoms – are intentionally ignored, often maliciously trampled, and routinely abused.'[2] The maintenance of this order for nonhuman animals merely prolongs their denial of justice.

In Nonhuman Rights Project, Inc. v. Breheny[3] the New York Court of Appeals was faced with a choice; would they adopt a law as order position concerned with upholding the status quo for nonhuman animals or would they take a law as justice approach focused on what fairness requires. In short, the five judge majority took the former approach while the two dissenting judges embraced the latter.

Background

At the centre of this case is an aging female Asian Elephant called Happy. Happy is believed to have been captured in Thailand as a baby in the early 1970s. She was subsequently shipped to the United States and sold to the Bronx Zoo in 1977 where she has resided ever since. Throughout the 1980s Happy and the other elephants at the Zoo were coerced into giving rides and performing tricks.[4] Since 2006, she has lived alone in conditions that experts suggest significantly increase her risk of a host of physical and mental harms.[5]

In 2018, the Nonhuman Rights Project (NhRP) filed a petition for a common law writ of habeas corpus on behalf of Happy, seeking her release from the zoo and transfer to an elephant sanctuary where she can exercise her autonomous capacities. The writ of habeas corpus is a legal remedy for challenging unlawful detention. Under New York law a petition for habeas corpus can be filed by a 'person illegally imprisoned or otherwise restrained in his liberty… or one acting on his behalf'.[6]

The NhRP argue that Happy is a 'person' for the purpose of the writ of habeas corpus. By this they mean that Happy is an entity with the capacity for legal rights. The reason why Happy ought to be recognised as a person for habeas corpus they argue is because the writ exists to safeguard liberty. Liberty is an interest held by all autonomous beings, individuals whose actions

1 Edgar Bodenheimer, 'Law as Order and Justice' (1957) 6 Journal of Public Law 194.

2 Steven Wise, Rattling the Cage: Towards Legal Rights for Animals (Profile 2000) 4.

3 2022 N.Y. Slip Op. 3859 (N.Y. 2022).

4 See Jill Lepore, 'The Elephant Who Could be a Person' (The Atlantic, 16 November 2021). https://www.theatlantic.com/ideas/archive/2021/11/happy-elephant-bronx-zoo-nhrp-lawsuit/620672/

5 See Affidavit of Joyce Poole (2018) https://www.nonhumanrights.org/content/uploads/Aff.-Joyce-Poole.pdf ('Holding (elephants) captive and confined prevents them from engaging in normal, autonomous behavior and can result in the development of arthritis, osteoarthritis, osteomyelitis, boredom and stereotypical behavior. Held in isolation elephants become bored, depressed, aggressive, catatonic and fail to thrive.')

6 NY CPLR § 7002 (2012).

are self-determined and based on freedom of choice rather than mere reflexivity. Relying on evidence from elephant behavioural experts, NhRP contend that elephants like Happy are clearly autonomous. To deny her the right to liberty merely by virtue of her species membership is contrary to the common law value of equality.[7] After a three-day hearing, the Bronx Supreme Court (the trial court) issued a decision in 2020 finding that the NhRP's expert affidavits 'demonstrate' that 'Happy possesses complex cognitive abilities sufficient for common law personhood and the common law right to bodily liberty.'[8] The trial court further noted that the arguments for transferring Happy 'from her solitary, lonely one-acre exhibit at the Bronx Zoo, to an elephant sanctuary' were 'extremely persuasive.'[9] Yet the court 'regrettably' declined to grant Happy habeas corpus relief on the basis of precedent from more senior courts that had rejected habeas corpus petitions on behalf of other nonhuman animals.[10]

The NhRP appealed to the First Department of the Appellate Division which affirmed that 'the writ of habeas corpus is limited to human beings' and cautioned that a judicial determination that nonhuman animals are legal 'persons' would 'lead to a labyrinth of questions that common-law processes are ill-equipped to answer'.[11] The NhRP further appealed to the New York Court of Appeals, New York State's highest court.

The Decision

In a 5-2 decision, the New York Court of Appeals affirmed the lower courts' dismissals of the peti-

7 See Brief for Petitioner-Appellant The Nonhuman Rights Project, Inc. v. Breheny (1st Dep't Case No. 2020-02581) https://www.nonhumanrights.org/content/uploads/Happy-Brief.pdf (hereafter 'Happy Brief')

8 Nonhuman Rights Project, Inc. v. Breheny No. 260441/2019, 2020 WL 1670735, at *3 (Sup. Ct. N.Y. Cty. Feb. 18, 2020).

9 ibid, at *10.

10 ibid, at *9.

11 Matter of Nonhuman Rights Project, Inc. v. Breheny 189 A.D.3d 583 at 583 (1st Dep't 2020).

tion for a writ of habeas corpus for Happy. Writing for the majority, Chief Judge DiFiore held that 'writ of habeas corpus is intended to protect the liberty right of human beings to be free of unlawful confinement'.[12] Such a right does not apply to any nonhuman animals, notwithstanding any 'impressive capabilities' they may possess.[13] The majority offer a handful of justifications for this conclusion. First, they noted that '[n]othing in our precedent or, in fact, that of any other state or federal court, provides support for the notion that the writ of habeas corpus is or should be applicable to nonhuman animals.'[14] While true, this observation seems beside the point as the Court of Appeals is not bound by the decisions of the lower courts or the courts of other States.

Second, the majority assert that 'Nonhuman animals are not, and never have been, considered "persons" with a right to "liberty" under New York law'.[15] To illustrate this they engage in a brief textual analysis of various New York Statutes. Again, though, it is hard to see what the relevance of this observation is. The petitioners did not claim Happy is a person with a right to liberty under any of the statutes cited by the majority. The petitioners claimed Happy should be recognised as having a right to liberty under the common law writ of habeas corpus. It was the job of the Court of Appeals to make that determination.

Third, the majority claims 'petitioner implicitly concedes that Happy is not guaranteed freedom from captivity' because the 'relief requested is not discharge from confinement altogether but, rather, a transfer of Happy from one confinement to another of slightly different form'.[16] This, the majority claims, demonstrates the 'incompatibility of habeas relief in the nonhuman context'.[17] There are a few problems with this. First, it's woefully inaccurate for the court to describe solitary life in a one acre enclosure as only 'slightly different' to life to a 2300-acre elephant sanctuary that closely approximates Happy's natural environment. There is clearly a difference of both degree and kind between these settings. Second, as noted in the 2018 concurring opinion of Judge Fahey,[18] the briefs filed by the NhRP[19] and its amici[20] and in the dissenting judgements of Judges Wilson and Rivera, the writ of habeas corpus can and has been used in New York and elsewhere 'to transfer a petitioner from an onerous custody to a less onerous custody'.[21] The Majority fails to address, let alone rebuke, these legal arguments and authorities.

Fourth, the majority observes that 'nonhuman animals cannot—neither individually nor collectively—be held legally accountable or required to fulfill obligations imposed by law.'[22] The majority provides no explanation for the relevance of this claim for denying Happy habeas corpus rights. It is morally odious to deny freedom to a complex autonomous being on the basis that she can't play by the rules of a human society she was forced into against her will. What's more, the claim that the ability to exercise rights is dependent on the capacity to exercise duties is patently false. As the Fahey concurrence,[23] briefs of the petitioners[24] and amici[25] and dissenting judgements[26] pointed out repeatedly, this claim would imply that infants and people with severe cognitive disabilities cannot hold legal rights either. Again, it is striking that the majority did not even consider these obvious counter-examples. Up until this point, the majority opinion reads as if it is scrambling for principles upon which to reject Happy's appeal. But the arguments offered are underdeveloped and unpersuasive, a mish-

12 Matter of Nonhuman Rights Project, Inc. v. Breheny (n3) majority op, at 2.

13 ibid, at 6.

14 ibid, at 9.

15 ibid.

16 ibid, at 10.

17 Ibid.

18 Nonhuman Rights Project, Inc. ex rel. Tommy v. Lavery 31 N.Y.3d 1054, at 1058 (2018) (Judge Fahey, Concurring) (hereafter 'Fahey Concurrence').

19 Happy Brief (n 7) at 54-56.

20 See e.g. Brief of Amici Curiae Habeas Corpus Experts for Plaintiffs-Appellants at 19. https://www.nonhumanrights.org/content/uploads/Habeas-Experts-Brief-Happy-Court-of-Appeals.pdf

21 Wilson, J., dissenting op at 36-37. See also Rivera, J., dissenting op at 18.

22 Majority op, at 11.

23 Fahey Concurrence (n 18) at 1057.

24 Happy Brief (n 7) at 44-48.

25 See e.g. Brief of Amici Curiae Joe Wills, et al., UK-Based Legal Academics, Barristers and Solicitors in Support of Petitioner-Appellant, at 4-17. https://www.nonhumanrights.org/content/uploads/Joe-Wills-et-al-amici-brief-Happy-case.pdf

26 Wilson, J., dissenting op at 12-16.

mash of half-baked ideas and quasi-principles. The real crux of the majority decision, I suggest, is not to found in legal principle, but rather in policy considerations. It is worth quoting the majority at length on this point:

A determination that Happy, an elephant, may invoke habeas corpus to challenge her confinement at the Bronx Zoo… would have an enormous destabilizing impact on modern society. It is not this Court's role to make such a determination… Granting legal personhood to a nonhuman animal in such a manner would have significant implications for the interactions of humans and animals in all facets of life, including risking the disruption of property rights, the agricultural industry (among others), and medical research efforts.

With no clear standard for determining which species are entitled to access the writ, who has standing to bring such claims on a nonhuman animal's behalf, what parameters to apply in determining whether a confinement is "unjust," and whether "release" from a confinement otherwise authorized by law is feasible or warranted in any particular case, courts would face grave difficulty resolving the inevitable flood of petitions. Likewise, owners of numerous nonhuman animal species—farmers, pet owners, military and police forces, researchers, and zoos, to name just a few—would be forced to answer and defend those actions.[27]

At the core of the majority's opposition to recognising habeas corpus rights for a nonhuman animal is the belief that doing so could create a 'slippery slope' opening up 'the floodgates' to a proliferation of lawsuits filed on behalf of other nonhuman animals. In other words, the majority adopts a law as order framework. Having found no legal principle with any real bite to justify the indefinite detention of a complex autonomous being, they instead appeal to the 'destabilizing impact' of her release. Rather than dwell further on this rationale here, let us turn to the dissents to examine a contrasting approach.

The Dissents

The two dissents from Judges Wilson and Rivera comprise over 75% of the written judgement and represent powerful clarion calls for a new legal approach to nonhuman animals. Judge Wilson's dissent offers a wide-ranging and detailed exposition on the historic role of habeas corpus, the purpose of common law adjudication and the evolving place of nonhuman animals in ethics and law. It begins by lamenting the majority's conservative approach to jurisprudence:

The majority's argument—"this has never been done before"—is an argument against all progress, one that flies in the face of legal history. The correct approach is not to say, "this has never been done" and then quit, but to ask, "should this now be done even though it hasn't before, and why?"[28]

Instead, Judge Wilson suggests, the court should adopt an evolutionary approach to common law adjudication: Tempora mutantur et leges mutantur in illis (Times change and the laws change with them). Societal attitudes to animals develop over time in line with shifting ethical norms and increased knowledge about animal capacities, behaviours and needs. Here Judge Wilson notes the common law's adaptability to 'reflect new knowledge, changed beliefs and economic and social transformations'.[29] Indeed, the writ of habeas corpus itself has played a key historical role as a vehicle 'to challenge conventional laws and norms that have become outmoded or recognized to be of dubious or contested ethical soundness'.[30] Here Judge Wilson refers to habeas corpus being used to free enslaved persons, indigenous peoples, women, children and other oppressed groups at times when they had few or no legal rights afforded by positive law.

Judge Wilson then quickly dispatches with the Majority's claims about rights and the scope of habeas corpus. The claim that personhood rights are dependent on the ability to shoulder responsibilities cannot explain why children or profoundly disabled adults possess them: 'we can, and constantly do, grant rights to living beings who bear no responsibilities and may never be able to do so.'[31]

27 Majority op, at 12-13.

28 Wilson, J., dissenting op at 10-11.

29 ibid, at 56.

30 ibid, at 36.

31 ibid, at 15.

Moreover, Judge Wilson's dissent offers a detailed historical analysis of the broad array of circumstances in which habeas corpus relief has been secured through the English common law. Contrary to the majority's claim that habeas corpus relief cannot be used to transfer an individual from one form of custody to another, Judge Wilson shows that courts in both the United States and England did just that. For example, the writ has been used to transfer custody of children from one parent to another.[32]

Concerning the majority's 'slippery slope' concerns, Judge Wilson offers several points. First, he suggests concerns about a proliferation of habeas cases in relation to farm animals and pets are misplaced. All these animals are domesticated: 'In the case of domestic animals, by definition, their habitation with their owners is something aligned with their genetic dispositions'.[33] Judge Wilson is suggesting here that liberty rights should be limited to wild animals only, a position recently adopted by the Constitutional Court of Ecuador.[34]

This limiting principle is not wholly convincing on a philosophical level. Even granting domesticated animals require some form of coexistence with humans in order to thrive, they can still possess autonomous capacities[35] and there are plainly some forms of captivity that deprive them of the ability to exercise these capacities. If, as Judge Wilson points out elsewhere in his judgement, the writ of habeas corpus can be used to relocate an individual from an onerous form of confinement to a less onerous form of confinement, there is no in principle reason why it could not be used for these purposes for domesticated animals. Despite this, there may be pragmatic grounds for animal advocates to accept Judge Wilson's limiting principle here, as doing could go some way to assuage judicial concerns about 'slippery slopes'. This does not mean abandoning domesticated animals altogether of course, rather it means attempting to vindicate their rights through other legal avenues with a greater chance of success.

In addition to limiting habeas corpus to wild animals, Judge Wilson notes that 'common-law courts are especially good at developing doctrines to deal with slippery slopes'.[36] What's more, the common law determines the scope of habeas corpus incrementally, on a case-by-case basis. Allowing Happy to have a habeas corpus hearing would not automatically lead to any other animals being freed. Judge Wilson points out that the use of habeas corpus to liberate enslaved persons, women and children did not bring about the end of their second or third class statuses.[37] To draw a more direct parallel, we could point out that jurisdictions where courts have recognised the liberty rights of some nonhuman animals – for example Argentina,[38] Pakistan,[39] India[40] and Ecuador[41] - have not

32 ibid, at 17.

33 ibid, at 63. Judge Rivera agreed on this point in her separate dissent: 'Happy, as with all elephants, has not evolved to dwell alongside humans as some domesticated animals have.' Rivera, J., dissenting op at 19.

34 Re: Estrellita, Final Judgement No. 253-20-JH/22, para.137(ii) (recognising that wild animals have a right to 'freedom of movement').

35 Ironically this point was made in an amicus curie brief filed in support of the Bronx Zoo by New York Farm Bureau, The New York Dairy Producers Association, and The Northeast Agribusiness and Feed Alliance. They argue that the scientific evidence suggests that farm animals - including pigs, chickens and horses – possess self-awareness and autonomy. These amici do not think this entitles such animals to freedom of course, rather it means that animals like Happy also shouldn't be allowed freedom. See Brief Amicus Curiae of New York Farm Bureau, Et al., In Support of Respondents and Affirmance, at 12-14.
https://www.nonhumanrights.org/content/uploads/NY-Farm-Bureau-amicus-brief.pdf

36 Wilson, J., dissenting op at 64.

37 ibid, at 35.

38 In re Cecilia, File No. P-72.254/15 32 (Argentina Nov. 3, 2016) (recognising a chimpanzee as a "nonhuman legal person" entitled to habeas corpus).

39 Islamabad Wildlife Mgmt. Bd. through its Chairman v. Metropolitan Corp. Islamabad through its Mayor & 4 others (W.P. No.1155/2019), 25 (Islamabad High Court Judicial Dep't, Apr. 25, 2020). (writ of mandamus to relocate an Asian elephant and other 'inmates' from the Islamabad zoo to a sanctuary on the basis that it "is a right of each animal… to live in an environment that meets [their] behavioral, social and physiological needs.")

40 People for Animals v. MD Mohazzim & Anr Crl.M.C. 2051/2015 & Crl.M.A. No. 7294/2015 (recognizing that caged birds have "a fundamental right to fly and cannot be caged" and ordered they "be set free in the sky")

41 In re Estrellita, Final Judgement No. 253-20-JH/22 (recognising an array of rights, including liberty rights, for wild animals under the Ecuadorian Constitution).

witnessed the 'parade of horribles' whose spectre haunts the majority. Nonetheless, as Judge Wilson astutely notes:

those cases did spark dialogue and change on a broader scale... The writ is a tool for society to challenge confinement, construed broadly, and can document and raise awareness of injustices that may warrant legislative, policy, or social solutions.[42]

This seems exactly correct. Whilst habeas corpus can't be used to wholly dismantle unjust social practices, it can provide relief to particular individuals who suffer as a result of them and more broadly catalyses social, legal and ethical debate about practices that sit in the grey area of a society's moral norms.

In respect of how to proceed, Judge Wilson would have recognised Happy's right to petition for her liberty before a factfinding court. That court would have first determined the merits of Happy's claim by evaluating the strength of the competing evidence offered by both the Bronx Zoo and the Petitioner about whether transferring Happy to sanctuary would be in her interests. Following this merits stage the court would then engage in:

a normative analysis that weighs the value of keeping the petitioner confined with the value of releasing the petitioner from confinement. The value of the confinement would include not just the value of the confinement to Happy (e.g., superior medical care), but also the value of the confinement to the captor and society.[43]

Here Judge Wilson echoes the ethical analysis offered in an amici curie brief submitted by Peter Singer and two other utilitarian philosophers.[44] Singer et al wrote:

According to consequentialism, the permissibility of transferring Happy to a sanctuary depends on the moral value of the outcome where Happy is confined indefinitely, compared to the moral value of the outcome where Happy is transferred to a sanctuary. The moral value of each of these outcomes is equal to the total value of the benefits to everyone who is benefited in that outcome minus the total disvalue of the harms to everyone who is harmed in that outcome. The right action is the one whose outcome has the greatest moral value.[45]

Again, some in the animal protection movement will no doubt baulk at this type of cost-benefit analysis as the basis for determining the scope of nonhuman animal entitlement. A more deontological rights-based framework would not assign any moral weight to the ill-gotten gains of exploiting or confining an innocent nonhuman animal.[46] In addition to principle-based concerns, a more practical one – shared by some utilitarians[47] – is the historic tendency of the judiciary to assign vastly greater weight to human interests in such balancing exercises.[48] Animal law is already replete with prohibitions on 'unnecessary suffering' (and cognate formulations) that require weighing the strength of human benefits against the magnitude of animal harms. Against the backdrop of a deeply speciesist social structure: 'the utilitarian balancing test at the heart of the animal welfare model always gives undue weight to human needs, no matter their purpose' and 'our privileged position invariably governs.'[49]

Despite these worries, there may yet again be a pragmatic benefit in accepting courts assuming a certain degree of flexibility in weighing competing interests in habeas corpus petitions for nonhuman animals. As the Singer brief indicates, a fair weighing of the competing interests in cases such as Happy's will likely favour the animal's

42 Wilson, J., dissenting op at 35-36.

43 ibid, 68.

44 Indeed, Judge Wilson expressly alluded to this brief in oral argument.

45 Amici Curiae Brief for Peter Singer, Gary Comstock and Adam Lerner in Support of the Appellant at 14. https://www.nonhumanrights.org/content/uploads/Peter-Singer-Gary-Comstock-and-Adam-Lerner-Amici-Brief-Filed-in-Support-of-Happy-Petition.pdf.

46 See e.g. Tom Regan, The Case for Animal Rights (California University Press 2004), 200-235.

47 See Tyler M. John and Jeff Sebo, 'Consequentialism and Nonhuman Animals' in Douglas W. Portmore (ed) The Oxford Handbook of Consequentialism (OUP 2020) 564 (defending rights-based practice in relation to animals on consequentialist grounds).

48 See Saskia Stucki, 'Towards a Theory of Legal Animal Rights: Simple and Fundamental Rights' (2020) 40(3) Oxford Journal of Legal Studies 533, 550.

49 Reece v Edmonton (City), 2011 ABCA 238, [61] (Chief Justice Fraser (dissenting)).

liberty interest. Moreover, this weighing exercise occurring under the rubric of a prestigious legal remedy (it isn't called the Great Writ for nothing) of ancient pedigree would hopefully invite judges to take the interests at stake more seriously than they often have done in the application of animal welfare laws.

Judge Rivera's dissent is significantly shorter but packs an equally powerful punch. Whilst agreeing with Judge Wilson's dissent, Judge Rivera in one respect goes further: she pours scorn on the Zoo's claims that detention is in Happy's interests:

Any myth that Happy is content in this environment is laid bare by the cruel reality of her existence. Day in and day out, Happy is anything but happy. There lies the rub—Happy is an autonomous, if not physically free, being. The law has a mechanism to challenge this inherently harmful confinement, and Happy should not be denied the opportunity to pursue and obtain appropriate relief by writ of habeas corpus...[50]

She further opines that 'Captivity is anathema to Happy because of her cognitive abilities and behavioral modalities'[51] and the 'sanctuary provides the best opportunity for humans to mitigate the harm caused by Happy's captivity by allowing her to live out the remaining years of her life in a place suited to her specific needs'.[52] Based on the factual determinations of the trial court, it appears that Judge Rivera thinks the merits of Happy's case for habeas relief were already met.

Concluding Remarks

I began this comment by suggesting that the difference between the majority decision and the dissents in Nonhuman Rights Project, Inc. v. Breheny can be best understood as two counterposed frameworks: law as order and law as

50 Rivera, J., dissenting op at 3.

51 ibid at 21.

52 ibid.

justice. These two framings are in turn linked to two views of animals: as objects for human use and subjects with value of their own.

The view of animals as objects is largely reflected in the amicus curie briefs filed in support of the Bronx Zoo. These briefs were filed almost exclusively industry lobby organisations for the animal exploitation industries.[53] As a brief filed jointly by Protect the Harvest, the Alliance of Marine Mammal Parks and Aquariums, the Animal Agriculture Alliance, and the Feline Conservation Foundation put it bluntly, 'animals like Happy are personal property'.[54] Accordingly, they argue, courts may not may not create 'fresh common law' to allow for the confiscation of such property.[55] To do so would 'disrupt the legal, social and economic order'.[56] Ultimately this view prevailed in the majority opinion.

The contrasting view of animals as subjects is found in the amicus briefs filed in support of the Nonhuman Rights Project. These briefs were filed by philosophers, ethicists, civil rights lawyers, academics, theologians, retired judges and animal behaviour experts. They typically emphasise the moral salience of animal interests and the role of law in upholding justice and fairness.

In cases involving animals, the Law as Order and Animals as Objects framings are closely related. In a society based on widespread animal ownership, order favours preserving the 'property', 'object' or 'thing' status of nonhuman animals. In seeking to make incursions into this paradigm, animal lawyers have two options. The first is to emphasis Law as Justice over Law as Order as the basis for extending fundamental rights to nonhuman animals. As the dissents from Judges Wilson and Rivera show, for deeply ethically-minded and independent judges, this strategy may prove successful.

But what of judges more cautious about rocking the boat, as the majority clearly were? Can there be ways of reconciling Law as Order with Animals as Subjects? Judge Wilson's dissent offers a number of limiting principles on the use of habeas corpus for nonhuman animals. Whilst these limiting principles were not enough to assuage the majority's concerns, they ought to be seriously considered by animal advocates moving forward.

Whilst limiting principles will restrict the scope of habeas corpus's emancipatory potential for nonhuman animals this is not necessarily a reason for animal advocates to reject them out of hand. There are two reasons for this. First, habeas corpus is not the only vehicle for the protection of animals. At present it seems highly unlikely that habeas could successfully be used in relation to farmed animals for example.[57] Other legal and non-legal avenues with greater chances of success ought to be deployed to address or reduce their plight. Second, in any event, limiting principles in common law adjudication are only limiting principles as long as the courts accept them as such. As Judge Wilson highlights, the common law evolves with the times, or at least ought to. What is unimaginable today, may well be possible tomorrow. For the time being, animal advocates being able to win habeas corpus for any nonhuman animal would be an incredible step in the right direction. The Nonhuman Rights Project's slow but steady accrual of judicial acceptance suggests that day may come sooner than we think.

53 The only exception was one brief filed by Richard L Cupp, a law professor at Pepperdine University. Since 2009 – when he received a research grant from the pro-animal experiment lobby group the National Association of Biomedical Research – he has written a series of articles critiquing animal rights and animal personhood.

54 Brief of Protect the Harvest, Alliance of Marine Mammal Parks and Aquariums, Animal Agriculture Alliance, and the Feline Conservation Foundation as Amici Curiae in Support of the Respondents-Respondents at 6. https://www.nonhumanrights.org/content/uploads/Protect-the-Harvest-et-al-amici-brief-Happy-case-CoA.pdf

55 ibid at 8.

56 ibid, Index No. 45164/2018 at 3.

57 Not for any legal reason I should add, but largely due to social and economic realities.