

Explain the potential significance of granting legal personhood to animals in the UK

Sam Groom, Annual Student Essay Competition Winner 2019

Introduction

In recent years, the achievement of legal personhood for nonhuman animals (“animals”) has been the ‘holy grail’ for lawyers seeking to secure for animals the legal protections they deserve.¹ The Nonhuman Rights Project is the most prominent organisation working towards this goal, in the United States and, increasingly, abroad, describing animals’ legal thinghood as ‘the single most important factor preventing humans from vindicating their interests.’² It is easy to understand why legal personhood is considered so important. As Will Kymlicka writes, ‘Bills of rights typically take the form of stating that “all persons have a right to X,” and so the most secure way to ensure animals have rights is to recognize animals as persons.’³

The granting of legal personhood to natural entities such as Te Urewera and the Whanganui River in New Zealand has further highlighted this means of endowing what is threatened with protective rights. Less clear are the consequences that granting legal personhood to animals would have in the United Kingdom, where there is no bill of rights. This scenario can be brought into focus by addressing two questions. First, what is legal personhood? Second, in light of this, what would animal personhood mean in the context of

the UK? Although these questions have diffuse answers, they help to establish whether the quest for animal personhood should be a priority for animal advocate lawyers in the UK.

There is consensus among animal law scholars that animal personhood would come about at the end of a long journey. The situation is called ‘unlikely,’⁴ ‘wildly utopian,’⁵ and a decade ago even Steven Wise, director of the Nonhuman Rights Project, writes that the time is not yet ripe for it.⁶ But a distant hope can and should be analysed and evaluated. The following is based upon the premise that a court decision declares that animals (for the sake of argument, those animals protected by the Animal Welfare Act,⁷ which is to say vertebrates other than man) are legal persons. Legislature or decrees establishing animals’ legal personhood are not considered, since these tend to be symbolic, as in the Swiss and European cases.⁸

What is Legal Personhood?

Although, or because, it is a fundamental particle of UK law, the legal person is a slippery concept without a standard definition. Theories compete to pin it down, and many of these theories themselves posit imprecise models of personhood. In order to determine the significance of granting legal personhood to animals,

¹ Richard Cupp (2007), ‘A Dubious Grail: Seeking Tort Law Expansion and Limited Personhood as Stepping Stones Toward Abolishing Animals’ Property Status’, 60:1 Southern Methodist U. L. Rev. 3, 3.

² Steven M. Wise, ‘Litigation’ (*Nonhuman Rights Project*) <www.nonhumanrights.org/litigation>, accessed 24 January 2019.

³ Will Kymlicka (2017), ‘Social Membership: Animal Law beyond the Property/Personhood Impasse’ 40 Dalhousie L. J. 123, 130.

⁴ Erica A. Tatom (2015), ‘Animals in the Law: Occupying a Space Between Legal Personhood and Personal Property’, 31 Journal of Environmental Law and Litigation 147, 166.

⁵ Kymlicka, *supra*, 131.

⁶ Steven M. Wise (1999), ‘Animal Thing to Animal Person—Thoughts on Time, Place and Theories’, 5 Animal L. 61, 66.

⁷ Animal Welfare Act 2006, s. 1.

⁸ Bundesverfassung [Constitution] 18 April 1999, SR 101, art. 120, para. 2 (Switz.); Consolidated Version of the Treaty on the Functioning of the European Union, art. 13, 2008 O. J. C115/47.

we must determine exactly what legal personhood connotes, and notably whether it necessarily includes any fundamental rights.

The legal personhood of corporations, the locus of most discussion and explicit developments in the law relating to personhood, presents an attractive analogy for personhood as a whole. It has meant different things at different times in history. John Dewey wrote of corporate personhood that “‘person’ might legally mean whatever the law makes it mean.”⁹ The concession theory, contract or aggregate theory, and real entity theory of corporate personhood have each imported different treatment of corporations by the US courts, and have been motivated at least in part by policy more than ontological concerns. Real entity theory, for example, has given corporations powerful Bill of Rights and Fourteenth Amendment protections in an age where corporate voices often speak the loudest in courtrooms and legislatures. Elizabeth Pollman sees in this series of developments an emptiness in the concept of corporate personhood: ‘the concept alone does not speak to whether corporations should have a particular right; it only provides a starting point of analysis.’¹⁰

Wise’s characterisation of legal personhood is similar to Pollman’s view of corporate personhood in this respect. In his Animal Rights Pyramid, legal personhood occupies Level 1, the lowest common denominator of all animals that are considered as more than things.¹¹ He writes that ‘legal personhood is the capacity to possess at least one legal right,’ without necessarily including any legal rights. (A legal right would raise the animal to Level 2.) While this at first seems to contradict the common assumption that a legal person is synonymous with a ‘rights-bearing subject’ (Kymlicka) or a ‘rights-holder’ (Gwendolyn J. Gordon),^{12,13} there is no practical difference. While Level 1 and Level 2 of Wise’s Pyramid may be conceptually distinct, there is no case in which a court could recognise an animal’s personhood without simultaneously recognising a legal right that animal possesses. Empty personhood without rights does not have any legal consequences, so it would not arise in the scenario under investigation. So any significant

granting of personhood to animals in the UK would need to be accompanied by the recognition of certain rights owed to those animals.

What would personhood mean for animals in the UK?

An answer to the second question must therefore take account of two things. What would be the impact of personhood itself for animals, and what would be the impact of any rights accorded simultaneously with personhood for animals?

...any significant granting of personhood to animals in the UK would need to be accompanied by the recognition of certain rights owed to those animals.

If it is correct that personhood is simply the capacity to have a legal right, the mere title of person would not assist animals under UK law. There is no bill of rights or analogous document explicitly according rights to all persons. The closest thing to that is the Human Rights Act, which, although not containing explicit reference to the human species in the Articles themselves, applies only to human beings by the strong indication of its title.¹⁴ Any benefit accorded to animals would be by virtue of the rights found by the court alongside personhood.

It is difficult to imagine that the court would find very important rights belonging to all animals upon the first occasion where they are recognised as having any rights at all. It is more likely that a right to some minimum level of protection would first be discovered, such as a right not to be gratuitously harmed, and that the law would develop incrementally from that point. Of course, a particularly sympathetic or open-minded judge could conceivably completely overturn the legal basis for the animal-industrial complex in one

⁹ John Dewey (1926), ‘The Historic Background of Corporate Legal Personality’, 35 Yale L. J. 655, 656.

¹⁰ Gwendolyn J. Gordon (2018), ‘Environmental Personhood’, 43 Colum. J. Envtl. L. 49, 69.

¹¹ Steven M. Wise (2010), ‘Legal Personhood and The Nonhuman Rights Project’, 17 Animal L. 1, 2.

¹² Kymlicka, *supra*, 130.

¹³ Gordon, *supra*, 50.

¹⁴ Human Rights Act 1998, sched. 1.



judgment, taking inspiration from Lord Mansfield in *Somerset v Stewart* (1772).¹⁵ However, the more sudden and stark the judicial diversion from the status quo, the more likely that Parliament would step in and remove the judge-made rights by legislation. The supremacy of Parliament over the courts is a significant difference between the UK and countries such as the USA whose judges can base their decisions upon constitutional rights. Incremental advances in legal animal rights might therefore be desirable for sustainable progress. As Wise writes in this connection, ‘Like some knots, the law can either loosen, or tighten, under pressure.’¹⁶ Whether loosening or tightening would depend upon political and social conditions rather than upon strictly legal considerations. Gordon makes this point with regard to environmental personhood.¹⁷ It would be difficult for animal advocates to recover from the position of having a favourable judgment cancelled out by democratically-elected legislators.

Instead of considering a declaration of animal personhood as merely vulnerable to public opinion, advocates could view it, and use it, as a shaping force. A judgment granting legal personhood to animals could have more symbolic than practical benefit in the campaign to improve animals’ lives, feeding into the legal and other challenges to the status quo. It has been noted that treating corporations as “people” strikes one, outside of a legal context, as odd.¹⁸ This sentiment nourishes the opinion that the law treats corporations in an unjustifiably favourable matter. With animals, it is the opposite situation, with more and more humans considering animals naturally as “people”. A judicial ruling to this effect could strengthen the popular desire to treat animals better. Further, the courts are connected in the popular imagination with justice. Legal changes sometimes come ahead of social changes, anticipating them or hastening their arrival. Public support for the death penalty for murder dipped below 50% for the first time fifty years after its

¹⁵ *Somerset v Stewart* [1772] 98 ER 499.

¹⁶ Wise (1999), *supra*, 62.

¹⁷ Gordon, *supra*, 88.

¹⁸ *ibid*, 70.

abolition by statute.¹⁹ Legal recognition of animal personhood and rights, however few, could constitute a significant milestone on the way to more complete protections.

Conclusion

The opportunities and limitations posed by the granting of legal personhood to animals in the UK make the battle for it a high-risk but high-potential endeavour. The obstacles to achieving it, and the best ways to overcome them, are for another discussion at greater length. It is clear, however, that the campaign for animal personhood best seen and waged as part of the broader struggle against abusively anthropocentric societies. Within the law, incremental welfarist reforms must be won while this greater prize is sought; beyond the law, political pressure, education and developments in cellular agriculture will all help to turn the tide against the assumption that animals are ours to use. If they take their place as one among the many missions launched by human beings who care about animals, attempts to have legal personhood granted to animals in the UK will be a valuable means by which legal protection can be granted to all who deserve it.

¹⁹ 'Support for death penalty drops below 50% for the first time' (*BBC News*, 26 March 2015) <www.bbc.co.uk/news/uk-32061822>, accessed 24 January 2019.