

report<sup>47</sup> on the issues surrounding dangerous dogs and the relevant legislation. With statistical data showing a record 4,000 cases of dog-bite wounds treated by doctors in the last year and a dramatic increase in the number of fighting dogs and dog-related anti-social behaviour, the main piece of UK legislation intended to address this problem, the Dangerous Dogs Act 1991, is clearly not achieving its aim. The report acknowledges the failure of the the 1991 Act and notes the negative welfare implications for dogs that are subjected to its provisions, regardless of whether they are a real threat. APGAW then turns to relevant member organisations for recommendations for reducing aggressive dog incidents and improving the welfare of the affected animals.

Many animal welfare organisations, including Battersea Dogs & Cats Home, the Blue Cross, the Dogs Trust, the Kennel Club and the RSPCA, have been looking at this issue for a number of years. They recommend preventative measures through early intervention, such as responsible dog ownership education programmes to encourage neutering, microchipping and dog training. Enforcement action similar to that provided for by the “improvement notices” under the Animal Welfare Act 2006 would also provide an early intervention mechanism.

The organisations generally believe that the current legislation should be consolidated and updated, with a new focus on the “deed not the breed” principle. The spectrum of offences should take into account different circumstances, such as an aggravating element where a dog is encouraged to attack another person or animal, and a corresponding defence where the dog is provoked. Penalties should be flexible and include exploring mandatory muzzling, re-homing and compulsory training.

Meanwhile, debate continues over whether the Index of Exempted Dogs should be reopened to allow owner-led applications alongside concerns about effective enforcement and its demands on the courts and the police.

The report concludes with a brief statement from each political party, all of whom agreed that there is need for reform of the current dangerous dogs legislation.

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<sup>47</sup> “Dangerous dogs: an APGAW mini-report”, see [www.apgaw.org.uk/reports.asp](http://www.apgaw.org.uk/reports.asp).

## Can a chimpanzee be a legal person?

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*This is an edited version of the winning entry of an Animal Law Centre<sup>48</sup> essay competition. The question concerned a fictional scenario involving the Island of Joata which houses a sanctuary for chimpanzees. A company called Chimera Developments operated an animal research unit on the island and one of their chimps, named Winston, escaped. Winston was discovered by the sanctuary staff but he had been attacked and was injured. The sanctuary discovered that Winston was being used in military research. Winston was eventually taken back to the research unit against the wishes of the sanctuary. A legal team was assembled to try to secure Winston’s return to the sanctuary. The students were asked to submit arguments for granting an order of habeas corpus in respect of Winston which could be used by the legal team.*

A habeas corpus writ essentially requires a legal person detained by the authorities to be brought before a court so that the legality of the detention may be examined. It does not determine guilt or innocence, merely whether the “person” is legally imprisoned. The Habeas Corpus Act 1679 guaranteed this right in law. For the purposes of bringing a claim for habeas corpus on behalf of the chimpanzee, Winston, it must first be established that he is a legal person.

Establishing that Winston is a legal person is vastly different to saying that he is a human being and so entitled to all human rights. It is important to establish Winston as a legal person because this would provide him with basic human rights, including the right to have a habeas corpus writ brought on his behalf. There is no direct case law on this point in England and Wales, but international cases will be considered.

One of the earliest cases concerning treating an animal as a legal person occurred in 1977, when an American judge had to decide whether or not a dolphin was a legal person. Dolphins are similar to chimpanzees in that they are both intelligent animals. However, it was held by Judge Doi that the dolphin could not be classified as a legal person and it was

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<sup>48</sup> [www.animallawcentre.org.uk](http://www.animallawcentre.org.uk).

defined purely as property.<sup>49</sup> This case shows the courts' typical attitude to animals: they are merely property. Nonetheless, at a similar time, also in America, an action was brought under the Marine Mammal Protection Act 1972 to try to stop a dolphin from being sent to the United States Navy. In this case, the attorney signed a settlement agreement as an attorney for the dolphin.<sup>50</sup> This is a rare case, but illustrates to a limited extent that the law is seriously considering the legal status of animals. This case had limited effect as it was unpublished and so did not receive much publicity and the dolphin was not awarded legal status. Other countries have edged closer than America to giving animals, especially chimpanzees, legal status. This is shown by the fact that recently there have been many cases brought on behalf of animals.

In 2005, in Brazil, a habeas corpus writ was brought before a court in respect of a chimpanzee called Sucia.<sup>51</sup> The Court did not grant habeas corpus, as the application was dismissed due to the death of Sucia. The Court therefore did not have to seriously consider whether a chimpanzee is capable of being a "legal person". Nevertheless, it did seriously consider the application, which is further than any previous action for a habeas corpus writ in respect of an animal has gone. Previously the Federal Supreme Court of Brazil had struck out a request of habeas corpus writ to release a caged bird. The Hon. Justice Djalcio Falcão, who voted for dismissal of that case, reasoned that "an animal cannot be involved in a legal relationship as a subject of law; it can only be an object of law, acting as a thing or asset".<sup>52</sup> Sucia's case illustrates that the courts are now at least willing to hear applications.

More recently, in April 2007, an Austrian court examined the question of whether a chimpanzee can be a legal person and therefore capable of having a legal guardian appointed by a court.<sup>53</sup> The central argument brought on behalf of the chimpanzee, Hiasl,

was that a chimpanzee's DNA is 98.77% the same as that of humans. The Court dismissed the claim on the ground that if Hiasl was appointed a legal guardian, this might create the public perception that humans with court-appointed legal guardians are on the same level as animals.<sup>54</sup> This decision may still be appealed. Although this application was unsuccessful it showed the Court's willingness to seriously consider an application on behalf of an animal.

One of the most compelling arguments that may be used in Winston's case is that humans, chimpanzees, bonobos, gorillas and orang-utans are all members of the Homidae family. The effect of this is that, as mentioned above, humans and chimpanzees have 98.77% the same DNA.<sup>55</sup> They are genetically closer than horses and zebras, which are able to breed with each other, and also genetically closer than mice and rats.<sup>56</sup> This close genetic relationship means that human and chimpanzee blood can be exchanged through a transfusion, while neither human nor chimpanzee blood can be exchanged with any other species. The immune system and the anatomy of the brain and nervous system are also similar in humans and chimpanzees. These resemblances are the reason why chimpanzees are used in so many medical research experiments.

Not only are chimpanzees genetically similar to humans, they also share many of the same characteristics. Chimpanzees are intelligent beings, who are capable of emotions such as happiness, fear and despair. Moreover, they are sociable, know how to live in a society, and have the ability to learn.<sup>57</sup> This was demonstrated in a project undertaken in America called "Project Washoe", in which a chimpanzee, Washoe, was taught to communicate with humans via sign language.<sup>58</sup> Chimpanzees are also similar to humans in that they are capable of non-verbal communication, such as kissing, embracing, holding hands and laughing. These actions are not performed in exactly the same context, but they do have similar meanings.<sup>59</sup>

<sup>49</sup> Brooman, S., and Legge, D., *Law relating to Animals*, Cavendish Publishing Limited, London, 1999, p. 54.

<sup>50</sup> Wise, S., "The legal status of non-human animals", a paper given at the fifth annual conference on Animals and the Law hosted by the Association of the Bar of the City of New York on 25 September 1999, p. 55, see [www.Animallaw.info/journals/jo\\_pdf/lralvol8\\_p001.pdf](http://www.Animallaw.info/journals/jo_pdf/lralvol8_p001.pdf).

<sup>51</sup> See [www.Animallaw.info/nonus/cases/cabrsuicaeng2005.htm](http://www.Animallaw.info/nonus/cases/cabrsuicaeng2005.htm).

<sup>52</sup> *Ibid.*, second paragraph.

<sup>53</sup> "Court to rule if chimp has human rights", Kate Connolly, *The Observer*, April 2007, see [www.observer.guardian.co.uk/world/story/0,,2047459,00.html](http://www.observer.guardian.co.uk/world/story/0,,2047459,00.html).

<sup>54</sup> "Chimp denied a legal guardian: court turns down request in case aiming for 'ape rights'", Ned Stafford, BioEd Online, 26 April 2007, see [www.bioedonline.org/news/news.cfm?art=3289](http://www.bioedonline.org/news/news.cfm?art=3289).

<sup>55</sup> See [www.greatapeproject.org](http://www.greatapeproject.org).

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*

<sup>58</sup> "The evolving legal status of chimpanzees", a legal symposium hosted by Harvard Law School on 30 September 2002, see [www.Animallaw.info/journals/jo\\_pdf/lralvol9\\_p1.pdf](http://www.Animallaw.info/journals/jo_pdf/lralvol9_p1.pdf), p. 16.

<sup>59</sup> *Ibid.*, p. 5.

The close genetic relationship and shared characteristics of chimpanzees and humans is compelling and the main reason why chimpanzees should be granted legal status. The law has developed to a limited extent to protect animals but it does not go as far as laws protecting humans.<sup>60</sup> Legislation on animals is merely concerned with animal welfare.<sup>61</sup>

Under the law animals are treated as property.<sup>62</sup> Chimera Developments is Winston's owner, and as such can subject him to scientific experiments. Under the law animals cannot be granted legal status because they are non-human. However, the law treats corporations, partnerships, local government and clubs<sup>63</sup> as legal persons even though they are non-human. This distinction seems extremely unfair and arbitrary. As such this distinction should be challenged and it provides another ground for Winston's application.

It may be difficult to persuade the court to hold that Winston is a legal person due to the attitudes of society, which are resilient against awarding non-humans legal status. However, recognising chimpanzees as legal persons is not the equivalent of defining them as humans, it merely recognises that both are entitled to ensure their protection through legal rights. At some point a court must be willing to make the leap, and class a chimpanzee or other animal as a legal person.<sup>64</sup> It has been proposed by many academics and lawyers that animal rights will develop in similar way to that in which the rights of women and slaves developed.<sup>65</sup>

Chimera Development's legal team will be arguing that non-humans should not be given legal status. It is likely to be argued that humans differ from chimpanzees in that humans can effectively communicate with one another and have conscious thoughts and feelings. However, as mentioned above it is now clear that chimpanzees are capable of all

these actions but in a different context to humans.

Chimera Development's legal team may rely upon a counter argument proposed by academics and philosophers including Immanuel Kant. This is that animals cannot be granted rights as "rights cannot be attributed unless the subject of those rights has the capacity or will to enforce them and to attach a duty to another not to infringe those rights".<sup>66</sup> However, this argument is not plausible. This is because, if this was the case, then neither young children nor the mentally incapable would have any legal rights, but in fact their legal rights are protected by a legal guardian. The use of a legal guardian to protect animal legal rights is a possible method to resolve this issue. According to Professor Wise, "[t]o deny chimpanzees these rights will open the judges up to a very serious charge of simply being biased and arbitrary".<sup>67</sup>

After weighing up both the arguments for granting Winston legal status and the counter arguments for withholding legal status, it would seem that the arguments for granting him legal status are more compelling. The law seems ready to advance forward and grant a chimpanzee legal status.

The strongest argument put forward on Winston's behalf is the scientific evidence that chimpanzees are 98.77% genetically similar to humans. It is therefore to be expected that humans and chimpanzees have behavioral characteristics in common, such as the ability to learn and communicate and self-awareness. These characteristics may not be identical but they are used in similar contexts. In addition, the distinction currently made between animals which are rejected legal status and corporations, partnerships and local governments which are granted legal status is unfair and arbitrary. International case-law may also be of use as persuasive precedent.

<sup>60</sup> *Law relating to animals*, p. 50, see footnote 49.

<sup>61</sup> Wise, S.M., *Rattling the cage: toward legal rights for animals*, Perseus Publishing, Cambridge, Massachusetts, 2000, p. 45.

<sup>62</sup> *Law relating to animals*, p. 31, see footnote 49.

<sup>63</sup> *Ibid*, p. 86.

<sup>64</sup> "The legal status of non-human animals", p. 35, see footnote 50.

<sup>65</sup> *Law relating to animals*, p. 80, see footnote 49. In 1772, there was a landmark case in which James Somersett, a black slave brought back to the UK from Jamaica, was freed after a debate sparked by his demand for habeas corpus. Lord Mansfield successfully argued for his release.

<sup>66</sup> *Law relating to animals*, p. 80, see footnote 49.

<sup>67</sup> "The legal status of non-human animals", p. 48, see footnote 50.