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ETHICAL IMPLICATIONS OF ANIMAL PERSONHOOD AND THE ROLE FOR SCIENCE

KRISTIN ANDREWS
Department of Philosophy
York University (Canada)
andrewsk@yorku.ca

ABSTRACT
Personhood is a normative concept applied to beings who are due moral consideration given their agential and social properties. While the concept is a normative one, knowing how to appropriately apply the concept is a descriptive project, requiring guidance from scientists who can help to uncover whether or not a being has the relevant properties. If our current science attributes properties sufficient for personhood to a nonhuman animal, then we can directly conclude that the individual is morally considerable. However, from the mere fact that an animal is a person, we cannot draw any specific conclusions about appropriate treatment for captive animals. I will argue that from the premise that an animal is a person we cannot directly conclude that the animal should be released from captivity, should not participate in research, should not participate in ecotourist schemes, or engage in other work; further descriptive premises would be needed. Such premises can only be supplied by experts who know the animal and the animal's context. With respect to the descriptive project, animal ethicists need to defer to folk experts and scientists who are able to make informed judgements about what is best for a particular animal. This requires a collaborative relationship of trust between scientists and ethicists in order to best respect animal persons.

KEYWORDS
Personhood, animals, agency, animal persons, moral consideration.

1. INTRODUCTION

Tanjung, a grande dame in her fifties, is largely retired after raising several offspring. These days she spends much of her time eating and laying about, but she still visits with her adult children and grandchildren. Her daughter Bayur seems annoyed when she comes around, but that doesn't stop Tanjung from visiting. If you were to meet Tanjung and Bayur, you'd know right away that they are orangutans. But would you know that Tanjung and Bayur are also *persons*?

In law, a person is a rights-bearer, an individual who enjoys protection under the law. In many societies, the legal idea of person is grounded in a philosophical idea of person. If Tanjung and Bayur are persons, then they are bearers of rights. They are morally considerable.

Currently, there is a worldwide legal movement to consider the question of animal personhood. In North America, the most prominent proponent of this movement is the Nonhuman Rights Project (NhRP), an American NGO working on gaining legal personhood rights for animals such as chimpanzees and elephants. Lawyer Stephen Wise and the NhRP are attempting to secure a common-law writ of *habeas corpus* for their animal clients. *Habeas corpus* literally means "that you have the body," and it is used to bring a detainee before the courts to determine whether the detention is legal. Thus, the NhRP is focused on the personhood of captive animals.

In December 2013, the Nonhuman Rights Project filed their first habeas corpus petition for a nonhuman animal on behalf of Tommy, a chimpanzee living alone in a cage in a shed in New York. Under animal welfare laws, Tommy's owners were doing nothing illegal. But, Tommy's conditions were dire, and the petition argued that since Tommy is an autonomous being, keeping him in those conditions was deeply wrong. The NhRP demanded a hearing by the courts. Their goal has been to move Tommy into a sanctuary where he can live a rich life with other chimpanzees, and where he can make choices about who he spends his time with and where he goes, within the confines of sanctuary. While Tommy's case was unsuccessful, in 2015 Justice Barbara Jaffe of the New York County Supreme Court ordered a hearing on behalf of two other chimpanzee clients of the NhRP, Hercules and Leo, who were being used in physiology research at Stony Brook University. Justice Jaffe originally issued a writ of habeas corpus and an order to show cause for the chimpanzees' detention, but the next day she amended her order, striking out the writ, perhaps in response to the idea that the writ implies that the chimpanzees are persons. Stony Brook retired the chimpanzees from research and moved them to a sanctuary before the hearing was ever held. Most recently, Justice Tracey Bannister of the Supreme Court of New York issued an Order to Show Cause hearing for an elephant, Happy, who resides at the Bronx Zoo. The hearing was held on December 14, 2018, and was the first time arguments for animal personhood were heard in US courts[1].

Around the world similar cases are being heard. In December 2014, an Argentinean court heard a case about Sandra, an orangutan living at the Buenos Aires Zoo. The

[1] A timeline of the cases and links to the legal documents can be found on the NhRP's website here: For Tommy https://www.nonhumanrights.org/client-tommy/. For Hercules and Leo https://www.nonhumanrights.org/hercules-leo/. For Happy https://www.nonhumanrights.org/client-happy/

court decided that Sandra should be released from the zoo and transferred to a facility that can provide better living conditions. While the media reported this as perhaps the first court case recognizing basic legal rights of a nonhuman animal, and some translated the decision as declaring Sandra a "nonhuman person," the court did not issue a writ of habeas corpus, or state that she is a rights bearer.

It is typical for animals to be considered property that can be bought and sold. In France, the civil code counted animals as "movable property" for 200 years, but in January 2015 Parliament voted to change animals' legal status to "living beings gifted with sentience". However, animals are still for sale in France. They are still property under the law. Likewise, in 2015 Quebec Bill 54 passed stating that "animals are not things. They are sentient beings and have biological needs." However, you can still buy a fish in Montreal. Despite these legal decisions, animals in these jurisdictions are not granted personhood rights.

In July 2018, the Uttarakhand High Court of India decided that animals should enjoy the same rights as human beings, writing "they have distinct personas with corresponding rights, duties and liabilities of a living person." All human residents were deemed to be guardians of animals. While animals are granted rights, they are not deemed to be full persons, but rather are juristic persons, who cannot speak for themselves. Animals are placed into this category along minors, companies, trusts, wards of the court, and people with mental incapacities.

The implications of these court hearings and legislative actions remains to be seen. Whenever society is on the brink of a revolutionary change, be it one in science or the law, it is essential to examine the ethical implications, and that is the intention I have for this paper. Consider some possible ethical conclusions one may draw about animal personhood. One might think that if an animal is deemed a legal person, we should end all captivity, research, and work for that species. I think that those conclusions are overly hasty, and require additional premises regarding the mental and social properties of particular animals in their particular situations. Indeed, I will argue that no general conclusions of these sorts directly follow from the conclusion that animals are persons. If we decide that Elephant Happy is a person, then we can directly conclude that Happy is morally considerable. That means that moral agents are required to take Happy's interests into account in their interactions with her. In particular, it means that moral agents need to respect her autonomy.[2] Furthermore, it means that moral agents like us have a moral obligation to carefully consider what is in her best interest. This strongly

[2] I take it as given that a person is morally considerable if anything is. However, I am not assuming that personhood is necessary for moral considerability. Things that are not persons, such as ecosystems, works of art, languages, cultural practices, plants, etc. may also have intrinsic moral value.

suggests that it is a moral imperative to fund and support the sciences of animal welfare, animal behavior, and animal cognition.

In section two I will sketch the cluster concept of a person, and show that current science suggests that many species qualify as persons. In section three I will turn to examine whether there are any general ethical conclusions about captivity that follow from animal personhood. After discussing the nature of captivity in 3.1 and the details of a particular case of captivity in 3.2, I conclude that the kinds of court cases discussed above do not entail that the individuals—all of whom are captive and dependent on humans for their continued survival—should be moved from their current living situations to sanctuaries (or rehabilitated and released into the wild), or removed from certain kinds of research participation. Rather, additional information is required from experts on the individual animals, the species, and the different possible living conditions for the individuals. To gain this information requires trusting the advice of experts. However, there is a worry that the scientists who know the animal best may have a conflict of interest, given that their research success is dependent on continued access to the animal as a research subject. I will address this worry in the section four, concluding that we have a moral obligation to develop trusting relationships between those who are working to promote animal rights and the animal behavioral scientists, welfare scientists, zoo keepers, and other caregivers of animals co-living with humans.

2. THE NATURE OF PERSONHOOD AND ANIMAL PERSONS

The term "person" is a particularly messy one, as it has two similar senses. In one sense, the term refers to human beings, and the plural is "people." In another sense, the term refers to autonomous rights bearers, and the plural is "persons." *Persons* and *humans* are two very different concepts. The Neanderthals who are some of our ancestors were not human, but they were persons. "Humans" – *homo sapiens* – is a biological term that helps us to identify populations. "Persons" is a normative term.

In this history of Western philosophy, the term "person" has been theorized by a number of authors. Their goal is not typically to understand the scope of individuals who should count as persons. Instead, the focus has largely been on the nature of a personal self, and whether the same person exists through time. These discussions often begin with John Locke's account of what it is to be a person: «a thinking intelligent being that has reason and reflection and can consider itself as itself, the same thinking

thing in different times and places; which it does only by that consciousness which is inseparable from thinking and...essential to it».[3]

Locke's view introduced what has become known as the capacities approach to personhood, according to which a person is one who has certain kinds of cognitive or psychological properties. Capacities conceptions have been quite popular among philosophers working on this question, though there is quite a bit of disagreement about the key capacities. In Andrews et al. 2018, we identified ten common capacities cited in the literature:

Sentience, often associated with basic awareness[4]

Emotions, including happiness, empathy, sadness, fear, anger, or pain[5]

Autonomy, the ability to act on behalf of oneself, including exercising executive control over the formation of one's goals and the means for achieving them[6]

Self-awareness, of one's own mental life[7]

Sociality, in relation to other individuals[8]

Language, used to communicate to others and self[9]

Rationality, means-end reasoning or logical thought processes[10]

[3] J. Locke, *An Essay Concerning Human Understanding*. London: Penguin Books, II. XXVII.9, p. 280.

[4] For example, S. Chan, J. Harris, J., "Human animals and nonhuman persons," in T.L. Beauchamp and R.G. Frey (eds.) *The Oxford Handbook of Animal Ethics*, New York: Oxford University Press 2011, pp. 304–331; M. Rowlands, "Are animals persons?", in *Animal Sentience: An Interdisciplinary Journal on Animal Feeling*, *1*(10), 2016; D.C. Dennett, "Conditions of personhood," in A. Rorty (ed.) *The Identities of Persons*, Berkeley, CA: University of California Press 1976, pp. 175–196; J. Locke, cit.; P. F. Strawson, P. F., *Individuals: An Essay in Descriptive Metaphysics*. Routledge 1959; G. E. Varner, G.E. *Personhood, Ethics, and Animal Cognition: Situating Animals in Hare's Two-Level Utilitarianism*, Oxford: Oxford University Press 2012; M.A. Warren, "On the moral and legal status of abortion", in *The Monist* 57:1, 1973, pp. 43-61.

[5] For example, Dennett, op. cit., and Warren, op. cit.

[6] For example, Dennett, op.cit.; H.G. Frankfurt, "Freedom of the will and the concept of a person," in *The Journal of Philosophy*, 68 (1), 1971, pp. 5–20; J. Locke, op.cit.; J. Rawls, *A Theory of Justice*, Cambridge, MA: The Belknap Press 1971.

[7] For example, Chan and Harris, op.cit.; Dennett, op.cit.; Locke, op.cit.; Varner, op.cit.; Rowlands, op.cit.; and Warren, op.cit.

[8] For example, Chan and Harris, op. cit.; Dennett, op. cit.

[9] For example, Chan and Harris, op. cit.; Dennett, op. cit.; Varner, op. cit.; and Warren, op. cit.

[10] For example, Chan and Harris, op. cit.; Dennett, op. cit.; Locke, op. cit.; Varner, op. cit.; Warren, op. cit.

Narrative self-constitution, thinking of oneself as a persisting subject with past experiences, a character in one's own story who will author one's future experiences[11]

Morality, an understanding of what is good, right, or virtuous[12]

Meaning-making, a vision of a life worth pursuing or a sense of what it is to live well[13]

There are two ways to understand capacity lists, either as presenting necessary and sufficient features of a person, in which case we'd have an essentialist view of persons, or as clusters of properties that are variously constitutive of persons. I endorse a cluster concept of person, according to which no one of the traits is required, but instead an individual must have enough of the properties. What counts as enough is going to be determined on a case by case basis, and by comparing the candidate person with others already included in the category. Given the use of "person" to apply widely to humans of all sorts, not all of whom enjoy each property on this list, I suspect that humans naturally use a cluster concept of person—though nothing in the argument I want to make here hinges on that empirical claim about the nature of human conceptual ontology. As Wittgenstein remarked, human concepts identify «a complicated network of similarities overlapping and criss-crossing».[14] With a little scrutiny, we see that the extensions of our social concepts, from "woman" to "chef" to "white," don't stand up to more than a family resemblance relation.

Cluster conceptions have a number of benefits over essentialist versions. Cluster conceptions can accommodate the fact that many of the properties on the list come in degrees. David DeGrazia has raised worries about list views of personhood given that properties like language, morality, emotions, and self-awareness are not all are or nothing. For example, enculturated apes who can comprehend spoken English without being able to produce it participate in a linguistic system to some extent, as do some humans with language impairments. Or, orcas who have social norms might participate in a type of moral practice without being full blown moral agents.[15]

[11] For example, M. Schechtman, *The Constitution of Selves*, Ithaca, NY: Cornell University Press 1996; Varner, op. cit.; G. Comstock, "Far-persons," in A. Woodhall and G. Garmendia da Trindade (eds.) *Ethical and Political Approaches to Nonhuman Animal Issues*, New York: Palgrave Macmillan 2017, pp. 39–71.

[12] For example, Dennett, op. cit; Warren, op. cit.

[13] For example, Chan and Harris, op. cit.; Frankfurt, op. cit.; Rawls, op. cit.

[14] L. Wittgenstein, *Philosophical Investigations*, New York: Blackwell Pub, p. 66.

[15] See S. Vincent, R. Ring, K. Andrews, "Normative Practices of Other Animals" In *The Routledge Handbook of Moral Epistemology*, Karen Jones, Mark Timmons and Aaron Zimmerman, eds., New York: Routledge 2018.

I agree with DeGrazia that many if not all of these properties come in degrees or in types (for example, sentience likely does not come in degrees, but there are different kinds of sentence based on what one can be aware of). However, I do not see this as a criticism of the cluster concept of a person. In fact, that these properties come in degrees or varieties is a benefit of the cluster approach. The degrees of each property permit a greater range of ways of being a person. The large diversity of individuals who fall into a class of social kinds, be it a person kind, a race kind, or a gender kind, is at the core of a cluster kind. By recognizing this diversity of ways of being a person, a woman, a scientist, etc. we can push back against critiques that some members of the class more or less qualify. One qualifies as a person, a woman, a scientist, or one doesn't. This doesn't mean that all persons, all women, or all scientists have all the same category-relevant properties, or have them in the same way or to the same extent. A cluster conception is even more clustery when the properties that make up the cluster are themselves cluster properties, or properties that come in degrees.

Cluster conceptions, unlike essentialist views, do not make biologically implausible claims about category membership. On essentialist views, all members have the set of properties. However, in the case of species, there are no properties that are universally exhibited by all individuals across their lifetimes, except for genetic properties, and even these are unstable over generational time. One of the key claims of the theory of evolution is that species change over time, which makes stable traits over time inconsistent with the theory. As species change their properties, gaining some and losing other properties associated with persons, or gaining or losing some aspect of one of the properties, individuals of that species can remain persons.

Finally, cluster conceptions, unlike essentialist views, do not lead to difficult practical and moral conclusions about the personhood of some humans. Typically, all humans are thought to be persons, yet it isn't the case that all humans have all the properties on the list. Humans with language impairments, disorders of consciousness, or difficulties with autonomy are considered persons--rights bearers--even though they lack relevant properties.

On a cluster conception of personhood, we can construct personhood profiles of different individuals as well as general profiles of different species. A 3 year-old child, for example, may score low on morality, language, and autonomy, but high on sociality and emotions. Given what primatologists tell us, we should expect chimpanzee adults to score high on emotions, autonomy, sociality, and rationality. While chimpanzees pass the mirror self-recognition task, demonstrating that they have the ability to match a reflected image of themselves with their own bodies, we don't have evidence that chimpanzees form the kind of self-conceptions that humans can, or decide what kind of a person they want to be. Likewise, while chimpanzees have communication systems

that include gestures and vocalizations, there is no evidence that any of these systems has a grammatical structure or the kind of productivity we see in human languages. Thus, chimpanzees would score lower in these two dimensions. Narrative self-constitution, morality, and meaning-making are largely unexplored in chimpanzees, though we have argued that chimpanzees demonstrate evidence of the moral foundations that have been identified among humans across cultures.[16]

Using the cluster conception of personhood, we have a way of understanding how chimpanzees can be persons, even when they do not tend to look like the typical human person. Variation exists in the personhood profile between species, as well as among species, and the cluster conception of personhood allows us to make sense of our current practice of treating all humans as persons. An essentialist view would fail to do so.

Of course, there are limitations to this approach to personhood. For one, it is of limited use in deciding borderline cases. While it can help us see how our concept is applicable in places we might not have thought, such as to many nonhuman animals, it cannot identify any line between persons and nonpersons. However, this is true of social kinds more generally, and its limitation in this regard shouldn't be considered a flaw.

Another limitation of the approach is that it is anthropocentric, and starts with a descriptive claim about how we identify human persons. There may be other properties that are very different from human properties that, counterfactually, we would take to be relevant to rights-bearing if we were able to conceive of them. The anthropocentric limitation may be relevant when considering the rights of organisms who are very different from us, the rights of non-biological artificial systems, or the rights of alien life forms. To deal with this limitation, we can emphasize that personhood is sufficient for being morally considerable, and not necessary, and we can acknowledge that our social kind of personhood may evolve along with our evolving understanding of other potential rights bearers.

A third kind of limitation is the topic of the next section. One might worry that the cluster conception of personhood allows us to identify many animal species as persons with rights—too many species. Charismatic mega-fauna such as elephants and dolphins, animals bred for research such as rats, animals bred for food such as chickens, as well as scary animals such as monitor lizards all have their own personality profiles. This inclusiveness may be seen as yet another limitation of the approach if one thinks that with personhood comes specific rights. If one thinks that a person automatically has a

[16] Ibid. See Andrews et al. 2018 for a review of the scientific literature showing that chimpanzees have the relevant properties.

set of specific rights, then one who believes that there is a difference in kind between chimpanzees, whom we should not take from the wild or conduct biomedical research on, and chickens, whom we can eat, would be wary about the cluster concept of personhood.

In the next section I will examine this third kind of limitation of the cluster account of personhood. The focus will be on the kinds of ethical implications that appear to be taken for granted by those promoting legal and political movements supporting animal personhood for chimpanzees, elephants, and dolphins. The prominent court cases have the goal of moving animals from their current living situation to a sanctuary (for example, moving Happy the elephant from the Bronx Zoo to an elephant sanctuary). In what follows I will focus on the issue of captivity in order to examine whether being a person entails specific changes with regard to human-animal co-living practice.

3. CAPTIVITY AND PERSONHOOD

Personhood status comes with a mandate that we respect the autonomy of a person by granting them rights. No matter how one qualifies as a person, whether by having high or low rationality, high or low sociality, etc., if an individual is a person, that individual is a rights bearer. There is no matter of degree when it comes to rights. But there is a difference in the *content* of rights that different persons will have, and the type of rights appropriate for an individual will depend on their interests, their capacities, and any other morally relevant properties.

Consider the rights one might think we grant to adult humans, such as free movement, voting in elections, and choosing with whom to have relations. While these rights may seem obvious for most adult humans in the developed world, they are not unilaterally granted, and they do not simply follow from the fact that one is an adult human. Some political scientists argue that democracy is best served by not having elections. Some politicians think that felons should not have the vote. Some cultures lack formal elections. US citizens living abroad have limiting voting rights in the US, and may have no voting rights in their country of residence. Free movement is largely constrained, such that humans who lack the right papers cannot cross borders as they please. There are laws prohibiting sexual relations between certain dyads, and laws that do not permit marriage between more than two people. Some of these constraints raise ethical concerns and are the subject of much political debate, but others are taken for granted. Human personhood does not come with rights of free movement, voting, or being in relationships. Certainly, human personhood does not entail we should have visas to every country, unlimited money, or the admiration of anyone we find stimulating.

The rights that humans are thought to possess, at least by signatories of the Universal Declaration of Human Rights, include rights that are relevant as rights of persons. In particular, Articles three, four, and five of the Declaration appear to be generally applicable to animal persons as well as human persons: Everyone has the right to life, liberty and security of person; No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms; No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.[17] From these rights, we may conclude that no person should be held in captivity. Captivity may appear, at first glance, to be inconsistent with the right to liberty and security of person, the right to not be held in slavery or servitude, and the right not to be subjected to degrading treatment. However, an analysis of captivity, and the variety of kinds of living situations that can be described as captive, make such conclusions hasty ones. To show why, let us begin with an understanding of what "captivity" refers to.

3.1 What is captivity?

Perhaps the most familiar image of a captive is of an individual in a cage, gripping the bars in anger or despair. This image is inextricable from the feeling that the individual is suffering. However, is an instance of captivity a moral wrong? Are the individual's rights being violated? To answer these questions, we need more background information about the individual who is caged and the process that led to the caging. For example, if the caged individual is dangerous, and was confined as an act of self-defence, then the image may be taken to represent a situation that is unfortunate, but morally justified. However, if the individual has not been charged with any wrongdoing, and is caged to be used by their captors, then we will judge the situation as morally aberrant.

These two ways of filling out the image show us that captivity, in and of itself, cannot be deemed to be a moral violation. However, the captivity of innocent individuals might always be wrong. Let us consider whether we can make sense of that claim by analyzing what is meant by "captivity."

While one understanding of captivity is imprisonment, which includes the connotation of being punished, there are other conditions of captivity that have other connotations. In the introduction to her edited volume *The Ethics of Captivity*, Lori Gruen identifies some of the key ethical themes, including «the value of liberty, the nature of autonomy, the meaning of dignity, the impact of routine confinement on well-being,

[17] The University Declaration of Human Rights can be accessed on the United Nations website at http://www.un.org/en/universal-declaration-human-rights/

both physical and psychological»[18]. These ethical themes should be salient when looking at the variety of conditions of confinement, as they are relevant ways of determining the morality of a particular circumstance of confinement. But, since there are a wide variety of captivity types, these themes on their own do not serve as general criticisms of all captive situations.

Before looking at these various conditions for captivity, it will be helpful to put some definitions of captivity on the table. Here's one:

Captivity^{w}: being held against one's will

This view of captivity emphasizes the psychological state of the captive individual. If the individual doesn't want to leave, then the condition would not be considered captivity, even if the individual were behind bars. This account can elicit all the ethical themes Gruen cites. However, it fails to capture all the cases that would naturally be construed as cases of captivity. Some captives may be willing. Those who know nothing else may be uncomfortable leaving the space, and captives can grow fond of their captors. Consider Emma Donoghue's novel *Room*, which describes a confinement situation from the point of view of a 5 year-old child named Jack who was conceived as a result of his mothers' rape by her captor, and spends his entire life inside a single room. Jack thinks that the room is all there is in the world, and is happy with his loving mother in the room. While we would naturally say Jack is held captive, he is not held against his will.

Another way of thinking about captivity would permit us to include Jack's situation as one of confinement. Consider this definition:

Captivity^{f}: being held without the opportunity to leave

This describes Jack's situation, but it also describes many other situations that we may not want to consider as examples of captivity. Children cannot leave the school grounds until the end of the day, but we wouldn't consider school children to be captive. Some people cannot leave their countries without a document, but are not typically considered captives of their governments.

Let us consider a third way of thinking of captivity, one that will keep school children and Americans without passports from being counted among those who are captive:

Captivity^{n}: being held in an unnatural environment

Here we could say that Jack is a captive, for it isn't natural for a child to be confined to a room by a kidnapper, and yet say that schoolchildren and Americans are not captives, for they are doing what schoolchildren and Americans are supposed to do. It's

[18] L. Gruen, *The Ethics of Captivity*. New York: Oxford University Press 2014, p. 2.

natural for children to be kept in school. A worry about this account is that it requires we have some way of deciding what is natural. Since living conditions change over time, what is typical now may not be typical later. Furthermore, what is typical may not be good. We might think that the mass incarceration seen in the US, while typical, is not morally justified. We might then argue that it is unnatural to hold so many people in prison. But then we need to identify *natural* with some normative properties—for example, associate it with Gruen's ethical theme of well-being—and to identify captivity we would need to identify a moral violation.

There is a fourth definition that emerges from these considerations:

Captivity[h]: being held

One thing all three accounts have in common is being held. Perhaps we can say that captivity just is being held. But again, this won't help. We hold infants, hold our beloveds, hold hands. The term "hold" is being used metaphorically in the above definitions, and in its metaphorical use it directly connotes being in captivity.

Perhaps the best we can do is to look at the uses of the term "captivity" in order to decide how to use it. Here again, Gruen's discussion is informative. She identifies the kinds of captivity that are usually hidden from society such as humans in prisons, animals on factory farms and in laboratories, and contrasts these with the kids of captivity that are so visible they are normalized (perhaps even natural), such as animals in zoos and aquaria, and pets in human houses. However, one may object to the characterization of the dogs and cats who are members of our family as captives. Dogs and cats, who coevolved with humans, have a natural place in the human home. Such pets are typically no more captive then schoolchildren are when they are in school. Of course, just as children can be taken captive, dogs and cats can be taken captive. But, the objection may go, many of our pets' typical state is not one of captivity, but rather cohabitation with humans. Rather than being purely descriptive, the term "captivity" expresses a normative perspective. Captivity implies that there is a problem in the situation—it is a non-ideal context. Whether the context of captivity is seen as morally justifiable, as in restraining someone for their own or others' safety, or whether it is seen as morally abhorrent, as in restraining someone to exploit their labor, the situation is not one in which all involved are flourishing.

Deeming a situation a captive one elicits worries that there is suffering in the context, and where there is suffering there is an opportunity, and depending on the case perhaps a moral obligation, to seek to minimize that suffering. However, the above discussion suggests that some of the contexts that are sometimes called "captive" may not be associated with suffering. Rather than deeming captivity in general a wrong, and concluding that animals who are persons have a right not to be captive, the conditions considered captive can be examined to determine whether or not they tend to involve suffering. I

will suggest that many living conditions deemed "captive" need not, and do not, involve suffering. Nor need they involve any other violation of personhood rights, such as undermining autonomous choice, liberty, or dignity, and impairing flourishing or well-being.

3.2 Co-living with animals

The co-living conditions of the animals who have made the news in legal battles tend to be exotic animals who are living in zoos, biomedical facilities, or in private homes. For example, chimpanzees Tommy and Kiko are each owned by an individual, and when younger they worked as actors. Chimpanzees Hercules and Leo were held at the New Iberia Research Center and used in biomedical research; now they are being held in sanctuary at Project Chimps. Elephant Happy has been living at the Bronx Zoo for 40 years. All these animals have been claimed as clients by the Nonhuman Rights Project, because they are perceived by the NGO to be suffering. Its goal, however, isn't to release the animals into the wild, or to free the animals, but to transform their conditions of captivity into ones that minimize the suffering. That Hercules and Leo are living at a sanctuary, Project Chimps, is a successful outcome, yet it remains true that Hercules and Leo are not permitted to leave the grounds of Project Chimps.

Individual ownership, individual co-habitation, zoo-living, medical laboratory living, behavioral laboratory living, and sanctuary living are some co-living situations for animals. But this list of co-living situations does not get to the fineness of description that is necessary for determining whether suffering exists. As the reader can imagine, each of these kinds of situations could be better or worse for an animal. We have read about or seen dogs or cats who have been mistreated by their human caregivers, as we have read about or seen human children mistreated by their adult caregivers. Rather than analysing all the possible types of animal captivity, I will describe one case of chimpanzee-human co-living that would be described as "captive" but which does not display the expressive aspect of suffering so often associated with the term. Rather, this situation demonstrate ways in which humans and animals can live together such that their autonomy and dignity are respected, and in which they flourish.

The case I want to consider is that of Chimpanzee Ai, who is one of the chimpanzees who lives at the Kyoto Primate Research Center (PRI). Ai was wild caught in the forest of Guinea in West Africa when she was an infant, and purchased by Japanese researchers through an animal dealer in 1978, four years before Japan banned the importation of wild born great apes.[19] She was brought to a behavioral research lab along with other

[19] See T. Matsuzawa, "The Ai project: Historical and ecological contexts", in *Animal Cognition* 6(4), 2003, pp. 199-211.

chimpanzees to be used in behavioral studies. Her primary trainer was Tetsuro Matsuzawa, who at the time was a 27 year-old assistant professor. Today Matsuzawa continues his work with Ai, who he describes as his research partner. Ai lives with other chimpanzees including her son Ayumu, who are also research participants in the lab. As Matsuzawa describes it, what was originally a test of basic perceptual and cognitive capacities in the 1970s and 1980s transformed into a research program dedicated to understanding social intelligence in the chimpanzees, with a focus on questions related to social learning, imitation, deception, and teaching. Matsuzawa's experience observing and conducting field experiments with chimpanzees in the wild led him to construct a physical and social environment for the chimpanzees in Kyoto that mimics the free-living chimpanzees he studied in Africa. With three generations of chimpanzees living together with daily access to an outdoor enclosure, the researchers hope to learn more about the cognitive and social properties of chimpanzees who live in communities. They built a 700m^2 outdoor enclosure that was planted with 500 trees of 60 species, including a small stream and 15m-tall climbing structures. Inside the enclosure is a booth connected to the main building via an underground tunnel. As the chimpanzees spend their days in the enclosure, the humans set up experiments in the booth and invite chimpanzees to participate. The autonomy of the chimpanzees is respected; they consent to the experiment in the sense that they can choose not to engage in the research. Matsuzawa describes the research method as one of "participant observation" in which researchers form strong social bonds with the chimpanzees they work with, interacting with them in their own space and on their own terms.

Matsuzawa describes how the social relationships between the chimpanzees and the researchers impact the research:

> The new paradigm is based on a triadic relationship between a mother chimpanzee, an infant chimpanzee, and a human tester. The experiments take place in a large booth, which the experimenter enters with both the mother and her infant already inside. As the mother looks on, the tester presents the infant with a variety of tasks, and provides social reinforcement. In this way, the close bond established between the human experimenter and the mother – based on years of experience and daily interaction – allows us to test the infant chimpanzees in much the same context as that in which human infant developmental tests are conducted.[20]

Chimpanzee Ai as well as the other chimpanzees at PRI are living in a context in which their autonomous choice, liberty, and dignity are respected, and their flourishing and well-being is of key importance, for research as well as ethical reasons. The lifetime

[20] Ibid., p. 208.

commitment the researchers make to their research partners, the respect for the chimpanzees' choices, and the development of living situations that permits them to engage in species-typical behaviors are examples of how the humans and the chimpanzees came to form a cooperative living experience. (In contrast, for example, see the descriptions of research on monkeys and chimpanzees in Harry Harlow's laboratory found in John Gluck's memoir.[21]

Critics of behavioral research with chimpanzees may raise some objections to the PRI arrangement. For one, they may worry that the chimpanzees are being made to work in the experiments, and that work does not respect their autonomy or dignity. In his discussion of "decisional authority" for chimpanzees, Andrew Fenton describes how we can both acknowledge the moral importance of animal autonomy and respect the decisions animals make about whether or not they want to participate in research.[22] This view rests on the assumption that we can come to understand what decisions an animal makes, which in turn rests on and the assumption that animals make decisions. Behavioral and welfare research suggests that both assumptions are true, and research programs like those at PRI provide an example of how chimpanzees can communicate their willingness to participate in experimental trials. When the physical environment is designed to allow chimpanzees to freely enter and leave a testing chamber, and when the chimpanzees know what to expect in the testing chamber, the chimpanzees are expressing their decision—their consent—to participate in the study. By creating the conditions in which consent and dissent can be expressed, the PRI scientists are working with animals in a way that does not raise any of the ethical themes that make a co-living situation a morally questionable one.

Indeed, the mere fact that an animal is working does not entail that the animal is being exploited. In their discussion of farmed animal sanctuaries, Sue Donaldson and Will Kymlica defend what they call an intentional community model of animal sanctuaries.[23] Unlike the "total institution" nature of some animal sanctuaries that control every aspect of the animals' lives, Donaldson and Kymlica advocate a rethinking of animal sanctuaries just as we are rethinking the "total intuitional" homes for some human populations, such as those with intellectual disabilities or the elderly. For example,

[21] See J. P. Gluck, *Voracious Science and Vulnerable Animals: A Primate Scientist's Ethical Journey*. Chicago: University of Chicago Press 2016.

[22] See A. Fenton, "Decisional Authority and Animal Research Subjects", in *The Routledge Handbook of Philosophy of Animal Minds*, edited by Kristin Andrews and Jacob Beck. New York: Routledge 2018, 475-84 and A. Fenton, "Can a Chimp Say "No"? Reenvisioning Chimpanzee Dissent in Harmful Research", in *Cambridge Quarterly of Healthcare Ethics* 23(2) 2014, pp.130-139.

[23] S. Donaldson, W. Kymlicka, "Farmed Animal Sanctuaries: The Heart of the Movement?", in *Politics and Animals*, *1*(1) 2015, pp. 50–74.

the total intuition models are focused on animal welfare, however they prohibit all work as exploitative. In contrast, Donaldson and Kymlica suggest that work may be part of a flourishing mixed-species community:

> Some dogs like to guard. If, as members of a FAS [farmed animal sanctuary], they take the job of alerting other animals to potential threats, are they being exploited? Some pigs like to root. If their rooting activity is used to help create productive garden plots to grow food for a sanctuary community, is this exploitation? If a sanctuary rescues orphaned infant animals, and adult members of the sanctuary community are willing and able to nurse and raise them, is this exploitation? When animals welcome newcomers to the community and show them the ropes, is this exploitation? If chickens lay eggs and abandon them, and some of these eggs are used to feed cat or pig members of the community (or neighbor foxes), is this exploitation? When sheep are shorn, if their wool is used to produce products that are sold to help finance the sanctuary, is this exploitation? If an ox carries hay bales on his back to feeding stations for other animals, is this exploitation? If humans who are part of the sanctuary community derive psychological benefit, companionship, and emotional sustenance form their interactions with the animals, does this exploit the animals?[24]

They go on to say that such activities would be exploitation if they were coercive, inappropriate, or dangerous, if there is not a balance between work and other activities, and if the work is not appreciated. Otherwise, there is no intrinsic problem with work. Indeed, work is part of a fulfilling life for animals, human and non-human alike. Boredom arises when there is not enough to do, and work and play are both activities that help make for an animal who is flourishing.

Critics of behavioral research on chimpanzees may also object that the chimpanzees will not enjoy full autonomy unless they are released "back into the wild." Consider again Chimpanzee Ai. She was taken from the wild as an infant. Today, many find it morally abhorrent to take a thriving wild infant chimpanzee from her mother, for any purpose. Regulations now exist that ban the collection of and trade in wild chimpanzees, most prominently the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) treaty.

One can judge it wrong to take a healthy chimpanzee away from their community against their will in order to serve humans, yet still object to the notion that currently captive chimpanzees should be released. The wrong that was done to Chimpanzee Ai when she was taken from her mother cannot be undone by releasing her into an African forest. Ai lacks any understanding of the physical or the social environments that are typical for free-ranging chimpanzees. In an African forest, she lacks a social structure and she lacks cultural knowledge. Ai lacks the basic abilities she would have

[24] Ibid., p. 62.

learned from other chimpanzees as an infant, such as how to crack nuts, dip for ants or find termites to eat, how to make the tools that are needed for such food processing, how to make a nest to sleep in, where to go when to find fruiting trees, and so forth.

In Roger Foutes' memoir about his work with captive chimpanzees, he writes about his struggles with the realization that the chimpanzees he worked with, including Chimpanzee Washoe and other chimpanzees who communicated with him using ASL signs, should not have been taken into captivity in the first place. He reports writing to Jane Goodall about sending Washoe "back to Africa", and Goodall's response was blunt:

> "That is the worst idea I've ever heard," she wrote. She went on to explain that Washoe could never be integrated into a chimpanzee group in the wild. As an outsider, she'd almost certainly be killed. Futhermore, the African nations were not financially able to support their own people, much less and expatriate chimp. Finally, it would be cruel to Washoe. She had been reared as a human child, diapered, spoon-fed, and privately tutored. How did I expect her to survive for ten minutes in the African jungle? Just to be sure I grasped this last point, Jane compared my proposal to abandoning a ten-year-old American girl in the wilderness, naked and hungry, and telling her to return to her roots in nature. This was romanticism at its most dangerous.[25]

What has been said about the chimpanzees at PRI may be true of many situations in which animals and humans live together in respectful relationships. Humans have taken many different species from the wild into zoos, homes, labs, and aquaria, and we continue to gather animals from the wild in order to satisfy human interest in such animals. Taking animals from the wild is one issue, but what to do with animals who have been taken from the wild is another. This isn't to say that these issues are unrelated, as promoting captive animals when their wild conspecifics are at risk of capture raises an entirely different set of practical issues about increasing demand. Let us turn to examine both of those issues in the context of personhood.

4. PERSONHOOD AND CAPTIVITY

Personhood at its most basic is a respect for an individual's autonomy, and being "collected" from one's natural social and ecological environment is not respecting an individual's autonomy. Indeed, the very term "collect" implies that what is collected is not a person, not a rights bearer, but is a thing, like a coin or a bottle of wine, that can

[25] R. Fouts, *Next of Kin: My Conversations with Chimpanzees*, New York: William Morrow Paperbacks 1998, p. 205.

be unproblematically purchased and added to a collection. Thus, for example, if parrots are deemed persons, then we should stop taking parrots from the wild to serve as pets in human homes.

Does it follow from this that we ought not breed parrots or other wild animals who have already been taken captive? The question of reproductive rights for animal persons is one that deserves its own treatment; I cannot do it justice here. Many animal sanctuaries take captive-extinction as a goal, putting the animals on birth control in order to end the need for human care of the species by ending the species' captive existence. Other sanctuaries allow animals to mate and breed as they will. Donaldson and Kymlica's intentional community model of animal sanctuary involves a respect for the variety of interests around sex, including sexual pleasure, forming attaching, and caring for or having relationships with young individuals. They advocate a careful study of how those interests can best be met in a sustainable manner.

While personhood status should protect animals from being collected, it doesn't follow that captive persons ought to be released back into their ancestral environment. Chimpanzees like Ai taken from the forest to live in at a research institute are as unlikely to survive in an African forest as Washoe was. Rehabilitation and release is not an option for great apes who grew up in captive environments. Marine mammals who were, like Ai and Washoe, taken from their communities to live in captivity for human purposes, are likewise unlikely to thrive in open ocean. We may all agree that wild marine mammals should not be captured and taken into captivity, but the fact remains that there are currently hundreds of cetaceans in captivity, and these animals primarily serve as entertainment for humans and work for the military.

Today in North America there is increased public concern about the welfare of cetaceans in captivity. There are two different approaches that are currently taken to be appropriate ways to deal with the cetaceans in captivity. One is a movement to "end captivity" for marine mammals through the creation of sanctuaries. The sanctuaries are envisioned to be, like chimpanzee sanctuaries, places in which dolphins can live in more natural settings without having to perform or interact with members of the public. The Whale and Dolphin Conservation and the Kimmela Center for Animal Advocacy are two organizations working on creating sea sanctuaries for whales and dolphins.

In parallel, there is a movement to certify captive dolphin situations by experts in captive and wild dolphin behavior via the Humane Certified seal of approval awarded by American Humane. The certification is a promise that the captive situation, be it a swim with dolphin program or an aquaria exhibit, meets a set of welfare criteria agreed upon by experts.

Both approaches are attempts to do right by cetaceans, to respect their autonomy and dignity. To ask which approach is best is to request more information about what

individual dolphins choose to do, and how well they flourish in different contexts. If dolphin swim programs do not reinforce dolphins with food rewards for swimming with humans, and provide places for the dolphins to avoid contact with human tourists, yet the dolphins choose to approach humans and play with them for a time, then the decisional authority of the dolphin is being respected. As with dogs, chicken, pigs, sheep and oxen at farmed animal sanctuaries, it may provide the animals with a richer intentional community if they are allowed to choose whether or not to interact with human visitors.

This is the ethical implication of animal personhood. As a person, an individual has a right to choose how to live. As persons who depend on human caregivers, it is our responsibility to determine the interests of animal persons, to give them choices, and to learn how to understand the choices that they make. This implies that there is a moral obligation to conduct certain kinds of research on the animals who we live with. Welfare research, research on animal interests, and research on animal communication are all research programs that will allow humans to fulfill the moral obligations we have to treat our non-human co-habitants with dignity and respect, and to offer them a degree of liberty which permits them to exercise their autonomy.

5. CONCLUSION

An animal person co-living with humans deserves rights, but the content of those rights will depend on the particular interests and capacities of the individual. To know what the interests and capacities are, and to interpret behavior and design experiments to test between preferences requires an expertise in animal behavior or animal welfare science. Insofar as there is a moral obligation to respect the rights of persons, there is a moral obligation to determine what the rights of a particular person are. And to determine their rights, we need to know more about them. We need information about the individual animal, the species, and the different possible living conditions available to the individual. For this reason, there is a moral imperative to do scientific research on nonhuman animals, in order to gain the empirical knowledge necessary to make an argument for a particular kind of moral treatment. Furthermore, we need to defer to scientists who are able to make informed judgements about what is best for a particular animal. This requires a collaborative relationship of trust between scientists and ethicists in order to best respect the moral considerability of animal persons.

One may object that scientists are not in the best position to consider the interests of animals, because they take an objective and distanced perspective toward their research subjects, and scientists may be biased against animal well-being if it interferes with their ability to do research. Rather, the individuals who know animals the best

should be the ones who make decisions about what is best for the animal, just as a parent can decide what is best for their child.

In response to this worry, I would like to draw a parallel to the relationship between the sciences of child development and education and the treatment of children. It is true that parents and teachers have a form of expertise when it comes to the children in their care. I have called this "folk expertise".[26] A folk expert is one who need not have any formal training about the psychology of their wards, but who has spent the time and given the required attention to get to know them. This kind of knowledge is often extracted by scientists who study personality or well-being, using measures such as the Child Behavior Checklist that are filled out by a variety of caregivers. In order to avoid the worry about subjectivity, multiple folk experts of an individual are queried and a shared perspective on that individual can be acquired. In these human fields we see how the folk expertise and the scientific expertise can work together in order to best understand the child subjects.

There is always a risk of bias in any human pursuit, be it animal advocacy or animal science. For this reason it is essential to follow practices in which multiple perspectives are considered together, so that no one bias wins out. Ideally, it will also involve conversations between experts of various sorts. For example, in the case of Elephant Happy, to determine what would be best for her would require a conversation between individuals who have general knowledge of captive Asian elephants, individuals who know about elephant welfare, individuals who know about elephant cognition, sociality, and physiology, individuals who know Happy well, and individuals who know sanctuaries and the costs associated with moving animals. This requires developing trust between experts of various sorts, and appreciating that there is a shared goal even when there may be differing opinions about what would be best. This is a human problem, and applicable in many areas of life. It is not a special problem for determining the best way to care for animal persons.

Once we have determined that an animal is a person, we are obligated to respect that individual's autonomy, and protect their liberty, dignity, and well-being. If they are wild-living, then we should not take them from a flourishing natural home. If they are co-living with humans, we are obligated to use our scientific expertise to determine how best to protect their autonomy. Doing science to promote welfare become a moral obligation. It is what we owe the animals who live with us, given our autonomy violations of the past.

[26] See K. Andrews, "Politics or metaphysics? On attributing psychological properties to animals", in *Biology and Philosophy*, 24, pp. 51–63.