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“Knowledge is power, but only wisdom is liberty.”

— Will Durant

*Shawn Thompson’s essay provides an inspiring and thought-provoking perspective on the legal fight for acknowledgement of the fundamental right to bodily liberty for autonomous species, in this case great apes. Thompson specifically calls upon science to assist the Non-Human Rights Project (NhRP) in their groundbreaking explication of possibly the most embarrassing “blind spot” of our time: regarding (autonomous) animals as “things.”*

Central in Thompson’s treatise is the question: ‘How can research be designed to define autonomy more clearly and to demonstrate autonomy in a stronger way to the court system?’ Here, Thompson’s emphasis, in line with the NhRP, is on chimpanzees – the species with which humans share more than 98% of their DNA, and for which an impressive body of affidavits with respect to their capacities and propensities has already been compiled by world-leading contemporary primatologists. We scientists progressively understand the intricate and intelligent modes in which chimpanzees perceive and act in this world as ends in themselves, even to the extent that we conclude that the differences between the human and chimpanzee species are merely one of degree, not kind. For example, chimpanzees are self-aware, empathize with victims of violence, plan for the future and mourn their dead. Yet, these insights do not mean a thing for chimpanzees’ fundamental rights if we cannot translate them into terms that speak to the court.

Thompson, therefore, outlines four domains in which research could synchronize with the court, also by him referred to as the “Pillars of Autonomy”: innovativeness, altruism, self-control and resistance. Thompson rightfully points out that current evidence already speaks to chimpanzees’ capacity to innovate beyond what is endowed upon them by genetic and environmental influences – a capacity that illustrates chimpanzees’ pro-active being-in-the-world. With respect to the other domains, the current evidence might be equally substantial, although more examples may better serve the purpose of the whole endeavor: convincing the judge that chimpanzees are sentient, autonomous beings, who can be ‘wronged.’

In an attempt to provide more convincing examples, thereby following Thompson’s emphasis on the importance of scrutinizing beings’ behavior in light of their susceptibility to “controlling influences,” we would point to chimpanzees’ rational decisions against group pressure (anti-conformist), their ability to restrain themselves from choosing immediate rewards when future rewards may be superior, and their unyielding stubbornness when they choose to mourn their loved ones in the face of both conspecific pressure (i.e., the group moves on) and human efforts to control the scene (i.e., luring the chimpanzees away in order to be able to retrieve the body from the enclosure). We would; if it wasn’t for the emerging picture that it is apparently insufficient to provide evidence of beings’ ability to act autonomously in the world for the plea for basic rights to be honored. In fact, judges do not appear to question that chimpanzees have the capacities to be considered as autonomous beings. So where does that leave science?

Lacking the potentially fruitful possibility to sit down with the judges and directly ask them what evidence would sway them in favor of granting basic rights to non-human beings, we follow Thompson’s advice and contemplate on how best to translate scientific insights into legal language. One strategy

could be to apply the scientific method to understand the legal system itself, or particularly, how judges think, evaluate and decide. We could, for instance, conduct experiments in which judges are blinded to the identity of the habeas corpus applicant: what would it take for the judge to consider the applicant as “person”? Which prerequisites for personhood would turn out to be fundamental? By exposing the considerations crucial to judges’ rulings in favor of personhood, such experiments could guide the endeavor of pleading for non-human rights in the real courtroom. A related scientific application could entail the scrutiny of judges’ previous rulings in relevant cases by means of established tools for qualitative research (e.g., based on the “grounded theory”) or even sophisticated algorithms designed to detect logical patterns in written text. This “know thy opponent” approach might generate valuable insights that can be used for expediently formulating the legal arguments accompanying the habeas corpus filings.

Additionally, it might be worth contemplating how one might build measures into the legal system to make judgments more objective, e.g., in regard to the identity of the applicant. Law and science both aim to be rational and objective, but where science has introduced double blind peer review (i.e., the identities of all stakeholders involved remain anonymous), Law may still be tainted by the (implicit) biases that humans invariably possess. Such biases do not merely come in conspicuous forms like speciesism, but can also subtly jeopardize objectivity through tendencies to decide conservatively rather than liberally. For a judge to rule against a non-human habeas corpus filing means to go-with-the-flow, to reiterate the status-quo. For a judge to rule in favor of this same habeas corpus filing means to stand out, to risk not only strange looks by fellow judges, but possibly also society’s scorn more generally.

Another strategy by which science could aid the fight for non-human animal rights might, therefore, be to portray the effects of granting fundamental rights to (certain) chimpanzees on society’s functioning. “Will my ruling cause a ruckus?” may plausibly be a question floating through judges’ minds while contemplating the habeas corpus plea for chimpanzees. Fear for consequences or even repercussions is a deepseated trait in social species, including – or perhaps better said: especially for – humans, and may thus represent an (implicit) bias in decisions with potentially highstake ramifications. By modeling the socio-economic effects for different versions and magnitudes of judges’ rulings, we may be able to, implicitly, weigh down the angst component contributing to judges’ current tendency towards conservative decisions. Effectively, we would create a situation in which less bravery is required to rule in favor of non-human rights by illustrating just how “normal” a society could function in which some or even all autonomous species have been granted fundamental rights. It’s perhaps not the way a court of law should work, but in pursuit of identifying one of the most embarrassing “blind spots” of our time, we may be justified in applying some unconventional approaches.

In conjunction, our suggestions in line with Thompson’s advice to calibrate the scientific enterprise with the legal system could hopefully serve as an impetus to generate a more encompassing “think-tank” with the aim to explore the poignant issue of transforming the legal status of (autonomous) non-human animals from “things” to “persons.” With an open mind, and in unison with all people regardless of (scientific) background, we may go beyond mere knowledge on the extent of a being’s sentience toward wisdom with respect to the living force that binds us.