

Will the campaign to make chimps 'legal persons' give wild individuals such as Freud a brighter future? He lives at Gombe Stream in Tanzania and is pictured aged 41, in a photograph taken in 2012.

BEING HUMAN

The more scientists discover about great apes' behaviour and society, the closer we realise they are to us. After a landmark legal case in the USA in April, **Vanessa Woods** asks if extending human rights to primates could be a positive step for conservation.



It's impossible not to see echoes of our human self in images of maternal affection in great apes. Here a rehabilitated female Bornean orangutan cuddles her four-year-old daughter at Camp Leakey in Kalimantan, Borneo.

Anup Shah/www.shahrogersphotography.com

Kendall is a bright 15-year-old with a smattering of freckles on his nose. He bounces towards me and offers his hand. Not with palm upturned like a wild chimpanzee, but vertically, as though to shake my hand like a person.

Kendall was taken from his mother as an infant and raised by a human. Years later he was sold to a company that hires animals for films and advertisements. Kendall appeared in Pepsi commercials and on *The Oprah Winfrey Show* until, like all chimps, he became too strong to manage. At the time of his rescue and relocation to North Carolina Zoo, his owners had several animal-welfare violations. Kendall was living alone in a small cage.

At the zoo, Kendall's situation has improved, but he is finding it difficult to be a chimpanzee. Because he was raised like a human child, he never learned the social etiquette of his species. Whenever he joins the group in the main enclosure, he is beaten by the dominant males.

BACK-YARD ZOOS

Kendall is luckier than 1,000 chimpanzees in the USA, which has one of the world's largest populations of 'back-yard chimps'. Taken from their mothers at birth, at puberty – when they develop the strength of a tiger, and the intelligence of a human child – they are locked into cages to live the rest of their 30–60 years in trailer parks, back-yard zoos or biomedical centres.

But the more cognitive research that is published on great apes – especially chimpanzees and bonobos, our closest living relatives that share 98.7 per cent of our DNA – the more difficult it becomes to draw the line between us. Why are we the only great ape with rights?

If Steve Wise has anything to do with it, back-yard chimpanzees will soon be able to sue for freedom. Wise is president of the Nonhuman Rights Project (NhRP), the first organisation to launch a sustained campaign seeking legal rights for nonhuman animals in a court of law. His big idea has been rapidly gaining ground in recent years.

In December 2014 an Argentinian court famously gave personhood to a 29-year-old orangutan called Sandra in



Buenos Aires Zoo. Most media stories said that the court ordered Sandra should be freed to a sanctuary by a writ of habeas corpus, the legal process determining lawful authority to detain someone (see box, p32). But the reports turned out to be misleading.

"We had the decision translated, and there was nothing about Sandra being a person, nothing about her being freed for habeas corpus," says Wise. "This was a regular animal mistreatment case, and as far as I know Sandra is still sitting in her cage." So the legal battle on behalf of nonhuman animals continues, with a chimpanzee called Tommy now at the forefront of the campaign.

Wise first met Tommy in 2013, on a used-trailer park that also rents out reindeer for Christmas commercials. "We weren't even sure he was in there," Wise says. "But we went into a large warehouse. It was dark and there was little natural light. Tommy was just sitting in his cage, watching television." ▶

In 2014 a court case involving a captive orangutan called Sandra made her a global celebrity, but the legal significance remains unclear.

THE GAP BETWEEN GREAT APES AND HUMANS HAS SHRUNK AS WE DISCOVER BEHAVIOURS THAT WE THOUGHT UNIQUE TO US.

TOO CLOSE FOR COMFORT: EXPLOITATION OF CHIMPS

Chimpanzees and bonobos are more closely related to us than they are to gorillas. Bonobos are found in one country, while chimpanzees are found in 21 across equatorial Africa, and historically had a much higher population. This led to chimps becoming the favoured model for behavioural and biomedical testing, and to their capture for zoos and circuses. Thousands were exported to the USA and Europe between the 1950s and 1980s.

Chimpanzees were used to develop a vaccine for hepatitis A and B, and the antibodies that treat rheumatoid arthritis, non-Hodgkin's lymphoma and psoriasis. During the 1980s the USA poured millions

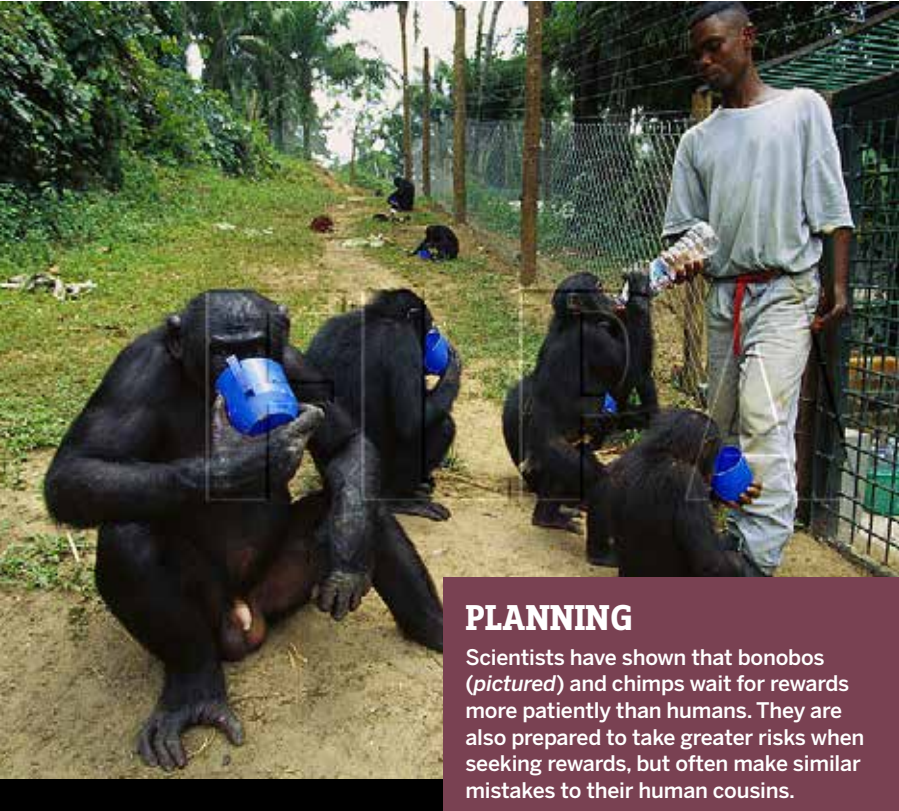


This captive chimp in Gabon is used for biomedical testing.

of dollars into AIDS research. But though chimps could be infected with HIV, they did not develop AIDS, so their use in these tests was very limited. By 1997 the US government owned 1,000 chimps that cost \$7.3 million annually; the same year chimp breeding was banned.

Now every country in the world has stopped using chimps for biomedical testing, except the USA and perhaps Gabon. The Netherlands was the last European country to test on chimps, which it outlawed in 2004. Japan retired its chimps to a sanctuary in 2006. The Netherlands, UK, New Zealand, Sweden, Germany and Austria have active bans on using great apes in research.

From top: Juan Mabromata/AFP/Getty Images; Lynn Johnson/National Geographic/Getty Images



PLANNING

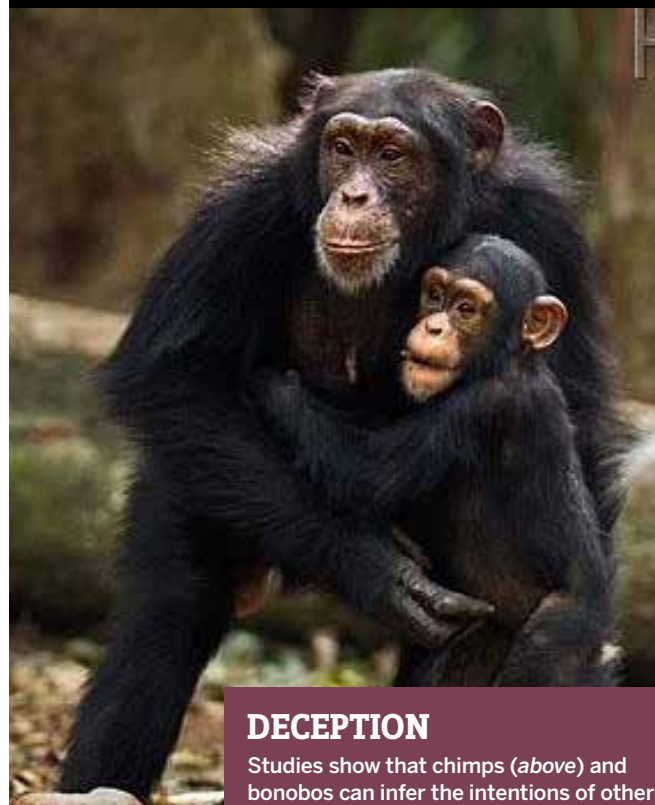
Scientists have shown that bonobos (pictured) and chimps wait for rewards more patiently than humans. They are also prepared to take greater risks when seeking rewards, but often make similar mistakes to their human cousins.



CO-OPERATION

Groups of chimps and bonobos are highly co-operative. They know when they require help from others and will help those in need, especially family and friends. They can identify the individuals best equipped to give assistance, and understand how best to leverage their powers of negotiation.

HOW CHIMPS AND BONOBOS SHARE HUMAN-LIKE TRAITS



DECEPTION

Studies show that chimps (above) and bonobos can infer the intentions of other individuals, make assumptions about what they can and can't see, and can intentionally deceive on that basis.



SELF-AWARENESS

Some bonobos (pictured) and chimps are able to use mirrors to explore parts of their body they can't normally see. They are aware of gaps in their own knowledge, and know where they fit into their social group, in terms of both hierarchy and family.



CULTURE

Chimps (above) and bonobos pass on learning from one generation to the next. This includes the ability to make complex tools learned in part by observation, and different groups display unique 'technical traditions'.

That December the NhRP went to court for Tommy and three other captive chimps in New York State. These were the first cases to seek rights for another species as 'legal persons'. The NhRP lost the first rounds, but filed an appeal. The original decisions were upheld, so the NhRP asked permission to appeal to New York's highest court. "That's a beauty of habeas corpus," says Wise. "You can re-file indefinitely. For as long as it takes."

By April 2015 a judge had granted an order to show cause and writ of habeas corpus for a nonhuman animal. Following the ensuing publicity, the judge hurriedly struck out the words "habeas corpus" from the title of her order. But this still represented a legal first.

As the litigation continues, the NhRP plans similar lawsuits on behalf of other animals with complex cognitive abilities, including the other great apes, elephants and orcas. "I thought we would begin with chimpanzees or bonobos, because they have been the subject of intense study," explains Wise. "They have dozens of the same cognitive abilities that we have, including being autonomous and self-determining, which are crucial in a court of law."

The gap between humans and other apes has been shrinking over the years as researchers identify abilities in great apes that were once thought to be unique to humans. They are capable of extraordinary feats of planning, deception, negotiation and co-operation. And they show remarkable emotional intelligence, such as empathy, altruism, grief and love.

However, in the eyes of the law one of the qualities that matters most for being a legal person is autonomy. 'Autonomy' comes from the Greek *autos* 'self' and *nomos* 'law', and means independence, or freedom from external influence or control. Although there are legal examples of autonomy, such as when

THE QUESTION IS, HOW WILL GIVING 2,000 OR SO CHIMPANZEES IN THE USA LEGAL RIGHTS HELP GREAT APES IN THE WILD?

Anup Shah/www.shahnersphotography.com; top left and using mirror: Cyril Ruoso/FLPA



Caged: Tommy the chimp.

HABEAS CORPUS: FROM PERSONHOOD TO FREEDOM

The term 'legal person' is confusing because it is not restricted to people. 'Legal person' refers to any individual or group that is allowed by law to take legal action. A ship can be a legal person, as can a corporation. Indeed in 2012 a river in New Zealand important to the indigenous people was declared a legal person.

The aim of the Nonhuman Rights Project (NhRP) is to change the status of some nonhuman animals from 'things' to 'persons'. They chose to start in New York, because here domestic animals that are the recipient of a trust are already considered legal persons – such as Bella Mia, the Maltese terrier from Queens set to inherit a million-dollar fortune.

The NhRP has set up a trust for four chimps, and argues that since they are persons for the purposes of these trusts the courts should look closely as to whether they should be legal persons for the purposes of habeas corpus, too. Habeas corpus (Latin for 'you may have the body') is the right to be free. In US federal courts, habeas corpus is used to decide if a prisoner is detained lawfully. In common law, habeas corpus can also be used to sue private citizens who are keeping a legal person against their will.

Gorillas are not as closely related to humans as chimps or bonobos are, but nevertheless have many human-like traits. In 2014 a young female was seen 'fishing' for ants with a stick – the first time that tool use had been observed in wild gorillas.



Rescued chimps at a sanctuary in Uganda. Though safe and well cared for, they are unlikely ever to be returned to the wild.



Suzi Eszterhas/naturepl.com

a terminal cancer patient chooses to stop treatment, there is no checklist to determine if someone is autonomous.

Primatologist Christophe Boesch has studied the chimpanzees in the Ivory Coast for over 30 years. He argues that, in scientific terms, chimpanzees are autonomous because they are aware that they have an autobiographical self. "Individuals not only remember things from the past – they remember them in a chronological way, and use this information when they need to make a decision," he says.

Since chimpanzees cannot describe their memories, Boesch tracks how they look for food. "They don't just randomly go to where they remember having food last," he says. "Trees come into fruit in a very precise chronological order. The chimpanzees can even take into account a feeding session from the previous season up to 24 months ago. They have to integrate past memories into their decision process."

AWARENESS OF SELF

Boesch says that recognising death is another measure of autonomy, since it requires the ability to appreciate the continuity of yourself and others through time. "In humans the notion of death occurs in steps. One of the key criteria is recognising that something irreversible has happened. We were looking for behaviour that would indicate this recognition in chimpanzees."

When a Tai Forest chimpanzee called Tina was killed by a leopard, several other members of her community surrounded her body. The alpha male and two high-ranking females inspected the wound while others held her hand. "There was respect showed to the body," recalls Boesch. "There was a different way of interacting with the blood around the body, compared with when they were guarding other individuals who had been wounded."

Not everyone believes that making apes legal persons is useful, however. "I don't think it's necessary to establish a revolutionary system where chimps have personhood," says Anna Frostic, senior attorney for the Humane Society of the United States. "Steve Wise gets a lot of attention, but there is concern that he's drawing funding away from what could really help the chimps."

Frostic has been part of the effort to push through an amendment to the USA's Endangered Species Act (ESA), which will list chimpanzees as an Endangered species when they are in captivity. By a curious loophole, chimpanzees are currently Endangered when they are in the wild, but they lose this status in captivity in the USA.

"The ESA prohibits what is called a 'take' of an Endangered species, unless you get a special permit," says Frostic. "Anything that causes harm or distress to an animal is known as a 'take', so this would certainly include any invasive biomedical research." The new ESA was recommended in July 2013 by the US Fish and Wildlife Service, and should be passed this year.

Once the law is passed, not only will biomedical research be restricted, but breeders of chimpanzees for

the US pet and entertainment industry will not be able to transport chimpanzees across state lines.

Yet chimps are still traded internationally, so this is a global issue. Those languishing in sanctuaries, such as Tchimpounga in the Republic of the Congo, are a case in point. I have known most of its chimps since they arrived as orphans, shot from their mother's backs and listed for sale on the black market. The chimps were rescued after being stuffed in cardboard tubes in airports, smuggled in crates labelled 'dogs' or crammed in cars full of drugs.

According to a 2013 report by the United Nations Environment Programme (UNEP), trafficking live apes has become part of organised environmental crime, with price tags as high as \$20,000 for a chimpanzee and \$300,000 for a pair of gorillas.

PROTECTION PAYMENT

So the question is, how will giving 2,000 or so chimpanzees in the USA legal rights help the 450,000 great apes in the wild? "Africa looks to the West," says Debby Cox of the Jane Goodall Institute. "We keep chimpanzees as pets, put them on TV and use them in biomedical testing. Why shouldn't they do the same?"

UNEP estimates that in 2005–11 more than 22,000 great apes were either killed or captured from the wild. Over 64 per cent were chimpanzees. In an eerie echo of the fate of chimpanzees in the USA, these apes are destined mainly for Europe, the Middle East, China and South-East Asia, where they will be sold to back-yard zoos, breeding centres and entertainment companies.

"If there is stronger legislation, at least in the Western world, it should improve conservation in these regions," says Cox. "Making chimpanzees legal persons and the ESA are stepping stones to help."

Cox is clear about what ultimately needs to happen. "We need better protection of apes and their habitats. African countries should not be expected to foot the bill. The forests of Africa are important to the rest of the world. It's a global responsibility we need to pay for." 🐼

➕ FIND OUT MORE

Discover more about great ape conservation and legal rights at www.janegoodall.org.uk and www.nonhumanrightsproject.org

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