

THE DEATH OF ELEPHANT GUIDA AND THE FUTURE OF ANIMAL RIGHTS

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“According to the constitutional provision, regardless of any other rule, animals are subjects of rights and, as such, prevails as a magnum principle, the repudiation of any act that demeans or tarnish the dignity of their lives. Therefore, any offense should be banned and any cruelty repealed “. With these words, on August 20, 2010, Brazilian Judge Ana Conceição Ferreira granted an injunction in favor of Guida and Maia, two female elephants who lived in precarious conditions in Circo Portugal, an itinerant circus that used these animals in their shows through Brazil.

The action was proposed in 2010 by Professor Heron Gordilho, who, in 2005 professors Luciano Santana, Tagore Silva and some animal protection societies, filed a Habeas Corpus in behalf of a female chimpanzee well known by the name of Suiça, who lived in a zoo in the State of Bahia.

It turns out that, unlike Suiça, who died before knowing freedom, elephants Guida and Maia were released and sent to a farm in the State of Minas Gerais and later to an elephant sanctuary in the State of Mato Grosso. Since June 24, 2019, however, animal rights activists are in mourning, due to the sudden death of Guida, at 47 years of age.

In order for us to understand the importance of these judicial precedents in favor of animals, we must make a brief historical retrospective of the cases.

The case Suiça vs. Bahia was the first judicial precedent in this direction. The trial occurred in 2005 when Professor Heron Gordilho, along with other animal rights advocates, filled a Habeas Corpus petition to free Suiça who was imprisoned in a public zoo in the State of Bahia. Although the chimpanzee died before liberation, she became known worldwide for being the first animal - usually considered the object of human property rights - to be admitted to court as a legal subject with standing before a court, provoking a true Copernican revolution in the legal world.

In his decision, Judge Edmundo Cruz made clear that the writ fulfilled all the conditions of the action, that is, that the judicial protection sought was susceptible of appreciation, and that Suiça had standing, since it was proved that she had an interest in be protected judicially and that the remedy of Habeas Corpus was a necessary and appropriate instrument to produce a result satisfactory to its interest.

Ten years after Brazil, it was Argentina's turn to make a qualitative leap towards recognition of animal rights. On October 21, 2015, the female orangutan Sandra was also recognized as a “subject of law” and released through an order of Habeas Corpus granted by Judge Elena Liberatori, from the city of Buenos Aires.

On November 3, 2016, another Argentine judge, María Alejandra Mauricio, declared that the female chimpanzee Cecília, who lived in a zoo in the city of Mendoza, was a “subject of nonhuman law”, and was to be released and transferred for a Great Primate Sanctuary located in the State of São Paulo, Brazil. In 2017, Animal Law achieved another new success in Latin America, when the Supreme Court of Colombia ruled that Chucho, a bear, was a non-human, and should be released from the Barranquilla Zoo and sent to a reserve wildlife.

THE FUTURE OF ANIMAL LAW IN THE UNITED STATES

Although the case *Sierra Club v. Morton* has become a leading case on the rights of nature around the world, and the United States is the leader of animal law research, US courts still do not recognize that self-conscious animals are legal subjects or have standing.

The case *Tree*, judged in 1972 by the US Supreme Court, began in California when the Sierra Club Association filed a lawsuit against the US Forest Service seeking annulment of the administrative license authorizing the construction of a winter sports resort in the Mineral King Valley, a valley of the Californian Sierra well known for harboring several species of redwoods. Since the California Court of Appeal had dismissed the application, since the association was not interested, since none of its members proved to have suffered any damage, Professor Christopher Stone of the University of California wrote a seminal essay “Should trees have standing?” toward legal rights for natural objects, which was promptly annexed to the lawsuit when it was already close to being tried by the Supreme Court.

In this article, Stone presents the argument of historical continuity, stating that law has increasingly extended its sphere of protection, from children to women, from slaves to blacks, to commercial societies, associations and public collectivities, so that there would be no reason to refuse ownership of rights to animals and plants, which would only be represented by the Sierra Club Association.

Contrary to all expectations, three of the seven US Supreme Court justices favored the arguments put forward by Stone, and although the thesis was defeated, Judge Marshall’s vote became anthological in saying that if in that country ships and corporations were entitled to rights, there were no grounds for denying the extension of these rights to animals and plants.

On December 14, 2019, Professor Steven Wise filed a Habeas Corpus petition in a New York State Court in favor of the elephant Happy, the first pachyderm to pass the “mirror recognition test”, an important indicator of self-awareness. During the test, the scientists painted a white cross over Happy’s left eye and placed it in front of a large mirror, and she repeatedly touched the mark with a piece of trunk, demonstrating that she recognized herself in the mirror.

In Latin America, the advances of Animal Law have had the leadership of Professor Heron Gordilho who, in addition to being the author of classic animal law literature - the book “Animal Abolitionism: Habeas Corpus for Great Apes”, which develops the idea of Habeas Corpus petitions as a remedy in favor of great primates - has been a competent advocate for animals, obtaining the first judicial decisions recognizing animals as a subject of law, one of the main demands of the movement to abolish the institutionalized exploitation of animals.

Founder and former president of the Abolitionist Institute for Animals and Latin American Animal Law Association, Professor Heron Gordilho is also the editor-in-chief of the Brazilian Journal of Animal Law, a journal linked to the research group on Animal Law at the Faculty of Law of the Federal University in Bahia.

In the United States, Professor Steven Wise has been the preeminent advocate for an immediate extension of human rights to chimpanzees and bonobos (pygmy chimpanzees), besides other self-conscious animals such as elephants and dolphins, on the grounds that these animals possess a mental capacity which would allow them to pass tests that are normally applied to humans.

Taking Wesley Hohfeld's theory of subjective rights as his starting point, he asserts that these primates have negative individual rights or privileges, such as bodily freedom and physical integrity. For Wise, if judges grant rights of dignity to children and people with serious mental deficiencies from the legal fiction that "all people are autonomous," for the same reasons they should recognize that great primates have these rights.

In 2018, in a request for Habeas Corpus by Professor Wise in favor of chimpanzee Tommy, one of the judges stated that the main argument used to deny the request for habeas corpus to chimpanzees was wrong: that they are not capable of assuming legal duties or be held accountable for their actions. "The same is true for human babies and comatose human adults, even though no one considers it inappropriate to ask for a habeas corpus in favor of a child."

A paradigm thus provides the foundations on which the scientific community develops its activities, and all these precedents demonstrate that the anthropocentric paradigm - which keeps all animals in the simple condition of the object of the property rights of humans - goes, little by little, being replaced by a new legal paradigm, which admits certain animals as subjects and no longer as objects of law, after all, increasingly they occupy a prominent place in our society.

For Thomas Kuhn, an important scholar of changes in scientific paradigms, when anomalies multiply within the scientific puzzle, it is time to consider replacing this paradigm, because in crisis situations, more creative members propose alternatives that begin to be taken seriously by the scientific community, and when a new paradigm ends up replacing the old one, there is a scientific revolution.

The struggle for the rights of Suiça, Guida, Maia, Sandra, Cecilia, Chucho, Tommy, Happy and many other intelligent and self-conscious animals demonstrates the urgent need for a change in the current legal paradigm and the recognition that some animals should be considered subjects of right.