

Life in A Cage: On Nonhuman Persons
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Tommy was a child actor, starring in a Hollywood movie and performing live in New York. It sounds like a dream come true, but as for many child actors, as he got older things started going wrong. Tommy's downfall wasn't due to financial excess or substance abuses. Rather, he just grew up into a normal guy. And he was treated like any normal guy of his kind in our culture—he was locked away in a cage. Tommy was left behind bars in a small concrete cage, prisoner in a dark, damp shed, fed and watered, but kept in hiatus until someone might want to use him again. You see, Tommy is a chimpanzee, and chimpanzees are property under the law. There are some regulations regarding how we handle them—much like the regulations regarding hazardous materials. But Tommy doesn't have any legal rights because he is not a legal person.

The Nonhuman Rights Project, headed by lawyer Stephen Wise, has been filing lawsuits on behalf of Tommy and other chimpanzees who are being held in horrific conditions. In one such case, NY County Supreme Court Justice Barbara Jaffee decided against considering chimpanzees legal persons under the common law, writing, "the parameters of legal personhood... [will be focused] on the proper allocation of rights under the law, asking, in effect, who counts under our law." Justice Jaffee didn't want to make this decision solely by legal fiat. She suggests it is a matter of public policy that needs to be decided by society, rather than the court. This leaves room for philosophers to enter the conversation, and consider whether chimpanzees are metaphysical persons, regardless of how the common law concept is understood.

On John Locke's influential account, a person is "a thinking intelligent being, that has reason and reflection, and can consider itself as itself, the same thinking thing, in different times and places." While this might sound like a good starting position, it is both too weak and too strong. Consider the case of KC, a human who became famous after a brain injury caused him to lose the ability to engage in mental time travel. KC wasn't able to re-experience his past events or to imagine his future ones, and so in this sense he wasn't able to consider himself the same thinking thing in different times and places. But when given economic decision-making tasks, he was able to discount future rewards in the same way typical people do. Furthermore, he had an average IQ and his cognitive capacities remained otherwise relatively unimpaired. It would be very strange to consider KC as not a person due to his inability to remember his past or project into his future. This shows that the Lockean view is too strong.

But it might also be too weak. In a recent [Animal Sentience article](#), Mark Rowlands argues that we don't need something like mental time travel to unify our mental life; rather in virtue of experiencing the world intentionally, minded creatures implicitly consider themselves the same thing across time. Given this argument, anything with intentional mental states fulfills Locke's requirements. This would make personhood widely distributed throughout the animal kingdom, and given some recent research on plant neurobiology, maybe even in plants as well. This conclusion suggests that there may be something more to our concept of personhood than what Locke has in mind.

What else might that be? David DeGrazia lists rationality, self-awareness, moral agency, and autonomy as properties typically associated with personhood (1997). In a later article he adds linguistic competence, sociability, and capacity for intentional action to the list (2007). Sarah Chan and John

Harris argue that a person is anyone capable of valuing their own existence (2011). Gary Varner (2012) argues that a person must be rational, self-conscious, and a full-blown moral agent, and that persons have the following four concepts from which to construct a linguistic self-narrative: self, birth, death, and personality.

From Locke's thin view, we can build a very thick one, consisting of ten proposed properties:

1. Consciousness or sentience
2. A sense of self that persists through time; self-awareness
3. Rationality
4. Intentionality, autonomy, free will
5. Sociability
6. Moral agency
7. Values one's own existence
8. Linguistic capacity
9. Narrative story of one's own life
10. Personality

What should we do with this menu item account of personhood? Certainly it can't be that a person must have all of these properties. That would entail excluding some individuals we already think are persons—not just KC, but young children whose autonomy and rationality is quite weak, as well as cognitively diverse adults with acute language impairments or memory problems.

DeGrazia has raised additional worries about these kind of menu accounts of persons. For one, these properties come in degrees, or at least some of them do. Someone can have a more or less sophisticated linguistic system—enculturated apes might be able to comprehend spoken English without being able to produce it, and orcas might have social norms without being full blown moral agents. In addition, the properties don't all hang together; one can be conscious without being social, perhaps, or without being a moral agent or having a narrative sense of self. But even worse, according to DeGrazia, is that on the menu account calling someone a person doesn't tell us anything that we didn't already know. The notion of person is descriptively redundant, at least as far as the non-moral properties go, and doesn't offer any explanatory power. The act of labeling only masquerades as offering a better understanding of the entity deemed a person. Finally, the menu account of person can't help us with the question we thought we were interested in, namely whether other animals like Tommy might be persons. It can't help us decide borderline cases.

To begin to respond to this set of concerns, we can consider what we use the personhood concept for. We call individuals persons to make sense of them, and this makes persons a social group, like women and hippies and Germans. Consider the following example of understanding an individual as a person. When the SETI project announces that Earth has received a radio signal consisting of a long string of prime numbers, we will infer that some kind of a person sent that message, and that categorization will cause to us to suppose it is possible that the sender has other properties in addition to rationality and engineering skills. It's likely they are conscious, that they can use some kind of a language, and that they value their own existence. None of those claims are obvious from the fact that they sent this message, but are probable given what else we know.

This leads us to examine the structure of the personhood menu items. It isn't that they are all properties that, once attained, create persons. Rather, if persons make up a social group, then the list of properties can be understood as describing the stereotype of person. While stereotypes that are inaccurate may lead to racist and sexist judgments about people, many of our stereotypes, like stereotypes about anarchist youth being more likely to be vegetarian than the general public, or Chinese people being more collectivist than Americans, are accurate. Stereotypes present statistical information about a group.

For a neutral definition of stereotype, we can appeal to one from social psychology: "a stereotype is a set of beliefs about the personal attributes of a social group." These beliefs are about the frequency of certain properties among group members compared with non-group members; properties include what group members believe, what they prefer, what they tend to do, how intelligent they are, what their typical social roles are, what their abilities are, and so forth. Olympic speed skaters are more likely to place value on health and athletic achievement, they tend to work hard and have fit bodies. When we have a robust stereotype of a group, learning that an individual is a member of that group raises questions in the categorizer's mind about the possibility that the individual might have some of these other properties as well. The social psychologist Lee Jussim argues that not only do we use stereotypes in this way, but that it is rational to do so, because when we have little information about a target individual, the stereotype gives us some guidance on how to proceed. This is not to say that we should privilege the stereotype over individuating information; knowing that someone is a person shouldn't lead us to think that they can speak when we already know they have language impairments.

If we consider that the menu items reflect our stereotype of person, then we can agree that the properties associated with personhood come in degrees and that the properties do not necessarily hang together. For many properties the relationship will be statistical. For example, knowing that someone is a rational problem solver raises the likelihood that they are also someone who can think about their past and future, but having the one property does not guarantee having the other. Consciousness or sentience, however, will likely be necessarily related to many of these properties. Moral agency, sociality, and valuing one's existence are all properties that are difficult to imagine in the absence of sentience.

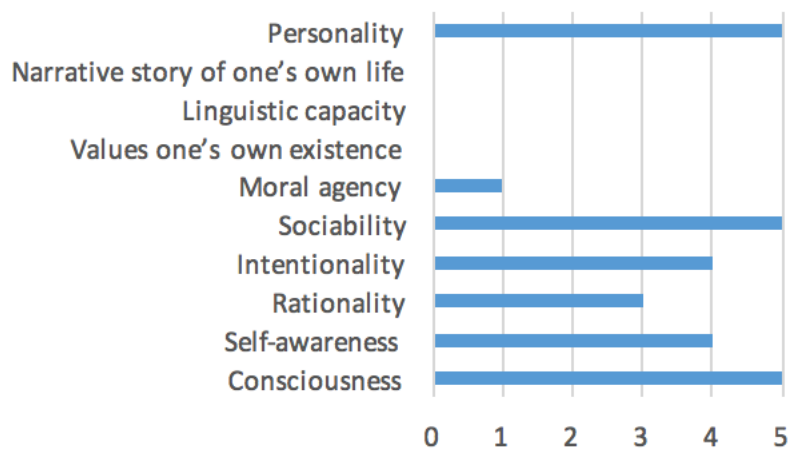
Descriptive redundancy is avoided with the stereotype of person, because calling someone a person adds probabilistic descriptive information about the likelihood that they have additional properties. When I call Tommy a thing, when I consider him to be private property, I think of him like other kinds of property, and treat him appropriately. Like an old sofa I don't want anymore, it makes sense to store Tommy in the garage until I know what to do with him. But when I call Tommy a person, I change my default attitudes and treat him as if he might be rational, enjoy social relations, and value his own existence. For an old sofa, I don't even have to wonder if it might be suffering in the garage. But by calling Tommy a person, I am forced to ask that question. Calling someone a person shifts the burden of proof.

The final challenge to address is whether we can use the personhood stereotype to decide whether Tommy is a person. Here I think it is useful to consider other debates about group membership based

on stereotype profiles. Consider the recent popular debate about transgender women. Some criticized transgender women who consider themselves women because they are not ‘real women.’ But it was quickly pointed out that there are many ways to be a woman. And indeed, what the debate needed was a consideration of the woman stereotype; without this information it is impossible to argue that one is a woman. Given the stereotype, we can see that there are various profiles for being a woman, and that some of the properties are fulfilled to different degrees, and some of the properties are fulfilled not at all.

As in the transgender woman discussion, we need to use the stereotype of person in order to determine whether Tommy is a person. We can use it to construct his personhood profile.

Chimpanzees



The science of chimpanzee minds is not very old, but we already know a lot about chimpanzees. We know that they have different personalities and that they use gesture and sound to communicate in the wild. We know that different chimpanzee groups have different cultural behaviors, and that chimpanzee males will patrol the edges of their territories and attack and sometimes kill members of neighboring groups. We know that chimpanzees have a hierarchical social structure, but that some members, such as infants, have special privileges. We know that chimpanzees use complex tool sets to fish for termites. We know that chimpanzees can pass delay of gratification tasks, mirror self-recognition tasks, and mindreading tasks—even false belief tasks. We know that chimpanzee facial expressions are correlated with emotional expression, and that chimpanzees can recognize emotion on others' faces. We infer, as the best explanation of their range of behavior, that chimpanzees are conscious. However, we don't know whether they value their own existence, and it is likely that they lack the kind of life narrative Gary Varner thinks is required for personhood (but so does KC).

And, if we look at chimpanzees held in captivity, we see they act in ways that suggest they don't want to be there. For example, Bruno, a chimpanzee who learned American Sign Language (ASL) at the University of Oklahoma with Roger Fouts, was sent to a biomedical facility after funding ran out for the communication study. Many years later, Mark Bodamer, one of the members of the language project,

came to visit Bruno. Bruno had no one to talk to all those years in the biomedical facility, and when he saw Mark he began to sign. What did he say? KEY OUT.

Two years ago, a group of chimpanzees at the Kansas City Zoo made a break for it. Randy Wisthoff, the director of the zoo, reports they were led by one chimpanzee who first set a log against the wall to be used as a ladder, and then “beckoned to another six chimps to join him.”

Tommy almost certainly doesn't want to live in his barren cage. If he had been taught ASL, or if he had a means of escape, he would be using those tools to gain his freedom. But he can't speak for himself, so that leaves us to speak for him. Categorizing Tommy as a person means he should be given a habitat in which he can flourish, where he has the opportunity to be social if he wants, to go outside or to stay inside, to act as he chooses. Tommy is not a normal chimpanzee, and what is good for a wild chimpanzee would likely be terrifying for Tommy. We have the obligation to provide sanctuary housing for Tommy so that he can fulfill his enculturated chimpanzee needs as best as possible. Chimp Haven is one such sanctuary, and here he could join other former entertainers, along with chimpanzees retired from biomedical facilities.

Personhood is not a redundant category, and we need an analysis of the category in order to determine category membership. Seeing that chimpanzees have a personhood profile allows us to argue that chimpanzees like Tommy are the kind of individuals who should count under the law - who deserve rights under the law. If chimpanzee personhood is a matter of public policy that needs to be decided by society, then learning more about the person profiles of chimpanzees will be essential in making this case. As the public learns what scientists have come to see, and with public conversations about what counts as a person, our society can make another ethical transformation that will be recognized by the courts. But without the metaphysical personhood concept to rely on, we will have a difficult time showing that chimpanzees should count as persons under the law.