

NEW ZEALAND'S ANIMAL WELFARE ACT: WHAT IS ITS VALUE REGARDING NON-HUMAN HOMINIDS?

By
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New Zealand's Animal Welfare Act has been touted as a world first in great ape protection, and that may be true. However, it has also been depicted as an act conferring basic legal rights on great apes, and that is an exaggeration. Challenging the legal status of great apes in any jurisdiction requires sound, factual propositions. Therefore, the background and breadth of New Zealand's protections must be understood before proponents of change employ them as precedent. This essay offers a brief history of the non-human hominid provisions of New Zealand's Animal Welfare Act.

I. INTRODUCTION

On October 5, 1999, New Zealand's parliament passed the Animal Welfare Act 1999 (the Act). With this statute, New Zealand became a world leader in great ape guardianship by bestowing certain legal protections on non-human hominids that they had not previously enjoyed.¹ However, the Act did not bestow the fundamental rights requested by certain submitters during the Act's passage.

Since the Act's introduction, some scholars have argued that New Zealand's new protections may be a persuasive factor in other jurisdictions where proponents for great apes are attempting to similarly amend legislation.² It has also been asserted that the Act may be used to initiate changes in international law by requesting the New Zealand government sponsor a United Nations resolution on great ape protection.³ Yet, at least two specific factors underlying the Act's introduc-

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¹ Non-human hominid is defined in section 2 of the Animal Welfare Act 1999 as "any non-human member of the family Hominidae, being a gorilla, chimpanzee, bonobo, or orangutan." Animal Welfare Act, 1999, § 2 (N.Z.). This essay uses the Act's definition.

² Electronic mail from Peter Singer, DeCamp Professor of Bioethics, University Center for Human Values, Princeton University, to Laura Ireland, Articles Editor, *Animal Law* (Feb. 3, 2000) (on file with author).

³ Great Ape Project New Zealand Inc., *Historic Breakthrough for Great Apes* (visited Jan. 10, 2000) <<http://www.newsroom.co.nz/Story.asp?S=7865>> (Press Release, Oct. 8, 1999) [hereinafter GAP's October Press Release].

tion must be considered to appreciate the legislation's true domestic and international value. First, at the time of the Act's passage, there were only thirty-four non-human hominids in New Zealand.⁴ Second, non-human hominids are not used for research, testing, or teaching in New Zealand, and there is no proposal to do so.⁵

This essay briefly traces the passage of the non-human hominid provisions of New Zealand's Animal Welfare Act, discussing the value of these provisions as precedent for changes in other jurisdictions. This essay concludes that the Act is a positive move for the protection of non-human hominids. However, people in the animal welfare movement should be careful not to over-glorify the Act in an effort to further rights for animals internationally.

II. CREATION OF THE ANIMAL WELFARE ACT

A. *Origins of the Act*

New Zealand's economy depends heavily on income derived from agricultural products.⁶ Consequently, the government is vitally aware of the concerns and expectations of New Zealand's national and international customers.⁷ As a result of raised public consciousness, animal welfare is increasingly viewed as an important facet of product quality, directly influencing consumer purchasing preferences and New Zealand's total exports.⁸

Due to these changing demands, the New Zealand government recently reviewed the country's animal welfare status. Prior to the Act's introduction, the welfare of New Zealand's animals was regulated by legislation that was nearly forty years old.⁹ Starting in the early 1990s, however, the government no longer considered the Animals Protection Act appropriate to adequately meet New Zealand's domestic and international requirements.¹⁰ The promulgation of the Animal Welfare Bill (No. 2) (the Bill) resulted from the government's review of the Animals Protection Act. When first introduced to parliament,¹¹ the Bill (which evolved into the Act) was aimed at reforming the law relating to the welfare of animals and the prevention of their ill treatment.¹² It amalgamated animal welfare provisions from a number of

⁴ PRIMARY PRODUCTION COMMITTEE REPORT, ANIMAL WELFARE BILL (No. 2), May 17, 1999, at xxi.

⁵ *Id.*

⁶ New Zealand Ministry of Agriculture and Forestry, MAF's Animal Welfare Mission 4 (visited Nov. 14, 1999) <<http://www.maf.govt.nz/>> (on file with author).

⁷ *Id.* at 10.

⁸ Animal Welfare Bill (No. 2), 1999, Explanatory Note (N.Z.).

⁹ Animals Protection Act, 1960 (N.Z.).

¹⁰ Animal Welfare Bill (No. 2), 1999, Explanatory Note, at i (N.Z.).

¹¹ The Animal Welfare Bill (No. 2) was introduced to parliament and had its first reading on September 23, 1998.

¹² Animal Welfare Bill (No. 2), 1999, Explanatory Note, at i (N.Z.).

statutes and aimed to clarify intersections with other legislation related to animal welfare.¹³

B. *Reforming the Bill*

1. *Submissions to the Primary Production Select Committee*

Following its second reading, the Bill was referred to the Primary Production Committee (the Select Committee) on September 29, 1998 with submissions closing on October 27, 1998.¹⁴ In conjunction with submissions on the Bill, the Select Committee considered submissions relating to the Animal Welfare Bill (a private member's Bill introduced by Pete Hodgson, a Member of Parliament for Dunedin North, in August 1997).¹⁵ Between the two bills, the Select Committee received and considered 266 submissions from interested groups and individuals.¹⁶

The majority of public submissions did not mention non-human hominids or their legal status in New Zealand because the Bill, in its original form, had not specifically considered non-human hominids.¹⁷ However, a submission by Great Ape Project New Zealand Incorporated (GAP) resulted in a fundamental change to the Bill and the Bill's possible (but not probable) repercussions on great apes in New Zealand.

2. *The Great Ape Project's Submission*

GAP is a chapter of an international organization dedicated to extending appropriate legal rights to all members of the biological family Hominidae, which includes humans and the four non-human great apes.¹⁸ The organization is "devoted solely to advancing the legal and moral status of non-human hominids."¹⁹

In its submission on the Bill, GAP criticized the Bill's failure to protect hominids' rights to life, freedom from cruel and degrading treatment, and freedom from experimentation.²⁰ The submission proposed that a new section be introduced into the Bill to provide these rights.²¹ GAP's foundation for proposing that human rights be extended to non-human hominids was that great apes "possess all the characteristics that are usually invoked to justify granting basic rights

¹³ *Id.*

¹⁴ PRIMARY PRODUCTION COMMITTEE REPORT, *supra* note 4, at i.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ In fact, about half of the submissions received by the Select Committee were aimed at the Bill's consideration of dog tail docking. *Id.*

¹⁸ Great Ape Project New Zealand, Submission on the Animal Welfare Bill (No. 2), Oct. 1998, at 2. See also *supra* note 1 for definition of Hominidae.

¹⁹ *Id.* at 3.

²⁰ *Id.* at 2.

²¹ *Id.* at 4

to human beings,” including self-awareness, theory of mind, and empathy.²²

GAP's proposal received national and international attention.²³ However, some of the publicity following public submissions and the Select Committee's public hearing process was misleading and misinformed. Newspaper articles indicated that New Zealand was on the verge of granting great apes the fundamental rights requested by GAP.²⁴ Other articles suggested that GAP had actually requested an amendment to New Zealand's Bill of Rights.²⁵ Unfortunately, the majority of media attention was eight months premature and most fora failed to publish accurate follow-ups in October when the Bill was passed into legislation.

3. *The Bill's Third Reading*

Having considered the public's written submissions on both bills and the related comments at public hearings, the Select Committee reported back to parliament.²⁶ GAP's submission directly resulted in the Select Committee: 1) amending two of the Bill's original provisions; and 2) including two additional provisions dealing specifically with non-human hominids.²⁷ Although the Select Committee agreed to spe-

²² Great Ape Project New Zealand., *supra* note 18, at 3. GAP's submission stated that New Zealand's "current system for assigning rights should be applied logically and consistently and, on the basis of the latest science, that means extending at least some rights to all the hominids," not just humans. *Id.* GAP's proposals were drafted to mirror the New Zealand Bill of Rights Act 1990, providing rights identical to those of humans. See New Zealand Bill of Rights Act, 1990 (N.Z.).

²³ Paul Chapman, *Scientists Urge Rights for Apes*, ELECTRONIC TELEGRAPH, Oct. 31, 1998 (visited Feb. 28, 2000) <<http://www.telegraph.co.uk:8...tmo=tttttttd&pg=/Et/98/10/31/wape31.html>> (on file with author); Bernard Orsman, *Monkey Business Over Animal Welfare*, THE NEW ZEALAND HERALD, Feb. 13, 1999 (visited Jan. 10, 2000) <<http://www.nzherald.co.nz/storyprint.cfm?storyID=2468>>; Alex Kirby, *Apes in Line for Legal Rights*, BBC NEWS, Feb. 11, 1999 (visited Jan. 13, 2000) <http://newsvote.bbc.co.uk/hi/english/sci/tech/newsid_277000/277031.stm>.

²⁴ *Should Apes Have Human Rights?*, BBC NEWS, Feb. 11, 1999 (visited Feb. 28, 2000) <http://newsvote.bbc.co.uk/hi/english/talking_point/newsid_277000/277545.asp> ("New Zealand is close to becoming the first country to pass a new Animal Welfare bill giving apes fundamental rights that would stand up in a court of law"); Robert Uhlig, *Great Apes May Have Basic Rights Enshrined in the Law*, THE TELEGRAPH, Feb. 13, 1999 (visited Jan. 13, 2000) <<http://www.smh.com.au/news/9902/13/text/world12.html>>. The Telegraph reported that a parliamentary vote was imminent on the Animal Welfare Bill which included a clause that, if passed, would make primates "the first animals with fundamental rights, including the right not to suffer cruel and degrading treatment." *Id.* The Bill never included such a clause.

²⁵ Heather M. Karal *The Road Less Traveled*, THE AQUINAS TIMES (visited Jan. 13, 2000) <<http://www.iserv.net/%7Eaqtimes/v18i5/op-road.html>> ("Should apes have the same legal rights as people? That sounds like a silly question, but a New Zealand organization called the Great Apes Project (GAP) now says yes, and they want these rights to be written into the New Zealand Bill of Rights.").

²⁶ This report was dated May 17, 1999.

²⁷ These provisions are codified at sections 2, 80, 85 and 86 of the resulting Animal Welfare Act 1999. Animal Welfare Act, 1999, §§ 2, 80, 85, 86 (N.Z.).

cifically outlaw experiments on non-human hominids, it declined to recommend conferring on them basic legal rights or legal guardianship.²⁸ In its report, the Select Committee noted that it did not agree with the proposed great ape amendments in their entirety because the intent and approach of the Bill would be "altered from welfare to rights."²⁹

At its third parliamentary reading on October 5, 1999, the Bill included the provisions regarding non-human hominids as reported back from the Select Committee.³⁰ During his introduction to the third reading, John Luxton (Minister for Food, Fibre, Biosecurity and Border Control) acknowledged the feelings of some community members that Parliament should have considered the "animal rights" issue within the statute (in contrast to the Bill's consideration of "animal welfare"). However, the Minister did not believe the Bill to be the correct medium for such consideration.³¹

III. THE ANIMAL WELFARE ACT 1999

The Animal Welfare Act 1999 came into effect on January 1, 2000.³² With its enactment, New Zealand's non-human hominids gained protections they did not previously enjoy. However, great apes neither have legal rights equivalent to all humans nor do they have a diluted form of rights similar to those of children.

²⁸ PRIMARY PRODUCTION COMMITTEE REPORT, *supra* note 4, at xx.

²⁹ *Id.* at xxi. Additionally, the Select Committee noted it did not agree with the proposed great apes rights amendment because there had been no "opportunity for public consultation and wider debate on the proposal." *Id.*

³⁰ An Act in New Zealand is passed on its third parliamentary reading. However, it must acquire Royal assent before it becomes operative legislation. The Animal Welfare Act 1999 obtained Royal assent on October 14, 1999.

³¹ Hansard, New Zealand Parliamentary Debates, Statement of John Luxton, Oct. 5, 1999 (visited Feb. 4, 2000) <http://rangi.knowledge-basket.co.nz/hansard/han/text/1999/10/05_258.html>.

This Bill represents a significant change in philosophy from the current Animals Protection Act, now nearly 40 years old. The Bill focuses on punishing acts of cruelty, and adopts an animal welfare rather than an animal rights philosophy. Whilst I acknowledge that some in the community feel that Parliament perhaps should have considered the animal rights issue, I do not believe that it should be with this Bill. . . . Issues surrounding the treatment of great apes has attracted much debate during the passage of this Bill. There is a clear international trend towards greater restrictions in the use and interaction with great apes. The Bill provides that research, testing, or teaching involving the use of great apes can be approved only by the Director-General of Agriculture and Forestry. I understand that New Zealand is the first country in the world to legislate in this way. This is a small but nevertheless important step.

Id.

³² Animal Welfare Act, 1999, § 1 (N.Z.). For more information on the Animal Welfare Act 1999, see New Zealand Ministry of Agriculture and Forestry, *The Animal Welfare Act—What Every Animal Owner Should Know* (visited Mar. 21, 2000) <<http://www.maf.govt.nz/MAFnet/press/140200act.html>>.

The Act states that any “research, testing, or teaching”³³ involving the use of a non-human hominid can only be performed with approval from the Director General of the Ministry of Agriculture and Forestry (the government official responsible for animal welfare).³⁴ The Director General can only give such approval if they are satisfied that the research, testing, or teaching “is in the best interests of the individual non-human hominid,” or “is in the interests of the species to which the non-human hominid belongs and . . . the benefits [of the activity] are not outweighed by the likely harm to the non-human hominid.”³⁵

The Act neither protects a non-human hominid’s right to life nor its right to freedom from cruel and degrading treatment. Further, the Act does not protect these rights for human hominids. The Act is aimed at ensuring the welfare of animals and preventing their ill treatment;³⁶ other legislation in New Zealand considers a human’s right to life and their right to freedom from cruel and unusual punishment.³⁷

The Bill’s introduction was an appropriate time for GAP’s submission regarding fundamental rights for non-human hominids. However, GAP’s proposed amendments, with their similarity to human rights, may be better aimed at amending the New Zealand Bill of Rights Act.³⁸ Alternatively, GAP could consider introducing a separate statute specifically aimed at securing these rights for non-human hominids.

IV. THE ACT’S REAL VALUE REGARDING NON-HUMAN HOMINIDS

A. *Effects in New Zealand*

Soon after the passage of the Act, and prior to its January 2000 effective date, the weakness of the non-human hominid provisions was vividly illustrated by the death of one of New Zealand’s great apes. In March 1999, two New Zealand born chimpanzees were sold to the owner of a Pacific Island circus.³⁹ At the time, it was not certain what kind of life the chimpanzees would have in the islands, but Bruno Loyal (the new owner) assured opponents of their sale that Lola Ridgeway, thirty-six years old, would be “retired to a glorious home in excellent care” while her three year old son, Buddy, would play a star role in Mr. Loyal’s circus.⁴⁰

³³ “Research, testing, or teaching” is defined in section 5 of the Animal Welfare Act 1999. *Id.* § 5.

³⁴ *Id.* § 85(1).

³⁵ *Id.* § 85(5).

³⁶ *See id.* at Title.

³⁷ New Zealand Bill of Rights Act, 1990 (N.Z.).

³⁸ *Id.*

³⁹ Darrel Mager, *Fears For Welfare of Aged Chimp Sold to Fiji*, THE NEW ZEALAND HERALD, Mar. 16, 1999 (visited Feb. 29, 2000) <<http://www.nzherald.co.nz/storyprint.cfm/storyID=3759>>.

⁴⁰ *Id.*

Prior to their departure from New Zealand, the Fijian Ministry of Agriculture blocked the importation of the chimpanzees because of concerns for the animals' welfare.⁴¹ Consequently, in November 1999, Mr. Loyal transported Lola and Buddy to Samoa instead. However, the Samoan Ministry of Agriculture had also denied Mr. Loyal permission to import the chimpanzees prior to their departure, requiring them to remain in cages upon their arrival in Samoa.⁴² Lola died just days after arriving in Samoa,⁴³ while Buddy was bought from Mr. Loyal through funds raised by a New Zealand organization.⁴⁴ Buddy now lives in a Zambian sanctuary.⁴⁵

Even if the Act had been in force at the time of the sale and exportation of these chimpanzees, it would not have saved Lola and Buddy from their fate. Since the Act was passed without the legislative provisions requested by GAP, non-human hominids (including Lola and Buddy) are still at the peril of human choice for their life and freedom from cruel and unusual punishment.⁴⁶ The provisions included in the Act have almost no substantial effect, only a limited policy value.

At the time of the Act's passage, there were only thirty-four non-human hominids living in New Zealand: twenty-eight chimpanzees and six orangutans.⁴⁷ In addition, New Zealand does not experiment on non-human hominids.⁴⁸ As a result, it is highly probable that the Act's provisions specifically protecting non-human hominids will never be used in a New Zealand court of law.

B. *Effects on a Global Scale*

Is New Zealand's introduction of the Act really the "first step" for great apes gaining legal rights as some commentators have proposed?⁴⁹ In its submission to the Select Committee, GAP considered New Zealand to be the "right place"⁵⁰ to begin granting basic rights to

⁴¹ Darrel Mager, *Death of Chimp as Liberty Beckons*, THE NEW ZEALAND HERALD, Nov. 18, 1999 (visited Feb. 29, 2000) <<http://www.nzherald.co.nz/storyprint.cfm/storyID=103107>>.

⁴² *Id.*; see also Darrel Mager, *Life's Looking Better for Sad Chimpanzee*, THE NEW ZEALAND HERALD, Dec. 11, 1999 (visited Feb. 29, 2000) <<http://www.nzherald.co.nz/storyprint.cfm/storyID=105160>>.

⁴³ *Id.*

⁴⁴ Nick Smith, *Buddy's Travels Put Safe on the Map*, THE NEW ZEALAND HERALD, Dec. 18, 1999 (visited Feb. 29, 2000) <<http://www.nzherald.co.nz/storyprint.cfm/storyID=106023>>.

⁴⁵ *Id.*

⁴⁶ Great Ape Project New Zealand, *Select Committee Blamed for Chimpanzees' Fate* (visited Jan. 10, 2000) <<http://www.newsroom.co.nz/Story.asp?S=10357>> (Press Release, Nov. 15, 1999); Great Ape Project New Zealand, *Animal Welfare Act Fails its First Real Test* (visited Jan. 10, 2000) <<http://www.newsroom.co.nz/Story.asp?S=11077>> (Press Release, Nov. 24, 1999).

⁴⁷ PRIMARY PRODUCTION COMMITTEE REPORT, *supra* note 4, at xxi.

⁴⁸ *Id.*

⁴⁹ Electronic mail from Peter Singer, *supra* note 2 (on file with author).

⁵⁰ Great Ape Project New Zealand, Submission on the Animal Welfare Bill (No. 2), Oct. 1998, at 12.

non-human hominids because of New Zealand's history as a catalyst for international change in areas such as whaling and nuclear power.⁵¹ New Zealand could be such a catalyst again, and the value of the Act should not be undermined, but GAP's examples of whaling and nuclear power merely illustrate New Zealand's relative aptitude for legislating in controversial areas. In 1978, when the Marine Mammal Protection Act was passed, whaling was not permitted in New Zealand's exclusive economic zone, and at no time prior to the introduction of the New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act in 1987 had a nuclear power facility ever been operated in New Zealand or nuclear arms been used by New Zealand. New Zealand is able to pass such groundbreaking legislation due to its population size, its lack of activity in these controversial areas, and through the progressive mindset of its residents.

Nonetheless, the Animal Welfare Act may be effective in encouraging similar legislative change in countries such as England or Australia where there is currently no experimentation on non-human hominids.⁵² In addition, the Act may aid international organizations petitioning for a United Nations resolution calling for stronger protection of great apes.⁵³ However, the Act's persuasive value in countries such as the United States will probably be limited. With a large population (of humans and great apes), diverse attitudes, and extensive biomedical experimentation on non-human hominids, the United States is unlikely to be persuaded by the New Zealand Act. However, state legislatures may be a more accepting forum for proponents of change. Population size and political climate at the state level may allow for a more open and aggressive consideration of the rights of non-human hominids.

V. CONCLUSION

The potential precedential value of New Zealand's legislative gesture should not be undermined. Yet, it should not be over emphasized either. The Act may have raised domestic and international awareness of GAP's mandate and it has certainly placed New Zealand in the international spotlight as a progressive nation. However, before quoting or relying on New Zealand's new provisions, proponents of legal rights for great apes must understand the limitations of those provisions. The movement towards granting legal rights to non-human animals will only be advanced if proponents debate with reliable facts, not exaggerations.

⁵¹ *Id.*

⁵² Rachel Nowak, *Almost Human*, NEW SCIENTIST, Feb. 13, 1999 (visited Jan. 26, 2000) <<http://www.newscientist.com/ns/19990213/newsstory9.html>>.

⁵³ GAP's October Press Release, *supra* note 3; *see also* Electronic mail from Peter Singer, *supra* note 2.