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Review of the September 30, 2002 Symposium on the "Evolving Legal Status of Chimpanzees"-Harvard Law School

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This was not a symposium to debate whether chimpanzees have interests worthy of human recognition or whether they should be given legal rights; that chimpanzees deserve such was acknowledged by not only familiar but also several new voices, including that of Alan Dershowitz. None of the speakers were frozen in the “let’s study it for a few decades” mode, but were pondering and suggesting strategies that could achieve the goal of extending legal rights to chimpanzees. This was a symposium where speakers not only fine-tuned the “why” and “what” discussion of rights but also broached the pragmatic and challenging “how to.”

A concordant note expressed by the speakers was that humans have inflicted injustices not only on chimpanzees but also on many other animals other than humans—indeed several speakers called them “wrongs.” These wrongs have occurred because of human arrogance in viewing ourselves at the top of a chain, rather than as fellow beings on a continuum. As Jane Goodall, the keynote speaker, aptly put it, humans need to demonstrate more humility—recognizing that we as humans are indeed unique but not as different as we used to think.

All speakers acknowledged that the law lags behind science. Even though no one seriously disputes that chimpanzees are intelligent and sentient, the law still supports holding chimpanzees—and there are, in fact, many—for their entire lives.
in 5 ft.-by-5 ft.-by-7 ft. cages. As to why rectifying this basic injustice, much less attaining rights, would be difficult in our current judicial system, Steve Wise spoke of the “extraordinarily strange rules” that apply in courtrooms. Such rules make the process from understanding that chimpanzees have many attributes in common with humans—to having the legal system treat chimpanzees and humans similarly—cumbersome, at best.

Other factors operate to deny chimpanzees as well as other animals, rights. Among these are the sheer numbers of animals, the fact that politically powerful industries profit from animals, and the fact that these industries are quick to cut off any inroads made toward taking animals out of their purely property status.

Who would get rights? According to Wise, not only a chimpanzee but also any other being with the ability to desire, act intentionally with a sense of self—that is, having practical autonomy—is one to whom rights should be extended. What rights for nonhuman animals? The rights most often mentioned are liberty and equality, the types of rights most often conferred on humans through state constitutions. All speakers explained that the conferring of rights would be at the individual, rather than at the species, level.

David Favre acknowledged that the property status of animals has been a barrier to having the legal system afford rights to them. According to Favre, the sharpest vision for attaining legal rights for animals occurs when one uses an “interest” analysis framework, which has a firm jurisprudential foundation.

Favre sees that four separate laws have provided “stepping stones” that recognize chimpanzees’ unique status even while they technically are still considered “property” under the law. First, criminal law recognizes that chimpanzees have an interest in being free from unnecessary suffering. Second, the 1985 Amendments to the Animal Welfare Act acknowledged the psychological aspect of chimps and other nonhuman primates. Third, Section 408 of the Uniform Trust Act provides for the creation of trusts for the benefit of animals. Finally, the Chimp Act recognized chimps as morally relevant beings. Favre then broached the idea of how a court might recognize the interests of an individual animal. Favre developed a tort cause of action entitled “Intentional Interference With the Primary Interest of a Chimpanzee.” Under this tort, an attorney representing a particular chimpanzee would adduce evidence that demonstrates (a) the interest of the animal, (b) that the interest is a fundamental one, (c) that interest is harmed by the action or inaction of a defendant, and (d) the interest of the chimpanzee is weighed against the interest of the defendant in taking the complained-of actions or inactions against the chimpanzee.

In essence, through this tort, a judge would be asked, on a case-by-case basis, to weigh and balance the interests of a chimpanzee in maintaining bodily integrity, for example, against those using him or her. Monetary damages or an injunction halting the complained-of conduct could be awarded. It is clear that chimpanzee welfare could improve significantly after a few of these tort cases were brought
and judgments were entered in favor of the chimpanzee. Because courts operate based on precedent, it is not clear what would authorize a judge to begin to use this theoretical tort.

Although not responding directly to Favre’s scenario, Dershowitz commented that if rights were afforded to animals the way that they currently belong to children, it would be harder to make cost–benefit trade-offs. In other words, the weighing of interests may not be a true substitute for the granting or recognition of rights. This brings us back to the original question that has long been debated: Is our current system capable of providing animals with any real protection, or is it necessary to have a complete overhaul of our legal system?

Although that question may still be subject to debate, it is clear that the Harvard Symposium significantly advanced the discussion and will pave the way for taking the concrete steps to turn concept into reality.