At the Labor Day pigeon shoot in Hegins, Pennsylvania, thousands of emaciated birds are released from trap boxes to be shot and killed by drunken Americans or wounded and then suffocated by their sons, all following a patriotic execution of the national anthem. In the preface of Animals, Property and the Law, Gary Francione relays a personal account of the spectacle. This review of Francione’s book also begins with a personal account.

In 1992, the Canadian city of Toronto, inspired by evidence of the cruelties to exotic animals inherent in the circus and of the accompanying risks to human safety, passed an amendment to an existing by-law and thereby prohibited the keeping of certain exotic animals in the city. Included among the prohibited species were those that are commonly used in circuses, such as elephants, monkeys, apes, lions and tigers. Ringling Bros. and Garden Bros. circuses, along with the corporation which owns the Skydome, Toronto’s largest stadium, challenged the amendment to the by-law in court and ultimately succeeded in having it struck down.¹

In order to combat some of the undesirable press about the lives of circus animals which arose at the time, the Garden Bros.’ first visit to Toronto post-court case included an opportunity for audience members to go behind-the-scenes and see some of the animals before the show. Not all of the animals were on display. The monkeys, living in small, enclosed metal boxes, were not available for public viewing.

Several elephants, however, were visible immediately upon entering the area. They were chained by a front and a back ankle and could barely move as a result. In one hour, I heard eight children ask their parents why the elephants’ legs were chained and eight parents respond that it was for the child’s own safety and that the animals were not being hurt. When I tried to talk to the children about their observations, the parents moved them away only slightly more politely than they would from a pedophile.

The innocent observations of children have been adequately sentimentalized elsewhere: suffice it to observe for present purposes that there is something that happens to humans between the stages of childhood and adulthood, something that induced these adults to abandon their own inclinations, their very observations and any memory of the articles they had recently read in the paper about why the by-law was passed in the first place, to a belief that everything was all right.

Perhaps the parents assumed that this way of holding the animals was temporary, or perhaps they chose not to wonder how else the elephants might be held and transported. Their response was of course a result of
Review of Francione’s Animals, Property and the Law

many psychological, sociological and economic components which are slightly, but only slightly, beyond the scope of this book review. Certainly one of the factors which facilitated their reaction was a fundamental belief in our system of laws to prevent harms from being caused; they were no different than their fellow members of society who believe that the justice system is both intended to be and is successful at preventing evils.

In 1993, ninety million new cases were filed in America’s state courts. Litigation has become a way of life, and our faith in it verges on religious. It is this faith in the system, and in the very notion of state-enforced justice, which begins to erode as one proceeds through Francione’s book.

It is not always easy or desirable to say what a book is about in one sentence, but here it is both: Francione’s intention is to show that in the American legal system (his comments are equally applicable in Canada) where animals are property and humans are property owners, animals do not and cannot have rights. Most jurisdictions in the country have laws which seem at first glance to protect animals, but when one contemplates the nature of the legal system and what interests the law is seeking to protect, it becomes an irrefutable proposition that animals lose out whenever humans want to exploit them.

In making his point, Francione is trying to speak to parents and activists as well as to scholars and lawyers. He exposes legal principles without relying on the sort of jargon that makes other books about law incomprehensible or uninteresting to non-lawyers, and he offers a compelling analysis of the structure of the legal system which is universal in its possible applications. He happens to be writing about animals, but those who concern themselves with other disempowered groups should be attentive to his critique.

The book is presented in three parts. The second and third parts offer specific examples to prove the thesis established in the first. Part I is arguably the most important, as it comprises an examination of the general way in which human behavior in respect of animals is determined in accordance with our rules about property ownership and includes a discussion of both the origin and the effect of animals’ status as property. While those who contemplate animal issues often start from the position that property status was established in the biblical reference to man’s “dominion” over the animals and ripened in Cartesian rationalism, this is too simple an analysis of a complex process that may in fact have occurred over many millennia and has had ramifications too important to be casually understood.

Francione’s approach reminds readers to consider well-known religious and philosophical sources in context and in combination. He finds early traces of the current ideology in classical antiquity and comments as well on the importance of John Locke, who connected the theological assumption that god gave animals to humanity with the economic perspective befitting his ideology: god gave the animal species to mankind (the gender term is intentional), but man cannot make use of the animal gift unless an individual man can claim a right to an individual animal.

In fact, Francione notes other writers who have offered the possibility that our very notion of property may have developed around the commoditization of cattle (the word “cattle,” for example, comes from the same etymological root as “capital”).

John Livingston, in discussing the consequences of the process of self-imposed human domestication in his book Rogue Primate, devotes considerable thought to evidence of human domination and domestication of nature having emerged long before Aristotle and even earlier than the dawn of sedentarism and agriculture. It would be interesting to hear more from Francione on this point; his thoughts in this volume are incisive but brief. Understanding both the source and sustenance of the current ideology is crucial to those who seek to dismantle it. As Animals, Property and the Law subtly proves, it is perception, as a precursor to or ideally as an alternative to law, which must be the focus of any further efforts toward change.

The current dualistic paradigm, in which humans are on one side of the equation and everything that is nonhuman is on the other, is contradictory to say the least, and Francione exposes the paradox. While everybody claims to be opposed to cruelty to animals and while the law purports to reflect this concern by way of legislation that prohibits unnecessary suffering and requires animals to be treated humanely, it is permissible to routinely subject them to barbaric behavior.

In present day North America we take property rights quite seriously. Humans own property: land, cars, furniture, stock in corporations. Animals are property: models in experiments, machinery in food production, exhibits in zoos... Resolution of any conflict between the interests of a property owner and any interest we
may attribute to her animal property has been determined by our characterization of the parties at the outset. Our justice system, whose raison d'être is the protection of our interest in property, is uninterested in the life of the property itself. There are restrictions in law on our use of animals; however, there are restrictions on the use of all property (I have all of the rights associated with ownership over my pen, however, I may not generally use it as a weapon), and there is no concern for the animal herself at the law’s core.

While the normative assumption that animals exist for human ends goes unchallenged, courts and legislators do recognize a distinction between animate and inanimate property: notions of “humane” treatment and “unnecessary” suffering are superimposed on the scheme of regulations. However, the key to legal terminology is interpretation, and “unnecessary” and “inhumane” are interpreted in light of the existing legal status of animals as property and the lengths to which we are willing to go (i.e., constitutional guarantees) to preserve the capital “p” in Property.

Examples are abundant: corporal punishment of the dog is necessary to train her not to mess in the house; death by electrocution is necessary to protect the fox’s coat; chaining the ankles is necessary to control the circus elephant. Francione finds an example in the food industry. While it has for many years been lawful to brand and castrate food animals without anesthetic, to say nothing of myriad other daily abuses suffered as they are fattened and delivered for slaughter, these being practices “necessary” to the efficient process of food production, those who have let their cattle starve to death, thus allowing resources to be wasted, have been convicted of cruelty.

An event which attracted much media attention since the publication of *Animals, Property and the Law* further illustrates the point. Consider the excitement around the outbreak of BSE, better known as Mad Cow Disease, in Britain in the spring of 1996. Front page media reported all of the concerns regarding human safety (what was the cause of the disease, where had it spread, what people might be exposed to it) and economic loss (the effect on Britain’s economy of a European ban on beef and any products that might contain any amount of beef by-products, where will the animals be slaughtered, who will reimburse the farmers) with a distinct absence of any discussion of the cows themselves (whether or how the animals could be treated, where they might live out their lives, what are these cows being fed anyway). As soon as her value in food production was destroyed, so was the cow.

Using the above and other examples, Francione reveals two important truths. First, the existing regulation of animal use never exceeds the degree of protection which facilitates the most economically efficient exploitation of the animal. Second, absolutely no conceivable treatment of an animal is illegal, so long as it is administered in the approved economic context.

The analysis reveals another distasteful effect of a structure whose major interest is economic, namely that it accepts certain behavior which is common among its elite supporters, those with lots of property, but refuses to accept corresponding behavior on the part of the disempowered property-less. Francione compares the illegality of dog fighting, which is more common among the latter, to horse racing, which is favoured by the middle and upper classes.

He also tells in some detail the story of the prosecution of the Church of the Lukumi Babalu Aye by the City of Hialeah, Florida. The members of the church, numbering in the hundreds of thousands or millions of people in the United States, practice Santeria, a religion which involves the ritual sacrifice of animals. The members of the church are also primarily black. The city’s attempt to stop the sacrifices by way of the state anti-cruelty law, although ultimately unsuccessful, cannot help but illustrate the distinct absence of prosecution of other rituals by which animals in the United States are systematically brutalized. The suffering of animals in food production, science and entertainment would appear to be authorized by a more popular bible and celebrated by a more powerful congregation.

Francione calls the phenomenon summarized above “legal welfarism,” which he specifically describes as a normative theory implicit in the law, whose fundamental assumptions are never challenged, according to which it is morally acceptable, at least in some circumstances, to kill animals or subject them to suffering, as long as an effort is made to ensure that they are treated humanely. The fact that we operate on the basis of the status quo without ever questioning underlying assumptions in the law is a theme that recurs in the book and should be recurring more subtly and on a broader scale in the reader’s mind while proceeding through it.

Francione posits that legal welfarism establishes a strong presumption in favor of a general theory of animal welfare, the view that it is morally acceptable,
at least in some circumstances, to kill animals or subject them to suffering as long as the treatment is as humane as possible. Legal welfarism also generates a strong presumption in favor of letting the owner determine what uses best maximize the value of the property and what treatment is “necessary” for her particular purpose; the animal user thus becomes the real judge of whether her own behavior is lawful or not.

This analysis coincides with a concern regarding specialization that has been leveled by thinkers in various disciplines, namely that we have discarded our independent existence in exchange for reliance upon a collection of experts. We accept (in a technological age this is unavoidable to a certain degree) largely unchallenged their advice on problems in their selected field. We are no longer expected to think for ourselves. Nor, as domesticated animals, do we have any interest in doing so anyway.

One distinction that is not clear in the book is between those whose ideology is what Francione has called “legal welfarism,” and those who choose what might be identified as welfarist methods despite a belief that animals ought not to be seen merely as means to human ends. The former group includes animal users who are likely to feign an interest in animals’ well-being in response to growing pressure, while the latter might well be comprised of people whose motivation is sincere and who are willing to consider what are perceived to be welfarist steps with the intent, perhaps misconceived, of achieving improvements for animals incrementally.

This latter position can neither be summarily endorsed nor dismissed; many committed and creative minds are presently busily occupied in attempting one or the other. I seek here only to point out an important distinction, between those who are motivated by self-interest and those who are inspired by an interest in others, that should have been acknowledged in this work. As mentioned above, Francione’s thorough examination of anti-cruelty cases in the second part of the book helps to prove his thesis and verifies that any inquiry into any type of animal use ends as soon as the user says that a particular use of an animal is necessary for her purpose, be it scientific, industrial, recreational or entertaining. Nobody wants an animal to suffer unnecessarily, but we refuse to convict those responsible for mule diving, bear wrestling or bow hunting.

In the third part of the book, the focus is on the use of animals in experimentation. Has the celebrated American Animal Welfare Act been a useful tool in the attempt to get animals out of research? Consider the following:

When I was studying at Gottingen, Blumenbach spoke to us very seriously about the horrors of vivisection and told us what a cruel and terrible thing it was; wherefore it should be resorted to only very seldom and for very important experiments which would bring immediate benefit... Nowadays, on the contrary, every little medicine-man thinks he has the right to torment animals in the cruelest fashion in his torture chamber so as to decide problems whose answers have for long stood written in books into which he is too lazy and ignorant to stick his nose.

Neither the nature nor the number of experiments conducted in the name of science has improved since Schopenhauer wrote this passage one hundred and fifty years ago. Ironically, it is by way of this most heavily regulated animal use that animals are most horribly made to suffer. The very title of the federal Animal Welfare Act is misleading, in that the Act does nothing to serve the interest of animals. On the contrary, it serves the doubly harmful purpose of, first, entrenching as acceptable the
use of animals as tools in experiments without ever questioning the propriety of such behavior, and, second, creating a public perception that there are laws in place to ensure animal interests are being looked after.

Readers of Francione’s book might be surprised to learn that the Act came into being to address the complaints of people whose pets were being stolen for use in research. Many years later, a major emphasis in the Animal Welfare Act and in the equivalent legislation of other jurisdictions continues to be on the facilities which supply the animals to be used.

Animals, Property and the Law is at once compelling and depressing as a result of all of the above and of the sickening examples of lawful, institutionalized abuse cited. Despite or because of this, it is a book that ought to be read by everyone who has ever wondered, Aren’t there laws against that kind of thing? Francione disabuses the reader of her constructed belief that the law is making sure that the elephants are not being hurt.

In sum, perhaps the most important statement of the book is found in the introduction, where Francione observes that “(o)ur legal system is quite adept at making it appear as though disenfranchised groups receive legal protection. By directing our attention to issues that are often quite tangential, legal discourse steers clear of the more important fundamental moral and economic assumptions upon which the legal system ultimately rests.”

Terms such as “due process” and “equality before the law” are solemnly invoked by judges and lawyers, but these serve essentially as distractions. With the discussion framed in normative terms and our minds focused on the minute particulars of the process, we are entirely distracted from the very acts which the court is believed to be scrutinizing. As Chomsky and others have amply demonstrated, distractions are a powerful tool of the ruling elite. Keeping the minds of the masses far away from reality protects the behavior by which the corporate structure derives its profits.

The argument that protection of a particular group will never exceed that which is needed to most efficiently exploit its constituents is familiar to anyone who has ever read Marx. The legal system uses not only animals; they are just the best example of the phenomenon, as they are the weakest group and the only one without any human members as constituents. Therefore, all arguments must be advanced on their behalf.

Most of Francione’s analysis could be articulated, and some of it certainly has been, by opponents of sexism and racism and other forms of discrimination. However, this is a new application of a critique that has previously been reserved for humans, and to make it credible, Francione has had to go beyond the level of discourse at which human rights activists have been engaged. Unlike other criticisms made by individual segments of society for their unique benefit, the principles established in this book are all-encompassing. The result is a critique which speaks of animals but to the entire animal kingdom and suggests, without making the direct argument, that solutions to the disharmony in North American society are not effective when fragmented.

Francione’s opposition to legal welfarism is not an attempt to improve animal welfare but to replace the paradigm by which we understand human/animal relations in the first place. He invokes rights theory as a mechanism of ensuring that animals not be treated merely as means to an end. The notion of “rights” is clearly enunciated. A right is explained as some value that requires respect, whether or not exploitation of that other would be beneficial to someone else. It is a barrier between the right-holder and everybody else.

Regan’s philosophy is invoked. Regan rejects the welfarist approach (as well as the utilitarian and other consequentialist approaches more thoroughly described in the book) and argues that humans and nonhumans possess equal inherent value precisely because of one crucial similarity: they are the subject of a life, a life which is meaningful to the being regardless of that being’s value to everybody else.

This does not mean that humans and animals should have the same rights or that any rights are more absolute than others. Regan acknowledges that under his subject-of-a-life regime, conflicts will arise, just as they do among humans, and have to be resolved. “Rights” simply means an entitlement to be treated as an end in oneself, rather than as a means to the end of someone else.

A perfect jurisprudential example cited by Francione is the nineteenth century case of Dudley & Stephens, where two sailors stranded at sea with basically no food or water killed and ate their companion. Rescued shortly thereafter, the two men were charged with murder and attempted to raise a defense of necessity. The court refused to consider the argument. Humans have the basic rights which cannot be crossed, no matter what the benefit to others, which Francione seeks to extend to animals; there are some interests that are simply not up for grabs.
The first read of the book left me slightly disappointed; convinced that efforts toward change have been misconceived, and thoroughly sickened by gruesome examples of lawful animal abuse peppered throughout the text, I got through the experience convincing myself that there would be a happy ending, or at least insight on how to go about achieving one. Upon further thought, that sophomoric response was replaced by a realization that Francione had achieved exactly the effect he sought; he persuaded a reader that the present legal system will not be a tool of animal liberation.

The view that rights theory would be better than the present state of affairs was also convincing. What is needed is not an improvement in the condition of animals used by humans but a willingness to take the animal's own interest into account when making a decision that will affect her life. To that extent, rights theory is instructive. However, before misconceivedly investing further efforts toward achieving legal status in the present system, one must consider whether success in that regard would be much of a coup. There are problems with this system, with its adversarial nature and "rights" terminology, some of which have been identified in this book.

Plenty of disenfranchised groups have labored for and ostensibly achieved the status of right-holder, but has this liberated them in the true sense? Being told, for example, that one has rights and having the resources to assert them are two different things. While Francione is absolutely right that "rights" is the language of the existing structure, is the existing structure the ideal to be pursued?

Other approaches have been suggested by feminists and Marxists, for example. These are alluded to by Francione in passing but not explored. Other options should not be so readily ruled out.

Ultimately, the solution to the problem of human domination is beyond the scope of the "rights vs. welfare" debate, or of any one book. In putting the emphasis on underlying assumptions, Francione has focused our attention in the right direction. One cannot legislate desirable behavior upon a group of people that has no interest in following nor any idea of why they are being told to behave inconsistently with their own beliefs.

The antiquated manner of trying to correct undesirable behavior by punishment has never been successful. The exponential growth of the incarcerated populations of the United States and Canada has not resulted in a corresponding reduction in the number of "crimes." Laws alter only the behavior of society's most timid, who were probably not causing much trouble in the first place. They do not stop individuals or corporations who are wealthy enough to find ways of exceeding the law's grasp, nor has any murderer ever hesitated before the kill to consider the possible legal consequences of the act. The concept of punishment as a deterrent to murder, be it prison or capital punishment, has long been recognized as a disguise for the "eye for an eye" vengefulness endorsed by the Bible and enthusiastically pursued since that book's first publication.

Decomposition of the assumptions on which the system rests is a process which is not merely legal but spiritual in nature, and it is not an amendment but an evolution of ideas which must occur before we see the end of elephants in circuses. This is a lengthy process which will occur over historical time. A generation whose most open-minded look to the Celestine Prophecy for spiritual guidance is still too gratefully manipulated by rhetoric.

One cannot help but realize that the failure on the part of many advocates to be able to think in terms of this kind of historical time contributes to the problem. Animal advocates are certainly not alone in seeking band-aid solutions; consider food banks and homeless shelters, foreign aid to "developing" countries, prisons, all of which are promoted by at least some well meaning advocates but which, rather than contribute to any long term solution, entrench and prolong the predicament. Those committed to change must be prepared to persevere with their criticism without seeing results in their lifetime.

Francione seeks to do for animals what Mary Wollstonecraft did for women at the end of the eighteenth century, expose the fallacious assumptions about them and the arbitrary distinctions which underlie our daily behavior. With intellectual eloquence, despite the dry nature of some of the areas he must discuss to...
prove his point, Francione tells us that change is less frightening than the status quo.

However, just as Wollstonecraft’s incisive commentaries are, two hundred years later, only beginning to be acknowledged by some and still widely resisted by others, so too is the kind of change which Francione seeks to inspire going to occur over historical time. At this stage of consciousness of the Western human, with its love of television and marketing and all things litigious, simple exposure to Francione’s ideas is a happy ending in itself.

Notes

1 First, Ontario’s Divisional Court unanimously dismissed the request that the amended by-law be struck down. However, the Ontario Court of Appeal allowed an appeal on a technical ground related to legislation specific to the Municipality of Metropolitan Toronto and the authority of its constituent city councils to enact by-laws regarding various matters.


3 The right to own property is not enshrined in the Canadian Constitution as it is in the American, however, it would be difficult to argue that the Canadian commitment in this regard is any different.


5 A. Schopenhauer, Essays and Aphorisms (Penguin Books, 1970), p. 188

6 See, for example, N. Chomsky, Necessary Illusions, Thought Control in Democratic Societies (Anansi Press, 1991)