

# BETWEEN THE SPECIES

Issue VIII

August 2008

[www.cla.calpoly.edu/bts/](http://www.cla.calpoly.edu/bts/)

## Review of Gary Francione's

## Animals as Persons: Essays on the Abolition of Animal Exploitation

Columbia University Press, 2008

by

Joan Schaffner

Associate Professor of Law

Director, Animal Law Program

George Washington University Law School

*Animals as Persons: Essays on the Abolition of Animal Exploitation* by Gary Francione brings together several of his prior articles (dated 1995-2007) in a comprehensive and persuasive discussion of why humans have a moral obligation to abolish all animal use. Gary Francione's

analysis is refreshingly straight-forward, well-organized, and devoid of jargon. In the introductory chapter entitled: “The Abolition of Animal Use versus the Regulation of Animal Treatment,” he draws the primary distinction between the two different aspects of humans’ relationship with other animals that guide our society both as a moral and a legal matter: “our *use* of animals and our *treatment* of animals.” (P. 1) On the one hand, the animal welfare position which he describes as the “prevailing contemporary paradigm” accepts humans’ use of animals so long as we treat them “humanely” and avoid imposing “unnecessary” suffering on them. The focus of such a regime is the regulation of animal treatment. On the other hand, the animal rights position, which he promotes, maintains that our use of animals is not justified and thus all animal use must be abolished. The rights position rejects regulation of animal treatment on both theoretical and practical grounds. In the “middle” he describes the “new welfarist position” that promotes “regulation as a means to achieve abolition or significantly reduce animal use and exploitation in the future.” For Francione, only the rights position is legitimate. (P. 2)

Gary Francione’s thesis is simple: all sentient beings have a right not to be used exclusively as the means to another’s ends, in other words, to be held as the property of another. Thus, we have a moral and legal obligation to end the property status of all sentient beings. The result is a world where “we would stop producing and facilitating the production of domestic animals altogether. We would care for the ones whom we have here now, but we would stop breeding more for human consumption. And with respect to nondomesticated nonhumans, we

would simply leave them alone.” (P. 13)

In setting out his thesis he defines what he means by animal rights—the right of all sentient beings not to be used exclusively as the means to another’s end and makes clear that he is not attempting to define any right beyond this one. Second, he argues that the property status of animals is the primary reason that animals do not have rights. He admits that both of these claims are controversial. First, the term “right” can have many different meanings both in terms of the nature of the right—a moral right, constitutional right, statutory right, etc—and in terms of the scope of the right—a right to be free from the infliction of pain and suffering, the right to liberty, the right to free speech, etc. (*See e.g.* p. 50) Nevertheless, he describes his rights theory as that which promotes the basic right to the equal consideration of one’s interests as ends in themselves. (P. 50) This is useful since the reader understands Francione’s position and the disagreement over terms is little more than that. The second argument, however, is one that must be addressed because many others, including Cass Sunstein and David Favre, argue that status as property does not prevent the granting of rights to animals and in fact the property status may in fact promote their well-being. (P. 97) This disagreement is a major theme throughout Francione’s writings in this book.

Each chapter discusses an aspect of this thesis and provides a platform for him to directly address his critics. It is this aspect of the book that is particularly interesting and controversial. From the question of what provides the basis for granting a being moral consideration to whether

any use of animals is justified, he takes on his critics arguing not only that his view is correct but that their view not only will not promote animals' interests but are detrimental to them. Thus, from the first essay, "Animals—Property or Persons?" where he argues that the primary problem with our moral thinking about animals is our treatment of them as property, which cannot be justified morally, to the final essay "Comparable Harm and Equal Inherent Value: The Problem of the Dog in the Lifeboat" where he critiques Regan's view that harm is a qualitatively greater loss for humans than for nonhumans, he achieves his stated desires of sharpening the meaning of "animal rights" and his use of the term "personhood" while informing the debate between the abolitionist and welfare approaches the debate "increasingly taking center stage in our thinking about the moral and legal status of nonhuman animals." (P. 23)

To begin, in the chapter "Taking Sentience Seriously" Francione argues that for all beings sentience alone is sufficient to warrant moral consideration; no additional cognitive capability is necessary to justify not using a being exclusively to serve the means of another's ends. He challenges those who believe that some additional cognitive ability is necessary by first questioning how the characteristic should be chosen. He asks why is the ability to do calculus morally better than the ability to fly with your wings or to recognize yourself in a mirror rather than in a scent that you left on a bush? Presumably one is better because only because humans have the one characteristic. (P. 141, 159) Second, he argues that the requirement is often a moving target because once research demonstrates that at least some nonhumans have the

capability, that capability is no longer deemed sufficient. Furthermore, establishing some cognitive ability as necessary to be morally worthy incentivizes additional use of nonhumans in research to demonstrate they either have or do not have the capability. This in turn promotes increased exploitation of animals. Third, even if a characteristic beyond sentience is agreed upon, some humans, such as the severely mentally disabled, will not have the characteristic; yet, we agree that such disability does not make it permissible to treat that human as “property.” Thus, there is no explanation, other than speciesism, to treat such humans differently from similarly situated nonhumans. (P. 142)

A main focus of Francione’s works targets utilitarian theory, most notably that of Bentham and Singer, who agree that sentience is sufficient to warrant moral consideration but who believe that animals only have an interest in not suffering. Under such a belief, humans’ use of animals, so long as animals are treated humanely while alive, is morally acceptable. (P. 53) Francione vehemently disagrees with this premise and argues that animals who are sentient have an interest in continued life. Since sentience itself, a characteristic developed to adapt to one’s environment and survive, is only a means to the end of continued existence, a being that is sentient by definition has an interest in continued existence

Moreover, he claims that while the utilitarian position is that animals’ interests must be given equal consideration this is virtually impossible so long as animals are deemed property. By definition, the interest of property is always subservient to that of its owners and the property

status of animals prejudices us against perceiving their interests as similar or equivalent to our own. Thus, so long as animals are deemed property their interests cannot be given equivalent consideration and any utilitarian calculus always will result in human interests trumping nonhuman interests. (P. 166) Similarly, he attacks the ecofeminist theory's ethic of care approach because it too allows the objectification of animals as things. He states that the ethic of care may help to negotiate life's moral hazards, but so long as it is applied in a context in which there is a preexisting denial of personhood, caring is simply not enough. (Pp. 208-09)

The treatment v. use debate is at the center of his critique of the animal welfare movement in general since he claims the movement is interested solely in protecting animals from inhumane treatment and not from use. Moreover, even to the extent that some animal welfarists seek to end animal exploitation, they are harming animals' interests by promoting animal welfare reforms as an instrument to achieve the abolition of animal use. Francione argues that animal welfare reforms will not end animal use, in fact they result in more animal use and suffering, not less. Only by working towards abolition of animal exploitation through abolitionist methods, will animals ever achieve the protection they deserve.

His specific criticisms of animal welfare legal reforms are numerous. First, such reforms prohibit "unnecessary" suffering but the necessity of the particular use is never questioned. The law assumes the use is necessary and only regulates the particular treatment to satisfy that use.

(P. 100) Second, the law looks to the customs and practices of the relevant industry to determine what treatment is necessary under the assumption that owners act rationally and do not treat their property in harmful ways that would detract from their own interests in the property. Thus, the animal welfare reforms rarely if ever provide any protection for animals that rise above that which a rational property owner would provide in order to exploit the animal in an economically efficient way. Third, by arguing for such reforms while maintaining the property status of animals, animals' intrinsic value will never be recognized or appreciated. In his chapter "Reflections" he details several reforms touted as major victories for animals and demonstrates how utterly ineffective they have been, including the CHIMP Act of 2000, the Florida ban on gestation crates, California's foie gras ban, and the two primary federal laws, the Animal Welfare Act and the Humane Slaughter Act. Of course, although these critiques are accurate they do little more than argue that the welfare reforms achieved thus far are inadequate but not that any or all welfare-type reforms would be inadequate.

Finally, he argues not only that the animal welfare reforms are not effective in protecting animals' interests in their own right but they promote the continued and increased use of animals by making people feel better about animal exploitation because such exploitation is presumably being undertaken "humanely." He equates those who promote "consuming with conscience" with those who would claim to be in favor of human slavery yet continued to own slaves (p. 108) or with the notion that rapists can be "conscientious rapists" by not also torturing their rape victims. Slavery is wrong, rape is wrong, and the use of animals is wrong and by promoting

anything less one is justifying the underlying wrong.

However, these analogies do little more than enrage those who are seeking to protect animals' interests through welfare reforms. First, there is no proof that those who are satisfied to consume with conscience would promote the end of animal exploitation if it meant they would be deprived of items they want. Second, by seeking reforms that treat animals more humanely one is not arguing that the use is justified. Such reforms merely acknowledge that more education and social reforms are required before further legal reforms can be achieved.

Francione also chastizes the emergence of “animal law” in our law schools and the growing body of legal scholarship focused on animals arguing it will not promote animal rights nor erode the property status of animals. (P. 117) In fact, he claims these developments do more to reinforce the property paradigm than to eradicate it. For example, the growing literature focused on the value of companion animals beyond economic market value, emphasizing the emotional bond between humans and animals, promoting trusts for pets, and the custody battles over pets, do little more than help animal lawyers develop lucrative careers because they remain grounded in the legal regime that retains animals as property. Moreover, while the anti-cruelty statutes were in part designed to recognize that humans have certain moral and legal obligations to nonhumans, these laws are ineffective as they apply to very few animal by containing explicit exemptions for most forms of institutional exploitation, and are grossly under-enforced. (P. 120-

21) Instead, he suggests that animal law programs should follow the lead of his Rutgers Animal Right Clinic (which closed in 2000) that focused on assisting animal advocates in their efforts to educate about the need to abolish animal exploitation, designing laws that were abolitionist and not regulationist, and taking cases that provided an opportunity to promote the end of animal use not the promotion of animal welfare. (P. 122)

The problem with his critique is that it mischaracterizes the goal of animal law in society today. Animal law per se is not part of the animals “rights” movement as Francione defines it. Law schools seek to provide valuable skills to our students, teach them the state of the current law, how an advocate uses the law to maximize the benefits for their clients, and explore ways in which the law can be improved. Thus, animal law is not necessarily working towards the eradication of the property status of animals but rather to exploit the legal system to best serve the interests of animals. Moreover, various legal strategies targeted at promoting animal interests are necessary. This is an area where one size does not fit all.

Nevertheless, according to Francione, the only means of shifting the paradigm away from the speciesist hierarchy is to develop a political and social movement in favor of abolishing animal use (e.g. the property status of animals), with veganism as the baseline of that movement. (P. 17). First and foremost, on the individual level, rights theory prescribes incremental change in the form of veganism extended to food, clothing, and other products. (P. 107) Second, on the social level, reform must come from increased education, boycotts and protest rather than

legislation or administrative regulation because until there is support of institutional exploiters and the public, no meaningful legal reform will occur. He asserts that this has been proven time and again for the past 200 years by noting the various animal welfare reforms that have led to increased animal exploitation and suffering, not less. (P. 110) Third, the promotion of animal rights reform must acknowledge the inherent value of animals and not merely their extrinsic value to humans.

Francione dismisses the critique that achieving animal rights is impossible because it requires the total abolition of all animal use and there are no incremental reforms that will achieve such nirvana. To the extent that legal reforms are attempted, Francione approves only of those reforms that meet five criteria. (P. 113) The legal reform must be a (a) prohibition of (b) an activity constitutive of the exploitative institution that (c) recognizes and respects a non-institutional animal interest, (d) is not tradable for other animal interests nor (e) a substitute that is a supposedly more humane form of exploitation. Only a reform of this type is acceptable and will move towards the abolition of animal exploitation. (P. 114) Interestingly he admits that a “prohibition that satisfied all these criteria would not have any significant chance of succeeding at the present time, but the process of promoting such a prohibition would at least have the effect of educating the legal and political system, as well as society in general, about the need for radical change.” (P. 114)

Francione's main argument that those seeking to promote animal welfare by regulating their treatment are doing more harm than good for animals is not only highly controversial but creates large divides within the movement and may itself do more harm than good for the animals. Even if one believes that the world should be vegan and humans should not exploit animals for any use, it is difficult to accept that promoting more humane treatment of animals while seeking to educate the public about the need to abolish animal exploitation, in fact prevents achieving abolition. Admittedly the reforms to date have been modest to say the least. Today, largely because of our technological development and human overpopulation, we exploit more animals than ever before. Human nature favors our own while being unappreciative of those that are different from us and the need to conquer and exploit the other is deeply engrained. But to argue that only movement towards ending exploitation is beneficial for animals' interests seems extreme. Time and again Francione admits that we *could* treat animals much better than we do while retaining the property status of animals yet he refuses to accept that we ever *will*. (E.g. p. 70). The solution is not to alienate others who want to improve the fate of animals but rather to work in concert to promote common goals even if there are points of disagreement. Francione should promote laws that seek to end exploitation and persuade others to follow. However, by chastizing those he could likely win over by claiming they are no better than those who exploit animals directly (e.g. are slave owners themselves), he detracts from the progress that could be achieved through greater solidarity. Especially since he agrees that his accepted "rights" reforms will not succeed at this time, it is difficult to understand how "welfare" reforms are more harmful than no reform at all.

Admittedly, he explains that this position is based on the fact that people who would otherwise not allow the exploitation of animals will allow their exploitation if they believe that the animals are being treated humanely. However, why would one who disagrees with any animal exploitation alter their view merely because the animals are treated humanely? It seems only that those who otherwise do agree with exploitation but are sensitive to animals' interests in not suffering will be satisfied with animal welfare reforms. Moreover, it is not clear that those who do agree with humane exploitation would favor no exploitation over inhumane exploitation if it means they cannot eat or wear what they wish. Promoting reforms that seek to regulate animal treatment do not legitimize the underlying use of the animal anymore than laws that impose harsher sanctions for torturing a victim while raping her legitimizes the act of rape. The only difference is that societal norms finally accept that rape is wrong while societal norms still accept animal use.

Perhaps the most controversial aspect of his thesis is the end result--a world where "we would stop producing and facilitating the production of domestic animals altogether." (P. 13) He seeks to establish a world with no domestic animals of any sort. This is a very difficult world to imagine and one that many--human and nonhuman alike (I believe)-- would find dismal. Of course, retaining domestic animals solely for the pleasure of humans is contrary to an animal rights position. But is it true that domestic animals have no interest in any existence? This

appears contrary to Francione's insistence that animals have an interest in continued existence. Clearly he distinguishes an interest in *continued* existence with an interest in *any* existence and apparently so long as one never exists, one has no interest in existing. But, if a being once in existence wishes to remain that way, it would seem that the being had an interest in existing in the first place otherwise why would the being not rather be killed than remain alive?

Francione likely would argue that evolution over time would result in these beings existing but rather than being domesticated they would be wild and humans would have to "leave them alone." This is a world with true animal rights. Admittedly wild animals should be left alone but do domesticated animals have no interest in living with humans, whether it be in the shelter of a barn with the freedom to graze on land cultivated for his or her sustenance, or in a home where he or she is fed, entertained, and loved? Is there no position for domestic animals other than full personhood or mere thinghood? The challenge is for humans to think outside the dual categories to create a world that is respectful and nonexploitive of nonhumans without eradicating the very creatures we are fighting to set free.

Gary Francione is described as a "respected philosopher of animal rights law and ethical theory."(Front flap) As both a lawyer and philosopher he approaches the issue of animal rights from both a theoretical and practical perspective. Philosophy provides the theoretical framework for the laws that govern our society. However, there is a gulf between theory and reality that Gary Francione understands and expressly addresses in his writings. His goal is to create a

world devoid of animal use. His views are uncompromising, unless incremental steps promote abolition, they should not be pursued. The supposed advances in the regulation of animal treatment will only prolong animal suffering and justify the continued use of animals indefinitely. It is this view that generates much of the critique of his work. Rather than confront those in opposition to promoting the interests of animals, he confronts his supposed “allies,” humane organizations and prominent philosophers such as Peter Singer and Tom Regan, who, like him, seek to promote the interests of animals. Admittedly they have different views of the ultimate goal and/or the means of achieving that goal, but they nevertheless are on the same side of the fight against those cruel or indifferent to animals in general. It is this tactic that earns him the title of “iconoclast” and “activist” “unafraid to upend conventional theoretical and practical approaches to our treatment of animals in his analytical rigor.” (Front flap) He is generally persuasive on a theoretical level, however, on a practical level, only time will tell.