

Gary Francione's Right Not To Be Considered Property

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[*Note:* the following is an excerpt from a forthcoming book.]

Francione is a law professor and attorney based at Rutgers's University. [snip] ... , by not treating someone as property, we will see that Francione broadly means respecting others with dignity (although Francione does not use this term). Francione writes: "I argue that the basic right not to be treated as property may be derived directly from the principle of equal consideration and does not require the complicated rights theory upon which Regan relies."¹ Francione declares that the sole right of animals is not to be considered as property or a resource.² At another juncture, he offers the idea that the right not to be property is a grounding for other rights.³

It is important, to be clear about Francione's views [snip], that he does not consider counting as property merely in the literal sense of being legally owned, but also in terms of what is "metaphorically" associated with property status, a point I owe to philosophy graduate student David Langlois.⁴ Francione associates with property status:

- (1) being owned, but also
- (2) being literally treated as if one is an object or thing by denying that one has a mind, feelings, or interests as the Cartesians maintain⁵;
- (3) being figuratively treated as if one is a thing by conceding that animals have minds and feelings but by treating them *as if* they are beings without interests, through a disregarding of interests⁶;
- (4) being treated as if one is a mere means, tool, resource, instrument, or slave whose value can be reduced to that of a commodity⁷ (again disregarding interests); and
- (5) being treated with unnecessary suffering (again disregarding a specific interest).⁸

¹ Gary L. Francione, *Introduction to Animal Rights: Your Child or the Dog?* (Philadelphia: Temple University Press, 2000), p. xxxiv.

² *Ibid.*

³ *Ibid.*, p. xxviii.

⁴ Langlois told me in a public debate on the Toronto Animal Rights Society list-serve in 2006 that, for Francione, property is not literally just being owned, but rather a set of metaphorical associations.

⁵ Francione, *Introduction to Animal Rights*, p. 73.

⁶ Francione, *Rain without Thunder* (Philadelphia: Temple University Press, 1996), p. 45 discusses disregard of interests.

⁷ Francione, *Introduction to Animal Rights*, p. 100, he refers to "the basic right not to be treated as a resource," which is reminiscent of Kant's obligation not to treat persons as a mere means, and implies a synonymy between the right not to be considered property and the right not to be treated as a resource.

⁸ *Ibid.*, p. 30, he acknowledges a legal and moral obligation not to cause unnecessary suffering.

So an animal eradicated as a “pest” is not anyone’s property or tool but is being treated in ways characterizable as possibly (2), but certainly (3) and (5). Vegans may have legal ownership of animal companions, but refuse to use animals as a resource, and indeed use that ownership status to protect animals’ rights. Not all of the conditions need be the case for an animal to be treated like property. Many people who exploit animals still grant that they have feelings for example. This model can be compared to possible symptoms of a disease, all of which would be had in full-blown form, but not all of which are required to make the diagnosis. This is my own interpretation of Francione’s not-property idea, using David Langlois’ notion of metaphorical associations with being classified as “property.” Neither Francione nor Langlois outline the five conditions, relating each one to the disregarding of interests, nor do they use my disease comparison. [snip]

(1) Problems related to the property status of animals:

(a) It is highly confusing to blend not being considered property with not treating animals as resources, slaves or objects, etc. This seems to involve conceptual confounding rather than philosophical clarification of distinctions, nor is it a credible analysis of the meaning or usage of “property.” It would be like stating that the fundamental right is not to be treated as an object and then claiming that all other rights are somehow “blended” with that right. However, Regan’s fundamental right to be *respected* (which we will explore in the next section) or having a dignity may have better success because we do not need to confuse anything for a strong form of respect to rule out treating someone as a mere tool, object, etc. These latter are always disrespectful, although as we shall shortly see, they are definitively *not* always rooted in property status.

(b) *The post-property objection.* If animals’ property status were abolished, we would still need to speak of disregard for their interests, and it would only be confusing and indeed false to say this state would be a restoration of property status. Animals on animal rights sanctuaries are virtually no longer treated/considered as property, and if a question arises about the animals’ optimal treatment, it would be absurd to suggest that falling short of such an ideal (in a well-intended but mistaken way) makes those animals somehow analyzable as “property.” Francione would have to say, extending his theory, that blacks free from slavery are treated *like property* whenever they are abused post-property. I do not find that suggestion to be particularly illuminating. I would venture to say that abuse victims, sympathetic observers and abusers themselves do not usually think of such maltreated people as “property,” so Francione’s metaphor implausibly reaches beyond all normal usage. [snip] Humans beings considered as property just means *slavery*. Would it be considered an advance in human rights theory to say there is only one (fundamental) right: the right not to be a slave? I do not believe so. If someone were information-tabling with such an impoverished view, wide-eyed sympathy for the impassioned tabler could easily transform into saucer-eyed disbelief. Animal rights theory similarly needs to provide an intelligible framework for a post-property era.

(c) Suppose someone is a member of a hunter (but mostly gathering—as is usually the case) society, and is a traditionalist who lives off the land. According to common

custom, animals (like the lands themselves) are not anyone's property although creatures are sometimes hunted. Suppose this Native is influenced by animal liberation and decides not to hunt anymore. This person from birth never considered animals to be property, so it would be incoherent and indeed ethnocentric to interpret that he or she is ceasing to treat or consider animals as property when hunting is abandoned. This last case is not even "pre-property" if the Aborigine never will treat animals as property. However, before pastoral peoples came along and claimed *ownership* of animals, hunted animals were treated—albeit unconsciously and ubiquitously—in a speciesist way. But it is simply false to associate prehistoric hunting or "pest control" with property status.

(d) These last examples suggest that it places the cart before the horse to make the right not to be considered/treated as property the fundamental right. Being considered property is not the root of all speciesist evil, since, as shown, disregard of interests can occur quite without property status. That is because people often use property status itself in order to entrench the pre-existing tendency to disregard animals' interests; they do not disregard interests for the sake of considering/treating animals as property. Disregarding animal interests is a more lasting end than property status is a lasting means.

(e) Langlois' idea of metaphorical association is too subjective and unreliable. For rationalists, associations with a fundamental concept need to be suitably fixed and explicit. Francione would seem forced to rely on metaphor since property does not *literally* mean all that he says. Also, Francione's metaphorical associations are unstable. This seems to be about what animals-as-property calls to mind, in a loose, connotative sense. This methodological aspect is, incidentally, more like "free association" or stream-of-consciousness poetry than philosophical or legal theory. Now do we metaphorically associate "animals as property" with their being mindless objects, or only being considered as tools, slaves, resources, etc.? Most people do *not* see animals—even ones who are property—as nonsentient, or having *all* interest in them reduced to their value as tools. So mostly, the "metaphorical" model rings false on this score. Or what about the "metaphorical" association of animals as owned, i.e., slaves? It really depends on whose animals-as-property, in particular, is contemplated, if we are to avoid crude overgeneralizations or stereotypes. A vegan's treatment of an animal companion as property more truly calls to consciousness ideas of liberation rather than slavery. Also, it is ambiguous in our broader society as to whether animals as property will be treated so-called "humanely," in a way that avoids "unnecessary suffering." There is no certainty or definiteness of any kind in the "metaphorical" associations here. By contrast, a [snip] position will not give rise to such subjective, imprecise, and ever-shifting ambiguities or even false "metaphorical" associations in many cases.

(f) Francione's insistence on the right not to be considered property is negative, and seems to involve avoiding bad things but not especially the affirming of good things. We need not only to overcome oppression but indeed to seek *liberation* in a very positive sense.

[snip]

(2) Problems associated with the principle of equal consideration:

(a) Francione bases his theory of animal rights on the principle of equal consideration. This principle merely states that we ought to treat like cases alike unless there is a good reason not to do so.⁹ Francione holds that this principle is enough to abolish treating animals as property and resources. That is, since we do not treat humans as property, animals should be extended the same right unless we can give a reason to the contrary.¹⁰ Yet this principle only requires reasonable self-consistency. If we can self-consistently assert that humans have rights but not other animals and give a “good reason” why animals are treated differently, then Francione’s theory is in trouble. Yet Francione himself proclaims that we can prefer to rescue humans over other animals in cases of emergency.¹¹ Why not *generalize* this preference to satisfy human interests even at the cost of animal lives or other interests? Francione gives no “good reason” why we should not be consistent with this preference for human interests across the board, and therefore his own principle of equal consideration does not logically guarantee animal rights. If animals’ interests cannot compete with humans in “emergencies,” then perhaps human interests *routinely* should override animal interests, an idea which the animals-as-property idea truly upholds. Francione points out that humans can be preferred in dilemma cases too, but we do not enslave those humans. However, it could be argued by a devil’s advocate which Francione fails to consider that humans have much more value associated with their lives (see an elaboration of this powerful view in Chapter 10).

(b) We need a rights view that rules out utilitarianism and that protects humans (and I would urge also, other animals) from vivisection. Francione appears to overlook the fact that utilitarians also accept the principle of equal consideration, but insist that some may be vivisected for the greater good. Peter Singer for example demands the “equal consideration of all interests.”¹² Francione notes Singer’s competing interpretation of “equal consideration” in passing¹³ but offers nothing in his work to seriously refute the idea. Ethical egoism, utilitarianism, and skepticism in ethics are all impartial ways of treating everyone’s interests in the sense of treating like cases alike unless there is a “good” reason for treating them otherwise. Francione cannot summarily rule out these frameworks’ “good” reasons for disregarding animals’ interests in not being considered property without simply begging the question against these theories, or merely assuming what needs to be justified. This reflection also shows that “the principle of equal consideration” (as Francione sometimes puts it) does not automatically mean “the principle of equal consideration *of interests*” (e.g., for moral skepticism) as Francione carelessly and wrongly assumes.

⁹ *Ibid.*, p. 82.

¹⁰ *Ibid.*, p. xxix.

¹¹ *Ibid.*, p. xxxvi.

¹² An oft-repeated phrase in Singer’s major works such as *Animal Liberation* and *Practical Ethics*.

¹³ *Ibid.*, p. xxxii.

(c) Francione claims that his derivation from the principle of equal consideration “does not require the complicated rights theory upon which Regan relies.”¹⁴ Yet I have demonstrated that it is manifestly too simplistic to posit the principle of equal consideration as a basis for rights. It rules out neither utilitarianism nor any other ethic. Besides, Francione also explicitly relies on Regan’s key idea of equal inherent value¹⁵ so he seems to lean on Regan’s “complicated” theory after all.

(3) Francione relies on interest theory, focusing not only on the interest in not suffering but the interest in not being treated as property (with all the connotations that this shakily bears). However interest theory by itself, or even in conjunction with the principle of equal consideration, is problematic. Animals may have an interest in not being exploited, but exploiters also have active interests in using animals. It might be argued that animals only have an interest in themselves or perhaps those they know not being treated as “property,” in some sense, but that most humans have an interest in *most* animals being used as tools, as part of their notion of “civilization,” so after all millions or even billions of human interests converge on every animals’ interests—outnumbering pro-animal interests on any thorough accounting. That exploitive interests are morally irrelevant my theory will try to show, but relying on interest theory alone, you see, does **not** rule them out. And such interests are now in the overwhelming majority. Also, exploiters’ interests may be considered cognitively richer, which is presumably why humans are often “intuitively” preferred in dilemmas even by Francione (see again Chapter 10 on superiority). So which interests prevail from an equal consideration of interests, the exploiters’ or the animals’? Not every benign interest is morally obligatory to consider, such as someone’s preference for the color purple. So which interests should we consider? My own theory of best caring will agree that those interests consistent with what is best, all beings considered, are morally relevant, but Francione does not argue this. Merely advocating an “equal consideration of interests,” as Francione does (apparently as a borrowed idea from Singer) does not by itself rule out harmful interests, as indeed Singer’s utilitarianism cannot in principle rule out such dangerous dispositions.

(4) Francione further asserts that his view rests “comfortably” on two *intuitions*: (1) that we can prefer humans in cases of necessity, and (2) it is wrong to inflict unnecessary suffering on animals.¹⁶ Francione correctly observes that society is inconsistent in professing “animal welfare,” or the view that we should avoid unnecessary suffering, whereas in practice huge, repetitive, and egregious harms are visited on animals routinely. He argues that the surest way to avoid this suffering is the abolition of animal exploitation. However, once again we will find that any reliance on *intuitions* is problematic enough, to say the least, to make any theorist who recognizes the implications of intuitionism *uncomfortable*. Francione also claims that his two intuitions accord with common sense, but I will explore the perils of relying on common sense or tradition later in this chapter.

¹⁴ Gary L. Francione, *Introduction to Animal Rights: Your Child or the Dog?* (Philadelphia: Temple University Press, 2000), p. xxix.

¹⁵ See, for example, *Ibid.*, p. 128.

¹⁶ *Ibid.*, p. xxxvi.

(5) Worse, Francione's two intuitions (of avoiding unnecessary suffering and preferring humans in cases of necessity) are compatible with advocating medical vivisection in many minds. Indeed many people consider all animal uses to be "necessary," as they might appear if human interests (including rights to happiness and freedom) systematically override animal interests (unprotected by rights) as superiorism maintains.

(6) Francione seems correct to say that animal rights will eliminate all "unnecessary suffering" in some sense. He baldly declares that: "...most of the suffering we impose on animals is completely unnecessary *however* we interpret that notion."¹⁷ However it must be conceded that "unnecessary suffering" has a different meaning to traditionalists. Traditionally, not only the need for animals to avoid suffering is considered. Added to the picture is humans' supposed "need" to use animals, in keeping with humans' rights to freedom and animals' supposed lack of rights, and so "unnecessary suffering" means a minimizing of suffering within the context of animals being used for food, clothing, entertainment, and so on. We cannot settle the debate verbally, by confusing together philosophically distinct definitions of "unnecessary suffering," and claiming that the welfarist sense falls short of the animal rights sense. We must show that the animal rights interpretation of "unnecessary suffering" is the correct one.

"Necessary" *can* mean that a need is not being addressed, but rather a mere amusement or pleasure as Francione says. However, it can *also* refer to what is needed as a means to an end, such as water being needed to grow a plant. A "welfarist" will say that some suffering is a necessary by-product of the means needed for meat-eating, and so is "necessary suffering" in that sense, although not in the sense that we need to eat meat for our survival. A "welfarist" does not agree that animals have protective rights, although the human right to liberty may protect the freedom to eat meat. I am not saying that the welfarist is *justified* in this belief, only that animals rights does **not** logically flow from their commitment to avoiding unnecessary suffering—as Francione erroneously claims.

In conclusion, Francione's unfortunate series of [snip] moves does not conduce towards an adequate basis for human or more generally animal rights. On a more positive note, there are several aspects of Francione's theory that match my sensibilities of what is ideal, and the theory that I will justify in the next chapter bears out many of the same insights or principles. For instance, equal consideration of like things is part of being equitable or just, and animal liberation does indeed involve liberating animals from being our chattels or property, slaves, and animals are surely not mere objects. None of these ideas is original to Francione, however, since Singer writes of equal consideration, and all animal rightists have for over a century (since Henry S. Salt's 1892 book on animal rights, at least) ruled out the above list of abuses. As well, Francione's intuitions that we can sometimes prefer humans in dilemmas and avoid unnecessary suffering—also very common notions—likewise seem to be part of what is ideal. What is most original to Francione, though—namely the "fundamental" right not to be considered/treated as property, which is supposedly implied by the principle of equal consideration (of interests)—seems quite unsalvageable as a general matter. [snip]

¹⁷ *Ibid.*, p. xxiv.