

## Animal Rights Law: Fundamentalism versus Pragmatism

David Sztybel†

**Abstract:** *Animal rights law, both animal rights “fundamentalists” and animal rights “pragmatists” agree, consists of aiming for animal rights in the long-term. They differ, however, in their views of what is morally right and most effective for animals in the legislative short-term and long-term. I argue that animal rights law ideally involves trying to encourage animal rights, and that the best possible short-term laws may sometimes be so-called “welfarist” in character. I argue that a specific kind of pragmatism offers a more just and effective vision for animal rights law than that of philosopher Gary Francione, who seems to consider himself an animal rights fundamentalist.<sup>1</sup>*

### I. Introduction

The position of animal rights has been defended by various philosophers, including: Tom Regan, Evelyn B. Pluhar, Mark Rowlands, Paola Cavalieri, Gary Francione, Julian Franklin, and myself.<sup>2</sup> I will not try to substantiate animal rights on this occasion but assume, for the sake of argument, that in some strong form rights are the animals’ just due. I think that what we call “animal welfare” in standard cases is “animal illfare,” since in the meat industry and vivisection laboratories, for example, animals come to an ill-fate—a foreshortened life of intense suffering—as dominant and inevitable parts of these practices. However, I have defended the “animal illfare” label elsewhere and will not reproduce that defense here.<sup>3</sup> I am not an “animal welfarist” in the standard, speciesist sense of oppressive disregard for animal interests, but rather an advocate of illfare-reducing laws in the short-term. Recognizing that we are still left with animal illfare in the short-term will help to reduce complacency that it is morally acceptable for society to stop short of legislating animal rights. Those who do not adhere to my animal illfare usage can substitute “animal welfare” in their own minds if they wish, and indeed I will often use “animal welfare” in quotation marks (following the usage of Joan Dunayer<sup>4</sup>) referring to speciesist animal illfare, just because it is not truly welfare overall as I argue. Now two chief concerns in animal rights law in the fundamentalism versus pragmatism debate is proposing laws that exhibit both *moral integrity* and *effectiveness* in not only relieving the suffering of animals, but in promoting the long-term goal of animal rights.

I make a distinction between *animal rights fundamentalists* and *animal rights pragmatists*.<sup>5</sup> Animal rights fundamentalists (hereafter, “fundamentalists”) insist that animal rights is absolute and indeed a basic moral principle, and that anything inconsistent with such a principle is morally wrong. Animal rights pragmatists (hereinafter “pragmatists”), in contrast, advocate that we *ultimately* act for sentient beings, rather than *ultimately* for abstract principles such as rights (although animal rights are still worth promoting to animal rights pragmatists), and we will see this different theoretical orientation carries practical implications. Joan Dunayer is more of a fundamentalist than Gary L. Francione,<sup>6</sup> since she rejects more proposed laws as falling short of animal rights. We can distinguish between “holistic fundamentalists” (who only demand perfect animal rights) and “partitive fundamentalists” such as Francione (who are not perfectionists and may advocate for parts of full rights as a next stage of animal law through “proto-rights”). Proto-rights is a term introduced by Tom Regan. We can distinguish (a) strong proto-rights which Francione exclusively advocates, which are not full rights but at least a whole animal interest may be

†David Sztybel is a Fellow with the Oxford Centre for Animal Ethics. He did his doctorate in animal rights ethics at the Department of Philosophy, University of Toronto, Canada. He has lectured on ethics at University of Toronto and Queen’s University, and is the author of a range of essays on animal liberation ethics, as well as a forthcoming book on animal rights ethics.

protected, and (b) weak proto-rights, in which case there is interest protection, but there may only be a degree of an interest that is protected.

This distinction avoids the problem that pragmatism is often associated with amorality or utilitarianism because it advances a view that rights, although ideal, are not ultimate ends in themselves in a way that I will explain. I am not a philosophical pragmatist who argues for theories solely on the grounds of whether they “work,” but rather am using pragmatism solely in the context of legal and political reform. Moreover, I am not insultingly suggesting that fundamentalists do not have a practical program. I will now defend the idea that “welfarist” laws aiming to reduce animal suffering may be best morally and practically from a pragmatist perspective. However, I concede that Francione’s insistence on strong proto-rights exclusively (see below) may one day be appropriate once further progress is made.

## **II. Ethics : Animal Rights and Suffering-Reduction**

People for the Ethical Treatment of Animals (PETA) exemplifies the approach that has a long-term goal of animals rights and that is why its motto is that “animals are not ours to eat, wear, experiment on, or exploit for entertainment,” and why it promotes veganism as the ideal diet. At the same time, PETA advocates suffering-reduction laws. These laws have brought PETA under fire by fundamentalists for being both immoral and ineffective. Banning factory farming is an example of a suffering-reduction law supported by PETA that falls short of animal rights as articulated by fundamentalists since on family farms animals would still be exploited and subject to speciesist discrimination.

From a fundamentalist perspective, we will see that Francione rejects legislative proposals that do not achieve at least a part of animal rights in the form of his version of proto-rights. He rejects “welfarist” legislation. However, the ethics of supporting “welfarist” suffering-reduction laws have not been clearly illuminated, and Francione only acknowledges one theorist, British political thinker Robert Garner, as having made any attempt to form a reasoned concession to “animal welfarism.”<sup>7</sup>

Key aspects of my own ethical stance here are: (a) dilemma reasoning, and (b) reflecting on what is ultimately morally right. The dilemma reasoning component is simply that there is perhaps no dilemma about what to advocate in the long-term—i.e., animal rights. However, in the short-term, important legislative dilemma options include:

- (1) No change in the law;
- (2) Cosmetic changes that do not significantly or even negatively affect animal welfare (cruelties can be made worse by creating the false impression that animals are “well off,” which may encourage more animal consumption, thus multiplying the misery);
- (3) Suffering-reduction laws which substantially improve conditions for animals under oppression by at least curtailing suffering without necessarily obtaining animal rights or proto-rights;
- (4) Suffering-reduction laws that *only* try to secure rights or strong proto-rights for animals, excluding all other forms of suffering-reduction laws;
- (5) Animal rights/vegan education as a short-term means of building long-term legal changes.

Laws that would satisfy the requirement of animal rights are generally not a possibility in the short-term for legislatures, although individuals or groups can indeed adopt an animal rights ethic.<sup>8</sup> So pure animal rights law in the short-term is not a “better” choice if

it is not a choice at all. I agree with Francione that strong proto-rights may sometimes be best to demand as legal reforms (e.g., ending animal circus acts), but contrary to his option (4), I argue for (3) above that “welfarist” suffering-reduction may be acceptable or even superior to advocate in near-future contexts in which more stringent measures are unobtainable, which will often be the case. All animal rights proponents presumably agree with option (5). Or if some legal reformers do not agree, since they are afraid that any use of the terms “animal rights” or “vegan” will hurt their credibility as legal advocates, then I will have to disagree since we cannot fail to ask for anyone’s just due.<sup>9</sup> Alternative (2) involving cosmetic changes is the worst choice since it may entrench speciesism but not benefit animals while option (1) that brings no legal changes is second-worst—no relief for animals can be found there.

How could option (3) be right if it involves speciesism which is morally wrong?

It may help to think of these options for the short-term as a dilemma in which none of the options deliver animals from speciesism, so we should choose the best one(s). Think of the classic burning house situation. In such a case, one can only rescue one animal from the fire, and so not everyone’s right to life can be satisfied. This is an important way in which a rights proponent accepts that rights cannot dictate the outcome of every single decision. Perhaps we can likewise only choose in the short-term among laws that fall short of anything strongly resembling rights.

Yet it can be argued that law-advocacy is not like the burning building. We can coolly decide whether to advocate (a) only animal rights or strong proto-rights in the law, since that is allegedly morally right, or else (b) strong proto-rights, and/or “welfarist” suffering-reduction laws (short of strong proto-rights) in the short-term, and animal rights in the long-term. Not all uses of dilemma reasoning are acknowledged as legitimate by animal rightists. Vivisectionists—contrary to animal rightists—often insist that we would save a human instead of a rat in a burning building, therefore we can use rats to find cures for human diseases. I agree that dilemma reasoning by itself is insufficient for justifying “welfarist” laws, and indeed no one to my knowledge has tried to use dilemma reasoning at all thus far for justifying legal reform strategies.

The opponent of “welfarist” suffering-reduction laws can say that we do not face a *moral* dilemma if option (3), which permits “welfarism,” is morally wrong “merely” to reduce animal suffering. This can be expressed in various ways. Fundamentalists might contend that (3), even if it *does* mean less suffering for animals, involves *complicity* (i.e., partnership in wrong-doing) with speciesists. Not every improvement of welfare, they would warn, is compatible with moral rightness. Theft might improve the welfare of a thief after all. Complicity allegedly leads to a co-opting of animal rights people by animal industries and speciesists more generally. Another way of stating the fundamentalist point is that there is a departure from what is morally right, as embodied by animal liberation, and therefore some proponents of suffering-reduction laws are morally wrong. Yet another way to express this idea is that certain suffering-reduction advocates such as PETA are part of the problem, not the solution of the abolition of animal exploitation.<sup>10</sup>

I can see too how this fundamentalist belief regarding what is morally right links to conceptions of what is effective. How can we eventually get to what is morally right through complicity with what is morally wrong? From this fundamentalist perspective, it would seem like veering off course from the morally right, or plunging into and entrenching corruption, not embarking on a promising road towards more ethical rightness than ever through, say, Francione’s very limited forms of incremental liberation. Adding to the seeming hopelessness of this situation, as perceived by fundamentalists, is that the wrong-doers with

whom one might collude are politically and socially dominant and so might be presumed to prolong this stopping short of animal rights indefinitely.

This is a powerful argument. It has strong emotional resonances since people often resent complicity in any form. But the complicity charge could never be fully made since the pragmatists' long-term goal of abolition is by all accounts not cooperating with speciesists but trying to convert them. Also, we accept complicity with governments by paying taxes even if we strongly disagree as to how some public monies are spent, or vegans may indirectly be complicit in the profiteering of grocers who traffic in animal corpses. I would argue that some "welfarist" suffering-reduction laws lead to a *lessening* of wrong-doing on the part of speciesists by curbing their cruelty. If I am right, such laws also help conduce towards eventually *removing the whole wrong of speciesism* (see III. below). However the question still remains: are animal rights pragmatists *themselves* morally wrong by getting involved in producing additional speciesist laws in the first place?

The crux of the issue I think lies in: what is ultimately morally right? If some "welfarist" suffering-reduction laws can be shown to be consistent with an ultimate principle of what is morally right, then such advocacy does not involve a partnership in wrong-doing or complicity but rather a cooperation with doers of right. If animal rights and anti-speciesism are ultimate principles of moral rightness, then perhaps complicity is occurring, and pragmatists simply condone what is morally wrong. As vegan advocate Howard Lyman writes regarding this very question: "anytime you join a team...of somebody doing something wrong, *you're* doing something wrong."<sup>11</sup>

However, I argue that rights themselves are not fundamental, in the sense of things being ultimate ends in themselves. I argue that only sentient beings can be ultimate ends in themselves. Rights are at best means to an end. Rights secure goods and protections from harm, and that for me is their rationale. Anti-speciesism, I think, is really about avoiding systematic harms. Alasdair MacIntyre argues that rights are inventions from the Middle Ages, and rights appeals have no bearing on cultures before that time: it would be like using checks in the time of cave people.<sup>12</sup> I argue that the ultimate principle of moral right, as best as I can tell, is: *Produce what is best for sentient beings at all times*. We should wish our actions to have positive significance, but nothing has any positive or negative significance to nonsentient things. Therefore we must act ultimately for *sentient beings*, since we cannot do anything that ultimately has any significance to any nonsentient thing. Mere things include ovens and rocks, but also principles such as rights and anti-speciesism. We cannot rationally act ultimately for the sake of a principle, such as *abolition*. Nothing is of value to "abolition," and rather abolition is good for sentient beings. I call those who advocate ultimately acting for the sake of any nonsentient thing "nonsentientists." For some theorists, ethical principles simply emerge from intuitions,<sup>13</sup> but no amount of intuition can change the fact that I cannot ultimately act for or against any mere thing. Becoming obsessed with principles is understandable, but it may distract from the pragmatic focus on what is ultimately important.<sup>14</sup> Centering on human-made abstractions above all, instead of on the animals themselves as individuals is oddly anthropocentric. My way of thinking does not lead to the problem cited earlier of complicity with moral wrongness as a means to moral rightness, or moral corruption and veering off course, since there is here a defensible idea of moral rightness and no departure from it, and a systematic building of ever greater moral rectitude on a societal level even as what is best for individual animals—which includes reference to their welfare and freedom—becomes ever more possible and actual.

Of course, fundamentalist opponents of "welfarist" suffering-reduction laws may argue that they also favor what is best for sentient beings: it is best for animals to have rights

and not to be oppressed under speciesism. I concede this last is true in the “timeless” abstract: that is why rights are advocated to be entrenched as soon as can be. It is vital—although by no means easy—to distinguish between the best that is *conceivable/imaginable* and the best that is *really possible*. The latter is what is relevant in seeking what is best in a dilemma, since indeed there would *be* no dilemmas if the best we can fantasize were always really possible. Abolition is not the best that can be realized for animals in the concrete short-term, in terms of what is really possible, so doing nothing to affect current laws, or futilely advocating only rights or strong proto-rights, may sometimes be inconsistent with a sentientist ultimate principle of moral rightness: doing what is best for sentient beings. If the best that can *really* be achieved in the short-term is cage-enlargement, then that is what is best for animals in the short-term. It would be difficult to argue that it is actually *better* for animals in the short-term to suffer horribly cramped quarters, let alone *best* for that to be the case. Anything better is further progress towards what is best—the converse cannot be gainsaid, that what is worse is somehow progress towards what is best.

I also reverse the charge of complicity. I argue that there is tacit or passive complicity in *allowing* the wrongs of cruelty to continue without effective challenge, or permitting them to continue longer than necessary, or failing to do what is most conducive to animal *rights* by failing to advocate such “welfarist” suffering-reduction laws (more on this below). Indeed, by not favoring what is best for sentient beings at every turn, one is in danger of being complicit in wronging these beings. This is not to say that a pragmatist would automatically donate \$100 to groups promoting larger cages. I might give it to a group promoting veganism. But I would not criticize but rather support the United Farm Workers, founded by Cesar Chavez, who are trying to improve conditions for workers and animals alike.

Of course not everyone need agree with my ultimate ethical principle. Some people might act *only* for animal rights. But to me that is like idol worship—performing excessive homage to a mere thing. The “real” solution, to me, is doing what is morally right at every stage of personal and social development. Now Francione will say that not rights but “proto-rights” are best for animals in the short-term. So rather than urging tactics that “merely” *reduce* suffering, he favors measures consistent with *abolishing* suffering altogether. He is right that this *is* concretely best in the short-term *if it is possible*, but if it is not, I argue that “merely” reducing suffering may be the best for animals that can really be achieved. Less suffering is often better for animals than advocating a proto-right only that dies in a legislature, leaving in its wake a largely wasted campaign (save for its educational value—although it may teach wrong lessons about animal rights law unlike wiser campaigns).

It will be objected that of course *all* principles, including proto-rights, are advocated for the sake of sentient beings. However, one can agree that *any* ethical principle, including that of ethical egoism (which is hostile to animal rights<sup>15</sup>), ultimately has significance in relation to sentient beings. The real issue is: what is *best* for sentient beings? Again, it seems that—failing the obtainability of strong (proto-)rights—that option (3) which permits “welfarism” secures what is really best for animals in the short-term. I agree that animal rights laws are really as well as conceptually best for the long term. The issue under consideration here is *what is really best for the short-term*, and what is really best for the long-term does not settle that issue. As Paul Shapiro (formerly of the group Compassion Over Killing), wrote of banning battery cages for “laying hens”: “We should not be willing to abandon millions of animals to endure significantly worse cruelty than they have to.”<sup>16</sup> By the way, when I speak of what is best for animals, and animal rights pragmatism, I do not advocate utilitarianism, or “optimal utility.” I speak of securing what is best for you, me, this

sentient being, that sentient being, up to and including all of the subjects of rights that there are rather than optimal utility.<sup>17</sup> This vision is strongly suggestive of individual rights. For now, I have at least tried to clarify why there is no objectionable complicity, or partnership in wrong-doing, because rights themselves arguably get their justification from the supreme principle of moral rightness—doing what is best for sentient beings—and that supreme principle tells us that concrete options falling short of rights are in fact sometimes the best that can really be won for nonhuman sentient beings in the legislative short-term, or at least such measures may be significantly better than the status quo or other non-viable proposals.

We can move towards the goods named by animal rights (including freedom and welfare on my framework) by degrees. I favor short-term laws that approximate animal rights in the greatest degree. Laws permitting factory farming are *non-animal rights laws*. However laws banning factory farming may be *proto-animal rights laws* in my sense although not *necessarily* in Francione's sense (e.g., pragmatists may accept larger cages unlike Francione). Note that proto-forms need not even be much recognizable, like a redwood seedling or sapling may not be seen for what it will become. Thus proto-animal rights laws need not much resemble animal rights. Banning whole areas of exploitation such as animal circuses are by contrast very strong forms of proto-animal rights laws.<sup>18</sup> *Securing maximum proto-animal-rights law* I argue is a goal of progressive animal rights law.<sup>19</sup> Animal rightists must as surely be concerned with proto-animal rights law, even in certain cases modest degrees of it, even as farmers are concerned with proto-forms of plantlings before the harvest. Francione's proto-rights require *eliminating* suffering when suffering is an issue, but my proto-rights view allows substantial *reduction* of suffering as well. I will illustrate this contrast with examples later on.

I speak of animal suffering-reduction in the *shortest* term because animal rights will displace “welfarist” laws as soon as possible. I do not embrace “gradualism” in the sense that there is a right and proper series of stages short of animal rights to go through—by all means let us skip stages as we can. I argue that two single-minded approaches are morally indefensible in light of my arguments: (1) calling for animal rights—or parts of them—without suffering-reduction,<sup>20</sup> and (2) Bernard Rollin's profession of animal rights as a personal ethic but giving up on its political advocacy because he deems it to be a hopeless cause at the societal level.<sup>21</sup>

It may be objected that we do not propose abolishing child abuse by degrees or asking to make it merely “kinder.” However this is not an analogous case, since there are already laws and norms against such abuse. Even calling for the norm in child abuse cases means calling for its end, since that form of violence is normally unacceptable in modern societies. But calling for “normal treatment” of animals merely invites further abuse of these beings. Normal treatment of farm animals means confinement, tail-docking, other cruel treatments, and death at the slaughter-house. People can in effect shut down child abuse by exposing it, but exposing factory farms does not now lead to their closure. Ongoing calls for eliminating animal abuse still go largely unanswered. Anti-speciesism is morally right as a general ideal, but that ideal rightness does not make anti-speciesism a practical possibility to realize in the legislative shortest-term.

If we confuse the long-term and the short-term, and ultimate and subordinate ethical principles, there is a superficial appearance of inconsistency: acting in breach of animal rights. But there is no deep inconsistency if one acts in accord with a higher principle of moral rightness in the long- and short-terms. Now if speciesists attempted to be rigorously humane the world over, we should simply advocate strong (proto-)rights flat-out as the best thing for animals, but that is lamentably far from being the case. Francione may have

outlined a progressive insistence for later in history. What is best for animals is partially time-sensitive, for although abstract ideas of the best may to some extent involve timeless absolutes, concrete realizations of the best are dependent upon what is available in specific contexts.

Part of my framework is that full animal welfare can be a positive thing. Indeed, I argue that we should eventually, once speciesism is abolished, entrench a right to welfare (in the true meaning of this last word, without quotation marks) for humans and other animals. It throws out the baby with the bathwater to not designate a right to welfare out of misguided opposition to speciesist forms of “welfarism” as temporary measures, or out of opposition to utilitarianism (the purpose of which is to maximize welfare in a sense). It can be appealingly suggested that animals have a right to welfare if they have a right to respect. If we only grant animals a right to life and freedom, they may live long and roam widely but still be abused and made miserable. Welfare or well-being is rooted in the idea of the good. No one can respect anyone while negating their good.<sup>22</sup> It would be odd to advocate an ethic that is unconcerned with the good of animals. There are degrees of well-being, and merely abolishing factory farming, while “welfarist” in a speciesist sense, would nevertheless bring the oppression of welfare that much closer to zero than no change at all. Something is often better than nothing.

We cannot disregard animal welfare any more than we can morally disregard human welfare. There is a continual storm over human welfare issues. The issues of a minimum wage, unemployment insurance, welfare payments, disability support, old age pensions, standards for treating prisoners, arbitration of labor disputes, job security, state-sponsored medical care and so on often have human welfare as part of their justification. On my reasoning, it would be speciesist to allow for human-centered, *truly* welfarist legislation but to disallow non-speciesist welfare in the case of other animals.

By contrast, Francione’s negativity about animal welfare is revealed when he takes exception to the following statement by abolitionist Zoe Weil: “Animal welfare *does* mean something good and positive.”<sup>23</sup> He just objects to this statement in passing, without indicating what is wrong with it, even though he himself explicitly supports what he calls “micro” animal welfare (see below). Perhaps he has a point if he insists that we should say that animal welfare *can* mean something good and positive, but it *does* not necessarily—depending on the sense of “animal welfare” being used. Weil might rightly respond that welfare always does mean something good and positive if we are discussing *true* animal welfare.

Francione is erroneous when he writes that “no form of animal welfare has ever challenged the basic assumption that animals are somehow ‘inferior’ to humans and that humans are justified in exploiting animals,”<sup>24</sup> and also in his claims that “animal welfare...though it comes in many different shapes and sizes, always endorses some version of instrumentalism, or the treatment of nonhumans exclusively as means to human ends.”<sup>25</sup> An animal right to welfare in a non-speciesist society easily belies Francione’s statements. He also points out that since the enemies of animal rights support animal “welfare,” therefore we should distance ourselves from that idea.<sup>26</sup> This commits the genetic fallacy of rejecting something based on its origin. We do not reject the use of money because Nazis used it. In fact it would be a travesty to leave the defining of “animal welfare” to the enemies of animal rights. Crucially, Francione fails in these above-cited remarks clearly to distinguish different senses of “animal welfare.”<sup>27</sup> Dunayer makes the point that if we have to choose between animal liberation and merely improving conditions for animals we should

choose the former.<sup>28</sup> I agree, but that is a false dilemma. I have argued that in some cases, strong “welfarism” in the shortest term *and* animal liberation in the shortest term is best.

### III. Short- and Long-Term Effectiveness: The Example of Sweden

It is useful to distinguish between short-term and long-term efficacy. The two are ideally linked: short-term effects at their best will promote, or at least not negate, long-term goals—in this case animal rights. Short-term effectiveness means the aptitude to be *successful* in achieving the best possible immediate results while also striving for long-term goals. I do not think it is up for debate that in an intensely speciesist society, “welfarist” suffering-reduction law is more likely to be achieved in the short-term than Francione’s more ambitious proposed measures, which we will see aspire to either wholly protecting an animal’s interest (although actually, his proposals often amount to less than that) or abolishing a facet of animal exploitation. For Francione to argue that his proposals are more likely to be successful in the short-term, he would have to say either that achievability is not a factor in short-term effectiveness, which is unintelligible, or that his proposals are more realizable in the short-term, which is unbelievable.

Now for long-term effectiveness. Promoting kindness I argue is not a stumbling-block for animal rights. On the contrary, animal rights seems *ridiculous and contemptible* in an unkind society. In countries with no animal welfare laws, such as China,<sup>29</sup> there are few vegans and animal rights sympathizers.<sup>30</sup> Therefore there are fewer animal rights law advocates. Therefore, straightforwardly, there is far less democratic potential for animal rights law in a cruel culture. Kindness promotes a concern for animals’ goods such as freedom and well-being, and rights would protect similar goods. Therefore the opposite of animal rights is not animal “welfare,” but subjecting animals to unmitigated misery such as commonly occurs on factory farms or in nations without a broad culture of animal concern. Any significant kindness can enhance both the lives of animals and, to some extent, a culture of kindness towards animals. Animal rights advocates need to believe that kind—indeed very kind—culture is possible, although admittedly great social, economic, and political changes may be necessary first.

Yet Francione argues that the “kindness” approach of “welfarism” is futile. He writes that “because animals are property, the prohibition on the infliction of unnecessary suffering is wholly without meaning.”<sup>31</sup> However pragmatists might point to the example of “welfarist” banning of factory farming in Sweden which is meaningless neither semantically nor in terms of its significance for animals. Sweden banned anti-biotics,<sup>32</sup> which are a staple feature of factory farming since animals cannot survive in intensive confinement conditions without such drugs, and indeed the drugs are also used as de facto “growth-promoters.” As a result, Swedish law mandated that pigs have more room, better surroundings, less stress,<sup>33</sup> and straw bedding.<sup>34</sup> Sweden also banned the farrowing crate<sup>35</sup> which cruelly confines sows while they suckle their offspring. In general legal “welfarist” changes in Sweden mean that animals spend more time outdoors, have toys for mental stimulation, and have greater stall space.<sup>36</sup> As well Swedes have banned battery cages for hens<sup>37</sup> and *foie gras*<sup>38</sup> (force-feeding ducks and geese to promote a fatty liver). Sweden has also outlawed the leg-hold trap<sup>39</sup> and has signaled its intent to prohibit “fur farms.”<sup>40</sup> This last example shows a “welfarist” culture making progress towards banning animal exploitation. These laws were enacted for “welfarist” reasons. Francione can rightly point out that his proto-rights might support some of these bans such as banning the leghold trap.<sup>41</sup> He notes that “incremental measures that are acceptable to welfarists and to rights advocates may very well overlap.”<sup>42</sup> So why is

it that Francione's proposal is part of a potent movement for animal rights, but an astonishingly similar ban from a "welfarist" is futile?

Francione proposes various reasons why "welfarist" initiatives cannot work for animals so long as they are regarded as property. Still, he does not say that only rights advocacy leads to rights since instead he favors strong proto-rights as a precursor to full rights (elaborated in section IV). I will summarize his reasons why "welfarism" is useless in his view:

- (1) Such laws would create complacency that animals are well-treated and thus lead to more animal consumption;
- (2) Empirically it cannot be shown that "welfarist" laws have been good for animals;
- (3) So long as animals are property, only the owners' interests will be considered, such including how to exploit the property more efficiently;<sup>43</sup>
- (4) Property (in this case animals) cannot have legal relations with owners or other property, so animals as property cannot have rights against mistreatment;<sup>44</sup>
- (5) "So long as animals are viewed as property, if they have no market value, then they have no value at all,"<sup>45</sup> he argues, giving the poignant example that if a veterinarian negligently kills a cherished family pet, only the fair market value of the animal can be recovered<sup>46</sup>;
- (6) A pen cannot have rights against its owner and animals are also property, so animals likewise cannot have their interests balanced against owners' interests<sup>47</sup>;
- (7) there is a presumption that "animal property" owners "look after" animals or they would not be able to rear them for use<sup>48</sup>; and
- (8) Animal "welfare" laws are not adjudicated in the animals' favor, penalties are minor, judgments in favor of animals are typically not enforced, anti-cruelty laws require proving cruel intent (it is almost impossible to prove a mental state)<sup>49</sup> and many species of animals are legally exempt from lawful protection.<sup>50</sup>

I think that Francione has not demonstrated the futility in question given his reasons. Leaving aside (1), the complacency and increased consumption issues, for section VII below, we can respond to point (2) by way of the empirical example of the Swedes abolishing of factory farming, which occurred despite the pleas of animal proprietors; these measures were not passed using his proto-rights model but rather "welfarist" principles. The last example also disproves his contention (3) that only human interests are considered while animals are property since the animals' own interests are considered, such that animals are not merely subject to the will of owners. Moreover, it shows (4) possible legal relations between humans and animals-as-property, and debunks point (5), since animal interests are protected and valued in Sweden even if it means less profit for farmed animal industries. His pen analogy (6) is misleading since pens have no interests, but welfarists at times recognize interests in the case of animals.<sup>51</sup> The Swedes did not presume (7) that owners "look after" their animals. In a country with a greater kindness culture, a pragmatist would expect, as regards (8), that animal welfare laws may become more fairly adjudicated, penalized and enforced. Fewer if any species of animals would be exempt from legal protection; such a culture could also reject proof of mental state requirements for anti-cruelty statutes. Francione cites many important complaints against contemporary animal law that do not demonstrate so much the futility of reform as the utility and *urgency* of needed reforms. He writes: "The status of animals as property renders meaningless our claim that we reject the status of animals as things,"<sup>52</sup> but again, no such pessimistic exaggeration paralyzed the minds of the Swedes. Francione defines *legal welfarism* as that "which comprehends animal welfare as that level of animal care that will efficiently facilitate the exploitation of

nonhuman property.”<sup>53</sup> For example, animals will be kept alive and “well” enough for slaughter. Francione’s concept of legal welfarism is a clear misnomer, however. Swedish legislators succeeded in passing laws that constrained profit-making by protecting animal welfare to some extent.

The European Union’s abolishing of the battery cage will no doubt not respect hens’ full liberty of movement via, in effect, a lovingly designed bird sanctuary (only loving or at least “most caring” regard I find fully respects interests). Francione’s proto-rights seem to require respect for full liberty of movement. Yet it is *better for animals* to ban battery cages now—which is part of my version of animal rights pragmatism. As argued above, even “welfarist” laws can conduce towards animal rights by shoring up a culture of kindness rather than cruelty—an objective that is hardly futile. A culture of cruelty cannot take animal rights seriously, and there are more animal rights activists and advocacy groups in countries with laws requiring “animal welfare” in some form. We are by no means at the end of any test period which has shown the failure of advocating animal “welfare” laws as a partial means towards animal rights, especially since animal rights advocacy itself is relatively novel in historical terms. There are forward and backward strides, but overall one would expect incremental progress along animal rights lines in a kinder culture rather than a less kind one. Animal rightists *more than anyone else* need to believe that progress in all areas of animal law is possible, although euphemistic “humane” standards (as in the use of deceptive language) and lack of enforcement, for example, can present a discouraging picture at times.

Still, just because I favor laws that have the most concrete benefits for animals does not mean that I have to advocate the *language* used in certain laws and policies. Having long-term goal of *animal rights* means a certain dissatisfaction with suffering-reduction laws. Whole Foods is a commercial food chain operated by a vegan, John Mackey, who sells what is called “humane meat” using so-called “compassionate standards” for “meat production.” While legislatures cannot be made to pass animal rights law in the short term, nothing compels animal rights supporters to call meat-eating “humane” or “compassionate,” even if intentions along these lines exist.<sup>54</sup> Co-option of animal rights discourse need not be an option. We need not agree with wording of laws, but in any event the concrete short-term and long-term implications are more significant for animals than the words.

To be clear, animal “welfarist” laws do not play a “causal role” in abolition as Francione claims supporters of such laws believe. I do not know anyone who thinks that just creating “welfarist” legal reforms will somehow magically bring about abolition all by itself. Indeed, “welfarist” reforms do not even contain in them anything directly related to abolition, and therefore such laws are obviously insufficient *causes* to bring about the destruction of speciesism. Fundamentalists tend to consider causation in black and white terms. So if “welfarist” laws do not “cause” abolition, they are prepared to reject such proposals as doing more harm than good.

Here I make a relevant distinction between causation and what I call “conduciveness.” In causation, if A causes B, then A being present ensures that B will come about. In conduciveness, if A conduces to B, then A may make it more likely that B will occur, *in conjunction with other factors*, but does not guarantee its occurrence and in many cases one can have A without B occurring, or A at first leading to an improvement in the form of B and then a regressing even to a state worse than A. I am not saying that so-called “welfarism” causes abolition, then, but that “welfarist” norms *favorably influence* abolition to grow as I have argued above, like good conditions for growing a plant. Sunshine, water, air and soil do not *cause* a plant to be—these conditions can exist without any plants—but are *part* of what favorably conduces towards growth. A plant could still suddenly die of drought,

but this does not change the fact that the conditions aforementioned are generally favorable to plant growth. The plant can only come to be in a place by appropriate seeding or transplanting. Radical<sup>55</sup> abolition can only be caused by abolitionist tactics, not only by the “sunshine” of kindness to animals.

According to the principle of sufficient reason, a politically distinctive demand for abolition must eventually move the body politic to abolitionism for the cause to succeed. Abolition needs to grow in people’s minds using the seeds of education and to be transplanted into the minds of others. Conduciveness is admittedly a bit of a hit and miss matter. Still, it is not blind faith but what *tends* to work pragmatically that makes one put stock in what is conducive. Textbooks do not “cause” learning but often conduce towards it in concert with other factors. I have clearly argued above how “kind culture” is more conducive to animal rights and how unkind culture is conducive to the absence of animal rights in the long term.

#### **IV. Francione’s Program of Incremental Reform Based on Proto-Rights**

We now turn to Francione’s proposed program for acceptable legal changes for animals which incorporates both ethical principles and strategies for effectiveness. Although Francione fails to show that “welfarism” does not work, he nevertheless advocates incremental reforms based on what he calls “proto-rights,” which are supposed to have moral integrity in contrast to “merely” affording less suffering for animals. So Francione does not criticize activists for falling short of animal rights in the law but rather for failing at least to institute proto-rights in his sense. In fairness, he states that one can reasonably abstain from any sort of legal initiatives at this point in history.<sup>56</sup> Rather, one can mobilize to educate and engage in protests and boycotts,<sup>57</sup> but especially vegan education.

He notes that animal rights advocates will not gain “insider status” with governments and will not be taken seriously as reformers because they are too radical.<sup>58</sup> He calls insider-status-seeking “counterproductive” because it would mean having to give up animal rights advocacy,<sup>59</sup> which he calls essentially an *outsider* position. This need not be the case, however, since one can massively advocate animal rights in the short-term for individuals and animal rights law in the long-term as PETA does. He predicts the animal rights movement will lose its radicalism in proportion to how much it seeks “insider status.”<sup>60</sup> This implies a distancing from the entire legislative process.

He states that legal reform must be concerned with the interests that animals would have if they were no longer considered property,<sup>61</sup> which go beyond the “welfarist” interest in reducing pain and suffering.<sup>62</sup> Francione’s program seeks to “abolish the institutionalized exploitation of animals, the treatment of animals exclusively as means to ends,”<sup>63</sup> and insists on a “claim against *instrumental treatment*.”<sup>64</sup> Francione characterizes a right as a prohibition imposed “not to interfere with the right-holder’s interest protected by that right.”<sup>65</sup> Examples of interests that may be protected by rights which Francione discusses are bodily integrity and liberty of movement. He gives no complete list of interests to be protected by rights. So his proposals must be consistent with the inherent value of animals and not merely make the exploitation of animals more profitable, and the measures must not involve a substitute form of exploitation.<sup>66</sup>

Important to Francione’s proto-rights thinking is that a *whole interest* must be respected. So for example confining fewer hens to a battery cage is not consistent with a hen’s “freedom of movement...appropriate to their species.”<sup>67</sup> Also, he rejects restricting vivisectionists from doing experiments with a certain rating on a “pain scale” since that “includes the implicit judgment that some forms and amounts of pain are acceptable.”<sup>68</sup>

Another acceptable ban would be “a complete ban on experiments that cause pain in animals without complete and effective pain relief,”<sup>69</sup> which would *completely* respect the interest in not feeling pain. Now this would permit vivisection *with* anesthetics, violating bodily integrity, but he is only suggesting the ban completely protects one interest, in not feeling pain, not that it ensures all interests protected by rights. I add there would also be acute psychological or emotional pain resulting from confinement in laboratories— anesthetics cannot remove all pain. He would approve of banning dehorning and castration of bulls,<sup>70</sup> and while this would not completely protect the interest in bodily integrity of the bulls (these cows might still be branded for example and will be sent to slaughter), and thus may be seen as self-contradictory, it may still be consistent with his emphasis on banning particular activities or behaviors and his concern to prohibit insults to bodily integrity by concrete increments.

Other examples include banning vivisection involved in products-testing and drug-addiction experiments.<sup>71</sup> Here again no interest of animals is completely guaranteed as in true rights, since other experiments would be allowed, but proto-rights proposals may be seen as consistent with achieving increments against animal exploitation or instrumentalization in a different way: a part of that exploitation itself is eliminated. So although Francione does not explicitly distinguish between these options, there are two ways he seeks to make legal increments against animal exploitation: (1) by prohibitions consistent with a complete protection of some interest(s) that rights would respect, e.g., freedom of movement; (2) chipping away at *kinds* of exploitation, e.g., drug-addiction experiments, although exploitation is not ruled out completely.<sup>72</sup> So Francione at most protects whole interests only in a loose sense since he might only do so with respect to proscribing some practices within areas of exploitation (e.g., dehorning bulls) but not others, or with respect to banning some areas of exploitation (e.g., commercial products testing) but not similar kinds of utilization (e.g., medical vivisection).<sup>73</sup> In any event, Francione’s proto-rights are justified not only as an efficient means towards true abolition, but as being of constitutive value by achieving a piece of abolition in the present.

It may be thought to be speciesist to support the Great Ape Project, or according rights only to some apes, since socially, these animals will be preferred on speciesist grounds such as resembling humans in various ways. However, although this outcome would be inconsistent with animal rights, it may accord with *imperfect* proto-rights, because again a kind of exploitation is ended. Francione has since withdrawn his support of the Great Ape Project in early 2007 on Vegan Freaks radio since he believes it would use speciesist criteria of personhood. He supports pursuing great ape personhood at a later time when sentience can be used as a criterion. By then, I think, society would already accept animal rights. He is giving up an important achievable increment that is consistent with abolishing an area of animal exploitation, a general idea that he now accepts even if other speciesist exploitation persists. Here he is inconsistent, unpredictable, as well as spurning what is best for animals in the short-term. Asking for too much conduces not towards what is best, but at most leads to “too little, too late.”

Francione proposes the following criteria for the incremental eradication of animals’ property status rather than an incremental reduction of pain and suffering.<sup>74</sup> He intends this platform as a “conceptual rallying position”<sup>75</sup> for animal rightists:

(i) An incremental change must constitute a *prohibition*, meaning that it must prohibit some reasonably identifiable behavior or a particular practice<sup>76</sup> since merely demanding that animals be treated “humanely” or without “unnecessary suffering” has no content and “no

one is under any obligation to refrain from any particular action”<sup>77</sup> and in that case the property owners’ interests will normally prevail. Although not a true right, the proto-right prohibition would entail definite protection like a right.<sup>78</sup> He reserves “prohibitions” for these short-term incremental goals—which also meet criteria detailed below—and “abolition” for the long-term goal of animal rights.<sup>79</sup>

(ii) The prohibited activity must be *constitutive* of the exploitive institution. It might be objected that banning dehorning is not constitutive of animal agriculture because the latter can carry on without dehorning, but again he is targeting particular practices with good reason, so what is “constitutive” of animal agriculture for Francione’s purposes will be particular practices rather than what is essential to any or all animal agriculture.

(iii) The prohibition must recognize and respect a *noninstitutional animal interest*. By “noninstitutional interest,” he means that there must be a protection of the animal’s interests that goes beyond merely maintaining the animal so that he or she can be (more) profitably exploited. Noninstitutional interests are those interests that the animal would have if not reduced to the status of property. For example, avoiding injury to animals just so that meat carcasses are not damaged is insufficient.<sup>80</sup> The “wise use” of animals is not enough, and typically, there will be an additional cost to the owner of the animal.<sup>81</sup>

(iv) Animal interests cannot be *tradable*, which means that the animal interest cannot be overruled or “balanced away” by a human benefit such as profit or use-value<sup>82</sup> such as slaves’ interests being ignored “whenever they conflict with the interests of their master.”<sup>83</sup> Finally,

(v) The prohibition *shall not substitute an alternative, and supposedly more “humane,” form of exploitation*. An example would be forbidding vivisection on dogs and providing that pigs be used instead which would be speciesist<sup>84</sup> and be a “moral conflict with rights theory.”<sup>85</sup> The only exception to substitute exploitation could be an alternative arrangement that eradicates an activity constitutive of institutional animal exploitation through the full recognition of animal interests,<sup>86</sup> e.g., a fully generous hen enclosure. Not substituting exploitation is crucial since otherwise exploitation continues in a regulated or reformed way, and there is no chipping away at exploitation itself by taking out a whole piece of it.

He warns that these criteria are imprecise<sup>87</sup> and “imperfect because none will succeed in securing the basic right of animals not to be regarded as property.”<sup>88</sup> Rather he seeks “to approximate some moral idea in a sensible way.”<sup>89</sup> Primarily seeking to act for *ideas* rather than sentient beings is actually central to what he is attempting as I have argued in II. Still, his strategy allows an alternative to simply demanding an end to all animal oppression. Francione writes: “the basic right not to be treated as property is a right that does not and cannot admit of degrees.”<sup>90</sup> Yet he speaks of “trying to chip away at the property status of animals and move in the direction of establishing their personhood.”<sup>91</sup> It may seem superficially inconsistent that the right not to be treated as property is not a matter of degrees and yet you can chip away at it—are not the “chips” themselves degrees? Francione can reply that rights are not a matter of degrees but proto-rights are. The entire right not to be considered property would include a number of subsidiary rights, e.g., freedom of movement and bodily integrity, etc., being protected at the same time. That is an all-or-nothing logic. But one can still chip away at property status by guaranteeing a single interest such as liberty of movement, even if one does not protect all of the interests that full animal rights would provide for.

We must be careful not to object to Francione's legal proposals because they are "welfarist" in his sense of merely regulating animal exploitation without abolishing it, or treating animals more "humanely" while instrumentalizing them. It is true that the animals are treated better, and there is no wholesale abolition. However, he does seek to contribute immediately and in the long-term to abolition with the particular prohibitions that he sets out, and also to strongly recognizing animal interests so that sentient beings are not treated as mere instruments. He does not pretend to perfect abolition or de-instrumentalization, but only to imperfect increments of a very particular sort.

## V. Protecting Whole Interests: Would-Be Justifications and Objections

Francione oddly does not make complete interest-protection an explicit part of his five criteria for incremental reform, although we have seen it prominently figures into his thinking. Indeed, the issue of whole-interest-protection seems to crystallize the key area of contention between animal rights pragmatists and the fundamentalists who follow Francione. Both agree to proposals that are imperfect compared to animal rights, and the main issue is a contest over the size of "pieces of rights" that are acceptable. Noninstitutional animal interests are to be wholly respected according to Francione. Eliminating practices constitutive of exploitation and restricting against substitute forms of exploitation both ensure that specific types of insults to interests are gone and not replaced by practices that merely degrade the insulted animal interest(s) less. Proscribing "tradability" of interests does not allow degrading of an interest in question to any degree for human gain. So whole-interest-protection interweaves with his criteria of incremental reform.

Francione also devotes scant attention to *justifying* this key part of his thinking. He seems to take it for granted that his interpretation of animal rights law is uncontroversial:

I think that these aspects of rights theory are relatively uncontroversial—not, of course, in any absolute sense, but rather in that anyone who identified herself as an advocate of animal rights would probably agree that these are key aspects of rights theory and with the content of these assertions.<sup>92</sup>

Among the assertions referred to here is that "we cannot endorse the sacrifice of fundamental interests of some animals today in the hope that other animals tomorrow will no longer be treated as the property of human owners."<sup>93</sup> Apparently, not sacrificing interests means respecting whole interests. However, this simply begs the question. Calling one's own position "uncontroversial" does not preserve it from controversy.

Consider now his claim that "the rights advocate cannot endorse the sacrifice of fundamental interests of some animals today in the hope that other animals tomorrow will no longer be treated as the property of human owners."<sup>94</sup> Suppose there is a "welfarist" law proposal prescribing larger cages. Pragmatists might intend this measure just for the sake of the animals now suffering under exploitation. The new law need not be seen as treating contemporary animals as a means to the end of serving future animals. Not treating others as a mere means, the core Kantian idea here, entails treating someone with substantial respect for their interests. However, suppose that demanding 100% of an interest protection results in no legal progress. This would not serve the interests of present-day animals. Indeed, *there is no better regard for the interests of an individual than doing what is really best for him or her at any given time.* More than the best possible no one could reasonably expect. So the "welfarist" need not treat animals today as a "mere means"—on the contrary.

A variation on Francione's assertion is that it is wrong "to disregard the rights of animals *today*...in the hope that some other animals will have rights *tomorrow*."<sup>95</sup> Pragmatist support for "welfarist" measures does not exclude animal rights. Animal rights pragmatists

also advocate animal rights today. Thus they do not “disregard” these rights. Asking for animal rights to be legislated a.s.a.p. makes a demand not just in the long-term but in relation to the present. However, pragmatists also have regard for what they perceive as a higher principle of moral rightness: advocating what is really (and not just conceivably or imaginably) best for sentient beings. If pragmatists advocate “welfarist” suffering-reduction laws this does not “sacrifice” animal rights in time frames in which such rights are not ours to gain in the first place.

Recall his claim that a pain scale which only rules out extreme pain is wrong because he said that would imply that other degrees of pain are acceptable. Thus the whole interest in not feeling pain must be legally protected. However, this criticism can redouble back on Francione’s own arbitrary and incomplete securing of protection for animals. If cows are not dehorned but still branded, does that not on this logic imply that branding is acceptable? Or if the interest in freedom of movement is respected but bodily integrity is not, does that imply that violating bodily integrity is condoned? Or if one area of exploitation such as drug addiction experiments is banned and others are not, does that imply that these other areas are legitimate? Francione cannot self-consistently deploy this argument against an incomplete protection of interests since his proto-rights proposals also leave interests unfulfilled. He does not approve of areas that are unprotected but neither do many animal rights pragmatists. So Francione’s strategies for justifying protections of only whole interests fail. Perhaps he rather has in mind an implicit justification which he does not come out and state. Fundamentalists may think it is self-evident that preserving whole interests are what rights do, and that rights are what we ultimately act for, and so anything else is wrong. Yet the findings of section II. above show that (as with so many aspects of this whole discussion) the case is not so simple.

Now here are 10 objections to his insistence on the protection of whole interests:

(1) Partial relief is *in the interests of animals* if entire relief for the frustration of a given interest is unavailable. *Rights themselves have no interest whatsoever in their own fulfillment*—they are implemented exclusively for the sake of sentient beings. Crucially, Francione agrees with Singer that “it would be better for ‘food’ animals if we adopted free-range farming and discontinued factory farming,” but Francione does not support all aspects of eliminating factory farming, such as replacing tiny enclosures with more generous ones, because he is “trying to approximate [the] moral idea”<sup>96</sup> of rights. He prefers what is “better” for rights in the unrealistic, timeless abstract to what is better for animals by his own admission. And this even though rights or strong proto-rights are often not even a *possibility* in the foreseeable short-term, although what is really better for animals might be possible. If animal rights cannot be obtained in concrete reality, then they are not a “better real option” if it is not a real (as opposed to merely conceptual or imaginary) option at all, or the best that can be realized in the immediate short-term. Rights are only part of what is really better if they are part of what is possible in reality, which they may be one day for legislatures but maybe not for now. Those who do not separate what is really better from what is conceptually/imaginably better are partly living in a fantasy world when it comes to reckoning the nearer future. We should not lose sight of reality in an obsession with ideals. While rights may one day help fully to secure true animal welfare by eliminating unnecessary suffering, reducing animal suffering short of rights now makes animals better off too. A larger hen enclosure respecting 80% of an interest—which runs afoul of Francione’s standard—can be *much* better for animals than continuing utter disrespect, as in factory farming. We must not treat animals as “mere means” towards animal rights, or omit to

secure their interests because we try misguidedly to serve timeless abstractions as wholes above all—like Plato’s Forms—more than animals. That is what Francione in effect does.

(2) Francione might think that rights activists by nature demand *strong* protection for prospective rights-holders, and whole interests are stronger than parts.<sup>97</sup> However, there is nothing weaker than futility. It is much stronger to achieve substantial progress rather than none at all in the short-term. I additionally have argued that unkind culture delays in precipitating the absolutely strong long-term goal of total liberation.

(3) Francione already accepts partial fulfillment of rights by only respecting some interests named by rights and not others (e.g., freedom of movement but not at all bodily integrity—part utopia and part utter distopia), or by only protecting rights-interests somewhat by prohibiting some practices that contravene the interest, say, in bodily integrity, but not others (e.g., by prohibiting dehorning but not branding of cows). If he already accepts these partial fulfillments of interests, why not a partial fulfillment in the sense of “merely” reducing suffering? There seems to be arbitrariness in accepting some partial fulfillment of interests but not others. Parts of interest-fulfillment are also part of rights, only they are smaller parts that may be more difficult to conceptualize precisely than the simpler formula of whole fulfillments of interests or whole lack of fulfillment of interests.

(4) Francione’s proto-rights can protect one interest but leave another completely unprotected (e.g., bodily integrity). So he will tolerate 100% of an interest not being respected. However, a pragmatist might support a “welfarist” measure that guarantees 80% of freedom of movement for hens. That implies the birds will lack 20% of free movement. Yet oddly, this missing 20% (which he will not abide) is a lesser imperfection to tolerate than the 100% (which he plainly accepts). I suppose he might reply that he does not accept partial fulfillment of interests because that is less like full rights-protection. Yet preserving part-interests also stake out part of rights-protection, and doing without the 100% is even more unlike rights protection. In any case, we cannot as rational agents ultimately serve rights, but only sentient beings. Progress for sentient beings can be assessed by the degrees to which their interests are served. “Welfarist” progress may not be part of rights in the way that one right is part of all rights, but generally animal rights cannot be had in the short-term anyway.

(5) Admittedly his way of falling short of pure animal rights may seem “neater” (i.e., more all-or-nothing) rather than going by degrees of interests that are ideally protected by rights, but rights themselves often progress by degrees of respecting interests anyway. Say the unemployed have a right to support from a modern welfare state. That support will fluctuate by degrees as different amounts and periods of compensation are legislated. So it appears dogmatic to declare that interests protected by rights cannot be a matter of degrees. A sophisticated understanding of rights already accepts full rights as protecting degrees of interests in the real world of political economy, which intrinsically involves negotiation. Let us say, then, that full rights-recognition refers to a range-property, which means that a set of possible protections may be acceptable. Not only proto-rights but rights themselves *already* involve degrees of protection of interests.

(6) We can use various analogies to illustrate that it does not make sense to disregard degrees of what is of value. Francione’s denial that we can make legitimate progress via protecting

degrees of interests associated with animal rights is like stating that, in assessing available water rations (partly analogous to precious animal welfare), only full bottles of water should count. Partly filled bottles are unworthy of either practical or theoretical attention. However, the water in the partly filled bottles may collectively be greater than the total quantity in one or even all of the full bottles. Likewise, partial recognitions of many interests may be “greater” than whole interest recognition in many cases in contemporary animals law (in which whole interests of animals are rarely respected). Maximal progress considers *all* degrees of progress, just as maximal savings in one’s bank account considers “small change.”

(7) Francione seems to assume that only laws containing part of animal rights in some sense—with full protection of interests—will lead to animal rights law, and that this will not happen with mere “welfarist” laws. However, this assumption is falsifiable. All that is needed for animal rights law is democratic support, or constituents who empower representatives to create such laws. A majority can create *any* kind of law, for better or worse. Thus far in history, our culture has given rise to many animal rights supporters *without* anything like strong proto-rights on the law books. Therefore, plainly, we can grow animal rights supporters without such laws. Laws are not induced mechanically due to the state of preceding law, as though people are mass-hypnotized by law books—which most people will never even read. Rather laws in a democracy are ideally determined by *people*. Saying we cannot go from, say, 70% of an animal’s interest being protected to 100% is just saying that people will never be convinced of animal rights if we secure animal “welfare.” This way of thinking seems unsupportable, as my next point will show.

(8) Francione would say that protecting 70% of an animal’s interest would be unacceptable because then no further progress would be made (soon enough) from there. So he would not advocate making things better for animals by a more modest increment. However, positive legal change for animals is largely a matter of public *motivation*. We need to be clear about what complete respect for animals would involve. It would involve: (a) protecting them against bad/harm, and (b) enhancing their good/benefits. Animal rightists to succeed need to inspire motivation to eliminate harms and to create great good for animals out of an abhorrence of harm and a love of the good. Respecting 70% of liberty of movement might eliminate harm but might not be as beneficial as possible. If we are **successful** in creating motivation for animals rights by inculcating a love of the good of animals, then progress upwards of 70% *will* be possible and indeed that is the only way we could ever get to 100% respect (i.e., by motivating people to have a sufficient love of animals’ good). We can also establish animal rights motivation *en masse* sooner by cultivating a kinder culture towards animals, including through progressive legislation. If we are destined to be **unsuccessful** (which I do not believe) in creating animal rights motivation, then 70% may be the best that humans could ever manage for animals and so on that scenario we should at least secure that. Either way (and thus the same applies if we are *unsure* of our ability to create animal rights motivation), it makes sense to aim for 70% in the short-term. We should not be afraid of “welfarist” successes or aim for the best only indirectly. Part of the fear of such success is the crucial problem of complacency (which I discuss in VII, Objection 2).

(9) Francione’s insistence on “imperfection” and “imprecision” with proto-rights is rather suggestive of the imperfect fulfillment of interests too. And finally:

(10) His own protection of whole interests is very loose and some would justifiably say not even truly the case (e.g., banning de-horning cows but not branding), so he may contradict himself in demanding only whole-interest-protection. He seems at times to advocate weaker proto-rights, in which only a degree of an interest is protected, after all.

Now let us reconsider Francione's key contention that we can only call for the complete protection of animals' interests. Recall his three justifications: that his stance is "relatively uncontroversial," that we cannot "sacrifice" animal interests today for animal rights tomorrow, and that a partial fulfillment of interests implies that partial violation of interests is morally acceptable. First I found that his three justifications fail; second, I raised ten relevant objections to his principle of whole-interest-protection. Therefore his principle should be rejected for the time being—although not necessarily for the future. One day, when there is sufficient public consensus against speciesism, it may be appropriate to insist that whole-interest-protection be legislated.<sup>98</sup> Until then, though, we should aim for strong proto-rights when possible, or else the best "welfarist" measures that can be obtained.

## **VI. Further Objections to Francione's Insistence on Strict Proto-Rights**

Note that Francione objects to laws providing water to thirsty cows in slaughterhouses because that would condone animal slavery and exploitation<sup>99</sup> and presumably speciesism. However his own proposed laws, as amendments, would become a part of general agriculture laws which equally condone these same evils. So if speciesism and rights violations are still permitted, why not have a more imperfect approximation of rights through only *degrees* of protection of interests that would ideally be fully protected by animal rights?

Consider my example of a larger hen enclosure respecting 80% of the birds' interest in liberty of movement. The proposal might meet Francione's criteria (i) in that it is specific. It is not prohibiting a practice "constitutive" of exploitation, as in (ii), since it replaces the something with the same sort of practice only more generously. It respects a noninstitutional animal interest, as it costs money, as in (iii) although not fully, or not as though animals are no longer property as Francione would have it (respecting 100% of an interest). Animals interests are to some degree tradable, contrary to (iv), since limiting the size of the enclosure inevitably would take into account costs to exploiters at this stage in history. Finally, contrary to (v) this is indeed a substitute form of exploitation. The much larger hen enclosure contravenes the last four of Francione's criteria, although it reflects the good sense in (i) of requiring something specific. Yet the nature of this reform I have already defended ethically and in terms of effectiveness in earlier sections. It is only too easily possible to insist dogmatically on Francione's criteria, but it is not the most reasonable move or what is really best for animals as I have argued.

Recall that Francione considers "welfarist" laws futile to seek so long as animals are property. By the same logic, his stronger proto-rights would be even more fruitless to seek since they would be that much harder to obtain. (I am not saying his proto-rights, once achieved, would be futile in seeking animal rights—a different point.) In fairness to Francione, he seems to advocate abstaining from legal initiatives at this time in history. I argue however that such a strategy is not best for animals. Animals urgently need legislative relief right now.

Prohibitions are always negative, unlike regulations, although Francione illustrates that a prohibition can be used to secure something positive. One can prohibit that animals be deprived of water by vivisectors.<sup>100</sup> However he denies that giving treats to hens would

prohibit an activity that is constitutive of the hens' exploitation.<sup>101</sup> This seems arbitrary. Part of their exploitation and being treated as a mere means is being deprived of positive benefits, and treats, amusements, or ways of relieving boredom can make animals considerably better off, which again is my bottom line, rather than exclusively Francione's abstract model of rights-realization, as important as rights are.

Francione's program of highly restrictive incremental reforms condemns substitute forms of exploitation. Yet although he supports a ban of the leg-hold trap and would not accept a substitute of a padded trap,<sup>102</sup> the fur industry, if permitted to do so, will predictably turn to a substitute: fur-ranching. The animals and the exploiters would agree (if they were in a position to judge) that substitute exploitation is occurring in such an instance but not Francione. He writes evasively, "that the rights advocate cannot fairly be made to account for what others do to effect other types of exploitation."<sup>103</sup> He gives the example of ending child slavery in factories, noting that it would not be activists' fault if the children are forced into prostitution instead. Of course activists are not to *blame* and we would celebrate the banning of the leghold trap, but it does not alter the fact that fur-ranching may be a substitute form of exploitation *specifically* for the leghold trap: they are not relatively unrelated areas of exploitation unlike factory work and prostitution. He supports prohibiting chimpanzees being used in experiments so long as it is not specified that dogs will be used instead.<sup>104</sup> However, if experiments are prohibited for one species, experimenters will tend to use other species. Laws, their meaning, and significance have force due not only to what they say, but *what they do not say* (and thus do not prohibit). Thus certain laws which Francione approves passively encourage the substitute use of animals of permissible species.

## VII. Fundamentalist Objections to "Welfarist" Laws

Now we turn from objections to Francione's incremental reform strategies to further consider his and Joan Dunayer's objections to so-called "welfarist" laws.

Objection 1: "Welfarist" suffering-reduction laws are inconsistent with animal rights and are therefore unethical to support.<sup>105</sup>

Reply: I have already answered this objection but it may be helpful to recapitulate here: we cannot always use rights reasoning in moral dilemmas, such as in the legislative short-term, and strong proto-rights might not be the really best that can be secured for animals in all cases. My philosophy of pragmatic reforms is a self-consistent position that incorporates animal rights, and is consistent with Francione's own "burning building" reasoning. Also, since Francione is speaking of consistency with animal rights, he ought to favor not only what *causes* animal rights, but what is *conducive* towards animal rights. I have argued that current laws which permit any amount of cruelty, e.g., in factory farming, are not conducive towards kindness. Only a culture that is kind—if only by imperfect increments, such as the banning of factory farming—can be receptive to animal rights. A culture of cruelty finds animal rights to be ridiculous and an object of deprecation<sup>106</sup> and also is likely to produce fewer animal rights supporters. In summary, I have argued that Francione is inconsistent with maximum conduciveness towards animal rights. My philosophy is completely consistent with an ultimate principle of moral rightness which justifies rights themselves in the first place: what is really best, both in the short- and long-terms, for sentient beings (see Section II). Francione, by contrast, is very much at odds with this moral principle.

Objection 2: "Welfarist" laws make people too complacent that animals are well-treated.<sup>107</sup>

Reply: Warnings against complacency are well taken. “Welfarism” may afford animals only a token good. However, how complacent people remain is in large measure due to how effective animal rights activism is, and the strength of the given community’s kindness culture. The unstated logical other half of the idea that “welfare” reforms lead to complacency is the shady notion that *not* improving animal welfare will help to *prevent* complacency. That is, specifically, when people see how cruelly animals are still treated, they will not rest easy and will call for reforms—perhaps even to the extent of demanding animal rights? This implication—which fundamentalists by no means *explicitly* support—cynically uses animals’ misery as a means towards animal rights or reformism and is more worthy of a utilitarian rather than a rights advocate.

Such a position is also misguided since legal changes tend to be conservative, and *keeping* conditions extremely cruel by not acting to change them will only likely inspire a next legal phase of less cruel laws, not strict animal rights law. Francione calls for consistency with animal rights but again he does not seem to promote maximum conduciveness towards animal rights. Animal rights advocates often rely on atrocity images now, and appeal directly to human compassion. However, when factory farming is no more, cruel conditions may not be as readily apparent except at the slaughterhouse. Then extensive philosophical dialogue rather than pointing to cruelty will be necessary to make progress for animal rights. We should not use severe cruelties as our crutch or means of easy appeal. Moreover, thinking of reforms shy of animal rights as illfare-reduction rather than as securing *animal welfare* will help to combat complacency, since no one can rightly be smug about illfare as an outcome.

*Qualitatively*, it is more wrong to be complacent with a worse state of affairs, such as contemporary factory farming, than to risk complacency with a better situation reflecting “welfarist” suffering-reducing reforms. *Quantitatively*, in terms of years needed for change to occur, “welfarist” animal suffering-reduction is a likely transition-phase before animal rights. So in a society progressively moving towards a kinder culture, the sooner we bring about kindness-positive suffering-reduction, the sooner the transition to something kinder. We need to risk complacency with “welfarism” anyway, since that will *always* be a legal option or risk on the hopeful road to animal rights, so we would do well to push through this particular risk of complacency sooner rather than later. This need to go through a “welfarist” suffering-reduction phase first, before animal rights, could only fail to be the case if we could somehow “pole-vault” from abject animal misery, such as the factory farming which now prevails, straight to animal rights. This is doubtful since a culture of cruelty is structurally incapable of taking animal rights favorably or even seriously. It would be complacent indeed to believe that we could go from cruelty to liberation in one gigantic leap. Francione does not wish to leave factory farming unchanged. Still, Francione’s limited set of incremental proposals might keep the culture of cruelty continuing longer since they may be unattainable and advocating unsuccessfully would inadvertently keep conditions just as cruel for longer.

We can also use Francione’s own reasoning once again to turn the tables. Suppose, for the sake of argument, that we *can* attain his kind of proto-rights reforms. We saw that many of them overlap with Sweden’s “welfarist” initiatives such as banning the leg-hold trap. So if it is predictably objected that Swedish “welfarism” will create too much complacency, then so will Francione’s proto-rights, since they are materially equivalent in many cases. Actually the proto-rights *discourse* may provoke even *more* complacency than materially equivalent but less impressive “welfarist” laws because people might in that case say: “It is as

though even *animal rights* are being met to some extent according to Francione—so why go further?”

In terms of law, it is really the fundamentalists who are complacent, in effect, with horrendous living conditions for animals in the short-term, and legislatively hesitating over this horror, in effect, is supposed to be conducive to animal rights in the long-term. Pragmatists themselves are continuously vigilant about making the conditions as livable as possible in the short-term, while at the same time facilitating what is best for sentient beings in the long-term.

Objection 3: People will consume more animal products if practices are made less cruel, and thus more animals will suffer and have their rights violated.

Reply: I offer ten objections to Objection 3: (i) Actually, Francione’s own legislative proposals coming to pass would boost animal consumption even more, since then people would say it is almost as if animals have rights, not merely increased welfare, so we can consume animals in better conscience once again. (ii) The kinder a culture gets, the more animal consumption might one day fall off as we approach a society that upholds animal rights. (iii) Many will continue to boycott animal products on animal rights grounds even given less cruel meat, and many more may convert to animal rights given increased media attention to the cause if, say, factory farming is outlawed. (iv) Less cruel meat might be more expensive which would help to discourage consumption. (v) While more rights to life may be violated with greater consumption, there may be enhancements along the lines of, for example, welfare and liberty. And what is life for in the first place but for having a good quality of life and freedoms? (vi) We likely cannot avoid an animal “welfare” phase before animal rights as discussed above, so the sooner we may risk increased consumption temporarily before ending animal consumption with animal rights, the better. (vii) This objection implies that we can make people consume fewer animal products by keeping conditions for animals very cruel, thus cynically using the miserable animals as a means. (viii) Banning factory farming would not *create* the choice to consume less cruel products derived from animals, since such products are already available and so there is even now a risk that some boycotters’ animal consumption will go back up. Finally: (ix) The objection seems confined to a fragmentary view, whereas we can more objectively evaluate from a comparative overview. There are three broad phases here: (1) extreme cruelty (such as right now); (2) substantially reduced cruelty, and (3) animal rights. On Francione’s approach that opposes the suffering reduction phase (2) due to a supposition of increased animal consumption (among other reasons), there would be a longer phase (1) which is undesirable, and a shorter phase (3) (because we can bring animal rights about sooner as I argue through a kinder culture) which is also undesirable. Phase (2) might last about the same amount of time on his and my approaches, or maybe his phase (2) would be even longer, since if a cruel culture is more firmly entrenched after being dragged on for his reasons, then animal rights might come much later. If he ends up with a longer phase (2) as seems reasonable on my arguments, then his scenario may again might (on his own reasoning that “welfarism” leads to greater consumption) risk an overall *greater* consumption of animals, and be worse in all three phases by dragging on (2) more than need be. But even if (2) is the same length on his scenario and mine, he makes worse phases (1) and (3) as I argued, rendering his overall proposal less desirable.<sup>108</sup>

Objection 4: It is right to assist animal welfare on the “micro” level of relating to individuals, but wrong to institute animal welfare at the “macro” level of laws.

Reply: Despite his rhetoric at times noted above, Francione is no enemy of “animal welfare” per se. He thinks it is fine for an individual to give water to thirsty cows in stockyards and slaughterhouses, presumably if one happens to be in the vicinity, but it is wrong, he claims, to advocate a *law* to the effect that cows in these situations should get water. He calls promoting animal welfare on the individual level “micro” animal welfare, which he agrees with, and animal welfarism on the legislative level “macro” animal welfare, which he disagrees with.<sup>109</sup> The law would be unjust because it would supposedly “condone” animal slavery and exploitation, unlike the individual helper.<sup>110</sup>

Francione’s distinction between micro and macro “welfarism” seems incoherent or unsustainable, because if *everyone* should practice animal “welfare” at the “micro” or individual level that always adds up to a “macro” phenomenon. Perhaps “animal welfare brigades” could form near a slaughterhouse? The only remaining question is: *What kind or degree of “macro” concern with animal “welfare” may be endorsed?* The argument from dilemma reasoning holds that it is better for cows to have water in these facilities in the shortest term rather than no such improvement whatsoever. Recognizing the value in the best of sub-utopian practical options is compatible with advocating a just society on a two-tiered approach.

If PETA supports a law to provide water to these cows, it would show appallingly bad judgment or even insincerity to read this as a “sign” that PETA “truly” supports animal slavery or slaughter. PETA gives every sign of *not* approving of anything contrary to animal rights. Anyone taunting PETA that such a law “really” means that this animal protection group endorses speciesism merely betrays an ignorance of PETA. Rather, advocating such a law is a clear sign that PETA is *frustrated* in its abolitionist agenda, not that it lacks such a purpose. It is those who participate in the murder of animals who approve the killing and make it inevitable in the shortest term—no matter what PETA says—and no one else.<sup>111</sup> Francione’s own proposed amendments to animal laws would *equally* be part of laws that condone speciesism. As for the key question of whether PETA is wrongfully complicit in seeking macro laws, see again Section II, which uses a justification that is unavailable to Francione’s “condoning” since his proposals go contrary to the pragmatist principle of rightness but also contrary to his principles of animal rights and anti-speciesism.

Objection 5: Fundamentalists such as Francione charge that self-described animal rightists who support “welfarist” laws are really “new welfarists” and not, after all, animal rightists.

Reply: Francione calls “new welfarism” a hybrid position of animal “welfare” in the short-term but animal rights as a long-term goal.<sup>112</sup> He outlines five supposed characteristics of “new welfarists”:

- (i) They favor abolishing animal usage or tolerating it so long as animal interests are not devalued due to speciesism;
- (ii) They believe that animal rights theory cannot provide a practical agenda for activists seeking abolition;
- (iii) Animal welfare campaigns are pursued which are identical to traditional welfarists’ tactics<sup>113</sup>;
- (iv) Animal welfare regulations are seen as necessary and desirable on the road to animal rights, and most new welfarists see reformist measures as causally related to abolishing animal exploitation;
- (v) They believe that there is no moral or logical inconsistency perceived in “reinforcing an instrumentalist view of animals.”<sup>114</sup>

Francione uses “new welfarist” derisively, since he at times suggests a distinction between “rightists” and “new welfarists,”<sup>115</sup> and he writes that new welfarists “purport to embrace animal rights at least as a long-term matter,” as if they are not sincere about their support for animal rights. In the practice of the movement, Francione and his followers often call themselves *animal rightists* and *abolitionists* but insultingly try to deny these terms to so-called “new welfarists.” He might say rather that animal rights do not *result* from new welfarism, but anyone who supports rights, even if we generously assume, for the sake of argument, that their strategies are mistaken, are rights advocates and are to be dignified as such. Francione likens the so-called “new welfarists” to reformers who tried to improve human slavery “by reforms such as recognizing the validity of slave marriages to prevent the hardships caused by breaking up slave families,”<sup>116</sup> rather than seeking to abolish slavery altogether. In fact, escaped married slaves often took grave risks to free captive spouses, and the people cited often advocated abolishing slavery!

Now we will consider Francione’s five alleged features of activists who support animal “welfare” and will find that his description is prejudicial, unrealistic, and ultimately mistaken. He is objecting to “welfarist” laws of the sort that pragmatists would argue are better than no legislative changes at all, and therefore he is presumably keen to label these pragmatists as “new welfarists,” a label meant to embody such advocates. However I, for example, do not fulfill even *one* of his conditions for counting as a “new welfarist.”

First he claims that animal “welfarists” tolerate animal usage *so long as it is not speciesist*, but dilemma reasoning means that options are not necessarily recognized to be void of speciesism, especially if it is *impossible* to avoid such oppression. If we only have speciesist options to choose from dilemma reasoning may authorize us to recognize the best realistic option for the shortest-term, given the ultimate principle of moral rightness that I have posited as part of my pragmatist position. By way of self-contradiction, his own proto-rights amendments would also become parts of speciesist laws. Nonetheless a long-term practical goal of ending speciesism is clearly and unequivocally embraced both by animal rights fundamentalists and pragmatists.

Second, he claims that “new welfarists” say animal rights theory does not provide a practical agenda for activists to secure abolition. On the contrary, those who embrace pragmatic reasoning have insisted that advocating animal rights is *crucial* for dialogues *now* with individuals and groups and also key to the long-term goal of abolition and therefore of course such advocacy is part of the pragmatists’ “practical agenda.”

Third, he claims that animal rightists’ campaigns are “identical” to traditional “welfarism.” However, animal rightists only temporarily and conditionally recognize possible progressive merit in “welfarist” legislation, whereas traditional “welfarists” permanently and unconditionally support such laws. Animal rights advocates see such laws as *prima facie* morally wrong, unlike traditionalists who tend to see them as absolutely morally right. Animal rightists are not unconditionally “welfarist” or “anti-welfarist.” It depends on the meaning of “welfare” and the context of political action. It is not “identical” to traditional “welfarism” that PETA says animals are not ours to eat, wear, experiment on, etc. I even deny that the laws in question are truly *welfarist* and instead dub them illfare-reducing, which is hardly the same as traditional “welfarism.” Francione’s is really calling apples “oranges” and then denying that they are different.

Fourth, according to “new welfarism,” animal welfare leads to animal rights. Not only have I defended this possible link using the subtleties of conduciveness rather than the crudities of causation, I would make the further point that we legitimately can recognize laws

to benefit animals now suffering under drastic oppression, *without* any thought that these laws might directly or indirectly lead to animal rights laws some day sooner. (Conduciveness does not involve guarantees anyway.) The reform may be intended *just* for the specific animal(s) involved, or at least that may be a huge part of the reasoning. We cannot look at millions of animals in distress and dismiss them with the question: “What good is my helping you in furthering the cause of animal rights?” Again, ultimately we should act for *individual sentient beings*, as many, as often, and as well as we can.

Fifth, it is insulting for Francione to claim that “new welfarists” do not perceive any inconsistency between speciesist animal “welfarism” and animal rights. Of course they are different, as all animal rights pragmatists openly recognize. Dilemma reasoning in this case involves painful awareness that available short-term options usually fall short of animal rights. Also the *right to welfare* that I propose for animal rights pragmatism in the long-term goes far and away beyond any “welfare” available to animals under speciesist rule. However, I have argued that there is in any case perfect consistency between animal rights pragmatism and a higher moral principle than animal rights, i.e., doing what is best for sentient beings at all times. It is also worth emphasizing again that Francione’s amendments to animal agriculture and vivisection laws would “inconsistently” (according to his objection) become a part of laws that condone speciesism. Probably the new welfarist paradigm was in large part born from the thought that through complicity with wrong-doers, one becomes practically indistinguishable from those who do wrong, but I have already addressed the collusion question.

My analysis utterly undermines Francione’s characterization of “new welfarists.” Here is a case of *persuasive definition*, a fallacy in which a definition of a term is urged that is really designed to convince those who accept it of various conclusions—in this case all spurious. Even the name “new welfarist” is meant as a belittlement, because it falsely suggests a lack of difference between new and old. Thus he denies pragmatic animal rights supporters their rightful name. Not surprisingly, these faulty labels have infuriated many activists in the movement and have led to much needless division, alienation, lack of communication, and so forth. However, anyone aiming for abolition—which in the end *destroys* speciesist “welfarism”—is primarily, or overall, an *abolitionist*. And the “welfarism” recognized as progressive in the shortest-term does not define animal rightists so much as the society which may only practically permit speciesist suffering-reduction in the median-term between now and animal rights law per se. One day we will hopefully transcend the dilemma that helps to justify “welfarist” suffering-reduction laws. Come that time, when society better permits what is best for animals, we will be able to advocate (strong proto-) animal rights law as the next stage of animal law. Francione’s “new welfarist” label needs to be set aside not only as irreverent but irrelevant if we replace it with the much more apt term: “animal rights pragmatist.”

Objection 6: Joan Dunayer objects that people should not advocate anything that they are not willing to do themselves.<sup>117</sup> Therefore, if people are not willing to eat meat, they should not advocate laws that permit meat-eating but make it less cruel.

Reply: The whole point of dilemma reasoning is that one cannot stop people from doing things that one would *never* do oneself, at least in the short-term, and the question remains about how to make the best of that (optimistically) short-term and indeed the long-term. If I were a speciesist, I might be willing to reduce cruelty to animals. I also would not willingly allocate as much monies as governments do to military expenditures, but as long as that is

carried on I believe that all of those allocations should be regulated. I think this objection really addresses the problem of collusion with wrongful practices (see again Section II).

Objection 7: It is not virtuous to eat meat and a vice to endorse laws which permit meat-eating (this objection I have not seen voiced, but anticipate it anyway).

Reply: The animal rights pragmatist strategy promotes more or less perfectly virtuous laws for the long-term, promising to bring them about sooner, and as-virtuous-as-possible laws for the short-term. To be virtuous one must not collude with wrong-doing, but again I deal with that key objection in Section II. By contrast, the fundamentalist approach would fail to produce more virtuous laws in the short-term, resulting in laws that are more vicious for the foreseeable future. Fundamentalist tactics also may delay bringing about wholly virtuous laws. We should indeed promote what is as virtuous as possible for individual behavior in oneself and others, and also address the virtues and vices of legislatures in the best possible way.

Objection 8: Animal advocates should never tell people to stop short of what is most ideal.<sup>118</sup>

Reply: Animal rights pragmatists do not *tell* people to stop short: they consistently demand animal rights. It is rather the *answer* of most of the populace to stop short of this demand. The aim is rather to prevent society from falling still shorter than it would without effective “welfarist” advocacy in many cases. We need to make the best of speciesists stubbornly falling short.

Objection 9: We should not send confusing messages of animal “welfare” and rights.<sup>119</sup>

Reply: It is clear enough to aim for animal rights in the long-term and the best possible “welfarist” measures in the short-term. Rather, it would be quite confusing not to distinguish between short-term and long-term strategies. Indeed, Francione’s unclear proto-rights criteria are more confusing than simply seeking to reduce suffering.

### **VIII. Conclusion**

Animal rights law involves a long-term goal of animal rights, as fundamentalists such as Francione agree.<sup>120</sup> However animal rights pragmatism would argue that we must choose that which is closest to animal rights and best for animals in the short-term, and what is maximally conducive to animal rights in the long-term. Ushering in “welfarist” legislation plays with fire because the end result will still be morally wrong in terms of moral perfectibility, but it honorably passes on the torch of moral progress for animals. These laws are “progressive” not in the sense of making what is good better, but what is unjust less horrific. The majority of animal rights advocates the world over I suspect would be in agreement with this general strategy since something like it is deployed by mainstream animal rights groups such as PETA. A minority of fundamentalists, influenced by Francione, would disagree, and lodge predictable objections to my position, advocating strong proto-rights exclusively as permissible incremental reforms. I have considered these objections and shown that they fail to discover any flaw in the pragmatist animal rights law position. Indeed, Francione’s own ideas are logically faulty, and ironically, not maximally conducive towards animal rights. Fundamentalist objections themselves are objectionable. On the road to abolition, smaller but significant increments of progress may still be progressive in terms of both ethics and efficacy.

Francione falsely claims that hybrid theorists “sacrifice” animal rights today to gain such rights tomorrow, as if animal rights are now achievable. He insists that welfare reforms are somehow inherently futile so long as animals are considered property, ignoring, for example, the clear counter-instance of Sweden banning factory farming. He criticizes the idea that animal “welfare” laws somehow *cause* abolition. In this paper I have offered a much more realistic model according to which “welfarist” laws may *conduce towards* abolition. The concern that “mere” suffering-reduction laws for animals lead to complacency is well taken. However I have argued that pragmatists, far from being complacent, are constantly vigilant about what is really best for animals. It is also unlikely that allowing cruelty to persist without “welfarist” laws would lead to an emotional upset sufficient to ensure animal rights as the next stage of animal law, but rather just the same animal “welfarism” which fundamentalists propose to delay. Francione’s position may complacently promote pipe-dream demands that are doomed in the short-term and make matters worse by delaying long-term progress for animals. I have shown that his own proto-rights, if passed into law, significantly risk even *greater* complacency. His charge about increased consumption of animals may well be reversible. He suggests that pragmatists approve of speciesism when that is really not the case; meantime, his own proposed amendments would equally form a part of speciesist laws. He constructs a demeaning label, “new welfarist,” none of the specifications of which apply to the animal rights pragmatist position outlined in this essay. We would do well to replace “new welfarist” with “animal rights pragmatist.” All this I have argued.

Let me be clear that in contrast to legislative campaigns, it is often advantageous to promote animal rights and veganism directly, as: (1) the eating of animals is often the key area of animal exploitation to abolish in a person’s life; once this form of oppression is addressed, other areas tend to follow; (2) it can thoroughly be justified ethically; (3) it connects well with the passions and interests of animal rights supporters; and (4) it avoids the red tape, time-consumption, resistance, legislative watering-down, lack of enforcement, etc. often involved in securing animal-suffering-reduction laws. Dunayer points out that activists have limited time, money and effort, and she argues that we should devote every available minute and dollar to promoting veganism and animal rights.<sup>121</sup> This paper has shown though that sometimes “welfarist” laws win *important degrees of goods for animals that cannot be won in any other way at this time*, contribute to a culture of kindness, and are conducive towards still further progress (e.g., Sweden). That Francione in the end recommends abstaining from any legislative initiatives in the short-term indicates a paucity of legal solutions for the foreseeable future. Francione would no doubt say that he promotes what is best for animals in the short-term and long-term. However, his recommendation that we abstain from any legislative initiatives in the short-term falls short of optimal efficacy in the near- and far-terms. People can respectfully disagree on what is most effective, but my paper is intended to show at least that it is not *immoral* to argue in favor of the occasional efficacy of “welfarism.”

Francione’s insistence on (proto-)rights only might become entirely appropriate one day, once animal rights activism and indeed “welfarist” initiatives have reached a certain level of progress for animals. As said, once animals’ interests are afforded greater consideration, there might be nothing pragmatically but to advocate either strong proto-rights (perhaps much as Francione construes them) or rights full-out. Proto-rights might well precede rights, although if any legislature can skip proto-rights and go directly to rights all the better for everyone. Francione may be right but at the wrong time. That he is ahead of his time does not mean that he is of no contemporary relevance. There is a vital role for visionaries

in any idealistic movement: they give us something to look forward to. Francione's approach is not *purely* visionary though, but rather short-sighted regarding what is best for animals in the short- and long-terms. Fundamentalist and pragmatist animal rights law strategies will converge at some point in the medium- or long-term, depending on the specific context, although Francione would not agree with that assessment. In rare cases though, legal initiatives can and do happen today that meet his criteria such as the banning of circus animal acts. In general, however, we must not allow our utopian dreams for the future to cloud our judgment as to what is really best for animals today. I hope the pragmatist approach incorporates the strengths of Francione's approach for the far-future without the dangers of fundamentalism for the short- and long-terms, even as I aim to have the strengths of allowing "welfarist" reforms without the weakness of omitting to advocate abolition. Still, there may be an indirect pragmatic benefit—although as I have said there are strong liabilities—in having a spectrum of demands, including those who ask for nothing less than the full recognition of interests, so long as that is a minority and "outsider" position as it is now. That outsider stance may make it more likely that a more modest proposal might pass due to fear of—or a positive desire to meet part-way with—something more radical. In the course of history, anti-speciesist irrationality may help to balance out speciesist irrationality.

In dilemmas, it is the most caring thing we can do to try to salvage the most good. Francione wrote a key work about animal rights movement strategy entitled *Rain without Thunder*, the idea presumably being that we cannot get the rain of animal liberation without the thunder of abolitionist activism. In this he is correct. Yet reducing animal suffering also plays an important part in seeding the thunder that shakes up the establishment before the day will dawn that wholly illuminates animal rights laws.

## Notes

---

<sup>1</sup> This terminology originates with James M. Jasper and Dorothy Nelkin—see note 5 in this essay. Gary L. Francione, *Rain without Thunder: The Ideology of the Animal Rights Movement* (Philadelphia: Temple University Press, 1996), p. 40, describes fundamentalists rejecting instrumentalism in regard to animals as he does, rejecting the pragmatic view that "the instrumental treatment of nonhumans may in some circumstances be morally justifiable." On p. 26 he further characterizes fundamentalism as a position according to which rights are "accepted as a moral trump card that cannot be disputed....rights are considered non-negotiable." Francione agrees, and we will see he aims for rights wholesale but accepts piecemeal progress in securing rights in the short-term.

<sup>2</sup> Tom Regan, *The Case for Animal Rights* (Los Angeles: University of California Press, 1983); Evelyn B. Pluhar, *Beyond Prejudice: The Moral Significance of Human and Nonhuman Animals* (Durham: Duke University Press, 1995); Mark Rowlands, *Animal Rights: A Philosophical Defence* (London: Verso, 1998); Gary L. Francione, *Introduction to Animal Rights: Your Child or the Dog?* (Philadelphia: Temple University Press, 2000); Paola Cavalieri, *The Animal Question: Why Nonhuman Animals Deserve Human Rights* 2d ed., trans. Catherine Woollard (New York: Oxford University Press, 2001); Julian Franklin, *Animal Rights and Moral Philosophy* (New York: Columbia University Press, 2005); and David Sztybel, "The Rights of Animal Persons," *Animal Liberation Philosophy and Policy Journal* 4 (1) (2006): 1-37. My book on animal rights ethics is forthcoming.

---

<sup>3</sup> Szybel, “The Rights of Animal Persons,” pp. 5-6.

<sup>4</sup> See generally Joan Dunayer, *Speciesism* (Derwood, MD: Ryce Publishing, 2004).

<sup>5</sup> See James M. Jasper and Dorothy Nelkin, *The Animal Rights Crusade: The Growth of a Moral Protest* (New York: The Free Press, 1992) for a different sense of these terms. They distinguish pragmatists and fundamentalists from welfarists, too. Pragmatism in their vision may allow for human superiority although that is not what I am advocating in my version of animal rights pragmatism; still I see negotiation and legislation as a means in common with their reading of pragmatists. The fundamentalists reject any instrumentalist view of animals in keeping with how I am using the term in this essay. In my understanding of fundamentalism, rights are among the ultimate principles of moral rightness (an idea which I will soon explain) and that is not a requirement for Jasper and Nelkin. Francione, *Rain without Thunder*, p. 40, is upset that Jasper and Nelkin “without any argument whatsoever—...assume that fundamentalists, who reject instrumentalism, can use ‘pragmatic strategies,’” or can use reformist strategies although having the ultimate goal of abolishing animal exploitation. My own sense of animal rights fundamentalism and pragmatism is somewhat different (not to be confused with their sense especially of pragmatism) and relates to whether animal rights is a fundamental principle or a practical means towards a higher ethical principle as I shall make clear.

<sup>6</sup> I invited Francione to the list-serve of the Toronto Animal Rights Society (TARS) on the animal rights versus “welfarism” question. There was a brief dialogue but Francione left before much could be discussed. The contents of this exchange can be viewed in the public archives of the Toronto Animal Rights Society for mid-September, 2006. To access these archives, please contact TARS (accessible on all internet search engines). I am grateful to David Langlois, as an extension of these TARS discussions, for interpretive insights concerning Francione’s work which are no longer featured in this essay, but which led to my removing some criticisms from the paper which were based on taking Francione’s most basic right not to be considered property too literally.

<sup>7</sup> Francione claims, *Rain Without Thunder*, p. 124, that “the only attempt that I have seen thus far to employ rational discourse and argument in support of the central tenets of new welfarism” is in Robert Garner contention that the welfarist catch-phrase of only permitting “necessary suffering” will help people gradually realize that more and more animal suffering is not “necessary.” Francione, in my abortive debate with him on the Toronto Animal Rights Society list-serve already noted, failed publicly or privately to engage my new rational argument based in dilemma reasoning. However, although Francione condemns Garner’s line of reasoning in his 1996 book *Rain without Thunder*, Francione himself uses a very similar argument to Garner’s, without attribution, in Francione’s 2000 book *Introduction to Animal Rights*, p. xxiv, and on his website by arguing that traditional animal welfare does not live up to the ideal of avoiding unnecessary suffering. Yet in *Rain* Francione characterizes Garner’s welfarism as naïve because welfarism does not work so long as animals are considered property and immoral because welfarism contradicts animal rights. Still, perhaps Garner would not progress by protections of whole interests alone.

<sup>8</sup> The viability of pure animal rights law in the short-term requires a majority endorsement not only by legislators, but also their constituents, lest a new election bring about the repeal of such laws.

<sup>9</sup> Should we *wait* before advocating animal rights until society is more “ready” for that message? Society will never be ready for the message unless it is advocated. Abolitionists

---

cannot grow from a small minority to a large minority to a bare majority to a large majority to an overwhelming majority without a principled demand for the abolition of speciesism itself all along. In other words, we cannot get to these majorities without widespread humane education that includes animal rights. Scatterings of outreach by activist groups, although vital, are not enough. Such education needs to be systematic and part of the public system. Most people crudely understand animal rights as never using animals anymore, as though they can never be used as subjects for photography. Or they say that vegans merely use no animal products, as though babies should be given no breast-milk. Few people grasp what motivates animal rights, let alone how animal rights theory competes with standard ethical theories, including skepticism in ethics. We need an “educational critical mass” that no amount of advertising or corporate public relations can possibly overcome.

<sup>10</sup> Howard Lyman, “Straight Talk from a Former Cattleman,” *Satya* (September 2006): 31, writes: “...when *we’re* involved in killing the animals, *we’re* part of the problem.” I do not dispute this statement, but rather argue that suffering-reduction is part of the long-term solution.

<sup>11</sup> *Ibid.*, p. 28.

<sup>12</sup> Alasdair MacIntyre, *After Virtue: A Study in Moral Theory*, 2d ed. (Notre Dame: University of Notre Dame Press, 1984), pp. 67-68.

<sup>13</sup> See for example Tom Regan’s reflective intuitionism in *The Case for Animal Rights*.

<sup>14</sup> It might be objected that rights are still morally right so there is wrong in contravening them. However, rights are pragmatic on best caring ethics in the way that rules are on utilitarianism. Usually a rule utilitarian believes that it maximizes utility to follow rules, but that in some cases it is better to have exceptions to rules based in optimum happiness. Best caring ethics firmly rejects utilitarianism but insists on rights *whenever that is practical or applicable*, but in exceptional circumstances aims for what is best for sentient beings directly in cases where insistence on rights or proto-rights alone will not deliver what is best. This is arguably not morally wrong but organizing all actions using an ultimate principle of moral rightness.

<sup>15</sup> See Regan’s treatment of ethical egoism, for example.

<sup>16</sup> Paul Shapiro, “Getting Birds Out from Behind Bars: The Campaign to Ban Battery Cages,” *Satya* (September 2006): 37.

<sup>17</sup> See “The Rights of Animal Persons.” I will also discuss this matter in my forthcoming book.

<sup>18</sup> It might be objected that we cannot take it for granted that a ban on factory farming measures will lead to actual animal rights law, so we cannot assume that such laws are “proto-animal-rights law.” In reply, we cannot take it for granted that animal rights law itself will result either, but we still speak of animal rights law as an intended outcome. The same is true of proto-animal-rights law: it is an intended outcome regardless.

<sup>19</sup> I agree with Francione that we must not be indiscriminate about supporting measures that support animals. For example, *Rain without Thunder*, p. 59, he criticizes Peter Singer’s claim that he supports any kind of measure so long as it helps animals as not being consistent with Singer’s utilitarian ideal of minimizing suffering.

<sup>20</sup> It may be objected that we always have a choice about what we advocate politically, and we can choose not to advocate suffering-reduction laws. We are not “forced” by any dilemma to advocate such laws. Or perhaps the least of evils is for animal rights advocates to ask only for animal rights, but to comment on others’ speciesist positions that it would be

---

*better* (more good and less bad) if they agreed to laws which reduce animal suffering even if they would not be truly morally *right*. Such a compromise position seems to allow one to preserve one's own morally integrity by only advocating animal rights, and lets speciesists make wrong speciesist choices if anyone is to do that. Such a view is attractive for obvious reasons. However, such a compromise position may fail to be what is best for *animals* in a very practical way. When campaigning for animal law, it can never be taken for granted how much public support exists for a given law. If animal rights advocates do not push for a "welfarist" suffering-reduction bill, it may make the difference between passing and not-passing, or passing faintly or resoundingly (which inspires more confidence in the law in social-democratic terms), and solely commenting on *others'* choices may therefore be insufficient. Even if most people favor what they call "animal welfare" laws, they may not turn out to vote in sufficient numbers for particular measures. So is it the least of evils to merely comment on others' choices? Rather, it seems the least of evils to ensure *the least suffering for animals*, and it is only the most pleasant for oneself to demand only those sorts of laws that are dearest to one's heart. Such a position may be other-regarding, but is not so in the highest degree. Rather, it is seemingly self-indulgent and may chance that animals receive no real protection at all just so that one can feel better about one's advocacy. That is, if there is no complicity in moral wrong-doing as I argue in this essay.

<sup>21</sup> Bernard Rollin, *Animal Rights and Human Morality*, 2d ed. (Buffalo: Prometheus Books, 1992) starts out arguing for animal rights, but then decides that it is impossible to realize such a dream and so instead he advocates, for example, kinder forms of animal experimentation rather than abolishing vivisection.

<sup>22</sup> Pluhar advocates a right to well-being in *Beyond Prejudice*, ch. 5. Regan, *Animal Rights, Human Wrongs: An Introduction to Moral Philosophy* (Lanham, MD: Rowman and Littlefield, 2003) seems to use a right to bodily integrity rather than welfare because he rejects animal welfarism, or making animals better off under slavery. However, we must also have respect for "mental integrity" too, and not merely integrity, or being left intact, but functioning, flourishing, or doing well, i.e., *welfare* or well-being.

<sup>23</sup> Zoe Weil quoted in Francione, *Rain without Thunder*, p. 33.

<sup>24</sup> Francione, *Rain without Thunder*, p. 11.

<sup>25</sup> *Ibid.*, p. 31.

<sup>26</sup> *Ibid.*, p. 79.

<sup>27</sup> As I wrote in "The Distinction between Animal Rights and Animal Welfare" in *The Encyclopedia of Animal Rights and Animal Welfare*, ed. Marc Bekoff (Westport: Greenwood Publishing Group, 1998), pp. 43-45, there are at least five distinct usages: (1) *animal exploiter's animal welfare*, which may be a harsh standard indeed and a verbal smokescreen to hide poor treatment; (2) *common-sense animal welfare*, which reflects the average citizen's concern with kindness or anti-cruelty (which means using animals but "kindly"); (3) *organized humane animal welfare*, which is more disciplined, principled and knowledgeable than the humaneness of the average citizen, but which may not reject most animal industries (fur and hunting, and the worst of factory farming and laboratory treatment may be occasional exceptions); (4) *animal utilitarian animal welfare* such as that of Peter Singer; (5) *new welfarism*, which we will see is Francione's own definition; and (6) *animal welfare-animal rights views*, as in Richard D. Ryder, "Painism: The Ethics of Animal Rights and the Environment," in *Animal Welfare and the Environment*, ed. Richard D. Ryder (London: Gerald Duckworth & Co. Ltd., 1992), p. 197 opposes all animal experimentation while noting that animal rights and animal welfare "both

---

denote a concern for the suffering of others.” I also distinguish a seventh sense of “animal welfare” in “The Rights of Animal Persons,” for I analyze traditional “kind” treatment of animals as still animal illfare rather than “welfare,” making the latter as it is usually used by speciesists into a misleading but widespread euphemism.

<sup>28</sup> Dunayer, *Speciesism*, p. 62.

<sup>29</sup> This fact is cited on the website of the group North Shore Animal League America. There are many Buddhists in China who would promote kindness to animals, but that is only a minority.

<sup>30</sup> Peter Singer and Bruce Friedrich, ‘The Longest Journey Begins With a Single Step: Promoting Animal Rights by Promoting Reform,’ *Satya* (September 2006): 12.

<sup>31</sup> Francione, *Rain without Thunder*, p. 151.

<sup>32</sup> <http://www.purefood.org/Toxic/eufactfarm.cfm>.

<sup>33</sup> *Ibid.*

<sup>34</sup> <http://www.alternet.org/story/14154/>.

<sup>35</sup> [http://www.goveg.com/factoryFarming\\_pigs\\_farms.asp](http://www.goveg.com/factoryFarming_pigs_farms.asp).

<sup>36</sup> <http://www.sierraclub.ca/national/programs/health-environment/food-agriculture/ilo-environment.shtml>.

<sup>37</sup> <http://www.hsus.org/farm/camp/nbe/>.

<sup>38</sup> [http://www.hsus.org/press\\_and\\_publications/press\\_releases/chicago\\_wont\\_swallow\\_foie.html](http://www.hsus.org/press_and_publications/press_releases/chicago_wont_swallow_foie.html).

<sup>39</sup> <http://www.da4a.org/trappingfur.htm>.

<sup>40</sup> <http://www.respectforanimals.org/news/2001/221101.html>.

<sup>41</sup> Francione, *Rain without Thunder*, p. 212.

<sup>42</sup> *Ibid.*, p. 217.

<sup>43</sup> Francione, *Introduction to Animal Rights*, p. 51, he notes a strong tendency in law for the owners of property to be allowed to use property to the exclusion of everyone else. He cites, *Ibid.*, p. 54, William Blackstone: given “the right of property...one man claims and exercises over external things of the world, in total exclusion of the right of any other individual in the universe.” However, it is commonplace that one cannot use one’s umbrella to assault people, and it is conceivable that property cannot be used in ways that “needlessly” harm animals too, as in Sweden’s banning of factory farming. Francione, *Ibid.*, he notes that in the U.S. Constitution no property shall be taken for public use without just compensation, interpreting perhaps that property owners need to be compensated for any interfering with their profit-making. Thus if it is more profitable to exploit animals through intensive farming, U.S. law might be reluctant to interfere with that property right. However this is not impossible since legal change is always possible, and tax monies used for people with disabilities is not always in taxpayers’ self-interest.

<sup>44</sup> Francione, *Rain without Thunder*, p. 206.

<sup>45</sup> *Ibid.*, p. 68.

<sup>46</sup> *Ibid.*, p. 129.

<sup>47</sup> This is an analogy frequently given in Francione’s talks on animals, property and the law.

<sup>48</sup> Francione, *Introduction to Animal Rights*, p. 66.

<sup>49</sup> *Ibid.*, p. 63.

<sup>50</sup> *Ibid.*, p. 56.

<sup>51</sup> In my own country of Canada, staff from the animal “welfarist” organization, the Toronto Humane Society, moved on to form animal rights groups such as Action Volunteers for

---

Animals and the Animal Alliance of Canada. Peter Singer's "welfarist" book, *Animal Liberation*, which is not abolitionist with regard to medical vivisection, gave rise to an Australian group, Animal Liberation, whose pamphlet said it would abolish all animal exploitation. Singer's book inspired many, including me, to become animal rights vegans. This was not because of "causation," but because his "welfarist" critiques are part of what is *conducive* towards animal rights in many people's lives.

<sup>52</sup> Francione, *Introduction to Animal Rights*, p. 79.

<sup>53</sup> Francione, *Rain without Thunder*, p. 10.

<sup>54</sup> See generally the excellent issue of *Satya* (September 2006) for a discussion of this issue by numerous writers. James LaVeck, pp. 8-11, is particularly eloquent. He compares euphemisms for speciesist treatment with Orwell's "double-think" from *1984* which in essence is the acceptance of contradictory thinking.

<sup>55</sup> Note that "radical" etymologically refers to the "root" of things.

<sup>56</sup> *Ibid.*, p. 192.

<sup>57</sup> *Ibid.*, pp. 211, 171.

<sup>58</sup> *Ibid.*, p. 163.

<sup>59</sup> *Ibid.*, p. 171.

<sup>60</sup> *Ibid.*, p. 171.

<sup>61</sup> *Ibid.*, p. 202.

<sup>62</sup> *Ibid.*, p. 190.

<sup>63</sup> *Ibid.*, p. 190.

<sup>64</sup> *Ibid.*, p. 194.

<sup>65</sup> *Ibid.*, p. 193.

<sup>66</sup> *Ibid.*, p. 214.

<sup>67</sup> *Ibid.*, p. 210.

<sup>68</sup> *Ibid.*, p. 212.

<sup>69</sup> *Ibid.*, p. 89.

<sup>70</sup> *Ibid.*, p. 214.

<sup>71</sup> *Ibid.*, pp. 196, 214.

<sup>72</sup> Note that (2) here presupposes (1) in specific contexts, but (1) is not always tantamount to (2).

<sup>73</sup> Also, it is not plausible to believe that interest-violations do not holistically interrelate. So if I claim that a whole interest is protected but a whole other one is not protected, the area not protected might make incursions into the area I claim is protected. If I claim that liberty of movement is secured but not bodily integrity or freedom from suffering, the latter two types of misery will likely in turn reduce full liberty to express movement that is normal and healthy for a given species. However this may relate to his warnings, documented later on, that his criteria are imperfect.

<sup>74</sup> Francione, *Rain without Thunder*, p. 221.

<sup>75</sup> *Ibid.*, p. 191.

<sup>76</sup> *Ibid.*, p. 194.

<sup>77</sup> *Ibid.*, p. 193.

<sup>78</sup> *Ibid.*, p. 205.

<sup>79</sup> *Ibid.*, p. 194.

<sup>80</sup> *Ibid.*, pp. 199-200.

---

<sup>81</sup> *Ibid.*, pp. 201-202. I do not know of examples of substantially alleviating animal suffering that would not cost money. However, if that were possible, I would not in principle be opposed to such a proposal if it made significant progress for animals.

<sup>82</sup> Francione, *Rain without Thunder*, pp. 203-205.

<sup>83</sup> *Ibid.*, p. 205.

<sup>84</sup> *Ibid.*, p. 208.

<sup>85</sup> *Ibid.*, p. 211.

<sup>86</sup> *Ibid.*, p. 211.

<sup>87</sup> *Ibid.*

<sup>88</sup> *Ibid.*, p. 218.

<sup>89</sup> *Ibid.*, p. 192. My italics.

<sup>90</sup> *Ibid.*, p. 178.

<sup>91</sup> *Ibid.*, p. 6.

<sup>92</sup> *Ibid.*, p. 191.

<sup>93</sup> *Ibid.*, p. 190.

<sup>94</sup> *Ibid.*, p. 190.

<sup>95</sup> Francione, *Rain without Thunder*, p. 37.

<sup>96</sup> *Ibid.*, p. 192. This quote was featured also above.

<sup>97</sup> Dunayer makes a similar point, *Speciesism*, p. 158, that nonhuman animals need clarion calls for rights (a strong idea), not weak requests for “welfare”—as though animal rightists must only ask for one or the other and not both over time.

<sup>98</sup> His three justifications could also be used in relation to the more austere principle that all legal proposals must respect all interests of animals, but objections (1) and (2), (7)-(9) apply, with suitable adjustments, to that sort of strategy.

<sup>99</sup> Francione, *Rain without Thunder*, p. 176.

<sup>100</sup> *Ibid.*, p. 195.

<sup>101</sup> *Ibid.*, p. 198.

<sup>102</sup> *Ibid.*, p. 212.

<sup>103</sup> *Ibid.*, p. 213.

<sup>104</sup> *Ibid.*, p. 208.

<sup>105</sup> Tom Regan and Gary L. Francione, “Point/Counterpoint: Point: A Movement’s Means Create Its Ends,” *The Animals’ Agenda*, (Jan./Feb. 1992), p. 40. Francione writes, *Rain without Thunder*, p. 1: “To oversimplify the matter a bit, the welfarists seek the *regulation* of animal exploitation; the rightists seek its *abolition*.” He adds, *Ibid.*, p. 32, that animal rightists reject the view that animals are human instruments, or are human property, to do with as we will. He admits, *Ibid.*, p. 45, that animals have an interest in not suffering, but that they also have an “interest in not being part of the institutionalized exploitation that causes the suffering in the first place.” Peter Singer stresses animals’ interest in not suffering, whereas Tom Regan, in Francione’s interpretation, *Ibid.*, p. 199, also advocates an “interest in not being treated exclusively as a means to an end.” For animal rights advocates, Francione, *Ibid.*, p. 108, writes: “‘happy’ slavery is still slavery.” Francione, *Ibid.*, p. 41, considers it a dodge when animal advocates try to make a distinction between the moral goal of abolition on the one hand, and a welfarist tactic or strategy on the other. Implicitly, he is suggesting that our campaigns must be ethically defensible, as must be all of our actions. He is disturbed, *Ibid.*, p. 2, that the theory of animal rights is not reflected “in the social phenomenon called the

---

animal rights movement,” and instead notes, *Ibid.*, p. 3, that the movement advocates animal welfare entangled with animal slavery, exploitation, and a denial of rights.

<sup>106</sup> Still, do suffering-reducing laws, in terms of conduciveness, guarantee that a given cruel individual will become kind? No. Do they guarantee obedience of the law? No. Could laws regress? Perhaps.

<sup>107</sup> Francione points out, *Rain without Thunder*, p. 187, that making the slaughter of animals for food more humane may have the effect of promoting more meat-eating. Dunayer, *Speciesism*, p. 68, makes a similar point that changing methods of confining animals can make an animal-derived product more desirable. However, it is the burden of animal rights activists in any case to show that even meat-eating with reduced cruelty is undesirable. We should not “show” it is undesirable by keeping it all the more cruel. Francione points out, *Rain without Thunder*, p. 69, that although the U.S. Animal Welfare Act was amended in 1985 to create care committees to monitor animal experiments, and to require the adequate use of anesthesia or analgesia unless “scientific necessity” dictates otherwise, the measures are not enforced, and in fact he claims, *Ibid.*, pp. 94-95, that statistics show that the number of painful experiments has increased. Part of the problem is that scientists themselves determine what suffering is “necessary.” Thus, an illusion of progress is sometimes created as a result of animal “welfarist” measures: the public comes to believe that animal “welfare” measures are in place when this is not the case.

<sup>108</sup> I again consider it unlikely that we could pole-vault from (1) to (3), since even Francione’s does not propose that as likely given his hypothetical acceptance of proto-rights reforms.

<sup>109</sup> Francione, *Rain without Thunder*, pp. 141-142.

<sup>110</sup> *Ibid.*, p. 176.

<sup>111</sup> This addresses a parallel point by Dunayer, *Speciesism*, p. 63, that to slaughter animals is to commit murder and so to advocate slaughtering them in any manner is to advocate murder. She makes the further assertion that “welfarist” guidelines and laws “re-legitimize” speciesist exploitation, give exploiters positive publicity, make critics appear unreasonable, keep abolition marginalized, encourage humans who care about nonhumans to continue to buy animal-derived products, and leave nonhumans in the power of abusers. Dunayer’s statement however is belied by more careful consideration. Positive publicity for progress for animals is not a bad thing. Critics who advocate animal rights do not appear unreasonable or marginalized if such rights are advocated in the long-term, and PETA does not encourage animal consumption but rather discourages it. Finally, animals are not simply “left” in the power of abusers, as though there is a choice about whether to leave most animals with speciesists or animal liberationists.

<sup>112</sup> *Ibid.*, p. 3.

<sup>113</sup> Dunayer, *Speciesism*, p. 51 makes the similar point that animal rightists “conduct old-speciesist campaigns” against cruelty to animals.

<sup>114</sup> Francione, *Rain without Thunder*, pp. 36-37.

<sup>115</sup> *Ibid.*, p. 45.

<sup>116</sup> *Ibid.*, p. 41.

<sup>117</sup> Dunayer, *Speciesism*, p. 58.

<sup>118</sup> This objection was voiced by doctoral student Valérie Giroux at a conference at Brock University March 16, 2007.

<sup>119</sup> Again I attribute this objection to Giroux although I have heard it in other places.

---

<sup>120</sup> To me, animal rights law fully realized will involve constitutional rights for animals. Francione, *Introduction to Animal Rights*, p. 221, n. 3, denies that constitutional law is a helpful framework “because it suggests that animals should have the same constitutional rights as humans.” However, not all humans have the same constitutional rights if special provisions for people with disabilities are interpreted, for example, as part of general rights to liberty. Many humans cannot enjoy liberty without extra assistance. Similarly, liberty might not entail religious freedom for animals or some mentally disabled humans, but there is no reason why constitutions cannot catalogue special animal rights as part of extending special consideration to beings who are after all different from humans. Constitutional law will enable judges to strike down past speciesist laws as unconstitutional, and will provide a guide for future animal rights law, and animal liberationists cannot hope for less than this. I contend it would be a short-sighted and speciesist (whether or not this is intended) outcome to allow humans to have the benefits of constitutional law while denying such strong measures on behalf of animals.

<sup>121</sup> *Ibid.*, p. 62.

### **Acknowledgements**

I would like to acknowledge the help of Dr. Anita Krajnc in the revision of this essay.