

# INTRODUCTION

## OBSTACLES TO LEGAL RIGHTS FOR ANIMALS CAN WE GET THERE FROM HERE?

By  
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While the efforts of the animal rights movement have produced some minor gains in the legal status of animals, it is unfortunately all too obvious that for the most part animals remain legally unrecognized and unprotected. As Gary Francione has pointed out, animals retain their property status, and virtually no concessions to the well-being (much less the rights) of the vast majority of animals (namely those used in agriculture) have been made.<sup>1</sup> Chickens still languish in cages so small and crowded that they cannot move, with their beaks cut off and their feathers rubbed bare by cage wire. It is still legal to keep veal calves in tiny crates, and sows are still clamped in farrowing crates. These discouraging facts should lead us to consider what aspects of the current social, political and legal climate have limited effective change, and what must change if animals are ever to gain genuine legal rights. Francione has already begun this important discussion, arguing that genuine progress toward animal rights cannot be achieved through welfarist means.<sup>2</sup> In his view, it is necessary to dismantle the moral and legal framework which treats animals as property rather than persons. It is not possible to achieve the ends of animal rights by continuing to elaborate and support the framework of animal welfare.<sup>3</sup> Whether or not Francione's position on this issue ultimately proves correct, he has raised a question of fundamental importance. There are several other questions of this general sort which we need to consider.

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<sup>1</sup> See generally GARY L. FRANCIONE, *ANIMALS, PROPERTY, AND THE LAW* (1995).

<sup>2</sup> GARY L. FRANCIONE, *RAIN WITHOUT THUNDER: THE IDEOLOGY OF THE ANIMAL RIGHTS MOVEMENT* 110 (1996).

<sup>3</sup> *Id.*

These questions ask: (1) Can we get there from here? or, (2) How much of the current framework must go, if we are to achieve the ends of animal rights? While these are difficult questions, they ought to be considered, since they bear directly on the question of whether various approaches to achieving legal rights for animals are likely to succeed. In what follows I will lay out these questions. I do not claim to have answers to them, however, working toward answers to these questions is necessary to further the long-term goal of achieving genuine legal status for animals.

### I. ECONOMICS: IS CORPORATE CAPITALISM COMPATIBLE WITH ANIMAL RIGHTS?

In an interview I conducted with Alex Pacheco of PETA,<sup>4</sup> he stated that he was marketing compassion. The idea is that compassion, just as soap or toothpaste, can be effectively sold to the public. If enough people learn about the issues, they will demand change (for example, cruelty-free products). On this view, there is seemingly no incompatibility between status quo corporate capitalism and the ends of animal rights. The familiar fact that large corporate interests, profiting from animal exploitation, generally crush any attempts to legislate protection for animals is not necessarily decisive in rebuffing this view. It could be that the fight for animal rights is analogous to the little family-owned company that eventually triumphs against all odds and becomes a big corporate giant, buying out the competition. The correct approach is to continue to educate the public, and create a demand for products which do not exploit animals. If properly educated, people will only buy fake fur, vegetarian food, and non leather shoes.

But there are reasons to think that this approach won't work. Most fundamentally, corporate capitalism focuses on the bottom line. The profit motive ignores other values, such as family, community, and environmental integrity. The results for family farms, family-owned businesses, ecosystems, and endangered species have been dismal. Is it likely that this massive system, which has so far ignored the most basic interests of human beings around the globe, can be bent to consider the interests of animals? Or, alternatively, can a consumer public which has so far been content to ignore the interests of human beings, willingly buying products produced by virtual slave labor, be convinced to turn away from the products of animal exploitation? In considering how this could be affected, it is important to remember that the mass media which is the most important avenue for the marketing of compassion is also owned by the same big corporations.

The trend of corporate capitalism has in recent times been to wipe out legal protection of animals and the environment. This was the effect

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<sup>4</sup> LAWRENCE FINSEN & SUSAN FINSEN, *THE ANIMAL RIGHTS MOVEMENT IN AMERICA: FROM COMPASSION TO RESPECT* 80 (1994).

of NAFTA<sup>5</sup> and GATT,<sup>6</sup> which nullify local environmental protections where they prove inconvenient to trade. What is the alternative to working within the corporate structure? Must animal rights await a massive economic and political revolution? Clearly, to some extent we must work within the economic system. But if the system is not in fact conducive to animal rights, then it is reasonable to critique the system and join in common cause with those who seek to restrict and change it, such as those who work for worker's rights, women's rights, children's rights, and rights for third world peoples.

## II. POLITICS: CAN ANIMAL RIGHTS OBJECTIVES BE ACHIEVED IN POLITICAL ISOLATION FROM THE RIGHTS OF OTHER EXPLOITED GROUPS?

This question, which has been raised so effectively by feminists and ecofeminists (e.g., Marjorie Spiegel, Karen Warren, Carol Adams),<sup>7</sup> cuts much more deeply than simply the question of which political allies it is best to have. The question is not whether it is better to court favor with Republican congressmen or to build alliances with gays, feminists, and civil rights workers. (Obviously, if one is merely marketing compassion then the best political allies would be the most powerful, and one would be careful not to offend the power elite.) Rather, the question is whether the fabric of oppression is interwoven in such a way that exploitation of women, gays, third world peoples, etc., is bound up with the exploitation of animals. If all forms of exploitation are of a piece, then the ends of animal rights cannot be achieved by pursuing them in isolation, saying, we are an animal rights organization, we don't have a position on abortion, gays, . . . , etc. Thus, the critique of hierarchical thinking and patriarchy offered by ecofeminists, if correct, has clear implications for the strategies which ought to be adopted by those seeking animal rights. If ecofeminists are right, then working for animal rights in isolation is bound to fail since the framework for exploitation itself has not been challenged—only one of its instances. This leads to the third question.

## III. HOW MUCH MUST SOCIETAL ATTITUDES CHANGE BEFORE LEGAL STANDING FOR ANIMALS IS POSSIBLE?

It is clear that there must be a reasonable degree of consensus within society if legal sanctions are to be effective. Of course, the legal and social realms are inextricably connected, and laws are themselves highly influential in forming people's moral perspectives. This is why many people fear the legalization of drugs as legality implies social acceptance. As

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<sup>5</sup> NORTH AMERICAN FREE TRADE AGREEMENT, Dec. 8, 1992, Can.-Mex.-U.S., 32 I.L.M. 259.

<sup>6</sup> GENERAL AGREEMENT ON TARIFFS AND TRADE, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194.

<sup>7</sup> See generally CAROL J. ADAMS, *THE SEXUAL POLITICS OF MEAT: A FEMINIST VEGETARIAN CRITICAL THEORY* (1990); MARJORIE SPIEGEL, *THE DREADED COMPARISON: HUMAN AND ANIMAL SLAVERY* (1996); Karen Warren, *The Power and Promise of Ecological Feminism*, 12 ENVTL. ETHICS 125 (1990).

Lawrence Kohlberg's<sup>8</sup> research on the stages of moral development made clear, most people uncritically accept the laws and standards of their culture. Thus, legal change can produce moral change, just as moral evolution leads to legal innovation. But prior to a certain threshold, legal change simply will not have the desired effect (witness the failure of prohibition), and cannot realistically be enacted. Those who advocate working for the goal of animal rights by promoting animal welfare legislation are attempting to adapt their approach to closely mirror mores that the majority of people can easily accept. It is an empirical question whether the social climate has evolved far enough to accept genuine legal standing for animals, and it would be useful to have more data on this topic. On the one hand, it is possible to find surveys that show a majority of Americans are sympathetic to animal rights, that most of them are opposed to hunting and believe animals should be treated well before being killed for human consumption. But such surveys are perhaps deceptive, since the vast majority of Americans continue to eat meat. In fact, it seems that public opinion is not consistent on animal rights, with many people being ambivalent, rather than simply hostile or sympathetic to the cause.

Among the more discouraging aspects of current social attitudes is the failure to take animal rights issues seriously. In a recent episode of 60 Minutes, hog confinement facilities were featured and the waste disposal and water pollution problems they cause were presented. But not one word was spoken about the suffering of the animals in these facilities. Where moral issues are taken seriously, they cannot be ignored in this way. Imagine a similar piece on the safety conditions in abortion clinics which never alluded to the morally controversial nature of abortion. The anti-abortion movement has managed to find a serious place on the moral landscape in a way that the animal rights movement has not.

It is a pervasive experience among those who are actively working for animal rights to find friends and colleagues making light of such a commitment, eating meat in the presence of moral vegetarians and generally treating this moral commitment in ways they would never treat those committed to other causes (feminists, gay rights activists, etc.). We need to understand why this is so. It can no longer be that the movement is so new and unfamiliar, since it is not. Serious commitment to animals is viewed by many as foolish and even childish. In spite of the philosophical literature which now exists on animal rights, the movement is associated with emotionalism.

This willingness to treat animal rights lightly presents a dilemma, since silence in the face of such treatment reinforces the idea that animal rights can be taken lightly, while refusing to tolerate such treatment is likely to brand activists as strident, humorless and inconsiderate. This day to day problem of how to live among the savages (as Henry Salt<sup>9</sup> put it) and how to promote animal rights is certainly vital to those who wish to

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<sup>8</sup> 2 LAWRENCE KOHLBERG, *ESSAYS IN MORAL DEVELOPMENT* (1981).

<sup>9</sup> HENRY SALT, *ANIMAL RIGHTS CONSIDERED IN RELATION TO SOCIAL PROGRESS* (New York, MacMillan 1894).

make serious legal inroads for animals. For it is far-fetched to suppose that a society which cannot even grasp the moral seriousness of animal rights is likely to be ready to give legal person-hood to animals.

Again, it would be useful to have some reliable data on this issue of the social acceptability of animal rights. While people are actively involved in animal exploitation, they are often surprised by how little legal protection animals have, and are also surprised to learn that animals are simply regarded as property under the law. It is not that rare to hear people claim that animals have more rights than some people. This suggests that there may be more room for change than one might think, in bringing actual law into line with what many people think already exists.

Consideration of the economic, political, and social barriers to achieving legal status for animals can show us that the best road to the goal may not be a straight path. Those who work incrementally to effect improvements in animal welfare, or who seek to focus on animal rights in isolation from other types of exploitation, are assuming that we can get there from here. But at the very least, we ought to seriously and critically examine this assumption.

