

DO ANIMALS HAVE RIGHTS?

INTERVIEW BY KATE KEMPTON

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Do humans have the right to slaughter and test products on animals? Do we even have the right to own them? The answer to all of the above is no, according to Dr. GARY FRANCIONE, a professor of law at Rutgers, the state university of New Jersey. There, he runs the RUTGERS ANIMAL RIGHTS LAW CENTER. Francione is the only tenured professor at any American law school that has a program such as his. He teaches animal rights and litigates cases, all with students as part of the educational process. Gary Francione has two degrees in philosophy, is outspoken, controversial, emotional (a fact of which he is proud) and highly intellectual. Suspend your traditional beliefs, but not your innate moral centre or your logic, when you read this provocative interview. He may at first seem to tangle you in doubts, but if you read his words carefully, Francione may serve to disentangle many dilemmas.

Kate Kempton: How did you become involved in animal rights law?

Gary Francione: When I was in law school, I was invited to visit a slaughterhouse by a classmate of mine who was a vegetarian, as a result of my making a statement in class that I found the idea of animal rights to be silly. Talk about changing one's tune! My classmate asked me if I thought my eating meat raised moral issues. I said as long as they're killed humanely, I can't see what the issue is. I said there's a law that prevents them from being killed inhumanely. She said, "For a guy who's so smart, you're really dumb." I visited the slaughterhouse and stopped eating meat immediately. I gave up dairy a few years later. Actually, I think there's more pain involved in a glass of milk than there is in a pound of steak.

KK: Your views are considered radical by many people. How did your views progress from that to where they are now?

GF: Although I became a vegetarian right away, I believed initially that it was necessary to do animal research and other things with animals. So I was very moderate with my views. But as I got into the issues as a young lawyer, I began to realize that animals did, in fact, possess moral rights. If they did possess such rights, I had serious questions as to what the moral justification was in using them in any sort of experiments, or using them at all for food, whether they were humanely raised or killed or not.

I began to see that killing them humanely was an oxymoron. Animals have fundamental interests in not being used in these various ways, and human interests weren't sufficient to outweigh these fundamental animal interests. Once I determined that animals were right-holders, then it seemed to me that the proper response in dealing with animals exploitation was to abolish it, not to regulate it.

KK: What is a right?

GF: I think of a right as a claim that someone has with respect to a particular interest. If I have the right to liberty, that means I

have the ability to stop you from interfering with that right. A right protects an interest that can't be compromised simply because there would be beneficial consequences if it were. It's an interest that's considered so important it can't be traded away.

KK: If the rights of human beings come into conflict with the rights of some sort of animal, is there a time at which one takes precedence? Could we not kill animals to eat to stay alive, if that were the only choice?

GF: It depends on how you feel about violence. The genesis of my ideology about animal rights comes from a principle called Ahimsa. It's an Indian concept from the Jain religion and requires a complete rejection of violence. So my view is that violence is always bad. Now if I were starving to death, would I kill an animal? I probably would. Then again, if I were starving to death, I might kill you. But we don't want to build a moral system on how I or anyone else would behave in an emergency. If I were on a deserted island and starving, I'd probably kill a rabbit. If there were no rabbits around, no offence Kate, but I'd probably kill you if I had no other choice. I don't make those kind of species distinctions. The only time it would be problematic for me theoretically, is if I said I'd eat the rabbit but I wouldn't eat you.

KK: Animals eat other animals, so why shouldn't people eat animals?

GF: It's absolutely irrelevant. Animals, like children, or the mentally disabled or insane, can be said to have moral rights even though they're not morally responsible. These humans may engage in all sorts of conduct that we deem morally undesirable, but that doesn't mean they don't have rights. Animals do not, as far as I know, engage in moral reasoning. I do. You do. All mentally normal humans do. That's what is relevant.

KK: Should all animals have the same rights, and if so what are they?

GF: Some people say all animals should have the same rights as humans do. That's nonsense. I don't even believe in a concept of positive rights for animals, as I do for humans. I

believe in a concept of negative rights for animals. That is, I think animals have rights not to be interfered with. There is one exception involving positive rights for animals. I think domestic animals have the right to be properly cared for by humans, because we've domesticated them, thereby taking away their ability to live in the way that they were intended to live. We've made them unable to care for themselves, so we need to care for them. By the way, if all domestic animals died tomorrow, I would be dead set against breeding any animals for any human purpose, including dogs for human companionship.

Apart from that, I think the only rights animals have are not to be interfered with, and not to be disrespected as beings who have inherent value. Basically we ought to leave them alone. Now, we do have to interact with animals when we encroach on their domain, but I think we have to be careful not to displace them to the extent that we can. I think we ought not to be consuming more habitat than is absolutely necessary. And even when we do displace animals, we shouldn't kill them as part of that dislocation. We can't disrespect their value as sentient beings. They have the right not to be interfered with, not to be exploited or killed or tortured.

KK: How does man determine sentience?

GF: As in feel pain? If they have endorphins, which are produced to alleviate pain, then they are sentient. Earthworms have endorphins. Fish have endorphins. With higher animals you can usually tell when they're feeling pain. They cry out, or they limp, or whatever. You'd be an idiot not to know when a dog, or cat, or monkey or cow was in pain. It gets a little more difficult when you're talking about earthworms or fish, but there are ways to determine pain, and sentience, in even these animals.

KK: Can you tell me how the law treats animals now?

GF: Animals are regarded as property. Animal-human conflicts are resolved by balancing animal interests against human interests. The problem is that because animals are property and have no rights; and because people are

not property and they have rights, in particular people have property rights over animals, the result of the balancing process is predetermined from the outset. The animal will almost always lose. Because animals are property, the law generally defers to property owners to determine how best to use their property. The law does not like to impose criminal sanctions on people for the use of their property, which is what anti-cruelty statutes are. So even though there are statutes which ostensibly regulate animal exploitation, because animals are property, the law generally defers to the owners of property.

KK: There are anti-cruelty regulations as you just mentioned, but are these rights for animals? Do animals have any rights under the law?

GF: No. They have no rights, and anti-cruelty statutes are worthless because all they do is give the animal the right to humane treatment, which is a right to have its interests balanced against human interest. It's an ineffectual process, this balancing of interests and conflicts. It's like saying I have a conflict with my wristwatch or my computer. They are things I own. How can I have conflict with things I own? There may be regulations about what I can do with my computer. I can't throw it out the window and hit someone on the head with it. But it's still my property and I can't have a conflict with it. Similarly, how can I have a conflict with my animal property? Animals don't have rights, humans do. Humans have the right of property and animals are property.

KK: What is the historical premise for the idea of animals as property?

GF: It's a Judeo-Christian notion. Our ideas of animals go back to people like Thomas Aquinas and Descartes. Descartes was not a priest, but he was still a sycophant for the Roman Catholic Church. His view was that we could do what we wanted with animals because they didn't have souls. He believed animals weren't conscious or sentient because they didn't use language and they didn't have souls. It's a little more complicated than that, but basically a lot of our notions about animal

exploitation come from a philosophical view that was established by Descartes, and Descartes was working very much in a Christian tradition. He was taken with Aquinas' notion that human beings could not have obligations directly owed to animals because animals didn't matter to God. The history of human thought is peppered with people who have tried to argue there is some defect with animals and that justifies what we do to them. And one of the defects is not having a soul. It's deeply imbedded in Judeo-Christian thought. Of course, there's evidence to the contrary. Christ was against animal sacrifice and got rid of the money-changers. And the Jews had to change money to buy animals. Some of my colleagues from the university say the Dead Sea Scrolls indicate Jesus was a Nazarene, which was a Jewish mystical sect thought to practise vegetarianism. It's very interesting.

I find it ironic that vivisectionists, and others who exploit animals, call people like me irrational or emotional and then they hold themselves up as rational. They're not rational. They're, in fact, defending a world view that is part and parcel of virgin births and holy spirits and all that stuff. Which is fine if they want to believe that. But they hold up the basis of their views as scientific. It's not scientific at all. It's based totally on religious views.

KK: How should the laws be changed, then?

GF: We have two choices. We either change them completely and we really get rights for animals, which would probably entail massive social dislocation, upheaval and violence. Or we can try to work within the system. What we need to be doing is abolishing certain forms of exploitation, not regulating them. We need to recognize that animals, like humans, have certain interests that can't be traded away. We have got to start chipping away at the world exploitation brick by brick. You abolish exploitative practices, you don't regulate them.

KK: How will animals be able to exercise their legal rights, if some are granted?

GF: You have a ready analogy already existing in law, which is the notion of guardian ad

litem. It's a guardian appointed by the court for somebody who can't exercise or claim his or her own rights, retarded children, insane people, people on life support systems. We have the mechanism available.

KK: What is the difference between the rights and the welfarist points of view?

GF: A welfarist is somebody who believes that animals can be exploited by humans as long as the animal is treated humanely. Somebody who believes in animal rights believes that animals have certain rights that can't be traded away simply because of consequences.

The welfarist basically says if the consequences justify it, the animal can be exploited. Vivisectors are all welfarists and their view is you can exploit animals whenever you want to exploit them. They say because we're curious about something by definition, that's enough of a benefit because we're so damn important.

If you take [animal welfarist] Peter Singer's position, he says there are certain circumstances where animals can be exploited but the consequences have to be significant, not just another brand of oven cleaner or eye makeup. Even though Singer would consider himself very different from a vivisector, in fact their positions are logically quite similar.

One of the reasons I'm much more attracted to the rights position, is because who died and left us boss? Who does this balancing that welfarists say is okay? We do. Who does the assessments about animal value? We do. And that's never going to work.

Even if animals weren't property, how can you compare animal life and human life? Yes, I'm capable of writing books and of doing complex quadratic equations, but I can't jump six feet from a standing position over a fence

like some dogs can. Now I don't value that a lot because I don't jump over fences; it's not something I do. I'm a professor and I value the things I need to do my work.

But how can I say that the things I value, the abilities I have, matter more than the abilities a dog has? I mean, do you really want a world where women's rights are determined by men? It can't be done because men can only value things from a patriarchal perspective. That's why we have such sexism in this society.

Similarly, we're all species-ists. I don't want humans making those assessments. I don't think we can make them.

KK: Is the animal rights movement making enough progress?

GF: No. It fizzled to a large degree in the 1980s. I don't know why everyone is getting so upset about this movement because it's basically impotent. As animal rights groups became large, multi-million dollar organizations, their radical edge was lost. When you're a ten-million dollar a year organization, you're getting a lot of money from people who are politically conservative, so you want to try not to alienate anybody. You try to be everything to all people and you end up being nothing to anyone. There are some excellent groups left but in my judgement the promise of the 1980s was not realized. What I'm seeing happening is the start of a lot of grass-roots organizations at the local level. Revolutions, which this is, don't come from the top down; they come from the bottom up. From small, politically organized groups who are helping people understand, not just about animal exploitation, but about the connection between animal exploitation and human exploitation. ■