

THE THIRSTY COW AND AN IMPORTANT DISTINCTION

By
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In *Rain Without Thunder* Gary Francione makes a number of very interesting and original points. Space will not permit a full discussion of all these points, but I would like to mention at least two points regarding his after-the-fact analysis of PETA's campaigns and the danger of using other types of exploitation, such as sexism, to further the animal rights movement. I will then discuss in more detail a third point involving a distinction Francione makes that clarifies a number of problems and has great significance for the animal rights movement.

One of the points which Francione makes so clearly concerns the activities of PETA in the early 1980s, first with what came to be called the Silver Spring monkeys, and then with the University of Pennsylvania's head-injury lab. At that time many activists believed that PETA had taken a revolutionary stand concerning the use of animals in biomedical research: namely that PETA's legal actions were *explicitly* directed toward the abolition of *all* experimentation using animals. What Francione reveals so clearly is that while the specific violations of animal welfare laws were the only means available to PETA to close these labs, the campaigns were ill-conceived. To quote Francione:

There was no question in the Taub case of what 'humane' treatment meant as an abstract matter; the issue was not whether Taub was inflicting unspeakable pain and distress on these animals in the course of deafferentation experiments. The only question was whether Taub was doing anything to them that was not justified by the experiments themselves. . . . [In sum,] the Taub case was an ordinary anticruelty case, all of which assume that animals are our property and that they may be exploited as long as we do not impose wholly gratuitous, socially useless suffering or pain on them.¹

In discussing the head injury lab at the University of Pennsylvania, Francione asserts that "some" animal advocates used the video tape that was made by the researchers themselves, and removed from the lab by the Animal Liberation Front to "mount a campaign against vivisection *per se*"

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¹ GARY L. FRANCIONE, *RAIN WITHOUT THUNDER: THE IDEOLOGY OF THE ANIMAL RIGHTS MOVEMENT* 66 (1996)

although "for the most part" such advocates did not use the tapes for that purpose.² To quote Francione once more:

Again, PETA and other more progressive advocates argued that although their long-term goal was the abolition of all or most experimentation, the problems with the particular experiments at Penn involved violations of federal and state animal welfare laws and regulations, poorly conducted science, and a waste of tax-payer funds. All of these concerns pointed in the direction of 'moderate and respectable' short-term changes in federal oversight, but not toward any fundamental changes concerning the acceptability of the practices involved.³

For the sake of the argument, let us assume that Francione's comments in the following note are not quite fair. He asserts that:

On a number of occasions, the Animal Liberation Front raided facilities, such as the University of California at Riverside and the City of Hope in Los Angeles, and then anonymously supplied the information to PETA. In virtually all of these cases, PETA and other advocacy organizations focused more on violations of federal and state law and regulations, and did not use the events to facilitate social discussion about vivisection per se. This was done, at least in part, to enable the formation of coalitions that included more conservative animal welfare groups, and to ensure that scientific experts who were not amenable to supporting an abolitionist position would provide assistance.⁴

One could claim, perhaps, that this is simply Francione's interpretation of what PETA was trying to do, or intended to do. But if this is simply an interpretation, which like all interpretations could be skewed, one has the impression from looking at the further actions and campaigns of PETA, such as their anti-fur campaign, also discussed by Francione, and their heavy use of celebrities, that the goals promoted by PETA have either changed and become less radical or were never what many of us thought and hoped they were.

In discussing the more recent campaigns of PETA, such as the anti-fur campaign, and also their campaign against xenographs, as well as in his discussion of a cover of *Animals Agenda* that portrayed a face that was half African-American and half cat, Francione raises the issues of sexism and racism as a part of—or as he calls it, an "aspect" of—the animal movement.⁵ Clearly in this book it is not his aim to write a diatribe against sexism or racism, but there is no doubt that he considers these to be social ills related to speciesism—and at least on this point he agrees with Peter Singer that these are forms of prejudice and are morally unacceptable.⁶

Many in the movement, according to Francione, appear not to be offended by PETA's so-called sexist anti-fur ads.⁷ Perhaps Francione does

² *Id.* at 70.

³ *Id.* at 71.

⁴ *Id.* at 243-44 n.81.

⁵ *Id.* at 76 (citing Kenneth White & Kenneth Shapiro, *The Culture of Violence*, ANIMALS AGENDA, March/April 1994, at 19).

⁶ Peter Singer, ANIMAL LIBERATION: A NEW ETHICS FOR OUR TREATMENT OF ANIMALS 6-7 (1975).

⁷ FRANCIONE, *supra* note 1, at 76.

not realize that some people do not consider these ads sexist or perhaps some consider them sexist to such a slight degree that the ads appear inoffensive. Be that as it may, Francione makes explicit the notion popular among many, that if it helps animals, then it's O.K.⁸ But with keen insight, Francione notes, "This is, of course, the essence of instrumental thinking and is no different from (or better than) the claim that animal exploitation can be morally justified by claiming that 'if it helps (or amuses or enriches) humans, it's acceptable.'"⁹

As animal advocates, we are morally offended that society insists on using animals as nothing more than means to our human ends, but we find it acceptable to use other people, or a particular group of people, as means to achieve our ends. Francione has pointed out the inconsistency of this attitude. He has revealed how this view damages our own position for if the end justifies the means, then our claim that we are taking a moral stand is on shaky ground, to say the least.

If animals cannot be used for instrumental purposes, that is, if they are not means to an end, and morally cannot be used as such, this is the same as asserting, claims Francione, that animals are not property because, in general, property is what the property owner can use as he sees fit. Property, explains Francione, cannot assert its rights against a property owner for the very simple reason that property has no rights.

Such a view of property raises the more general question of whether all conceptions of property would presuppose that animals are nothing more than means to an end. As Francione has pointed out in conversation, perhaps in a more socialist society, property would not be viewed in exactly the same manner and thus the status of animals might be associated with a different cluster of values. On the other hand, he asserts that ". . . in a society like ours, in which property rights are understood as equivalent in importance to rights of personal security and personal liberty, and in which respect for the autonomy of the property owner is itself a value that plays a central role in the culture, virtually *any* purpose will justify the imposition of pain, suffering, distress and death on animal property."¹⁰

Another way in which Francione has expressed this same idea is to say that in our society—and I suppose he means the capitalistic society of the western world—"we are defined by our property," by what we own, rather than what we are (in whatever sense we want to use this vague expression), or what we do. To be precise, who we are involves the size of our house, the make of our car, whether we own a private jet, and so forth. I do not think Francione meant to do so, but he has explained one of the prevalent aspects of sexism that we see in our present society: older successful men who marry younger, often "beautiful" women. Such a woman may be just one more symbol of this man's "success" for not only does his property include the aforementioned symbols of wealth, but also

⁸ *Id.* at 75.

⁹ *Id.*

¹⁰ *Id.* at 144.

a young woman, often wearing expensive designer clothes, and even more expensive jewels, all of which attest to the power and financial assets of the man who "owns this property." Thus, the notion of property plays a role in speciesism and sexism and shows, at least in this one very small example, how the two can be related. In this sense at least, speciesism and sexism are but two sides of the same coin.

One of the most important points that Francione makes in *Rain Without Thunder* concerns the criticism that animal rights, as opposed to what he calls the new animal welfarism, is a utopian (read: unrealistic) conception because it implies an all-or-nothing attitude: we must completely abolish injustices done to animals and must not settle for improving things a little bit or merely lessening animal pain.¹¹ Yet, to disregard pitiful suffering is insensitive and indeed, cruel. Ingrid Newkirk's example of the thirsty cow¹² is telling. Francione has experienced some harsh criticism about this issue, which at first glance may seem justified but which on second glance and even third glance, not only is unjustified, but appears simple-minded and thoughtless.

Let us examine more carefully the criticisms of Francione's position and rid ourselves of the easiest misunderstanding first. Francione points out that if this "all-or-nothing" criticism means that animal rightists expect to end animal exploitation overnight, then this is just plain wrong-headed. He responds, "I have been unable to find a single instance in which animal rights advocates support the notion there is any possibility of overnight abolition of all institutionalized exploitation."¹³

These are mild words indeed, for the problem many animal rightists face is so-called "burn-out" where progress seems, at best, pitifully slow. Even where abolition is successful, such as in the withdrawal of plans for a year-long deer slaughter in a suburban area near Philadelphia, such a success, spectacular in itself, is more than matched by the sudden opening of other parks in the area to deer hunting and to granting permission for the first time to kill male deer in addition to female deer in already opened parks. This practice increases reproduction in the remaining does since deer populations are density-related. Animal rightists simply do not have such grandiose expectations of ending animal exploitation. Indeed, most of us would be more than happy with a few crumbs of success.

Let us examine Newkirk's example of the thirsty cow. I believe this kind of criticism is illustrative of the problem that has caused so much resistance to the idea that animal rights can be effective or is the correct moral stance. It is in terms of this problem that Francione has provided us with a brilliant solution. A solution, which like all such solutions, once it has been formulated is so clear and simple that one wonders why it was not obvious to everyone from the onset.

In discussing the problem of cows awaiting slaughter and their lack of water, Newkirk, according to Francione, noted that some animal right-

¹¹ *Id.* at 32-3.

¹² *Id.* at 141.

¹³ *Id.* at 161.

ists refused to support laws that would have required that such cattle be given water.¹⁴ Referring to an article in *Animals Agenda*, Francione quotes Newkirk as saying that she "... cannot imagine how those vegetarians with clean hands, who declined to help, could explain their politics to the poor cows, sitting in the dust with parched throats."¹⁵

This "understanding"—or misunderstanding—of animal rights would seem to mean that if, for example, we find a dog hit by a car, bleeding by the side of the road, we have no moral obligation to help because we are not abolishing the institution of companion animals, the sale of so-called "pets" in pet shops, the overpopulation or such animals, and so on and so on.

Furthermore, if one generalizes from the example of the thirsty cow, it would seem that we have no obligation to decrease suffering in general in those cases where we do not completely abolish the exploitation. Interestingly enough, most of the examples seem to involve the slaughter of food animals. Francione remarks that although Karen Davis believes that "humane slaughter" is an oxymoron,¹⁶ she was the primary force behind the effort to have the Humane Slaughter Act amended to include chickens.¹⁶ At meetings, she revealed that she could not understand the lack of cooperation on the part of some people in not supporting her efforts in this direction. Others have insisted that we ought to work for humane slaughter laws in Spain and in some third world countries where goats and other animals are sometimes, we are told, simply hacked to death, dying an agonizing death.

Francione is not advising that one ignore the plight of the individual animal. It seems amazing that anyone who knows him even slightly would think that his actions as an individual fall so far from his own theoretical views, or to put it bluntly, that his actions are inconsistent with his theories. Nothing could be further from the truth.

In fact, what Francione does is to make the distinction I referred to above, a distinction between what he calls the micro and the macro level of a moral theory. This distinction is developed in Francione's discussion of the "three components of moral theory."¹⁷ One component involves "what the theory *ideally* seeks," which Francione calls the "ideal component."¹⁸ The second component involves what the individual ought (in the moral sense of ought) to do in terms of the theory in general. Francione refers to this component as the "micro component."¹⁹

The third component is what Francione calls the "macro component" and although he does not use these words, I think he would agree that what he is discussing here is the means that are sought to achieve the

¹⁴ *Id.* at 141.

¹⁵ *Id.* (citing Ingrid Newkirk, *Total Victory like Checkmate Cannot be Achieved in One Move*, *ANIMALS AGENDA*, Jan./Feb. 1992, at 44).

¹⁶ *Id.* at 100 (citing *Interview with Karen Davis*, *VIVA VINE*, May/June 1995, at 3).

¹⁷ *Id.* at 149.

¹⁸ *Id.*

¹⁹ *Id.*

goals given as the ideal component.²⁰ In other words, what we ought to do, not as individuals, but as members of a group perhaps, or as some sort of collective, as part of a social movement, to "implement the moral ideals" that we have proclaimed.

Philosophers are always drawing lines, making distinctions, showing that concepts or things that look similar in one respect are quite different if viewed from another point of view, and so forth. This careful analysis of concepts is precisely what Francione is doing here. He is showing that what one ought to do as an individual may be quite different from what one ought to do as a member of a social movement seeking change.

Let us now return to the thirsty cow, the bleeding dog, the goat hacked to death, the chicken inadequately stunned before it is decapitated, and so forth. Francione maintains that ". . . to say that we have an obligation to give the cow a drink of water in order to minimize her suffering does not *in any way* support the position that we ought to support animal welfare because it also seeks to minimize suffering."²¹

To explain this distinction from another angle: to deny that the goal of our social movement is to establish laws that require the watering of cattle about to be slaughtered when we think that the slaughter itself is immoral, says nothing about what we should do when actually confronted with this situation as an individual. Perhaps we can say that since the goals of our movement, for example the abolition of killing animals for food, are not yet achieved, they are in some sense ideal or abstract, while a situation that we ourselves experience is not at all abstract. In fact, it is the very concreteness of the situation that so often touches our emotions: the cow can be seen, touched, heard, and her distress is obvious to any sensitive observer. From this point of view, the confusion about the thirsty cow is a confusion between the concrete and the abstract.

This problem, then, is not so much one of moral reasoning as one of logic or simply ordinary reasoning. To say that we ought to water the individual cow or that we would wish that all cows who are thirsty be provided with water, namely to universalize from the individual and particular case, seems natural enough in a naive manner, but when examined as a means to achieving a goal which is not the abolition of thirst in cows, but the abolition of slaughter or the abolition of breeding all domestic animals for food, then the mistake in generalizing or universalizing becomes obvious. Even if we could pass a law that all thirsty cows must be watered, all dogs hit by cars must be cared for, all chickens must be properly stunned and so forth, then we still would not have achieved the goals that we have set for ourselves.

By the stroke of his pen, by making this distinction between the micro and macro components of a moral theory, Francione has clarified and has, I hope, abolished an objection that has worried many people and is responsible for the rejection, on the part of many, of a whole hearted acceptance of animal rights. As Francione asserts, "[t]his confusion—be-

²⁰ *Id.*

²¹ *Id.* at 142 (emphasis added).

tween the 'micro' and 'macro' moral issues presented in situations like the one Newkirk describes—has accounted for much confusion among animal advocates."²²

My only criticism is that Francione does not seem to realize how very important his distinction is for while it is not fair to say it is hidden, it is not sufficiently emphasized, at least not if my belief is correct that this distinction clarifies a confusion that results in most of the resistance to animal rights offered by the new welfarists. Francione has not only clarified a troublesome point, but in fact, perhaps not meaning to do so, has revealed that the position outlined above that is arrived at by universalizing one's own individual actions is—to put it as politely as possible—illogical.

I think Francione would object less strenuously toward working for the goal or slacking the thirst of cows and thus decreasing their suffering if such a person identified himself or herself as a welfarist. Francione, correctly in my opinion, objects to such efforts being the work of people who call themselves animals rightists for such efforts involve an acceptance of the use of animals that is inconsistent with the notion of rights.

One might argue, of course, that animals have the right not to be made to suffer for human purposes, and thus efforts to decrease such suffering are, on the contrary, compatible with the notion of animal rights. But even if one agreed that animals possess such a right, it still would not make much sense to press for a decrease in one particular kind of suffering when animals are still slaughtered for food and continue to suffer in intensive farming units, in transportation to slaughter and so forth. In other words, if animals had a right to be free from gratuitous suffering, this right would be abstract or meaningless for it does not qualify as a basic right. Francione, in agreement with Henry Shue, explains that a basic right, in this case the right to physical security is a "... prerequisite to the enjoyment and exercise of nonbasic rights. . . ." ²³ In other words, if an animal is not alive, it makes little practical difference whether or not it has a right not to suffer since the animal cannot enjoy that right. Such a right would be, as Shue and Francione have said, merely abstract or legalistic—in plain terms, meaningless.

This apparent inability to distinguish between basic and nonbasic rights which characterizes the new welfarists is similar to their inability to distinguish between the micro and macro components of an ethical system. This failure to make careful distinctions, as we have seen, confuses the whole picture of goals and methods or strategies to accomplish these goals. Unfortunately the confusion does not end there. The new welfarists then conclude that such distinctions are artificial, elitist, divisive or even irrelevant.²⁴ What could be more elitist than refusing to listen to criticism and what could be more divisive than calling views divisive before they are accurately understood?

²² *Id.*

²³ *Id.* at 153.

²⁴ *Id.* at 32-3.

The stance taken by the new welfarists, according to Francione is not only illogical, but in many instances, it may actually prolong suffering in the very same cases where welfarists had sought to decrease it. Suppose a law were passed requiring that all cattle must be watered or that chickens be included in the Humane Slaughter Act. Then, those people who are opposed to cruelty are apt to think that since slaughter is now humane, the animal does not suffer, and since they are either unable to give up a habit they find enjoyable (eating meat) or they wrongly suppose that humans require meat to survive, they conclude that everything is right with the world. In this case, most of the cattle or perhaps even most of the chickens will be stunned before slaughter, but the usual number of accidents will still occur in which such stunning is not perfectly carried out, the animals will still suffer the trauma of being transported to slaughter, of being intensively raised as food animals, and so forth. If one cares about the suffering of those with whom we share this planet, is it not indeed heartbreaking to work a lifetime—our lifetime—to achieve so little?