

Animals, Property and the Law

Gary L Francione (1995). Temple University Press: Philadelphia. 349pp. Paperback. Obtainable from the Eurospan Group, 3 Henrietta Street, Covent Garden, London WC2E 8LU, UK (ISBN 1 56639 284 5 paperback, 1 56639 283 7 hardback). Price £25.50 paperback, £53.95 hardback.

Professor Francione's book is an examination of the jurisprudence of animal welfare, of a number of animal rights theories, and a search for the underlying reasons why legislation is not fully effective in the prevention of suffering in animals.

The author of *Animals, Property and the Law* indicates in the Introduction that he is a professor of law who has had much practical experience of animal protection litigation and animal rights issues in the USA. His experience has led him to the view that, despite the existence of extensive animal protection legislation, the exploitation and abuse of animals continues, due to fundamental flaws in current legal and moral theories.

The main purpose of the book is to examine the thesis that the present legislation is based on a precept that makes it impossible for the law to ensure the welfare of animals. While it is widely agreed that animals should be protected from unnecessary suffering and should be treated humanely, their legal status being that of property means that their needs and well-being are usually treated as secondary to the rights of their owners.

He calls the current legal approach to animal protection via anti-cruelty laws, the concept of animals as property and attendant ideas 'legal welfarism'. He considers that any attempt in law to take into consideration the interests of animals, is thwarted by the fact that, ultimately, these are always in competition with the interests of people. When weighed in the balance, the qualifying term 'unnecessary' is interpreted by the courts and society so that proprietary rights take precedence over animal welfare. Thus, in effect, the law enables many forms of exploitation to take place.

He supports his arguments about the law with a study of anti-cruelty cases, of the legislation and cases involving animals in research and of two fields outside the anti-cruelty field, bailment (when an animal is in the control of a person other than the owner, usually for commercial purposes) and veterinary malpractice.

The author also looks at the question of 'standing'; that is, whether animals should have a status which enables them and their interests to be represented on their behalf in court, and concludes from the US cases that there is little scope for this except in respect of wildlife. He also considers the law and theories surrounding other groups in society (minors, the mentally incapacitated and, from former times, slaves) that have not had full legal capacity.

He seeks a niche for his views amongst those of other animal rights philosophers and considers himself closest to Tom Regan. However, he concludes that these writers either still treat animals as property or, if stronger rights are accorded they are nevertheless ultimately required to be balanced against human interests.

The author clearly has a strong commitment to animals and to raising their status in the human community and a strong sensitivity to the use of animals. He views almost all forms of utilization to be exploitation. This underlies his dissatisfaction with the functioning of the animal legislation. He writes from the animal rights end of the scale, perceiving legal welfarism to be at the other end. In his words, it is 'the doctrine that the welfare of animals

is determined by what conduct will maximize the efficient use of animal property', and it arises as a 'direct result of characterizing animals as property'.

Francione's final conclusion is that only a fundamental change of thinking and law, ie the removal of the status of animals as property, can adequately ensure their protection. Sadly, his last lines admit that it is unlikely that society at large would ever reach this conclusion and implement it. So, after a demanding read and unquestionably even more difficult and time-consuming research by the author (the extensive bibliography, despite some missing items in the legal section, bears out his diligence), what are we left with? A theory that, in the author's own eyes, has little chance of getting into law and therefore cannot be put into effect to relieve present suffering. What can the reader take away? There is no action plan for immediate reform or better enforcement. To let a concept just run into the sand at the end of so much thought and work seems unfortunate. Are there underlying beliefs which are at fault or unrealistic?

One important omission, not unknown in writers on animal law, is a discussion of the term 'animal'. Professor Francione has focused primarily on developing ideas for the western, and mainly urban climate from which his book emanates. He has yet to test his arguments within different cultures and religions, in the context of the poverty and harsh environments of the third world, and in respect of the many other species of animal that exist. What happens to animal rights theories when applied to the vectors of human and animal disease or food crop destruction; or in life threatening situations (for man or animal) posed, for example, by a poisonous snake or insect (usually rather unpopular species); or the revered and highly protected elephant which tramples the crops of a subsistence farmer? Do the rats and mice that invade our kitchens receive the same degree of concern in animal rights as their relatives in the laboratory? Questions of definition and discrimination must be addressed, together with a clear assessment of people's expectations and prejudices in respect of non-human animals. Once these issues have been clarified it may be possible to propound constructive and viable theories and laws that recognize fairly and logically the interests of humans and all non-human species.

The text is extensively annotated (61 pages) and there is a large and useful bibliography (14 pages), although the reviewer could add some titles to the legal section. By contrast the index can only be described as emaciated, being a mere five pages long and consisting mainly of names. There are fewer than 30 other entries to help the reader to navigate 258 pages of complicated text. For instance, it is not possible, via the index, to find out if the author has views on the term 'sentient being'. The term is being proposed by animal welfarists in Europe as an alternative to the European Union's treatment of animals as 'agricultural goods'. On the other hand the Foreword to Professor Francione's book includes both humans and non-human animals in the term. We are heading for a transatlantic divergence which needs urgent jurisprudential attention.

The author has taken an advanced stand on the legal convention that reference to the masculine includes the feminine. Although generally avoiding the use of 'he' or 'she', where forced to do so in giving examples, he chooses the feminine – thus hypothetical persons are 'she' and imaginary litigants are 'Jane' (Farewell John Doe and Richard Doe of ancient legal memory). It is an interesting argument that catches the eye of the reader, although some would find it distracting or unnecessary. More commendable altogether, but less obvious, is the extent to which the author has kept the text in neutral terms.

Despite certain points of weakness, the book is a serious contribution to legal and animal rights theory, well written and closely argued; it should be on the shelves of those interested and involved in these fields. For those who are not interested in theory, the cases that have tested the courts' attitudes to the attempts by animal advocates to intervene in welfare and wildlife situations, and on other subjects, are useful. It should not, however, be considered that approval of this book is to endorse the views held and activities undertaken in the name of animal rights.

What are the welfare implications of this book? Not many, since the author does not expect society to provide the climate needed to implement his thesis that animals should not be treated as property. This rather indicates that the world of animal rights theories is a luxury of the western sophisticated society where time and money can be made available to pursue such discussion. It is, of course, a disgrace that cruelty still occurs in such societies. Would it be more effective to seek more pragmatic ways to help to relieve suffering? The rights theories do not seem to have much of practical help to offer animals, or humans for that matter, in the world's areas of great poverty or where concepts of compassion are scarce. Do animals in these parts of the world have to wait while the west constructs elaborate concepts before their welfare needs are considered?

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Surgical Techniques in Experimental Farm Animals

F A Harrison (1995). Oxford University Press: Oxford. 159pp. Hardback. Obtainable from the publishers, Walton Street, Oxford OX2 6DP, UK (ISBN 0 19 854258 5). Price £50.

Under the Animals (Scientific Procedures) Act 1986 which controls the use of animals in scientific research in the United Kingdom of Great Britain and Northern Ireland, any person holding a licence to perform experiments on animals is required to be competent in the procedures to be used. In order to assist colleagues achieve the required level of competence, the author has drawn on his great wealth of experience gained during a long and illustrious career at the Babraham Institute in Cambridge, in preparing this excellent monograph. Descriptions of the approach and techniques developed and used during 30 years of study involving cattle, sheep, goats and pigs form the basis of the book but, where appropriate, reference is made to techniques reported in the literature which appear to be successful and may be useful.

The short introductory chapter briefly deals with experimental projects, the operating facilities required under law and the meticulous planning necessary if experimental surgery is to be successful. Chapter 2 is devoted to surgical principles including pre-operative management and general anaesthetic techniques applicable in the various species, surgery and suture techniques, fluid therapy and post-operative care. In a book of this size coverage of these topics is of necessity brief. Much of this chapter is devoted to the important subject of general anaesthesia which is the cornerstone of good surgery. Successful anaesthesia depends on confidence and experience in using individual agents and techniques. Those described here involving the use of sodium pentobarbitone for induction of anaesthesia in sheep, goats and pigs and methohexitone in cattle have served the author well. Other equally