

ON THE "NECESSARY SUFFERING" OF NONHUMAN ANIMALS

By
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In *Rain Without Thunder*,¹ Gary Francione demonstrates how the ideology of animal welfare facilitates human exploitation of nonhuman animals. Central to the rhetoric of animal welfare is the concept of "unnecessary suffering." Indeed, the literature, legislation, and ethical guidelines that spring from this movement are replete with references to it, as well as to its assumed opposite, "necessary suffering."² Animal welfarists have convinced themselves that something of importance is marked by this dichotomy; specifically, that if human impact on animals does not cause unnecessary suffering it is free from moral taint. In accordance with this proviso, for example, experiments designed to study the mechanisms of pain may be performed without anaesthesia when such medication would suppress the neurological responses being investigated.³ In what follows I extend Francione's analysis of these concepts within the context of animal experimentation. I argue Francione's work leads us to the conclusion that the notions of necessary and unnecessary suffering are empty of meaning, and no significant difference exists between them. That humans cause animals to suffer in abundance is reality. That their suffering is necessary in order to fulfill human purposes is fantasy.

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

² See, e.g., Criminal Code, R.S.C. 1985, c. C-34, s. 466(1)(a) (Can.); Animals for Research Act, R.S.O. 1990, c. A.22, s. 16(1) (Ont.); United States Animal Welfare Act, 7 U.S.C. §§ 2131-2156 (1994); ROBERT GARNER, *ANIMALS, POLITICS, AND MORALITY* (1993); F. BARBARA ORLANS, *IN THE NAME OF SCIENCE: ISSUES IN RESPONSIBLE ANIMAL EXPERIMENTATION* 20-35 (1993); ROD PREECE AND LORNA CHAMBERLAIN, *ANIMAL WELFARE AND HUMAN VALUES* 62 (1993); *Instructions to Authors*, 120 *BRAIN*, Feb. 1997 (unpaginated); *Instructions to Authors*, 9 *EUROPEAN JOURNAL OF NEUROSCIENCE*, Feb. 1997, at § 7; *Information for Authors*, 105 *GENERAL AND COMPARATIVE ENDOCRINOLOGY*, Mar. 1997 (unpaginated); *Guiding Principles in the Use of Animals in Toxicology*, 142 *TOXICOLOGY AND APPLIED PHARMACOLOGY*, Jan. 1997, at § 4.

³ *The Problems of Pain*, ANZCCART NEWS (ANZCCART, Australia), Dec. 1996, at 4.

As a starting point, I reach back a little over a decade to my own book, *The Case for Animal Experimentation*.⁴ As the title indicates, I endorsed the use of nonhuman animals in scientific research, a position I no longer hold. Consequently, I sought to understand unnecessary suffering in relation to necessary suffering, which I defined as "whatever kind or degree of suffering has to be produced to obtain a particular statistically significant result within the framework of a given, ethically acceptable experiment."⁵ This definition may look somewhat odd, since many would argue that precisely what makes an experiment ethically acceptable hinges on whether it generates only necessary suffering and does not cause unnecessary suffering. The definition escapes circularity, however, because by "ethically acceptable" I meant that, given a speciesist definition of the moral community and a cost-benefit vindication of animal research, it is in general justifiable for humans to use nonhumans in research in order to further their own ends, even if this entails suffering for nonhumans. An additional claim was that this is settled prior to the experiment through the detailed ethical scrutiny of each experimental protocol by a review committee. It is the review committee which makes specific judgments concerning the kinds and degrees of suffering commonly called necessary and unnecessary. Against this background I defined unnecessary suffering as that which is "morally unacceptable, meaning excessive or preventable."⁶ Excessive suffering is the result of procedures that fail to yield important benefits for humans or nonhumans; preventable suffering is the product of thoughtless or faulty experimental design. The discussion of these concepts had not advanced much beyond this level prior to the appearance of *Rain Without Thunder*.

What is new about Francione's approach? Coming from an animal rights perspective and taking a global view of nonhuman animals' status as property, he gives completely political-economic meanings to necessary and unnecessary suffering. Thus, he contends that within the dominant paradigm, which views nonhuman animals as property, animals "may be exploited as long as [humans] do not impose wholly gratuitous, socially useless suffering or pain on them."⁷ It is useful to sketch out the steps by which Francione reaches this conclusion.

1. Nonhuman animals' lives and well being have no intrinsic or inherent value, but only instrumental value.⁸
2. Whatever lacks intrinsic or inherent value and has only instrumental value is a thing. Things lack interests and rights.⁹
3. Therefore, nonhuman animals are things lacking interests and rights.¹⁰

⁴ MICHAEL ALLEN FOX, *THE CASE FOR ANIMAL EXPERIMENTATION: AN EVOLUTIONARY AND ETHICAL PERSPECTIVE* (1986).

⁵ *Id.* at 166.

⁶ *Id.* at 167.

⁷ *Id.* at 66.

⁸ *Id.* at 129.

⁹ *Id.*

¹⁰ *Id.*

4. All things may in principle be owned and hence may be someone's property.¹¹
5. Therefore, nonhuman animals may in principle be owned and hence may be someone's property.¹²
6. Property, if properly engaged in human service, may be used to create social wealth.¹³
7. Therefore, nonhuman animals, if properly engaged in human service, may be used to create social wealth.¹⁴
8. The law recognizes and protects activities that aim to produce social wealth.¹⁵
9. Therefore, the law recognizes and protects the use of nonhuman animals to produce social wealth.¹⁶
10. To facilitate the use of nonhuman animals in producing social wealth, they are often caused to suffer.¹⁷
11. Animal welfare legislation permits such suffering and designates it as necessary.¹⁸
12. Therefore, nonhuman animals may legitimately be subjected to necessary suffering.¹⁹
13. All suffering that is not necessary is unnecessary.²⁰
14. Animal welfare legislation prohibits unnecessary suffering.²¹
15. Therefore, nonhuman animals may not be caused unnecessary suffering.²²

What Francione clearly reveals here is that the division of suffering into two different degrees or kinds is an artificial one, derived from positive law. The division is also based on a distinction which is entirely self-serving from the standpoint of humans and which is a distinction without a difference from the standpoint of nonhuman animals. The animal welfare approach makes it appear as if the difference is clear and ethically substantiated. And many have beguiled themselves into believing this. But as Francione points out, there is no consistent interpretation of necessity among animal welfarists of diverse persuasions and interests.²³ He also notes that "there is nothing in the law that *prohibits* any type of experiment, however much pain or suffering is caused to animals."²⁴

One might be tempted to reply that the law must always remain general, that it establishes a threshold which safeguards nonhumans against what may unequivocally be labelled abuse, and that professional guide-

¹¹ *Id.* at 126.

¹² *Id.* at 126.

¹³ *Id.* at 126-27.

¹⁴ *Id.* at 127.

¹⁵ *Id.* at 131.

¹⁶ *Id.* at 131.

¹⁷ *Id.* at 127.

¹⁸ *Id.* at 129.

¹⁹ *Id.* at 133-36.

²⁰ *Id.* at 135-37.

²¹ *Id.* at 136-37.

²² *Id.*

²³ *Id.* at 170.

²⁴ *Id.* at 114.

lines governing peer review assessments, since they must conform to the law, limit necessary suffering in a precise, specific use-oriented way. The weakness in this whole system of "regulation," however, lies in devolution of the authority to make critical judgments of this sort from one anthropocentric institution—the law—to another—members of the scientific community with a vested interest in promoting their own activity.

When one examines ethical guidelines for research utilizing nonhuman animals, a profound feeling of dismay sets in. We may take the Canadian Council on Animal Care's set of voluntary guidelines as one example.²⁵ These guidelines are considered to be exemplary. This document prohibits two types of experimental procedures: "utilization of muscle relaxants or paralytics (curare and curare-like) alone, without anesthetics, during surgical procedures; [and] traumatizing procedures involving crushing, burning, striking, or beating in unanesthetized animals."²⁶ But these regulations are also characterized by such expressions as: "Expert opinion must attest to the potential value of . . ." ²⁷; "Investigators, animal care committees, grant review committees and referees must be especially cautious in evaluating . . ." ²⁸; and ". . . should only be used after alternative procedures have been fully considered and found inadequate."²⁹ These provisos are meant to flag evaluation points where careful judgment and restraint should prevail. I would argue, against Francione, that Canada has gone some distance toward improving the lot of certain nonhuman animals in some scientific research, but only to the extent to which, and in those jurisdictions within which, a recognizable form of public accountability is being developed. Having said this, I must add that the state of affairs I have described is still very far removed from the more desirable one in which a comprehensive set of ethical guidelines is given the force of law.

Francione argues that "hardly anyone disagrees with the notion that we ought to treat animals 'humanely' and should not subject them to 'unnecessary' suffering."³⁰ I take it he regards this as grounds for inferring that the terms "humanely" and "unnecessary" are empty of meaning. I believe this is accurate. But the reason is not merely that both welfarists and the exploiters of nonhuman animals see eye to eye here. As Francione observes, and I have discussed elsewhere,³¹ to appreciate this emptiness properly, we must attend to the special form of cost-benefit calculation that epitomizes, among other things, biomedical and behavioral research involving nonhuman animals. What happens is that the benefits to

²⁵ CANADIAN COUNCIL ON ANIMAL CARE, *ETHICS OF ANIMAL INVESTIGATION* (1989) (This version of the document is still current and in use across Canada. It has not been revised in seven years).

²⁶ *Id.* at 2.

²⁷ *Id.* at 1.

²⁸ *Id.*

²⁹ *Id.* at 2.

³⁰ *Id.* at 113.

³¹ MICHAEL ALLEN FOX, *Animal Experimentation: A Philosopher's Changing Views, BETWEEN THE SPECIES*, Spring 1987, at 55-60, 75, 80, 82.

humans and sometimes to animals are weighed against the costs borne by the nonhuman animals experimented upon. Never is it the case that a specific group of nonhuman animals, the experimental subjects themselves, benefits. Whether or not one adopts the idiom of animal rights and the trading-off of interests advocated by Francione, the anomaly here is striking because all of the costs are assigned to one class of sentient beings, and all of the benefits accrue to another. However one looks at it, this seems to be a model of injustice. Here we locate what really makes the concepts of necessary and unnecessary suffering vacuous,³² for it is these concepts that disguise the anomaly and infuse the cost-benefit calculation with apparent ethical legitimacy, when in actuality it is a sham.

I believe we should require of those doing research involving animals a reverse onus form of justification.³³ Albert Schweitzer held that it is always *prima facie* wrong to subject animals to aversive stimuli and degrading servitude to our will, and that we must unavoidably confront our conscience and accept responsibility for this wrongdoing. We cannot justify such acts simply by balancing the benefits to ourselves they produce against the collateral harms we cause animals. The reverse onus view, inspired by his thinking, replaces the criterion of necessary suffering by the much more stringent moral imperative of showing why the obligation *not* to experiment should be overridden.³⁴

An individual reading *Rain Without Thunder*, and having no independently acquired information to draw upon, might reasonably conclude that no recent advances have been made to reduce the suffering of nonhuman experimental subjects. This would be a mistake and, I believe, Francione cautiously avoids making it, although in doing so he is hesitant and almost seems inconsistent. The appearance of inconsistency may owe to the fact that he wants to make a strong argument that animal welfare ideology and legislation have not led to any reduction in suffering, but may have led to the opposite result. But he concedes that *something* has led to such reduction. For example, he writes that in research of the type we have been discussing, "the exploitation of nonhumans [is considered] morally legitimate but subject to some limitation the extent of which is determined and applied by the scientific community."³⁵ Thus some sensitivity toward, and a deliberate effort to reduce suffering is acknowledged, whatever its motivation might be.

³² The underlying reasoning is circular and absurd: it is necessary to do X, instrumental to which is the use of nonhuman animal subjects who will be caused to suffer. Therefore, the suffering of nonhuman animals who are instrumental to the doing of X, and whose suffering will be occasioned by X, is necessary.

³³ Michael Allen Fox, *The Possible Avenues of Solution: The Humane Treatment Principle, the Theory of Equal Consideration of Interests and Animal Rights*, in *L'ÊTRE HUMAIN, L'ANIMAL ET L'ENVIRONNEMENT: DIMENSIONS ÉTHIQUES ET JURIDIQUES* 55, 55-62 (Actes de la session internationale d'été 1994, Faculté de droit, Université de Montréal) (Montréal: Éditions Thémis, 1996).

³⁴ 2 ALBERT SCHWEITZER, *CIVILIZATION AND ETHICS, THE PHILOSOPHY OF CIVILIZATION* 256-57 (C.T. Champion trans., 2d ed. 1929).

³⁵ FRANCIONE, *supra* note 1, at 85.

We have seen that the concepts "necessary" and "unnecessary suffering" are spurious. None of the suffering of nonhuman animals at the hands of humans is necessary, all of it is unnecessary. And if animals' lives have value independent of their interests to others, all of their suffering is morally unjustified. We cannot, therefore, attribute to the application of these concepts any diminution in the suffering of nonhuman animals. Although this is so, it may well be that animal welfarism, as a set of attitudes rather than as an ideology, has after all, exercised a small, but positive impact on the scientific community.