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Joan Dunayer's "Advancing Animal Rights" is a response to a *Journal of Animal Law* piece on her book *Speciesism*: Jeff Perz's "Anti-Speciesism" (Volume 2, 2006). "Advancing Animal Rights" will be published in full or in part in Volume 3 of the *Journal of Animal Law*. Given the contents of "Anti-Speciesism," the *Journal* has deemed it appropriate to release "Advancing Animal Rights" before Volume 3 appears in 2007.
—Professor David Favre, Chair, Advisory Committee, *Journal of Animal Law*

In "Advancing Animal Rights," Joan Dunayer refutes Jeff Perz's charges that her book *Speciesism* appropriates and misrepresents the work of Gary Francione. She also critiques aspects of Francione's animal rights theory and discusses ways in which *Speciesism* represents progress beyond that theory. Dunayer demonstrates that Francione's guidelines for abolitionist action are needlessly complex and actually allow for "welfarism"; she proposes a different approach. In addition, Dunayer redefines speciesism, expanding and refining the concept by distinguishing between different types of speciesism. Finally, she outlines the legal rights that all nonhuman beings should possess.

ADVANCING ANIMAL RIGHTS: A RESPONSE TO "ANTI-SPECIESISM," CRITIQUE OF GARY FRANCIONE'S WORK, AND DISCUSSION OF *SPECIESISM*

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I. INTRODUCTION

Defending one's self against unjust attack is, at best, an unpleasant task. I would much rather focus on defending nonhuman animals against injustice. Current circumstances, however, require that I write partly in my own defense. Volume 2 of the *Journal of Animal Law* contains a piece, "Anti-Speciesism,"[1] that maligns my animal rights book *Speciesism*.[2] I became aware of this piece, by Jeff Perz, only after its publication. According to Perz, *Speciesism* "appropriates and misrepresents" Gary Francione's work.[3] In this response I demonstrate the falsehood of Perz's charges; defend *Speciesism*'s originality, integrity, and merit; and present arguments that I believe advance animal rights.

Professor emeritus of philosophy Steve Sapontzis, author of *Morals, Reason, and Animals*, has described *Speciesism* as a "definitive statement of the abolitionist animal rights position, not only in philosophy but also for the law and for conducting animal rights advocacy."[4] Perz relentlessly gainsays such an assessment. "Anti-Speciesism" opens, "*Speciesism* is a book that, for the most part, makes highly progressive, radical and laudable claims regarding animal rights theory and practice."[5] From that point on, however, Perz has

nothing good to say about the book. Nothing. At the same time, he has only praise for Francione's work, which he presents as flawless.

Whereas Perz's treatment of Francione's work is wholly uncritical, *Speciesism*'s treatment of Francione's work is objective and even-handed. The book's first mention of Francione appears in the Acknowledgments: "In *Speciesism* I build on the work of other animal rights theorists, such as Paola Cavalieri, Gary Francione, David Nibert, Evelyn Pluhar, James Rachels, Tom Regan, Bernard Rollin, Steve Sapontzis, and Peter Singer. My intellectual debt to Francione, Regan, and Sapontzis is especially large."[6] Thereafter the book cites Francione fifty-eight times. Twenty-four of these references cite statements by Francione with which I agree;[7] thirty-four cite statements that I find speciesist, logically inconsistent, or otherwise problematic.[8] Do these numbers prove that my treatment of Francione's work has been scrupulously fair? No. Nor can they convey the contexts in which the citations occur. However, the numbers do show that my treatment of Francione's work is far from either totally positive (like Perz's) or unremittingly negative (like Perz's treatment of *Speciesism*).

Dubbing Francione's theory "genuine animal rights theory,"[9] Perz speaks of animal rights theory and Francione's theory as synonymous. In reality, of course, animal rights theory continues to evolve not only in Francione's work but also in the work of other theorists. In Perz's view, Francione's theory is "consistent" and "readily and effectively applied to practical situations."[10] In some fundamental ways, I disagree on both counts. I'll be explaining why.

While duly crediting Francione's work, *Speciesism* advances animal rights theory beyond that work. The book offers clear, explicit guidelines for abolitionist action against speciesist exploitation, expands and deepens people's understanding of speciesism, and specifies the legal rights that all nonhuman beings should possess after their emancipation from property status.

Unfortunately, before proceeding to substantive discussion, I must refute the allegations with which Perz has impugned *Speciesism*'s integrity and worth.

II. PERZ'S FALSE CHARGES

A. "Appropriation"

As Perz himself states, his allegations that I've appropriated and misrepresented Francione's work are "serious charges."[11] Depicting Francione as the only worthy abolitionist theorist, Perz attempts to discredit *Speciesism*. In his efforts to give the appearance of appropriation and misrepresentation, he omits crucial facts, deceptively manipulates quotations, and falsely paraphrases and summarizes.

Among other things, Perz ignores all of my published work before *Speciesism*. He accuses me of appropriating content that appeared in my own writing *before* it appeared in the Francione work that he cites—in some cases, years before. At best, Perz has charged me with appropriation without bothering to familiarize himself with my body of work, or even my first major work: *Animal Equality: Language and Liberation*.[12] He says of the alleged appropriation, "The reader of *Speciesism*, Francione's books and articles and this review must consider all three of these sources and judge for her or himself based upon the evidence."[13] To judge fairly, readers must consider not only Francione's books and articles but also mine, including the book and articles that I wrote before *Speciesism*.

In his concluding section, Perz presents four examples of alleged appropriation. Each example juxtaposes text from Francione's work with text from *Speciesism*. I'll provide each example exactly as it appears in "Anti-Speciesism." All ellipses and bracketed words are Perz's.

Here is the first example:

2004 Dunayer without reference to Francione:

> U.S. law is even more speciesist than the U.S. public. Most U.S. residents believe that it's wrong to kill animals for their pelts, but the pelt industry is legal. Most believe that it's wrong to hunt animals for sport, but hunting is legal. Two-thirds believe that nonhumans have as much "right to live free of suffering" as humans, but vivisection, food-industry enslavement and slaughter, and other practices that cause severe, prolonged suffering are legal.

2000 Francione:

> There is a profound disparity between what we [the public] say we believe about animals, and how we actually treat them. On one hand, we claim to treat animal interests seriously. Two-thirds of Americans polled by the Associated Press agree with the following statement: "An animal's right to live free of suffering should be just as important as a person's right to live free of suffering." More than 50 percent of Americans believe that it is wrong to kill animals to make fur coats or hunt them for sport.
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> . . . .
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> On the other hand, our actual treatment of animals stands in stark contrast to our proclamations about our regard for their moral status. We subject billions of animals annually to enormous amounts of pain, suffering and distress. . . . [W]e kill more than 8 billion animals a year for food. . . .
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> . . . .
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> Hunters kill approximately 200 million animals in the United States annually. . . .
>
> [W]e use millions of animals annually for biomedical experiments, product testing, and education.
>
> And we kill millions of animals annually simply for [fur] fashion.[14]

Although Perz doesn't acknowledge the fact, I cite my source, also used by Francione: an article by Associated Press writer David Foster that reported the results of an AP poll.[15] Perz has inserted my word "public" into the Francione quotation; that word doesn't occur in Francione's discussion of the poll.[16] Perz's use of ellipses also misleads; in Francione's text nothing after the first ellipsis refers to the poll.[17] Ironically, whereas my wording largely differs from both Francione's and Foster's, Francione's closely resembles Foster's. Here are the relevant portions of the three texts:

Foster (1996):

> Two-thirds of the 1,004 Americans polled agree with a basic tenet of the animal-rights movement: "An animal's right to live free of suffering should be just as important as a person's right to live free of suffering." . . . 59 percent say killing animals for fur is always wrong; and 51 percent say sport hunting is always wrong.[18]

Francione (2000):

> Two-thirds of Americans polled by the Associated Press agree with the following statement: "An animal's right to live free of suffering should be just as important as a person's right to live free of suffering." More than 50 percent of Americans believe that it is wrong to kill animals to make fur coats or to hunt them for sport.[19]

Dunayer (2004):

> Most U.S. residents believe that it's wrong to kill animals for their pelts, but the pelt industry is legal. Most believe that it's wrong to hunt animals for sport, but sport hunting is legal. Two-thirds believe that nonhumans have as much "right to live free of suffering" as humans, . . .[20]

Finally, the point that I'm illustrating in the *Speciesism* excerpt differs from Francione's. My point is that U.S. law lags behind public opinion. Francione's point is that people don't act in accordance with their beliefs about nonhuman animals. I had no reason to cite Francione. I simply used the same report to make a different point in very different language. My paragraph in no way appropriates.

Perz's second example of alleged appropriation is equally spurious:

2004 Dunayer without reference to Francione:

> "Welfarists" seek to change the way nonhumans are treated within some system of abuse. They work to modify, rather than end, the exploitation of particular nonhumans.

1996 Francione:

> Both [welfarists] Spira and PETA . . . seek to effect change within the system. This inevitably requires the acceptance of reformist measures. . . .[21]

Once again, Perz has inserted one of my words into the Francione quotation; Francione doesn't use the word "welfarists" anywhere in his paragraph:

> PETA, however, despite its flair for attention-grabbing media events and its generally confrontational tactics, was and is no more (though no less) radical on a substantive basis than Spira, and has always accepted the view that although the long-term strategy is abolition, the short term may require reformist

> compromise. Both Spira and PETA espouse a radical rights ideology, but seek to effect change within the system. This inevitably requires the acceptance of reformist measures, which are then seen by these "radicals" as necessary stepping stones to the abolition of exploitation. So, although PETA and Spira have long-term goals that Jasper and Nelkin label "fundamentalist," they both adopt tactics that are "pragmatic."[22]

Apart from the commonplace language *seek to*, *change*, *within*, and *system*, my paragraph differs from Francione's in both wording and focus. Also, I cite Francione at the end of the paragraph:

> "Welfarists" seek to change the way nonhumans are treated within some system of speciesist abuse. They work to modify, rather than end, the exploitation of particular nonhumans. In effect, "welfarists" ask that some form of abuse be replaced with a less cruel form. In contrast, rights advocates oppose exploitation itself. As Francione has written, a rights advocate "rejects the regulation of atrocities and calls unambiguously and unequivocally for their abolition."[23]

Perz's third example, too, shows no more likeness than a few words:

2004 Dunayer without reference to Francione:

> [N]ew speciesists endorse basic rights for some nonhuman animals, those ostensibly most similar to humans.

2000 Francione:

> [The work of (speciesist) cognitive ethologists] is also dangerous in that it threatens to create new hierarchies in which we move some animals, such as great apes, into a "preferred" [personhood-rights] group based on their similarities to humans, and continue to treat other animals as our property and resources.[24]

Yet again, Perz has inserted language ("speciesist," "rights") into Francione's text that doesn't appear there but creates some artificial resemblance between Francione's wording and mine. Yet again, the context of my quotation substantially differs from that of Francione's. My sentence contrasts old and new speciesism:

> Unlike old-speciesists, new-speciesists endorse basic rights for *some* nonhuman animals, those ostensibly most similar to humans.[25]

Francione's sentence focuses on cognitive ethology:

> Although the work of cognitive ethologists has been very important, it is also dangerous in that it threatens to create new hierarchies in which we move some animals, such as the great apes, into a "preferred" group based on their similarity to humans, and continue to treat other animals as our property and resources.[26]

Surely I'm entitled to argue, without citing Francione, that rights shouldn't be restricted to those nonhumans who most resemble humans, especially given that I'm framing that argument in a new way: in terms of my original category "new speciesism." Moreover, I already was publicly contesting speciesist hierarchies a decade before Francione's *Introduction to Animal Rights*. In a 1990 article I rejected an animal "hierarchy with humans at the top."[27]

Perz's final example of alleged appropriation juxtaposes two sentences:

2004 Dunayer without reference to Francione:

> We consider it immoral to treat any human, whatever their characteristics, as property.

2000 Francione:

> We do not regard it as legitimate to treat *any* humans, irrespective of their particular characteristics, as the property of other humans.[28]

My wording is similar to Francione's but not the same. I didn't cite Francione because the similarity was unintentional. As for the idea that modern society considers human enslavement (property status) immoral, that's common knowledge. Nor did I have reason to credit Francione for the point of my sentence: people apply a double standard when they cite nonhuman characteristics as justification for nonhuman enslavement. I made that point in my first book, *Animal Equality*, which repeatedly discusses parallels between human and nonhuman enslavement.[29] For example, in *Animal Equality* I comment, "[E]aters of turkey flesh call turkeys ugly and stupid. Do they also consider it acceptable to enslave and kill humans whom they regard as ugly and stupid?"[30] Nothing in *Animal Equality* can have derived from *Introduction to Animal Rights*; I wrote the former before I read the latter.[31]

Perz's *Journal of Animal Law* piece appears as an abridged version of a much longer "Anti-Speciesism," which constitutes an entire website.[32] In the unabridged "Anti-Speciesism" Perz accuses me of appropriating arguments and examples that first appeared in my published writing *before* publication of the Francione work at issue.

Perz states, "Francione gives evidence and accounts of non-human animals acting morally and having moral sentiments. Dunayer even uses the same example of discovering more altruism in monkeys than humans via electric shock experiments. . . ."[33] In 1990, a decade before the Francione book cited by Perz, my article "The Nature of Altruism" appeared in *The Animals' Agenda*. That article, on nonhuman altruism, opens with the example to which Perz refers. Using the same language that I later would use in *Speciesism*, I wrote:

> Rhesus monkeys learned to pull two chains for food. Then one of the chains was linked to a shock generator. Now, in addition to releasing food, this chain would inflict an electric shock on another monkey, visible in an adjoining cage. To get adequate food, a monkey needed to pull both chains. Unlike Milgram's subjects, the monkeys were forced to choose between equally grave alternatives: shock another monkey or go hungry. Most monkeys went hungry.[34]

Other animal rights theorists, too, have used the example before Francione—no doubt, because it's a powerful one. For instance, in 1995 Evelyn Pluhar wrote:

> [A] majority of the subjects prefer to go hungry rather than hurt other monkeys. (Pulling a chain to obtain food would also severely shock another monkey who had been placed in full view of the subject.)[35]

Similarly to Pluhar, in 2000 Francione wrote:

> . . . 87 percent of the group preferred to go hungry rather than pull a chain that would deliver food but would also deliver a painful electric shock to an unrelated macaque housed in a neighboring cage.[36]

Ironically, Perz has accused me of appropriating content that I first presented ten years before the Francione work that he cites. Also ironically, Francione's wording resembles Pluhar's. Whereas *Speciesism* cites the experimenters' original report,[37] Francione's book cites a secondary source, a 1992 book by Carl Sagan and Ann Druyan.[38] The Francione excerpt includes most of this wording by Sagan and Druyan: "87% preferred to go hungry," "pull a chain and electrically shock an unrelated macaque."[39]

"In 2004, Dunayer states that a 'someone' is a sentient, thinking, feeling *individual* with unique life experiences whereas a 'something' is not. She rightly criticizes speciesists for characterizing non-human animals as things," Perz notes. He decries my doing this "without citing Francione," who made these observations "four years earlier."[40] Again Perz has it backwards. In my 1990 article "On Speciesist Language," I objected to categorizing nonhuman animals as "things"[41] and stated, "Every sentient being is a *someone*, not a *something*."[42] I developed this theme in much greater depth in *Animal Equality*, which contains a section headed "Someone, Not Something"[43] and statements such as the following: "No sentient being is an 'it,' 'that,' or '-thing.' Each is equally someone."[44]

Perz claims shared intellectual territory as Francione's personal property. "Dunayer's references to 'needlessly' and 'unnecessarily' killing and otherwise harming non-human animals for 'mere convenience and taste [enjoyment]' contain elements of Francione's thesis in *Introduction to Animal Rights*," he remarks.[45] The theme of needless harm runs throughout my first book, *Animal Equality*, in which I stress that speciesist exploitation is unnecessary and therefore morally wrong. "We're guilty if we participate in needless, unjust practices that cause suffering or death," I state.[46] "[H]umans don't need to eat flesh. . . ."[47] One after another, I describe various forms of speciesist exploitation as "needless" or "unnecessary." Human violence toward chickens? "[N]eedless."[48] Hunting? "[U]nnecessary killing."[49] Sportfishing: "needless infliction of suffering and death."[50] Vivisection: "unnecessary."[51] In a section titled "'Necessary' Evil" I argue, "By definition, evil entails unnecessary harm. And that's what vivisection inflicts."[52] Years before *Introduction to Animal Rights* I already was expressing the view that speciesist exploitation itself constitutes needless harm. In a 1997 letter published in *The Washington Post* I stated, "Because humans don't need to eat flesh, hunting lacks a moral defense." The letter ended, "Hunting, which needlessly causes suffering and death, epitomizes evil."[53]

Similarly, Perz falsely accuses me of appropriating Francione's assertion that humans have no moral right to breed other animals.[54] It should be illegal for any human to breed any nonhuman, I maintain in *Animal Equality*.[55] I elaborate:

> Envision nonhuman emancipation. With hunting, fishing, and trapping outlawed, free-living nonhumans adjust to their ecosystems in ways guided by natural selection; human interference no longer harms individuals, populations, or environments. Humans stop "producing" dogs to be merchandise, mice to be tools, and turkeys to be flesh. A ban on "selective breeding" ends centuries of inflicting deformity and genetic disease. The number of "domesticated" nonhumans rapidly declines.[56]

Moreover, in a 1991 letter published in *The Animals' Agenda*, Eric Dunayer and I said of dog breeding, "Would we 'trash' thousands of years of selective breeding? Absolutely."[57] We also made this general statement about human breeding of nonhumans: "Humans don't have the right to genetically manipulate other animals, or make them subservient."[58] Again: 1991, years before *any* Francione work cited by Perz.

According to Perz, I "borrow" Francione's "insight" that nonhuman animals who can't be rehabilitated after emancipation should be cared for in sanctuaries.[59] My thoughts on post-emancipation sanctuaries also appear in *Animal Equality*. The paragraph from *Animal Equality* excerpted immediately above continues as follows:

> All captive nonhumans are liberated from exploitation and cruel confinement. Those incurably suffering from deformity, injury, or illness are euthanized; all others receive any needed veterinary care. Liberated non-"domesticated" nonhumans are set free if they can thrive without human assistance (after any necessary rehabilitation) and if appropriate habitat exists. If not, they're permanently cared for at sanctuaries. As much as possible, these sanctuaries provide natural, fulfilling environments. Hens liberated from egg factories, cats liberated from "shelters," and other homeless "domesticated" nonhumans are fostered at sanctuaries and private homes until adopted.[60]

Speciesism's chapter "New-Speciesist Law" contains an original ten-page critique of Steven Wise's approach to nonhuman legal rights.[61] Perz goes so far as to indicate that Francione deserves credit for this critique. After discussing a 1993 Francione article on the Great Ape Project (GAP), Perz states, "Dunayer's objections to Wise's views are more specific than Francione's objections to the GAP, but if Dunayer's objections to Wise were generalized they would become similar to Dunayer's objections to the GAP. These, in turn, are similar to Francione's."[62] In other words, if my A were different, it would be similar to my B, which allegedly is similar to Francione's C; therefore, my A derives from Francione's C. Still straining to credit Francione with my work, Perz then falsely suggests that Francione has addressed Wise's work. Citing a 2004 Francione article, Perz remarks, "[A]lthough Francione does not thoroughly discuss the views of Steven J. [*sic*] Wise, . . . many of Francione's arguments against the GAP can be directly used against Wise's arguments."[63] With the words "does not thoroughly discuss," Perz understates to the point of being deceptive. The article doesn't even *mention* Wise except to say in an endnote, "For an approach that argues that characteristics beyond sentience

are necessary and not merely sufficient for preferred animals to have a right not to be treated as resources in at least some respects, see Steven M. Wise, *Drawing the Line: Science and the Case for Animal Rights* (2002), and Steven M. Wise, *Rattling the Cage: Toward Legal Rights for Animals* (2000)."[64] That's it. Nothing more.

Portions of my critique of Wise's views follow (minus the original note superscripts).[65] Francione has published nothing remotely similar.

> Wise grades animals on their supposed degree of autonomy, which he equates with self-awareness. Reserved for humans, a score of 1.0 signifies the highest level of autonomy. To qualify for basic legal rights, an animal must receive an autonomy score of 0.7 or higher. As determined by Wise, so far only six species "clearly" qualify for rights: humans, chimpanzees, bonobos, gorillas, orangutans, and bottlenose dolphins. With less confidence, Wise also advocates rights for African gray parrots and, provisionally, African elephants. Here again is the new-speciesist notion that rights should be contingent on someone's degree of humanness: we can be confident that nonhuman great apes deserve rights, less confident that other nonhuman mammals do, still less confident about birds, and so on "down" the phylogenetic scale.
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> By ranking humans as a perfect 1.0 and all other animals lower, Wise also casts nonhumans as lesser: not of equal value, not entitled to equal consideration. As envisioned by him, "animal rights" doesn't mean animal equality.
>
> Currently, Wise assigns the free-living African elephant Echo an autonomy score of 0.75, sufficient for rights. However, if some captive African elephants fail mirror self-recognition tests, he'll drop Echo's score and that of all other African elephants to 0.68 or lower, below the threshold for rights (0.7). That is, he'll oust Echo and all other African elephants from those who qualify for rights even if, unknown to us, Echo herself and some other African elephants actually possess the required degree of autonomy.
>
> Mental capacities and other traits vary within nonhuman species, just as they do among humans. Individual African elephants surely differ in their degree of autonomy, perhaps widely. Denying rights to *all* members of a species on the grounds that *some* members fail to meet the proposed criteria is illogical and unjust. It's akin to flunking an entire class because some of the students were given tests that they failed. The problem of unfairly applied criteria arises because it's impossible to determine the autonomy of each individual within a species, let alone within all species. (In reality, it's impossible to quantify the autonomy of *any* animal, including a human.)
>
> Wise claims to assess the autonomy of "normal" members of particular species. How does he know who's normal? If some African elephants fail tests of mirror self-recognition, how can we know that others wouldn't have passed? How many African elephants must we test before we claim to know that, worldwide, no African elephant possesses autonomy of 0.7 or higher? Six? Fifty? Eight hundred?
>
> African elephants must be captive to be tested for mirror self-recognition. Wise proposes that the rights of African elephants hinge on the performance of captives. Are captive African elephants more representative of their species than

free-living ones such as Echo? Isn't it the other way around? Most African elephants are free-living, and all *should* be. If African elephants obtained rights, their captivity would cease, leaving *only* free-living individuals.

Sentience is the only valid and fair criterion for basic rights. Whatever their degree of autonomy, African elephants definitely are sentient. That should suffice.

. . .

Wise defends his emphasis on autonomy as a response to the way in which judges decide cases. Judges, he says, think in terms of autonomy. No, they don't—not, at least, as Wise defines autonomy. Courts regard the most mentally incompetent humans as persons with rights, he himself notes.

In fact, Wise cites a legal case in which the Massachusetts Supreme Court asserted its duty to "safeguard the well-being" and "ensure the rights" of a "profoundly mentally retarded" 67-year-old man. Possessing an IQ of 10, Joseph Saikewicz communicated only through "gestures and grunts," couldn't understand words, and apparently couldn't conceptualize death. No matter. The court affirmed the "principles of equality and respect for all individuals," declaring that "the value of life under the law [has] no relation to intelligence" or an individual's ability to "appreciate" life. What's more, the court referred to Saikewicz as having "autonomy."

In chapter 2, I mentioned Nicholas Romeo, a man who has an IQ of about 9, can't speak, and "lacks the most basic self-care skills." The U.S. Supreme Court ruled, in 1982, that he has constitutionally protected "liberty interests in safety and freedom from bodily restraint." As legal scholars Lee Hall and Anthony Jon Waters have written, "Even when mentally disabled humans function only on a basic level, they are 'persons' in the eyes of the law."

Compassionate law recognizes that individuals with apparently little autonomy are particularly vulnerable to abuse; their need for legal rights is especially strong. Yet, Wise advocates legal rights for only the most autonomous nonhumans.

Judges consider the well-being of young children and other humans who lack sufficient autonomy to make important decisions regarding their own welfare. In such instances the court or a guardian makes the necessary decisions, presumably in the individual's best interest. Whether or not bottlenose dolphins are autonomous in Wise's sense, when they acquire legal rights and someone violates those rights, humans will have to act on their behalf. Dolphins can't ask the legal system for justice. Humans must do that. Given that nonhumans can't plead their own case or state their preferred fate in a court of law, what's the point—moral *or* legal—of attempting to assess their degree of autonomy?

Wise says that he assesses nonhuman autonomy in terms of human intelligence because "the law measures nonhuman animals with a human yardstick." The law doesn't measure nonhuman capacities. It measures nonhumans' financial and, to much lesser extent, emotional value to humans. The law regards nonhumans as property. And isn't the goal to change the way the law views nonhumans? Wise fails to provide any cogent, logically consistent reason for his severely restrictive autonomy criteria.

. . .

With good reason, Wise repeatedly compares nonhuman enslavement to the former enslavement of African-Americans. If opponents of African-American enslavement had adopted a racist approach comparable to Wise's speciesist one, they would have advocated rights for only some blacks: those who most resemble whites.

Before African-American emancipation, a number of slaves sued for freedom on the grounds that they were white. Unable to *prove* whiteness, they had to demonstrate that they were so much *like* a white that they should be given "the benefit of the doubt." These plaintiffs presented physical evidence of whiteness, such as light skin, eyes, and hair. They also presented behavioral evidence that they socialized with whites (for example, attended church with them) and conducted themselves in a ladylike or gentlemanly way associated with white respectability. Law professor Ariela Gross comments, "Doing the things a white man or woman did became the law's working definition" of whiteness. For instance, a person might demonstrate accomplishments such as financial self-support. "People described others as white or black in terms of their competencies and disabilities."

Ancestry also factored in. Evidence of African ancestry counted against the plaintiff; evidence of European or other non-African ancestry counted in their favor. In one case, the judge instructed the jury to award the plaintiffs freedom if the evidence indicated that they were less than one-fourth black: greater than 0.75 in whiteness.

We react with revulsion to the idea of demonstrating whiteness. We should react with equal revulsion to the idea of demonstrating humanness.

Wise would subject nonhumans to the same sort of bigoted, degrading tests that enslaved humans had to "pass" in order to receive the freedom that always was rightfully theirs. Just as demonstrations of whiteness were based on deeply racist premises, Wise's proposed demonstrations of humanness are based on deeply speciesist ones. Wise, you'll remember, considers the ancestry of African gray parrots and, deeming it too remote from ours, counts it against them. In Wise's scheme, nonhumans don't get freedom unless their ancestry is sufficiently human (white) and members of their species have demonstrated a sufficient number of human (white) traits. They don't get freedom unless members of their species have scored 0.7 or higher in humanness (whiteness).

Today, of course, no one must demonstrate whiteness in order to be free. Nor should anyone have to demonstrate humanness.

Demonstrating whiteness never had the power to free more than relatively few individuals. Although Wise's approach would emancipate entire species, those species would amount to a select few.

Making freedom contingent on whiteness maintained white supremacy; it kept whites in the position of judge and superior being. Outside a racist context, no one ever would "aspire" to whiteness. Analogously, only speciesism could place nonhumans in the degrading, oppressive situation of having to demonstrate humanness. Wise's approach would further inscribe human supremacy into law.[66]

Perz accuses me of failing to give credit where credit is due.[67] He's the one who fails to give proper credit, and to an extraordinary degree. By ignoring my earlier work, manipulating quotations in misleading ways, and otherwise distorting, Perz erases my contributions to animal rights theory and grossly inflates Francione's. He persistently credits Francione with my original work.

Speciesism "cites all of the major and several of the minor works of Francione," Perz notes.[68] Perversely, he presents even that fact as evidence of opportunity to appropriate Francione's work rather than evidence of thorough citation.[69]

Perz's allegation that I've appropriated Francione's work is false.

B. "Misrepresentation"

No less adamantly than he charges appropriation, Perz charges that *Speciesism* misrepresents Francione's work.[70] In his *Journal of Animal Law* piece, Perz makes four specific claims of misrepresentation. All pertain to my argument that a ban on egg-industry caging of hens is not abolitionist but "welfarist."

While quoting Francione extensively, Perz quotes very little of my discussion on this subject. Here, then, is my full discussion as it appears in *Speciesism* (minus the original note superscripts):

> What about seeking an ostensibly less problematic ban, one with no apparent tradeoffs, such as a ban on the caging of "laying hens"? Like a ban on forced molting, such a ban wouldn't emancipate hens from the egg industry, so it wouldn't be abolitionist. Also, it actually would involve all sorts of tradeoffs.
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> First, like other attempts to make abuse less severe, a cage ban focuses on one particularly cruel aspect of exploitation rather than exploitation itself, the cause of all the cruelty. Most people don't question the necessity of nonhuman exploitation, Francione comments. They question only "particular practices" within some area of exploitation. For example, they question the necessity of branding cattle but not of eating cow flesh. A campaign to ban the caging of hens obscures the importance of eschewing eggs. Such a campaign encourages the public to overlook the immorality of speciesist exploitation except where that exploitation entails extreme cruelty.
>
> Second, bans that don't prevent or end exploitation suggest that an inherently abusive enterprise can be fixed, made humane. A ban on caging hens invites the conclusion that caging (torture) is abusive but the egg industry per se (exploitive captivity) is not. Modifications to exploitation make it appear acceptable, especially when nonhuman advocates have sought and approved the modifications. I can't think of a better way to soothe the conscience of humans who eat animal-derived food than to suggest that food-industry enslavement and slaughter can be humane. That misconception enables people to tell themselves, "The problem isn't my consumption of animal-derived food. The problem is the way it's produced. I'm opposed to cruel practices like caging hens, which should be illegal. Lawmakers and the industry should make the necessary changes."
>
> Third, a cage ban implies that cageless confinement is morally acceptable. The term *free-range hen* suggests freedom. But "free-range" hens aren't free, and

most do precious little ranging. Many spend their lives with thousands of other hens in filthy, windowless warehouses. Many are debeaked because they're so crowded. Many never go outside. When uncaged hens do have access to the outside, this access often consists of nothing more than an opening to a grassless area large enough for only a few hens. Do uncaged hens suffer less than caged ones? There's every reason to believe that, yes, in general they suffer less. However, they still suffer. They're still manipulated, deprived, and, usually, killed when their egg laying declines. Currently in the United States, 282 million hens are laying eggs for human consumption. If cages were banned and egg consumption remained anywhere near current levels, hens still would be torturously crowded. The best way to reduce the suffering of hens is to reduce the number who are, *and ever will be,* exploited for eggs—by convincing people to stop eating eggs.

Fourth, a ban that replaces one method of enslaving or killing with another method can make the exploitive industry more profitable. In 1981 Switzerland set new egg-industry standards, with full compliance required as of 1992. The standards proved incompatible with caging. Did the mandated changes hurt the Swiss egg industry? No, they boosted its profits. Enslavers managed to hold nearly as many hens within the new confinement systems as within the former cage systems. Although the industry raised the price of eggs, demand for Swiss eggs increased: the public preferred eggs from uncaged hens.[71] The end of caging benefited the Swiss egg industry. And what benefits an industry prolongs its life.

The economic outcome of eliminating caging might be very different in another country, such as the United States, but this fact remains: Changing the method of confinement (or other abuse) can make an animal-derived product more desirable. A cage ban gives the egg industry added legitimacy and makes eggs more attractive to many consumers. Nonhuman advocates can't predict such a ban's economic consequences and shouldn't attempt to, just as they shouldn't attempt to calculate which of two abusive situations causes more suffering. They should oppose the egg industry's very existence. The relationship between abolitionists and enslavers must be adversarial, as it was with regard to African-American enslavement.

A ban on caging hens is old-speciesist. It changes the way that hens are held captive but doesn't prohibit holding them captive. It doesn't free hens from exploitation or prevent more of them from being bred for exploitation. "Welfarist" bans really aren't bans: they can be reworded as standards. As I mentioned, a ban on forced molting actually is a requirement that enslaved hens receive adequate food and water. Similarly, a caging ban actually is a requirement that enslaved hens have more space. Indeed, the Swiss cage "ban" wasn't expressed as a ban. Instead the law required that enslavers provide each hen with, among other things, at least 124 square inches of floor space. The effect was the elimination of cages.

Throughout his work, Francione emphasizes that property status violates nonhumans' moral rights. Nonhuman advocacy, he states, shouldn't compromise those rights. I strongly agree. At the same time, Francione argues that an egg-industry prohibition on caging hens can be "consistent with rights theory." I hope

> I've shown that it can't. Whether or not hens are caged, exploiting them for their eggs is inconsistent with animal rights.
>
> To be acceptable, Francione says, a ban on caging must result in hens being treated in a way that "completely" respects their moral right to freedom of movement. That isn't possible. Exploiting hens for their eggs automatically entails holding them captive and limiting their freedom of movement. When a hen is enslaved, neither her right to freedom of movement nor she herself is respected. The only bans that are consistent with nonhuman rights are those that are consistent with nonhuman freedom from exploitation.
>
> Although "still regarded as property" and "exploited as property," Francione further stipulates, the hens must be treated as if they *weren't* regarded as property. Again, that condition never could be satisfied. The egg industry regards and exploits hens as property and treats them accordingly—as property. I find it wholly implausible that the egg industry ever would do otherwise.
>
> A prohibition mustn't "substitute" or "endorse" an "alternative form of exploitation," Francione repeatedly states. Explicitly or implicitly, a cage ban does just that: it condones other forms of confinement. As I stated, the Swiss cage ban wasn't expressed as a ban but as new requirements. That fact demonstrates such a ban's "welfarist" nature. Any distinction between a ban that permits the continued exploitation of the animals in question ("You can't cage hens") and new requirements as to how that exploitation is carried out ("You must provide each hen with at least 124 square inches of floor space") is largely academic. Francione apparently recognizes this because he expresses a caveat: It *is* acceptable to "explicitly endorse" an "alternative form of confinement" if that confinement "fully recognizes the animals' interests in freedom of movement." Again, no exploitive confinement does that. Endorsing any form of nonhuman exploitation is inconsistent with animal rights.
>
> Francione objects to proposals that endorse nonhumans' property status. Any proposal to modify the confinement of exploited hens endorses their property status.[72]

Now I'll address Perz's four specific claims of misrepresentation. "Contrary to Dunayer's depiction," Perz writes, "Francione opposes welfare regulations that increase cage-size specifications for hens who are used for their eggs."[73] As readers can see, I do *not* depict Francione as other than opposed to "welfare regulations that increase cage-size specifications." I state, "Francione argues that an egg-industry prohibition on caging hens can be 'consistent with rights theory.'"[74] A prohibition on caging, not an increase in cage size. I also state, "To be acceptable, Francione says, a ban on caging must result in hens being treated in a way that 'completely' respects their moral right to freedom of movement."[75] Again: a ban on caging, not an increase in cage size.

Perz's second claim basically repeats his first: "[C]ontrary to Dunayer's innuendos," Francione rejects "welfarist proposals such as increasing battery cage size."[76] Nowhere do I either state or imply that Francione does *not* reject such proposals. Unlike Francione, I consider a ban on egg-industry caging of hens to be automatically "welfarist" rather than abolitionist—because it leaves the animals in question (hens) within a system of exploitation (the egg

industry). Disagreement isn't the same thing as misrepresentation, although Perz repeatedly equates the two.

Perz further claims, "[C]ontrary to Dunayer's false depiction, Francione does not contradict himself by suggesting that prohibitions should substitute or endorse alternative forms of exploitation."[77] I don't indicate that Francione thinks prohibitions "should" substitute or endorse other forms of exploitation. Instead I argue that, in effect, any ban on egg-industry cages substitutes another form of exploitation: cageless exploitation. By definition, any prohibition *that leaves hens within the egg industry* changes the way they're exploited rather than ends their exploitation and is therefore "welfarist." As the above excerpt shows, I wrote, "A prohibition mustn't 'substitute' or 'endorse' an 'alternative form of exploitation,' Francione repeatedly states. Explicitly or implicitly, a cage ban [not Francione] does just that: it condones other forms of confinement."[78] What about my statement that Francione considers it "acceptable to 'explicitly endorse' an 'alternative form of confinement' if that confinement 'fully recognizes the animals' interests in freedom of movement'"?[79] In *Rain without Thunder* Francione states with regard to prohibitions such as a battery-cage ban, "The only time that a rights advocate should explicitly endorse an alternative arrangement is possibly, as I argued earlier, when that alternative *fully respects some relevant animal interest*."[80] Can "an alternative form of confinement" do that? According to Francione, yes. In his next paragraph, he states that animal rights advocates should not support alternative forms of exploitation "unless the alternative form of confinement fully recognizes the animals' interests in freedom of movement."[81]

Finally Perz states, "Contrary to Dunayer's suggestion, Francione does not suggest creating new requirements regarding cage sizes or guidelines about how confined exploitation is to be carried out. Francione does not propose modified confinement."[82] Again, I don't indicate that Francione endorses new cage-size requirements or other confinement guidelines. Instead I argue that a ban on caging is, in effect, a guideline regarding confinement because the egg industry never would or could allow hens complete freedom of movement. As I express it in *Speciesism*, "Exploiting hens for their eggs automatically entails holding them captive and limiting their freedom of movement."[83]

Perz uses misrepresentation to charge *me* with misrepresentation. Like his allegation of appropriation, his allegation of misrepresentation is false.

III. *SPECIESISM*'S UNIQUE CONTRIBUTIONS: PROGRESS BEYOND FRANCIONE'S WORK

A. What Is and Is Not Abolitionist

"Francione argues that one must follow his criteria in order for the change to be abolitionist," Perz states.[84] I disagree with Francione regarding what is and is not abolitionist. *Speciesism*'s argument on this topic is one of the book's contributions to animal rights theory.

I explain:

> [M]any activists misunderstand the term *abolitionist*. Bans aren't automatically abolitionist. Yes, a ban abolishes something. However, if it leaves the animals in question within a situation of exploitation (such as food-industry enslavement and slaughter), it isn't abolitionist in the sense of being anti-slavery. An abolitionist ban is consistent with nonhuman freedom. It prevents or halts, rather than mitigates, abuse.[85]

According to Francione, bans on particular "husbandry" practices, such as the caging of hens or crating of calves, can be abolitionist.[86] To the contrary, such bans are inherently "welfarist" because they modify, rather than prohibit, exploitation. Francione argues that, in theory at least, such bans could have the effect of weakening a particular form of exploitation.[87] The same could be said of requirements for more cage or stall space. In Francione's view, a caging ban could erode hens' property status and therefore qualify as incremental abolition.[88] Whatever its ultimate effect, such a ban isn't abolitionist. To be abolitionist (consistent with rights theory), an action must oppose exploitation itself.

Incremental abolition prevents or ends the exploitation of *some* (rather than all) nonhuman beings. It doesn't modify their exploitation. Like a requirement for increased cage space, a ban on caging changes the *way* that hens are exploited. Banning the production or sale of eggs in a particular jurisdiction would be incremental abolition. Increasing the percentage of humans who are vegan also is incremental abolition. In contrast, banning egg-industry caging is automatically "welfarist." It rests on the premise of continued exploitation. That's the case whether or not activists themselves expressly condone cageless exploitation. By definition, a ban on caging, chaining, beating, or doing anything else to *exploited* nonhumans is "welfarist."

Francione himself emphasizes that any human exploitation of nonhumans is inconsistent with nonhuman rights.[89] At the same time, he contends that a change in exploitation can be consistent with rights theory if it fully respects some "interest"[90] or "protoright"[91] of the exploited animals, such as enslaved hens' interest in "freedom of movement."[92] That argument, too, collapses into "welfarism." After all, an egg-industry hen has an interest in spreading her wings, a zoo-confined polar bear has an interest in cool temperatures, and a laboratory-imprisoned dog has an interest in daily exercise. Such considerations are "welfarist." Abolitionist actions directly and unequivocally oppose the hen's being in the egg industry, the polar bear's being in a zoo, and the dog's being in a laboratory.

In addition to obscuring the meanings of *abolitionist* and *rights* by allowing for actions that are actually "welfarist" and "protorights," Francione further confuses the issues by sometimes arguing in terms of unrealistic outcomes. For example, he contends that a ban on caging could result in egg-industry hens' having complete freedom of movement.[93] "That isn't possible," I state in *Speciesism*.[94] In defense of Francione's contention, Perz writes:

> Before chickens were artificially bred by humans, their ancestors were jungle-birds who nested in trees. If birds such as these were being exploited for their eggs in battery cages today, the result of Francione's suggested prohibition would be that the birds would be removed from the cages and, after successful rehabilitation, returned to their jungle homes. The birds would be free to go anywhere in their environment they chose without any human intervention. There would be no fences or any other system of confinement. Humans would not touch or disturb the birds, save for stealing their eggs from their nests when the birds were away.[95]

According to Perz, this scenario "could be achieved now by an eccentric millionaire."[96] The entire scenario is absurd: ancient-ancestor-like chickens in battery cages; hens removed from cages, rehabilitated, and placed in the jungle; a jungle-based egg industry that allows hens to go wherever they choose and takes their eggs only when they happen to be away. Remember:

Francione contends that an egg-industry ban on caging could result in complete freedom of movement for exploited hens. While resorting to fantasy to defend that contention, Perz praises Francione's guidelines as "readily and effectively applied to practical situations."[97]

Perz claims that Francione offers "clarity" whereas I "obscure."[98] To the contrary, Francione's criteria obscure. They entail contradictions, as well as numerous caveats and exceptions, because they miss the essence of what is and is not abolitionist.

For example, Francione's first criterion for abolitionist change is that the change "constitute a prohibition."[99] As Francione himself observes,[100] both abolitionist and "welfarist" actions may or may not be expressed as prohibitions. The declaration "Nonhuman great apes now are legal persons" certainly is abolitionist, but it isn't expressed as a prohibition. Conversely, the declaration "Battery cages are hereby prohibited" is "welfarist," but it *is* expressed as a prohibition. As I note in *Speciesism*, Switzerland didn't expressly ban battery cages but instead legislated new standards, such as increased floor space per hen, that *resulted in* the elimination of battery cages.[101] Wording or not wording a change as a prohibition doesn't make it abolitionist or "welfarist." I agree with Francione that all abolitionist changes are, *in effect*, prohibitions. Again, though, the same can be said of all "welfarist" changes. A requirement that a caged hen have at least 67 square inches of floor space is a prohibition against less space. Even a requirement that exploited nonhumans be treated "humanely" is a prohibition—against whatever treatment is deemed inhumane. Therefore, the idea of prohibition *per se* isn't helpful; it confuses rather than clarifies. Whether or not a change is abolitionist depends on *what* is prohibited. An abolitionist measure prohibits exploitation.

Perz remarks, "Francione rejects Regan's rights theory, in part, because its multiple criteria for being a subject of a life and its other [*sic*] are overly complicated."[102] Francione's criteria regarding what is and is not abolitionist certainly warrant the same criticism: overly complicated. Indeed, they're tortuous. In contrast, *Speciesism* offers this one clear criterion: If an advocated measure leaves the animals in question within a situation of exploitation, it's "welfarist"; if the measure prevents or ends their exploitation, it's abolitionist.[103]

Apart from *Speciesism*'s discussion of cage bans (which I've already presented), here is the book's argument on what does and does not qualify as abolitionist:

> Like a ban on caging hens, a ban on confining pregnant sows in crates isn't abolitionist. Instead of removing sows from the pig-flesh industry, such a ban alters the way in which they're held captive. Just as the egg industry isn't consistent with chicken freedom, the pig-flesh industry isn't consistent with pig freedom. After all, why are the sows pregnant? Their exploiters have bred them to obtain more victims. A ban on the pig-flesh industry *would* be abolitionist. It would prohibit putting pigs into the situation of abuse. In effect, it would say, "You can't legally breed, rear, or kill pigs for food." Such a ban would emancipate. Whether or not it freed currently enslaved pigs, it would prevent the future enslavement of other pigs (who wouldn't be born).
>
> Francione doesn't categorically reject pursuing bans on such pain-inflicting practices as the dehorning of cattle exploited for food and footpad injections in rats used in vivisection. I do. Such bans are inconsistent with animal rights because they leave cattle and rats within a situation of abuse (the flesh industry or vivisection). Their context is exploitation. If cattle enslavers and rat vivisectors are forbidden to dehorn cattle or inject rats in their footpads, they'll

> simply accomplish their exploitive ends by other (possibly worse) means. Nineteenth-century bans on the branding of enslaved African-Americans weren't abolitionist; they didn't advance emancipation. Nor would a ban on the branding of enslaved cattle be abolitionist.
>
> . . .
>
> All abolitionist bans protect at least some animals from some form of exploitation. They prevent animals from entering the situation of exploitation and may also remove current victims from that situation. Consider a ban on elephants in "animal acts." Abolitionist? Yes. Such a ban doesn't necessarily emancipate all elephants within a particular jurisdiction; for example, it doesn't prevent elephants from being exploited in zoos. However, it *does* prevent their being exploited in circuses and other performance situations. More than a dozen U.S. cities already have banned "animal acts" with elephants and other "wild" animals.
>
> A ban on nonhuman primates in vivisection also is abolitionist. Although it doesn't free nonhuman primates from zoos or "animal acts," it does free them from vivisection.
>
> A ban on bear hunting? Abolitionist. It prevents bears from being wounded or killed by hunters—prevents, rather than modifies, their abuse. Such a ban doesn't state, "Bears are persons, not property," but it's *consistent with* their not being property.
>
> Abolitionist bans respect the moral rights of the nonhumans they're intended to protect. They're analogous to laws prohibiting child labor. Such laws didn't modify the treatment of children forced to labor. They prohibited the exploitation itself.[104]

In *Speciesism* I then give other examples of abolitionist bans, including bans on leghold traps, exotic pets, cockfighting, rodeo, the calf-flesh industry, wolf killing, dog breeding, foie gras production, and cosmetics testing on nonhuman animals.[105] Consider each of these bans, and you'll realize that they all prevent at least some exploitation.

Perz claims that my leghold-trap example contradicts my view that abolitionist bans "do not leave non-human animals in situations of exploitation."[106] There's no contradiction. Leghold traps *bring* nonhuman animals into a situation of exploitation. A ban on leghold traps reduces the chances that foxes, raccoons, and other animals commonly caught in leghold traps will be caught (and therefore exploited). Such a ban qualifies as incremental abolition. It's preventive, not "reformist." Compare a ban on leghold traps to a ban on egg-industry cages. By the time a hen is confined to a cage, she's already being exploited. Indeed, she's exploited from birth. Perz argues that a ban on leghold traps won't prevent animals from being trapped by other means or "farmed" for their pelts.[107] An abolitionist act doesn't necessarily abolish an entire industry (such as the pelt industry). It does, however, prevent the exploitation of the animals in question. In this case the animals in question are those who would otherwise be caught in leghold traps and thereby enter a situation of exploitation.

Perz similarly objects to my example of a ban on exotic pets on the grounds that such a ban "fails to protect native or local non-human animals."[108] Again, an incremental abolitionist ban doesn't prohibit all speciesist exploitation, only some. Perz calls a ban on exotic pets "arbitrary and speciesist" because it treats "foreign species" differently from "local species."[109] That's nonsense. The rationale behind a ban on exotic pets would be such a ban's attainability.

Perz also objects that animals categorized as "exotic" in one jurisdiction might not be categorized as "exotic" in another. Chipmunks, he notes, are exotic in Alaska but not in Maine[110] (if "exotic" is defined as nonindigenous). Whether or not a ban is abolitionist doesn't depend on which animals it covers in which jurisdictions. It depends on whether the ban prevents or modifies the exploitation of the animals in question. In Alaska, chipmunks would be among the animals in question ("exotic" animals); in Maine they wouldn't (again, if "exotic" means nonindigenous). By Perz's faulty logic, a European Union ban on vivisection wouldn't be abolitionist because it wouldn't also ban vivisection in the United States. Mice couldn't be vivisected in one jurisdiction (the EU) but still could be vivisected in another (the U.S.). That fact wouldn't make an EU ban on vivisection any less abolitionist.

Currently, many animal advocates are thoroughly confused regarding what is and is not abolitionist. In my view, part of the problem is that *Rain without Thunder* fails to provide clear, consistent, easily applied guidelines. *Speciesism*'s discussion of abolitionist strategy is intended to help rectify the situation. To my knowledge, no one else has reformulated abolitionism as I have.

B. Speciesism Redefined

Speciesism also uniquely advances the concept of speciesism. In the book, I coin and define the terms *old speciesism* and *new speciesism*. Old-speciesists oppose nonhuman rights.[111] New-speciesists favor rights for *some* nonhuman beings, those who seem most human-like.[112] Nonspeciesists advocate basic rights, such as rights to life and liberty, for all sentient beings.[113] Applying this original framework, *Speciesism* examines philosophy, law, and advocacy in terms of old-, new-, and non-speciesist.

Again uniquely, *Speciesism* shows that the standard Singer–Regan definition of speciesism encompasses only the most obvious and severe form of speciesism: old speciesism. In the book's opening chapter, "Speciesism Defined," I argue that this definition is too narrow because it restricts speciesism to prejudice against *all* nonhumans:

> What, exactly, is speciesism? In 1970 psychologist Richard Ryder coined the word *speciesism* in a leaflet of the same name. Although he didn't explicitly define the term, he indicated that speciesists draw a sharp moral distinction between humans and all other animals. They fail to "extend our concern about elementary rights to the non-human animals."
>
> With the 1975 publication of *Animal Liberation*, philosopher Peter Singer brought the concept of speciesism widespread attention. He defined speciesism as
>
> > a prejudice or attitude of bias toward the interests of members of one's own species and against those of members of other species.
>
> That definition falls short. Consider a comparable definition of racism:
>
> > a prejudice or attitude of bias toward the interests of members of one's own race and against those of members of other races.

> Yes, bias toward whites and against all other races is racist. However, bias toward whites and against *any number* of other races also is racist. All of the following are racist: prejudice against only Semites; prejudice against only Africans, Native Americans, and Australian Aborigines; prejudice against everyone *except* whites and Asians. Analogously, bias toward humans and against any number of other species (say, all rats and mice) is speciesist. So is bias toward humans and *toward* any other species (e.g., chimpanzees and gorillas).
>
> . . .
>
> Like Singer, philosopher Tom Regan defines speciesism as giving "privileged moral status" to all humans and no nonhumans. Again, it's also speciesist to morally privilege all humans and only *some* nonhumans. To me, the speciesism of privileging mammals and birds is as obvious as the racism of privileging Europeans and Asians or the sexism of privileging men and exceptionally masculine women.
>
> . . .
>
> According to Singer and Regan, someone is not speciesist if they give full moral consideration to *any* nonhumans—for example, those who most resemble humans in appearance, observed behavior, and apparent cognition. Giving full moral consideration to whites and mulattos, but not blacks, extends equality to some nonwhites but still is racist. Giving full moral consideration to men and only exceptionally masculine women extends equality to some women but still is sexist. Likewise, giving full moral consideration to humans and only some nonhumans—such as other apes—extends equality to some nonhumans but still is speciesist.[114]

In the same chapter, I show that the standard Singer–Regan definition of speciesism is too narrow in another important way: it limits speciesism to bias based solely on species membership, excluding bias based on species-typical characteristics:

> In a 2003 article, Singer defined speciesism more narrowly than in *Animal Liberation*:
>
> > the idea that it is justifiable to give preference to beings simply on the grounds that they are members of the species *Homo sapiens*.
>
> By "preference" Singer means greater moral consideration. This definition of speciesism is more inadequate than his earlier one. Now, in addition to limiting speciesism to bias toward only one species (our own), Singer limits it to bias *simply* on the grounds of species membership.
>
> Again, consider a comparable definition of racism:
>
> > the idea that it is justifiable to give preference to certain individuals simply on the grounds that they are white.

> Isn't it racist to give greater moral consideration to whites on *any* grounds, such as their generally having lighter skin or a higher standard of living than nonwhites?
>
> A parallel definition of sexism might help:
>
> the idea that it is justifiable to give preference to certain individuals simply on the grounds that they are male.
>
> It's sexist to give men greater moral consideration than women on *any* grounds, such as men's generally being more muscular or scoring higher on tests of spatial orientation. Likewise, it's speciesist to give humans greater moral consideration than nonhumans on *any* grounds, such as humans' generally possessing written language and engaging in more tool use.
>
> . . .
>
> Also like Singer, Regan further defines speciesism as "assigning greater weight to the interests of human beings just because they are human." This bears repeating: It's racist to give greater weight to the interests of whites than nonwhites, sexist to give greater weight to the interests of males than females, and speciesist to give greater weight to the interests of humans than nonhumans for *any* reason.
>
> . . .
>
> According to Singer, it isn't speciesist to believe that "there are morally relevant differences between human beings and other animals that entitle us to give more weight to the interests of humans." It *is* speciesist. There are no such differences, just as there are no differences between whites and nonwhites or males and females that entitle us to give more weight to the interests of whites or males.
>
> To warrant full and equal moral consideration, someone need only be sentient. . . .[115]

More recently Singer has stated, "The term 'speciesism' refers to discrimination on the basis of species, not to discrimination on the basis of cognitive capacities."[116] That definition denies the fact that cognitive criteria themselves can be based on species. If discrimination is based on the actual or presumed absence of cognitive capacities *typical of a particular species*, then such discrimination is species-biased. In *Speciesism* I note that Singer has described his criteria for equal moral consideration as "the characteristics that normal humans have."[117] I also note that he advocates rights only for animals as self-aware as a normal human beyond earliest infancy. "Why a normal *human*?" I object. "Why not a normal vulture or tortoise?"[118] Singer claims that his cognitive criteria aren't speciesist because they don't require membership in the human species.[119] However, they're clearly human-biased (species-based) and therefore correctly termed "speciesist."

In sum, in *Speciesism* I redefine speciesism to include bias based on species-typical characteristics (not just species membership) and bias against any number of species. My broadened definition is in no way indebted to Francione's work. In fact, Francione uses the standard Singer–Regan definition, which limits speciesism to discrimination against *all*

nonhuman beings based solely on species membership. He writes, "[T]here is nothing morally significant per se about species membership that justifies speciesism, or the exclusion of animals from the moral community and their treatment as our resources."[120]

"Speciesism Defined" concludes with this summary definition of speciesism:

> a failure, in attitude or practice, to accord any nonhuman being equal consideration and respect.[121]

I consider Perz's criticisms of that summary definition his only valid criticisms of *Speciesism*. Perz correctly remarks that the definition excludes speciesism against humans.[122] I don't regard prejudice against all humans as a serious problem. For good reason, the focus of *Speciesism* (and all other animal rights books) is human discrimination against nonhumans. Even so, I agree with Perz that a strictly accurate summary definition should allow for bias against the human species. Perz also criticizes my summary definition for not mentioning species.[123] That flaw is more serious. Why didn't I write something like "a failure, *based on species*, . . ."? I was concerned that people would interpret "based on species" in the standard, overly narrow way: based on species *membership*. I wanted the definition to be able to stand alone without explanation. Nevertheless, I again agree with Perz: without some reference to species, the definition is too broad, especially when divorced from its context, the discussion in *Speciesism*. As Perz points out, a human can fail to accord a nonhuman being equal consideration and respect for reasons other than species bias. He gives the example of a human's harming a nonhuman in a "fit of anger."[124]

However, Perz's discussion of my summary definition is unfair and deceptive in its failure to acknowledge several highly relevant facts. First, while criticizing the definition for omitting speciesism against humans—an omission that he says could arguably be termed "speciesist"[125]—Perz doesn't acknowledge that Francione's definition (like Ryder's, Singer's, and Regan's) entails the same omission. Perz doesn't discuss, or even provide, Francione's definition, even though the stated purpose of his piece is to compare *Speciesism* and Francione's work.[126]

Second, Perz doesn't acknowledge that my summary definition doesn't accurately reflect my own argument in *Speciesism* (presented above). In the chapter that ends with the summary definition, I continually speak in terms of species. I also allow for bias against humans, stating outright that the term *speciesism* should encompass any species-based discrimination: "Philosopher Paola Cavalieri comments that *speciesism* could 'be used to describe any form of discrimination based on species.' For the reasons I've given, that's how *speciesism* should be used. Unfortunately, Cavalieri adopts the standard Singer–Regan definition."[127]

Third, Perz doesn't acknowledge that I've publicly provided a corrected summary definition since *Speciesism*'s publication. Having realized the definition's two flaws soon after the book was published, I started using a revised definition. For example, in a 2005 article I wrote, "What is speciesism? A failure, on the basis of species, to accord anyone equal consideration."[128] On the basis of species. Anyone (i.e., any sentient being). The two flaws have been corrected. Perz cites that article.[129] The corrected definition appears in the article's opening paragraph. Yet, Perz argues against my older summary definition as if my newer one didn't exist.

Finally, Perz proposes a different (unwieldy) summary definition without acknowledging that it summarizes my own argument in *Speciesism* (see above):

> [P]erhaps a better definition of speciesism than Dunayer's is "a failure, in attitude or practice, to accord any *sentient* being equal moral consideration of interests and respect due to that being's species or having characteristics that are generally associated with a particular species."[130]

Perz gives no indication that I make the argument reflected by that definition. In keeping with his determinedly negative treatment of *Speciesism*, he avoids saying anything positive about the definition chapter.

Speciesism significantly develops and refines the concept of speciesism. To my knowledge, no other work explains the inadequacies of the standard Singer–Regan (and Francione) definition of speciesism. The book expands that definition to include bias against any number of species as well as bias toward animals (human or nonhuman) who possess characteristics typical of a particular species, especially the human species. *Speciesism*'s distinction between old and new speciesism also illuminates speciesism in an original way.

Whereas Francione's work is couched largely in terms of nonhumans' property status, mine is couched in terms of speciesism, the underlying cause of nonhumans' property status and all other species-based injustice. In each of Francione's books, the word *speciesism* appears a few times at most.[131] In contrast, speciesism-versus-nonspeciesism is the central theme of both my books, with *nonspeciesism* signifying moral and legal equality for all sentient beings.

C. Legal Equality for All Sentient Beings

Speciesism's discussion of nonhuman rights also represents progress beyond Francione's work. Like Francione,[132] I advocate freeing all nonhuman beings from property status—that is, emancipating them from enslavement.[133] Although Francione extensively analyzes nonhumans' *current* legal status,[134] he doesn't discuss nonhuman *emancipation* in legal terms. In *Speciesism*'s "Nonspeciesist Law" chapter, I describe how nonhuman emancipation might be obtained through U.S. law:

> [T]he U.S. Constitution's 13th Amendment (1865) states, "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." Slavery, you'll notice, needn't involve involuntary labor; anyone held as property is enslaved.
>
> The amendment's effect was to emancipate enslaved African-Americans. Its promise, however, awaits fulfillment. Because the amendment is interpreted as prohibiting only human slavery, nonhuman slavery continues to exist within the United States on a massive scale.
>
> . . .
>
> How, then, could some or all nonhumans be emancipated?
>
> The Constitution doesn't define *person*. As discussed in chapter 6, *person*'s legal meaning has expanded over time. Congress could pass a constitutional amendment declaring some or all nonhumans to be persons under the Constitution, rather than property. The 13th Amendment then would apply to those nonhumans.

> However, a constitutional amendment requires broad public support. Members of Congress are beholden to their constituents and financial contributors. Also, at least three-fourths (38) of the 50 state legislatures must ratify a constitutional amendment. Therefore, no amendment emancipating most or all nonhumans will be possible until many more Americans reject animal-derived products and endorse nonhuman rights.
>
> Alternatively to emancipation first being legislated by Congress, it could first be mandated by the Supreme Court. In *Minneapolis & St. Louis Railroad v. Beckwith* (1889) and *Noble v. Union River Logging* (1893), the Supreme Court ruled that a corporation is a "person" for the purposes of due process and equal protection under Amendments 14 (1868) and 5 (1791), respectively. The Court similarly could rule that some or all nonhumans are constitutional persons.
>
> Almost certainly, the first cases for nonhuman emancipation would seek personhood for nonhumans of one or more particular species, such as chimpanzees or dolphins. Such cases would begin in lower courts and, through a series of appeals, proceed to higher ones. Eventually they would reach the Supreme Court, which could rule that the animals in question aren't properly regarded as human property but should be legal persons.
>
> Over time, the Supreme Court could rule that all sentient beings should be free: persons under the Constitution. The precedents for such a ruling would include all successful sentience-based cases for particular species, as well as cases (such as *Superintendent of Belchertown v. Saikewicz* and *Youngberg v. Romeo*) in which judges have asserted the rights of humans who are sentient but lack intelligence of the kind typically associated with humans.
>
> The end of legal slavery would free nonhumans from human ownership. Slave laws such as the Animal Welfare Act, the Humane Methods of Slaughter Act, and state cruelty statutes would become void.[135]

Again, Francione doesn't address the legal process of emancipation. He states, "I do not think that according animals constitutional rights is a particularly helpful framework in which to address the overall problem of animal exploitation. . . ."[136] In contrast, I emphasize the importance of constitutional personhood for nonhuman beings: "In the United States, constitutional personhood seems the most likely means of nonhuman emancipation. In fact, I'm not aware of any way, within the current U.S. legal system, that nonhumans could be freed from property status *without* becoming constitutional persons."[137]

What about post-emancipation? Which animals should have legal rights? All sentient beings, I argue. In *Animal Equality* I assert, "Sentience entitles nonhuman animals to legal rights,"[138] "Justice requires that *person* include all sentient beings,"[139] and "Equitable laws would redefine *person* and *individual* to include nonhuman animals or replace those terms with *animal* or *sentient being*."[140] In *Speciesism* I elaborate and defend my view that all sentient beings should have rights.

Further, I argue that all sentient beings should have *equal* legal protection, all applicable rights afforded by legal personhood.[141] In contrast, Francione does not advocate equal legal protection for all sentient beings. All that he advocates for every nonhuman being is freedom from property status. In *Introduction to Animal Rights* he states, "My position is simple: we are obligated to extend to animals only *one* right—the right not to be treated as the property of

humans."[142] Several pages later he repeats that contention: "I argue that animals have only one right—a right not to be treated as property or resources."[143] He doesn't say "*at least* one right." He says "*only* one right."

Does Francione equate that one right (freedom from property status) with full and equal legal protection? No. With reference to humans he writes, "The right not to be treated as the property of others is *basic* in that it is different from any other rights we might have because it is the grounding for those other rights. . . ."[144] Different from other rights. The grounding for those rights. Clearly, Francione doesn't think that the right not to be property automatically entails all other applicable rights. By "other rights" does he mean rights relevant only to humans—for example, civil liberties such as the right to vote or petition? Again no. He includes among "other rights" rights vitally important to nonhumans, such as a right "of liberty."[145] Francione does not indicate that all sentient beings should have all applicable rights. With regard to all nonhuman beings, he advocates only one right: the right not to be property.

Francione distinguishes between the right not to be property and *equal* rights. In a 2004 email to me, he expressed his view that sentience suffices for "the right not to be property," but "cognitive and genetic similarities between humans and great apes might justify according equal rights to great apes."[146] Several months later, after he granted me permission to quote those words in *Speciesism*, I confirmed my understanding of them. I emailed Francione, "In the email quote you say that all sentient beings are entitled not to be property, but nonhuman great apes might be entitled to *more* than that ('equal rights')."[147] Francione let that interpretation stand.[148]

When he speaks of "equal rights" for *some* nonhuman beings (such as nonhuman great apes), what does Francione mean? As he repeatedly makes clear, he does not advocate that any nonhumans have the *same* rights as humans.[149] It would be foolish to propose that bonobos, chimpanzees, or any other nonhumans have rights, such as freedom of speech, that are relevant only to humans. Therefore, by "equal rights" Francione must mean equal protection. This, then, is his indicated position: All nonhuman beings should be spared property status, and additional rights might be appropriate for *some*. That is, we're obligated to accord all sentient beings the right not to be property, but we're not obligated to accord all sentient beings "equal rights." I disagree with Francione. In my view we *are* obligated to accord all sentient beings equal rights in the sense of equal protection. All sentient beings deserve all applicable human rights. As I comment in *Speciesism*, "I can't think of any human right that applies to nonhuman great apes but doesn't also apply to all other sentient beings. A ladybug can't benefit from freedom of religion or a right to petition, but neither can an orangutan."[150]

In *Introduction to Animal Rights* Francione asserts that all sentient beings should receive equal moral consideration.[151] Yet, he doesn't advocate equal legal protection for all sentient beings. *Speciesism* makes the case that equal consideration requires equal legal protection. Equal legal protection inscribes equal consideration into law.[152]

"[T]he rights view challenges the very conception of animals as legal property," Tom Regan wrote in 1983.[153] I strongly agree with that groundbreaking statement. However, in *Introduction to Animal Rights* Francione essentially reduces nonhuman rights to *only* the right not to be property. In that respect I consider his book a step backward rather than forward.

Apart from the right not to be property, Francione doesn't specify any legal rights for any nonhuman animals. As expressed by Perz, Francione "is silent on the question of what other rights they may or may not have."[154] Silence regarding what rights nonhumans should have is, to say the least, a major omission in any animal rights theory.

In contrast to Francione, I outline what legal rights all nonhuman beings should have: all applicable rights conferred by constitutional personhood, including rights to life, liberty, and property.

> Nonhumans need a number of the rights that constitutional personhood confers on humans, such as a right to life. Eventually after emancipation, virtually all nonhumans would be free-living and non-"domesticated." Free-living nonhumans can't be completely isolated from humans. Geese visit "our" ponds; squirrels enter our backyards; pigeons roost on our buildings. We encounter bears in the forest and crabs on the seashore. Wherever they may be, nonhumans need protection against humans. They need legal rights that prevent human interference. Unless buzzards and coyotes have a legal right to life, humans can shoot or poison them with impunity.
>
> . . .
>
> Along with a legal right to life, emancipated nonhumans would need a legal right to liberty (which includes physical freedom and bodily integrity). Without such a right, they could be trapped, confined, and otherwise denied physical freedom by any human who considered them a nuisance or threat.
>
> Without a right to liberty, nonhumans also would be vulnerable to human violations of their bodily integrity. Consider "domesticated" sheep who would exist during the transition period immediately following emancipation. No longer property, they still would need legal protection against battery or sexual assault by a human, just as humans do. . . .
>
> Amendments 5 and 14 also specify a right to one's property. Should nonhumans have such a right? In my view, yes.
>
> Just as humans have no moral right to treat nonhumans as human property, they have no right to treat what, in fairness, belongs to nonhumans as human property. Nonhumans should be regarded as owning what they produce (eggs, milk, honey, pearls...), what they build (nests, bowers, hives...), and the natural habitats in which they live (marshlands, forests, lakes, oceans...).
>
> As much as a woman, a cow has a moral right to milk that she produces. Free to choose, she would give this milk to her calf, not to humans. The law should regard the milk of a cow, or any other animal, as that individual's personal property. Similarly, bees have a moral right to the honey that they produce to nourish colony members. The law should regard honey as the colony's communal property. Legally, nonhumans should own the products of their bodies and labors.
>
> Most likely, emancipation would end most human theft of these products. However, without a nonhuman right to property, humans still would feel free to take from nonhumans—for example, take honey from a beehive or eggs from a robin nest. They'd also feel free to destroy nonhuman creations, such as a beehive or nest. A structure built by nonhumans should legally belong to its creators and their descendents. Consider a dam built by beavers. Its destruction can mean suffering and death for the beavers as well as many other animals within the ecosystem that has developed around the dam.
>
> With the possible exception of the right not to be murdered by humans, the most important right for free nonhumans probably is the right to their habitats.

> Steve Sapontzis has voiced the possibility of expanding our concept of property to include nonhuman territory. I think we need to do this.
>
> All nonhumans living in a particular area of land or water should have a legal right to that environment, which should be considered their communal property. The law should prohibit humans from appropriating or intentionally harming that property. Nonhuman territory should be off-limits to further human encroachment.
>
> Currently, humans regularly drain ponds, bulldoze woodlands, and otherwise destroy nonhuman habitat. This destruction causes incalculable suffering and death.
>
> . . .
>
> Nonhumans, of course, never would know that humans had given them a legal right to their home territory. Humans are the only ones who need to know. They need to know that their ownership doesn't extend to nonhumans, what nonhumans produce and create, *or* their habitats.[155]

Francione dismisses the idea of a nonhuman right to property. He places a "right to own property" among rights, such as a "right to vote" and a "right to an education," appropriate only for humans.[156]

Francione doesn't categorically oppose human home-building in "areas now occupied exclusively by nonhumans."[157] In *Speciesism* I point out that such building violates the principle of equal consideration. It gives greater weight to the non-vital interests of relatively few humans (those who would profit or otherwise benefit from the new housing) than to the vital interests of many more nonhumans (those who would be displaced, injured, killed, or otherwise seriously harmed).[158]

According to Francione, it might be justifiable to displace field mice, but not humans, from their current homes. Humans might value a particular piece of land more than the resident mice do, he argues.[159] I object, "It's much easier for humans to appreciate human needs and desires than nonhuman ones, so they shouldn't presume to judge how much field mice value their habitat. Also, the extent to which mice consciously value their habitat doesn't equate to how much they *need* that habitat."[160] Whites similarly rationalized the displacement of Native Americans, I comment. "Like Native Americans, the field mice were there first."[161] Francione indicates that the mice could be trapped and moved to other land.[162] In addition to permanently depriving the mice of their home territory, removal through trapping would temporarily deprive them of liberty. Francione intends his example to illustrate fair treatment. Instead it illustrates injustice. It shows that the right not to be property doesn't suffice. Mice and other nonhuman beings need rights equal to those of humans. As I argue in *Speciesism*, if humans can own territory but nonhumans can't, humans will win any territory conflicts.[163] I conclude that nonhumans need a right to their home territory.[164]

In other ways as well, Francione rejects equal legal protection for nonhumans. He poses this question: Would nonhuman rights require that a human who kills a nonhuman be punished as if the victim were human? Francione answers, "No, of course not."[165] If we abolish the property status of nonhumans and accord them moral value, he says, a human who wrongfully harms a nonhuman needn't receive the same penalty as that imposed for comparable harm to a human.[166] I write in *Speciesism*, "In my view, according *equal* moral value to nonhumans does require that comparable harm to humans and nonhumans carry equivalent penalty. Like human

equality, animal equality doesn't mean much if it doesn't include equality under the law. Nonhumans should share, in full, all applicable protections that the law affords to humans."[167]

In contrast to Francione's work, then, *Speciesism* argues that all sentient beings are entitled to *equal* legal protection: all applicable rights accorded by constitutional personhood (or its equivalent). Also in contrast to Francione's work, *Speciesism* describes how nonhuman personhood might be obtained through U.S. law and outlines the legal rights that nonhumans should have. Although Francione's work has analyzed nonhumans' current property status in considerable detail, it doesn't show the way forward in legal terms. *Speciesism* does.

IV. CONCLUSION

Readers of *Speciesism* will see that the book advances animal rights theory in ways other than those discussed here. *Speciesism* "brilliantly expands on the limited views of many animal rights philosophers," ethicist Michael W. Fox comments.[168] *Speciesism* expands on some aspects of Francione's theory and takes exception to others.

Using omission, distortion, and outright falsehood, Perz has charged me with appropriating and misrepresenting Francione's work. To the contrary, I've properly credited and critiqued that work. According to Perz, I "mischaracterize and dispute some of Francione's conclusions, claiming that they contradict the animal rights theory that Francione developed in the first place. . . ."[169] As I've shown, it is Perz who mischaracterizes. I do find contradictions within Francione's theory, and I do dispute some of Francione's conclusions. Francione has developed one version of animal rights theory: his version. Perz may regard that version as perfect. I don't. As I've explained, I think that Francione's theory has some serious flaws and gaps. For example, his "abolitionist" guidelines allow for "welfarist" actions, and his presented view of nonhuman rights is overly reductive, largely limited to nonhumans' right not to be property.

In Perz's opinion, *Speciesism*'s critique of Francione's work "does not do non-human animals any favors."[170] I strongly believe that the critique represents progress toward animal equality. The aspects of Francione's theory to which I object are those that I find inegalitarian, intellectually unsound, or both. Perz states, "[B]oth prior to and after Francione's work, publications by other authors on the subject of 'animal rights' fall far short of being consistent with what rights theory actually requires. . . ."[171] In this response to Perz, I've argued that *Speciesism* advances animal rights theory beyond Francione's theory. In my view, any attempt to limit animal rights theory to the theory of one individual—especially by unjust, deceptive means—harms nonhuman animals. For animal rights theory to thrive, new proponents must continually be welcome and receive a fair hearing. In addition to espousing justice, we must demonstrate it in our own work and conduct. Animals, both nonhuman and human, deserve nothing less.

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[1] Jeff Perz, *Anti-Speciesism: The Appropriation and Misrepresentation of Animal Rights in Joan Dunayer's* Speciesism *(Abridged)*, 2 JOURNAL OF ANIMAL LAW 49 (2006).

[2] JOAN DUNAYER, SPECIESISM (2004).
[3] Perz, *supra* note 1, at 65.
[4] DUNAYER, *supra* note 2, back cover.
[5] Perz, *supra* note 1, at 49.
[6] DUNAYER, *supra* note 2, at ix.
[7] *See Id*. at 31, 35, 38, 40-41, 53, 56, 58, 62, 63, 65, 67, 69, 70, 72, 124, 139, 142, 143-44, 145.
[8] *See Id.* at 56-57, 69, 70, 95-96, 115-16, 124, 126, 127-28, 139, 141, 142, 143-46, 147.
[9] Perz, *supra* note 1, at 49 n. 2.
[10] *Id.*
[11] *Id.* at 49.
[12] JOAN DUNAYER, ANIMAL EQUALITY: LANGUAGE AND LIBERATION (2001).
[13] Perz, *supra* note 1, at 65.
[14] *Id.* at 65-66.
[15] David Foster, *Animal Rights Activists Getting Message Across*, CHICAGO TRIBUNE (evening ed.), Jan. 25, 1996, at 8.
[16] *See* GARY L. FRANCIONE, INTRODUCTION TO ANIMAL RIGHTS: YOUR CHILD OR THE DOG? xix (2000).
[17] *See Id.* at xix-xxi.
[18] Foster, *supra* note 15, at 8.
[19] FRANCIONE, *supra* note 16, at xix.
[20] DUNAYER, *supra* note 2, at 49.
[21] Perz, *supra* note 1, at 66.
[22] GARY L. FRANCIONE, RAIN WITHOUT THUNDER: THE IDEOLOGY OF THE ANIMAL RIGHTS MOVEMENT 65 (1996).
[23] DUNAYER, *supra* note 2, at 58. Nonhuman animals exploited by humans lack genuine welfare. For this reason I place the terms *welfare*, *welfarist*, and *welfarism* inside negating quotation marks when the context is speciesist exploitation.
[24] Perz, *supra* note 1, at 66.
[25] DUNAYER, *supra* note 2, at 98 (emphasis in original).
[26] FRANCIONE, *supra* note 16, at 119.
[27] Joan Dunayer, *On Speciesist Language*, ON THE ISSUES: THE PROGRESSIVE WOMAN'S QUARTERLY 30 (Winter 1990).
[28] Perz, *supra* note 1, at 66.
[29] *See* DUNAYER, *supra* note 12, at 4, 144, 161-64, 170-71, 175.
[30] *Id.* at 146.
[31] Francione's *Introduction to Animal Rights* was published in August 2000. *Animal Equality* went to the printer in January 2001. Among others, Carol Adams, Evelyn Pluhar, and Tom Regan read the manuscript of *Animal Equality* before *Introduction to Animal Rights* was published. I still have the electronic files of the manuscript and the hard copies of colleagues' comments that predate Francione's book.
[32] Jeff Perz, *Anti-Speciesism: The Appropriation and Misrepresentation of Animal Rights in Joan Dunayer's* Speciesism (2006), http://www.speciesismreview.info, accessed Oct. 6, 2006, on file with the author.
[33] *Id.*
[34] Joan Dunayer, *The Nature of Altruism*, THE ANIMALS' AGENDA 27 (April 1990); DUNAYER, *supra* note 2, at 28.
[35] EVELYN B. PLUHAR, BEYOND PREJUDICE: THE MORAL SIGNIFICANCE OF HUMAN AND NONHUMAN ANIMALS 55 (1995).
[36] FRANCIONE, *supra* note 16, at 116.
[37] *See* DUNAYER, *supra* note 2, at 165 n. 40.
[38] *See* FRANCIONE, *supra* note 16, at 213 n. 38.
[39] CARL SAGAN & ANN DRUYAN, SHADOWS OF FORGOTTEN ANCESTORS: A SEARCH FOR WHO WE ARE 117 (1992).
[40] Perz, *supra* note 32 (emphasis in original).
[41] Dunayer, *supra* note 27, at 30.
[42] *Id.* at 31 (emphases in original).
[43] DUNAYER, *supra* note 12, at 155.
[44] *Id.* at 156.
[45] Perz, *supra* note 32.
[46] DUNAYER, *supra* note 12, at 175.
[47] *Id.* at 70.

[48] *Id.* at 37.
[49] *Id.* at 56.
[50] *Id.* at 70.
[51] *Id.* at 106.
[52] *Id.* at 121.
[53] Joan Dunayer, Letter to the Editor, *A Celebration of Cruelty*, THE WASHINGTON POST, Dec. 13, 1997, at A21.
[54] *See* Perz, *supra* note 32.
[55] *See* DUNAYER, *supra* note 12, at 175.
[56] *Id.* at 176.
[57] Joan Dunayer & Eric Dunayer, Letter to the Editor, *To Breed or Not To Breed: Joan and Eric Dunayer Reply*, THE ANIMALS' AGENDA 7 (March 1991).
[58] *Id.* at 8.
[59] Perz, *supra* note 32.
[60] DUNAYER, *supra* note 12, at 176.
[61] *See* DUNAYER, *supra* note 2, at 100-111.
[62] Perz, *supra* note 32.
[63] *Id.*
[64] Gary L. Francione, *Animals—Property or Persons?* in ANIMAL RIGHTS: CURRENT DEBATES AND NEW DIRECTIONS 108-42, 141 n. 94 (Cass R. Sunstein & Martha C. Nussbaum eds., 2004).
[65] Throughout this article I've omitted the note superscripts in quoted text, to avoid their being confused with this article's note superscripts.
[66] DUNAYER, *supra* note 2, at 102-03, 107-08, 109-10.
[67] *See* Perz, *supra* note 1, at 49 n. 2.
[68] *Id.* at 66.
[69] *See Id.*
[70] *See Id.*
[71] Recently it was brought to my attention that the wording "demand for Swiss eggs increased" isn't strictly correct. According to available statistics, Swiss consumers didn't purchase more Swiss eggs *in absolute terms*; instead a higher percentage of the eggs that they purchased were Swiss. Therefore, more accurate wording would be "Swiss demand for Swiss shell eggs increased relative to Swiss demand for imported shell eggs." *See* HEINZPETER STUDER, HOW SWITZERLAND GOT RID OF BATTERY CAGES 22, 31 (Anja Schmidtke trans., 2001).
[72] DUNAYER, *supra* note 2, at 67-70.
[73] Perz, *supra* note 1, at 54.
[74] DUNAYER, *supra* note 2, at 69.
[75] *Id.*
[76] Perz, *supra* note 1, at 55.
[77] *Id.* at 62.
[78] DUNAYER, *supra* note 2, at 69-70.
[79] *Id.* at 70.
[80] FRANCIONE, *supra* note 22, at 215 (emphasis in original).
[81] *Id.* at 216.
[82] Perz, *supra* note 1, at 62.
[83] DUNAYER, *supra* note 2, at 69.
[84] Perz, *supra* note 1, at 63.
[85] DUNAYER, *supra* note 2, at 152.
[86] *See* FRANCIONE, *supra* note 22, at 214-16.
[87] *See Id.* at 198, 202-03, 210, 214-16.
[88] *See Id.*
[89] *See Id.* at 2.
[90] *Id.* at 201-06.
[91] *Id.* at 206.
[92] *Id.* at 210.
[93] *See Id.* at 202, 210.
[94] DUNAYER, *supra* note 2, at 69.
[95] Perz, *supra* note 1, at 61.

[96] *Id.*
[97] *Id.* at 49 n. 2.
[98] *Id.* at 50. Reviewers have praised *Speciesism*'s clarity. For example, Steve Sapontzis has remarked on the book's "uncompromising clarity" (DUNAYER, *supra* note 2, back cover), and a *Choice* reviewer has described the book as "[a]dmirable for its clarity" (W. P. Hogan, Review of *Speciesism*, 42 CHOICE 1601, 1602 [May 2005]).
[99] FRANCIONE, *supra* note 22, at 192.
[100] *See Id.* at 195.
[101] *See* DUNAYER, *supra* note 2, at 68, 69.
[102] Perz, *supra* note 32.
[103] *See* DUNAYER, *supra* note 2, at 65-66, 152.
[104] *Id.* at 70-71, 152.
[105] *See Id.* at 152-53.
[106] Perz, *supra* note 1, at 63.
[107] *See Id.*
[108] *Id.* at 64.
[109] *Id.*
[110] *See Id.*
[111] *See* DUNAYER, *supra* note 2, at 9.
[112] *See Id.* at 77, 98.
[113] *See Id.* at 124, 134.
[114] *Id.* at 1-2, 3.
[115] *Id.* at 2-3, 4.
[116] Peter Singer, quoted in Rosamund Raha, *Animal Liberation: An Interview with Professor Peter Singer*, THE VEGAN 18, 19 (Autumn 2006).
[117] Peter Singer, quoted in DUNAYER, *supra* note 2, at 91.
[118] DUNAYER, *supra* note 2, at 81 (emphasis in original).
[119] *See* PETER SINGER, ANIMAL LIBERATION, 2nd ed., 21 (1990).
[120] FRANCIONE, *supra* note 16, at 127. Throughout *Introduction to Animal Rights* Francione uses the word *animals* to mean nonhuman animals.
[121] DUNAYER, *supra* note 2, at 5.
[122] *See* Perz, *supra* note 1, at 50.
[123] *See Id.*
[124] *Id.*
[125] *Id.*
[126] *See Id.* at 49 n. 1.
[127] DUNAYER, *supra* note 2, at 3.
[128] Joan Dunayer, *Reply to a Self-Proclaimed Speciesist*, VEGAN VOICE 14 (Sept.-Nov. 2005).
[129] *See* Perz, *supra* note 1, at 64 n. 93.
[130] *Id.* at 50 (emphasis in original).
[131] *See* GARY L. FRANCIONE, ANIMALS, PROPERTY, AND THE LAW 17 (1995); FRANCIONE, *supra* note 22, at 13, 48, 159; FRANCIONE, *supra* note 16, at xxix, 127, 161, 173-74, 191 n. 19.
[132] *See generally* FRANCIONE, *supra* note 16.
[133] *See* DUNAYER, *supra* note 2, at 17, 124, 136, 138, 149.
[134] *See generally* FRANCIONE, ANIMALS, PROPERTY, AND THE LAW (*supra* note 131).
[135] DUNAYER, *supra* note 2, at 136, 137-38.
[136] FRANCIONE, *supra* note 16, at 221 n. 3.
[137] DUNAYER, *supra* note 2, at 139 (emphasis in original).
[138] DUNAYER, *supra* note 12, at xvii.
[139] *Id.* at 175.
[140] *Id.* at 171.
[141] *See* DUNAYER, *supra* note 2, at 139-49.
[142] FRANCIONE, *supra* note 16, at xxxi (emphasis in original).
[143] *Id.* at xxxiv.
[144] *Id.* at xxviii (emphasis in original).
[145] *Id.*

[146] Personal email communication from Gary L. Francione to the author (Feb. 29, 2004), on file with the author.
[147] Personal email communication from the author to Gary L. Francione (May 13, 2004) (emphasis in original), on file with the author.
[148] My email exchange with Francione concluded with an email (*Id.*) in which I thanked him for permission to quote him and confirmed my understanding of his words. If I had misinterpreted him, he easily could have corrected me.
[149] *See, e.g.*, FRANCIONE, *supra* note 16, at xxxi, 221 n. 3.
[150] DUNAYER, *supra* note 2, at 124.
[151] *See* FRANCIONE, *supra* note 16, at xxv-xxvi.
[152] *See* DUNAYER, *supra* note 2, 140-49.
[153] TOM REGAN, THE CASE FOR ANIMAL RIGHTS 394 (1983).
[154] Perz, *supra* note 32.
[155] DUNAYER, *supra* note 2, at 141, 142-43, 146-47.
[156] FRANCIONE, *supra* note 16, at xxxi.
[157] Gary L. Francione, *Wildlife and Animal Rights*, in ETHICS AND WILDLIFE 65-81, 76 (Priscilla Cohn ed., 1999).
[158] *See* DUNAYER, *supra* note 2, at 143-46.
[159] *See* Francione, *supra* note 157, at 77.
[160] DUNAYER, *supra* note 2, at 144-45 (emphasis in original).
[161] *Id.* at 145.
[162] *See* Francione, *supra* note 157, at 77.
[163] *See* DUNAYER, *supra* note 2, at 145.
[164] *See Id.* at 146-47.
[165] FRANCIONE, *supra* note 16, at 184.
[166] *See Id.*
[167] DUNAYER, *supra* note 2, at 147 (emphasis in original).
[168] *Id.* at back cover.
[169] Perz, *supra* note 1, at 49.
[170] *Id.* at 49 n. 2.
[171] *Id.*