

ADULTERATING ANIMAL RIGHTS: JOAN DUNAYER'S "ADVANCING ANIMAL RIGHTS" REFUTED

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INTRODUCTION

There is a raging debate about the distinction between animal rights and animal welfare, particularly concerning what these terms mean, in practice, for non-human animals. This debate manifests itself in myriad ways, often without addressing the relevant underlying assumptions. Therefore, it is essential to have a clear understanding of the concepts of animal rights and animal welfare as well as the issues, arguments and practical implications surrounding these concepts.

In his 1995 book *Animals, Property and the Law*, Gary L. Francione was the first to thoroughly analyze and reject, on both principled and practical grounds, the concept of animal welfare: the view that it is morally acceptable to exploit non-human animals as long as this is done "humanely" and without "unnecessary" suffering.¹

In contrast, Francione argues for animal rights: the view that the basic interests of non-human animals must not be violated even if others would benefit from doing so.² The logical conclusion flowing from Francione's

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¹ See GARY L. FRANCIONE, *ANIMALS, PROPERTY, AND THE LAW* 6-7 (1995) (providing a theoretical and practical analysis of the concept of legal welfarism and its negative impact upon non-human animals).

² *Id.*

argument is that all non-human animal exploitation ought to be abolished, not merely regulated. Francione built upon this idea in his next book, *Rain Without Thunder*, in which he persuasively argued that, as a strategic matter, animal welfare has never and will never lead to animal rights.³

Many non-human animal advocates have objected to Francione's compelling arguments and evidence, mostly by employing empty rhetoric. In my view, even the reasoned objections to Francione's arguments and evidence do not withstand scrutiny, and only succeed in confusing the public's understanding of the meaning of animal rights.

In recent years, however, more and more people have embraced the validity of Francione's conclusions and his practical suggestions for incremental abolitionist change. In 2000, Francione published *Introduction to Animal Rights: Your Child or the Dog?*⁴ and, in 2006, he launched an educational website for animal rights activists and the general public. The response to Francione's new website, blogs and podcasts has been phenomenal. Francione's practical, abolitionist message has been spreading like wildfire, sinking into the collective consciousness of animal rights advocates across the globe. For the first time, genuine and sustained progressive change—on a grand scale—for non-human animals is beginning to take place. Other animal rights scholars have also taken notice of Francione's message. For example, Joan Dunayer, who is part of the abolitionist movement, articulated her perspective on Francione's theory in her 2004 book, *Speciesism*.⁵

I argue, however, in *Anti-Speciesism: The Appropriation and Misrepresentation of Animal Rights in Joan Dunayer's Speciesism*, that Dunayer further confuses the debate surrounding animal rights and welfare by misrepresenting the groundbreaking rights theory of Francione and by appropriating many aspects of this theory with less than adequate citation.⁶ In *Advancing Animal Rights: A Response to "Anti-Speciesism," Critique of Gary Francione's Work, and Discussion of Speciesism*,⁷ Dunayer attempts to rebut the arguments and textual evidence upon which I base these claims.

³ See generally GARY L. FRANCIONE, RAIN WITHOUT THUNDER: THE IDEOLOGY OF THE ANIMAL RIGHTS MOVEMENT (1996) [hereinafter FRANCIONE, RAIN WITHOUT THUNDER].

⁴ See generally GARY L. FRANCIONE, INTRODUCTION TO ANIMAL RIGHTS: YOUR CHILD OR THE DOG? (2000) [hereinafter FRANCIONE, INTRODUCTION TO ANIMAL RIGHTS].

⁵ See generally JOAN DUNAYER, SPECIESISM (2004).

⁶ Jeff Perz, *Anti-Speciesism: The Appropriation and Misrepresentation of Animal Rights in Joan Dunayer's Speciesism (Abridged)*, 2 J. ANIMAL L. 49 (2006), http://www.animallaw.info/journals/jo_pdf/Journal%20of%20Animal%20Law%20Vol%202.pdf [hereinafter Perz, *Anti-Speciesism*].

⁷ See Joan Dunayer, *Advancing Animal Rights: A Response to "Anti-Speciesism," Critique of Gary Francione's Work, and Discussion of Speciesism*, 3 J. ANIMAL L. 1 (forthcoming 2007), available at http://www.animallaw.info/journals/jo_pdf/jouranimallawDunayer2007.pdf [hereinafter Dunayer, *Advancing Animal Rights*].

Dunayer fails in this attempt and in doing so, not only perpetuates the appropriation and misrepresentation found in *Speciesism*, but also obscures the crucial concepts within the present debate. This debate is absolutely necessary, however, as it strikes at the heart of what animal rights advocates do for non-human animals. While Dunayer's analysis and commentary obscure matters, the crucial theoretical grounding in Francione's abolitionist theory informs the actions of animal rights advocates.

I. THE TIP OF THE ICEBERG

I conclude *Anti-Speciesism* with four quotations from Dunayer's *Speciesism*, juxtaposed with four quotations from Francione's books, thereby briefly illustrating Dunayer's unreferenced appropriation of the latter. The depth of Dunayer's appropriation, however, is uncovered at length in the unabridged version of *Anti-Speciesism*.⁸ In Dunayer's attempt to rebut these four relatively minor examples of her appropriation of Francione's ideas, however, she contradicts her claim that the quotations from *Speciesism* are original.

The first pair of juxtaposed quotations⁹ in the conclusion of *Anti-*

⁸ Jeff Perz, *Anti-Speciesism: The Appropriation and Misrepresentation of Animal Rights in Joan Dunayer's Speciesism (Unabridged)* (2006), available at <http://www.speciesismreview.info> [hereinafter Perz, *Anti-Speciesism* (Unabridged)].

⁹ 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 [sport] 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.

Perz, *supra* note 6, at 65 (quoting DUNAYER, *supra* note 5, at 49) ("sport" appears in original source).

In 2000, Francione wrote:

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.

....

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. . . .

....

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.

Speciesism relate to how non-human animals are treated. The point of discussing them is to show that Dunayer's objection that the quotations share the same news article source¹⁰ is misleading. Although both quotations cite statistical data from the same article, their juxtaposition is not intended to highlight the data itself, but rather to stress Francione's conclusions and arguments, which are made in response to that data. Dunayer objects that "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."¹¹ These points, however, are two different ways of stating the same thing.¹² Thus, this example of

Perz, *supra* note 6, at 65-66 (quoting FRANCIONE, INTRODUCTION TO ANIMAL RIGHTS, *supra* note 4, at xix-xxi) (alterations in original).

¹⁰ Dunayer, *Advancing Animal Rights*, *supra* note 7, at 3.

¹¹ *Id.* at 4.

¹² The quotation of Francione refers to what "we" believe about other animals versus how "we" treat them. The first "we" refers to the public, as illustrated by the statements that follow it: "[t]wo-thirds of Americans," "94 percent of Britons," "88 percent of Spaniards," and so on. FRANCIONE, INTRODUCTION TO ANIMAL RIGHTS, *supra* note 4, at xix-xxi (quotations at xix). The second "we" in the first quotation of Francione refers to the public, animal exploitation industries, and the laws that allow these industries to operate, as illustrated by the statements that follow it: "[w]e subject billions of animals annually to enormous amounts of pain, suffering and distress," "we kill more than 8 billion animals a year for food" and "these animals are raised under horrendous conditions." *Id.* (quotations at xx). In one sense, the public does subject billions of animals to pain and death every year because consumers of animal products create the demand necessary for the painful, lethal practices to continue to occur. In another sense, animal exploitation industries cause the pain and death; it is they who raise the animals under horrendous conditions and kill them for profit. Finally, in yet another respect, it is the law that causes non-human animals pain and death. Speaking about exactly the same subject of "our" not acting in accordance with "our" beliefs about non-human animals, Francione explains the *reason* for this state of affairs three pages later:

The property status of animals renders completely meaningless any balancing that is supposedly required under the humane treatment principle or animal welfare laws, because what we really balance are the interests of property owners against the interests of their animal property. It does not take much knowledge of property law or economics to recognize that such a balance will rarely, if ever, tip in the animal's favor.

Id. at xxiv-xxv. Clearly, in this instance, "we" refers to the law causing non-human animals suffering and death. Also, in the related first instance of "we" quoted above, the law is included as a contributing factor to how non-human animals are treated, as noted. Therefore, the above quotation of Francione's can be accurately stated thus: "[t]here is a profound disparity between what we [the public] say we believe about animals, and how we [the public, the animal exploiters and the law] actually treat them." *Id.* at xix-xxi. Dunayer's "point is that U.S. law lags behind public opinion." Dunayer, *Advancing Animal Rights*, *supra* note 7, at 4. In other words, there is a disparity between the law and what we, the public, say—Francione's point that Dunayer fails to cite, as illustrated by the above two quotations.

Dunayer objects to my insertion of the word "public" in the above quotation of Francione. *Id.* at 3. However, from the above analysis, it is clear that the insertion is entirely appropriate, accurate, and in context. Dunayer further objects that "Perz's use of ellipses also misleads; in Francione's text nothing *after* the first ellipsis refers to the poll." *Id.*

Dunayer's appropriation is valid.

With respect to the remaining three pairs of quotations in the conclusion of *Anti-Speciesism*, although Dunayer cited Francione in the original manuscript of *Speciesism*, she removed these citations from the published version of *Speciesism*, thus contradicting Dunayer's claim that her work did not rely on Francione's. In *Rain Without Thunder*, Francione states, "[b]oth [welfarists] Spira and PETA . . . seek to effect change within the system. This inevitably requires the acceptance of reformist measures"¹³

Without citing the above-mentioned quotation, Dunayer's published version of *Speciesism* states, "[w]elfarists' seek to change the way nonhumans are treated within some system of specieist abuse. They work to modify, rather than end, the exploitation of particular nonhumans."¹⁴ The same paragraph in Dunayer's original manuscript of *Speciesism* states, however:

As Francione has noted, "welfarists" seek change "within the system" of speciesist abuse. Their approach is comparable to seeking better treatment of enslaved humans rather than their emancipation. Instead of calling for an end to some form of nonhuman exploitation, "welfarists" call for its regulation or "reform." Tacitly, "welfarists" accept nonhumans' property status, which rights advocates reject. In Francione's words, "Animal rights theory rejects the regulation of atrocities and calls unambiguously and unequivocally for their abolition."¹⁵

This quotation from the manuscript of *Speciesism* cites the preceding quotation of Francione's *Rain Without Thunder*.¹⁶ Hence, Dunayer originally cited Francione in the manuscript of *Speciesism* and subsequently removed this citation from precisely the same passage of the final, published draft of *Speciesism*. Thus, this is a genuine example of appropriation, to which I draw attention in the unabridged version of *Anti-Speciesism*.¹⁷

(emphasis added). Again, this analysis is correct but the juxtaposition of the Dunayer and Francione excerpts is intended to highlight the conclusions and arguments that Francione made *after* Francione presents the data in the poll, not the poll itself. Perz, *supra* note 6, at 66. Thus, my use of the ellipses in the above quotation of Francione accurately reflects Francione's views on the point in question.

¹³ FRANCIONE, RAIN WITHOUT THUNDER, *supra* note 3, at 65.

¹⁴ DUNAYER, SPECIESISM, *supra* note 5, at 58.

¹⁵ JOAN DUNAYER, SPECIESISM 39 (Jan. 12, 2004) (unpublished manuscript, on file with Gary L. Francione)[hereinafter, DUNAYER, SPECIESISM (unpublished)] (quoting FRANCIONE, RAIN WITHOUT THUNDER, *supra* note 3, at 65, 2) (internal citations omitted). This claim about the manuscript of *Speciesism* can be verified by the editorial reviewers that Dunayer refers to—Steve Sapontzis, Michael W. Fox and David Nibert.

¹⁶ *Id.* at 39, 96 n. 4 (citing FRANCIONE, RAIN WITHOUT THUNDER, *supra* note 3, at 65).

¹⁷ As Dunayer correctly points out, after making the above quotation regarding welfarists in the final published draft of *Speciesism*, she cites Francione's definition of animal rights activists, which is found on page 2 of Francione's *Rain Without Thunder*. Dunayer, *Advancing Animal Rights*, *supra* note 7, at 5. The first sentence in the above

Dunayer objects that “Francione doesn’t use the word ‘welfarists’ anywhere in his paragraph.”¹⁸ Nevertheless, Francione regards Spira and PETA as welfarists.¹⁹ Thus, the insertion is both accurate and appropriate.

Dunayer continues this brazen appropriation when she claims that the quotation from *Speciesism* below is distinct from the quotation of Francione that follows, despite her citing the latter in the manuscript of *Speciesism* for precisely the same passage.²⁰ In *Introduction to Animal Rights*, Francione states: “[The work of cognitive ethologists] is also dangerous in that it threatens to create new [speciesist] 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.”²¹ Without citing the above, Dunayer’s published version of *Speciesism* states: “[N]ew-speciesists endorse basic rights for *some* nonhuman animals, those ostensibly most similar to humans.”²² The same paragraph in Dunayer’s original manuscript of *Speciesism* States, however:

The difference between old and new speciesists is that new

quotation that Dunayer removed from the manuscript of *Speciesism*, however, cites an entirely different section of *Rain Without Thunder*, which is found on page 65—the same page that is presently under dispute: “[b]oth [welfarists] Spira and PETA . . . seek to effect change within the system. This inevitably requires the acceptance of reformist measures.” JOAN DUNAYER, SPECIESISM (unpublished), *supra* note 15, at 39, 96 n. 4 (citing FRANCIONE, RAIN WITHOUT THUNDER, *supra* note 3, at 65). Therefore, Dunayer has appropriated this passage from Francione without providing any citation.

¹⁸ Dunayer, *Advancing Animal Rights*, *supra* note 7, at 4.

¹⁹ “Spira adopted a more welfarist approach in undertaking a more ambitious project—the use of animals in cosmetics and product testing.” FRANCIONE, RAIN WITHOUT THUNDER, *supra* note 3, at 62. “But it was clear that although PETA endorsed the long-term goal of abolition, it also acknowledged that short-term welfarist reform could, in Newkirk’s words, act as a ‘springboard into animal rights.’” *Id.* at 66. Francione calls this kind of welfarism “new welfarism.” *Id.* at 32-109.

²⁰ DUNAYER, SPECIESISM, *supra* note 5, at 62 (internal citations omitted).

²¹ FRANCIONE, INTRODUCTION TO ANIMAL RIGHTS, *supra* note 4, at 119. *Anti-Speciesism* provided the context for this quotation with the following comments in parentheses: “[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.” Perz, *Anti-Speciesism*, *supra* note 6, at 66 (quoting FRANCIONE, INTRODUCTION TO ANIMAL RIGHTS, *supra* note 4, at 119) (alterations in original). Although the addition of the word “speciesist” into the above quotation of Francione’s is appropriate, Dunayer is correct to the extent that its particular placement is erroneous. For an accurate and properly contextual presentation, the quotation in the main body of text above has been corrected. This quotation reflects Francione’s views because it does not necessarily assume that all cognitive ethologists are speciesist, an issue that Francione is silent on. Moreover, it is in accord with Francione’s statement that “[t]his is the danger of an enterprise like The Great Ape Project; it facilitates the creation of new hierarchies where some nonhumans are considered more deserving of the basic right not to be treated as a resource more than others because of their similarity to humans.” FRANCIONE, INTRODUCTION TO ANIMAL RIGHTS, *supra* note 4, at 213 n. 42.

²² DUNAYER, SPECIESISM, *supra* note 5, at 98.

speciesists accord rights to *some* nonhumans. Instead of requiring that an individual be human, new speciesists require that an individual be human-like. In Francione's words, new speciesists "move some animals, such as the great apes, into a 'preferred' group based on their similarity to humans." All other nonhumans remain "outside"—without rights.²³

Again, the above passage from the manuscript of *Speciesism* cites the preceding quotation of Francione's *Introduction to Animal Rights*.²⁴ Clearly, Dunayer's original citation of the passage in question and her subsequent removal of this citation indicates the fact that she appropriated it.

Although Dunayer objects that I insert the words "speciesist" and "rights" into Francione's abovementioned quotation,²⁵ Francione nevertheless regards the hierarchies in question as speciesist²⁶ and the preferred group in question as rights-holding legal persons.²⁷ Further,

²³ DUNAYER, SPECIESISM (unpublished), *supra* note 15, at 62, 99 n.101 (quoting FRANCIONE, INTRODUCTION TO ANIMAL RIGHTS, *supra* note 4, at 119).

²⁴ *Id.* at 62, 99 n.101 (quoting FRANCIONE, INTRODUCTION TO ANIMAL RIGHTS, *supra* note 4, at 119).

²⁵ Dunayer, *Advancing Animal Rights*, *supra* note 7, at 5 ("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.").

²⁶ In making the above quoted statement, Francione cites his 1993 article, *Personhood, Property and Legal Competence*. See FRANCIONE, INTRODUCTION TO ANIMAL RIGHTS, *supra* note 4 at 119, 213, n.40, 42. In this article, Francione states: "Philosophers such as Tom Regan and Peter Singer have demonstrated convincingly that there can be no moral justification for what Richard Ryder has called 'speciesism', or the determination of membership in the community of equals based upon species." Gary L. Francione, *Personhood, Property and Legal Competence*, in THE GREAT APE PROJECT: EQUALITY BEYOND HUMANITY 253 (Paola Cavalieri and Peter Singer, eds., 1993) (internal citations omitted) [hereinafter, Francione, *Personhood*].

²⁷ In *Personhood, Property and Legal Competence*, Francione states: The Declaration on Great Apes requires that we extend the community of equals to include all great apes: human beings, chimpanzees, gorillas and orang-utans. Specifically, the Declaration requires the recognition of certain moral principles applicable to all great apes—the right to life, the protection of individual liberty, and the prohibition of torture.

If these principles are going to have any meaning beyond being statements of aspiration, they must be translated into legal *rights* that are accorded to the members of the community of equals and that can be enforced in courts of law.

Francione, *Personhood*, *supra* note 26, at 248 (emphasis added). Furthermore, in the sentence immediately following Francione's above-mentioned disputed quotation, Francione states: "[t]he problem is that we do not require that humans have any particular characteristic—beyond sentience—before we accord them a basic *right* not to be treated as resources." FRANCIONE, INTRODUCTION TO ANIMAL RIGHTS, *supra* note 4, at 119 (emphasis added). The preferred group that Francione refers to is that of legal persons; membership in this group entails having legal *rights*. In the disputed quotation, the group contrasted with legal persons is the one whose members are treated as "property and resources" or who do not have the "basic right not to be treated as resources." *Id.* In the chapter prior to the quotation being considered, Francione argues that "[non-human animals] are either persons,

Dunayer claims that the context of her above-quoted statement is different from Francione's because it contrasts old and new speciesism by noting that old speciesists do not endorse basic rights for any non-human animals, even if they are ostensibly similar to humans.²⁸ Dunayer's old and new speciesism, however, are appropriations of Francione's discussions on classical and new welfarism generally and the Great Ape Project specifically.²⁹

Most significantly of all, examination of the fourth example of Dunayer's appropriation that I mention in the conclusion of "Anti-

beings to whom the principle of equal consideration applies and to whom we have direct moral obligations, or things, beings to whom the principle of equal consideration does not apply and to whom we have no direct moral obligations." *Id.* at 101. In other words, the sole legal group or class that can be contrasted with "property" is "persons." Therefore, Francione's point in the above quotation is that the placement of some animals (such as non-human great apes) into the preferred group of rights-holding persons on the basis of the fact that they are physically and mentally similar to human great apes is speciesist and hierarchical, and that there is a danger that this immoral result might be brought about due to the work of cognitive ethologists. The overlap of this suggestion with Dunayer's previously mentioned quotation is clear.

²⁸ See Dunayer, *Advancing Animal Rights*, *supra* note 7, at 5 (comparing Dunayer's discussion of speciesism, particularly with regard to comparisons between old and new speciesism, to Francione's).

²⁹ Francione defines new welfarism thusly:

Many modern animal advocates see the abolition of animal exploitation as a long-term goal, but they see welfarist reform, which seeks to reduce animal suffering, as setting the course for the interim strategy. . . . This view posits some sort of causal relationship between welfare and rights such that pursuing welfarist reform will lead eventually to the abolition of all institutionalized animal exploitation.

FRANCIONE, RAIN WITHOUT THUNDER, *supra* note 3, at 34. Francione defines classical welfarism as "assuring that [animals are] treated 'humanely' and that they [are] not subjected to 'unnecessary' suffering. This position, known as the *animal welfare* view, assumes the legitimacy of treating animals instrumentally as means to human ends as long as certain 'safeguards' are employed." *Id.* at 1. "[A]nimal 'welfare' laws assume that animals are property and have no protectable interests." FRANCIONE, INTRODUCTION TO ANIMAL RIGHTS, *supra* note 4, at 209 n.37. Dunayer defines old speciesism thusly: "[O]ld speciesists' . . . don't believe that any nonhumans should have legal rights or receive as much moral consideration as humans. By 'legal rights' I mean basic rights, such as rights to life and liberty, currently accorded only to humans (legal 'persons')." DUNAYER, SPECIESISM, *supra* note 5, at 9. Francione notes that the Great Ape Project

facilitates the creation of new hierarchies where some nonhumans are considered more deserving of the basic right not to be treated as a resource than others because of their similarity to humans. . . . Frans de Waal argues that if the moral status of some animals depends on their similarity to humans, then it is difficult to avoid 'ranking' humans as above other species. . . . I agree with de Waal's observation insofar as he identifies the problem of linking moral status with similarity to humans (beyond sentience).

FRANCIONE, INTRODUCTION TO ANIMAL RIGHTS, *supra* note 4, at 213 n.42. Dunayer defines new speciesism thus: "New-speciesists advocate rights for only some nonhumans, those whose thoughts and behavior seem most human-like. . . . They see animalkind as a hierarchy with humans at the top." DUNAYER, SPECIESISM, *supra* note 5, at 77. "New-speciesists endorse basic rights for *some* nonhuman animals, those ostensibly most similar to humans." *Id.* at 98.

Speciesism” demonstrates that Dunayer *intentionally* appropriates Francione’s work.

In *Introduction to Animal Rights*, Francione states, “We do not regard it as legitimate to treat *any* humans, irrespective of their particular characteristics, as the property of other humans.”³⁰ Without citation, Dunayer’s published version of *Speciesism* states, “We consider it immoral to treat any human, whatever their characteristics, as property.”³¹ With respect to this pair of quotations in the conclusion of “Anti-Speciesism,” Dunayer remarks, “I didn’t cite Francione because the similarity was *unintentional*.”³² It is perplexing how the extreme similarity between the above-juxtaposed quotations of Dunayer and Francione could be unintentional when Dunayer quoted Francione’s statement, “We do not regard it as legitimate to treat any humans, irrespective of their particular characteristics, as the property of other humans,” verbatim in the original manuscript of *Speciesism*, in exactly the same section and paragraph as in the final published draft of *Speciesism*.³³ In the final draft, however, Dunayer simply removes her original verbatim quotation of Francione and replaces it with a weak, unreferenced paraphrase: “We consider it immoral to treat any human, whatever their characteristics, as property.”³⁴ Will Dunayer claim that her original insertion of the above quotation of Francione—which expresses exactly the same idea that Dunayer expresses—was an accident? Will Dunayer then claim that her removal of this same quotation, and her replacing it with an equivalent but unreferenced paraphrase, was also unintentional?

III. ORIGINAL IDEAS AND PAST PUBLICATIONS

In response to the textual evidence I cite of Dunayer’s appropriation of Francione’s ideas, Dunayer asserts that she originated the ideas in question in publications that were issued prior to Francione’s publications. I will refute this assertion of Dunayer’s below by examining Dunayer’s examples.

Regarding the final pair of juxtaposed quotations in the conclusion of

³⁰ FRANCIONE, INTRODUCTION TO ANIMAL RIGHTS, *supra* note 4, at xxviii.

³¹ DUNAYER, SPECIESISM, *supra* note 5, at 136.

³² Dunayer, *Advancing Animal Rights*, *supra* note 7, at 6 (emphasis added).

³³ The unpublished manuscript reads,

In various eras and cultures, women and children have been the property of men. In other times and places, members of particular “races,” states, or tribes have been enslaved. Today human slavery is illegal worldwide. “We do not regard it as legitimate to treat any humans, irrespective of their particular characteristics, as the property of other humans,” Gary Francione notes. Morally, it’s equally wrong to treat any nonhuman beings as human property. Currently, though, nonhuman slavery is universal.

DUNAYER, SPECIESISM (unpublished), *supra* note 15, at 103 n.2 (citing FRANCIONE, INTRODUCTION TO ANIMAL RIGHTS, *supra* note 4, at xxviii) (internal citation omitted).

³⁴ DUNAYER, SPECIESISM, *supra* note 5, at 136.

“Anti-Speciesism,” discussed above, Dunayer further asserts, “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.”³⁵ This point, however, is Francione’s.³⁶ Dunayer asserts that she made this point in her book *Animal Equality*, which “went to the printer in January 2001,”³⁷ and that *Animal Equality* was written before Dunayer read Francione’s *Introduction to Animal Rights*.³⁸ Despite Dunayer’s assertions, *Introduction to Animal Rights* was published in August 2000, five months before *Animal Equality* “went to the printer.” Dunayer notes that editorial reviewers “read the manuscript of *Animal Equality* before *Introduction to Animal Rights* was published.”³⁹ If it is assumed that Dunayer did not add the above point to the manuscript of *Animal Equality* during the five months that *Introduction to Animal Rights* was available prior to the publication of *Animal Equality*, Dunayer nevertheless had access to Francione’s 1994 article “Animals, Property and Legal Welfarism,” which states:

When we^[40] balance human and animal interests in order to see whether suffering is “necessary” or “justified,” our notion of “necessity” is shaped by the fact that we generally balance two very different entities. Human beings are regarded by the law as having interests that are supported by rights. . . . Nonhuman animals are regarded by the law as incapable of having rights, or, at least, the same type of rights possessed by humans, despite an increasing consensus that animals possess at least some moral rights that

³⁵ Dunayer, *Advancing Animal Rights*, *supra* note 7, at 6.

³⁶ In the next paragraph and section after the quotation in question, Francione completes his argument thus:

The principle of equal consideration requires that we treat similar interests in a similar way unless there is a morally sound reason for not doing so. Is there a morally sound reason that justifies our giving *all humans* a basic right not to be the property of others while denying this same right to *all animals* and treating them merely as our resources?

FRANCIONE, INTRODUCTION TO ANIMAL RIGHTS, *supra* note 4, at xxviii (emphasis added). Francione then rejects several arguments for answering “yes” to the above question and proceeds to answer it in the negative:

In the end, the only difference between them and us is species, and species alone is not a morally relevant criterion for excluding animals from the moral community any more than race is a justification for human slavery or sex is a justification for making women the property of their husbands. The use of species to justify the property status of animals is *speciesism* just as the use of race or sex to justify the property status of humans is racism or sexism.

Id. at xxix. Note the simple truth that racism, sexism and speciesism are double standards. Also note that “nonhuman enslavement” is equivalent to non-human animals being property. Thus, Dunayer’s point is the same as Francione’s but she fails to credit Francione in the final draft of *Speciesism*.

³⁷ Dunayer, *Advancing Animal Rights*, *supra* note 7, at 29 n.31.

³⁸ *Id.* at 6.

³⁹ *Id.* at 29 n.31.

⁴⁰ In other words, “the law.” See *supra* note 12.

ought to be recognized by the legal system. . . . [T]o the extent that humans have rights and animals do not, animal interests will, of necessity, be accorded less weight.⁴¹

Dunayer also had access to Francione's 1993 article discussing the speciesist double standard of basing membership in the moral community upon qualities other than sentience, quoted above.⁴² Therefore, the point in question was not originally made by Dunayer. Just as Dunayer attempted to defend the originality of her conclusion by shifting attention from *Speciesism*—the work at issue in my review—to *Animal Equality*, in the present piece I have focused on Francione's 1993 and 1994 articles, published before *Introduction to Animal Rights*, in order to show that his point is original.

Dunayer goes on to state: "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."⁴³ In support of this claim, Dunayer quotes my observation that "Francione [in *Introduction to Animal Rights*] 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 . . ."⁴⁴ Dunayer objects that she describes the same experiments in a 1990 article entitled *The Nature of Altruism*.⁴⁵ Dunayer concludes, "Ironically, Perz has accused me of

⁴¹ Gary L. Francione, *Animals, Property and Legal Welfarism: "Unnecessary" Suffering and the "Humane" Treatment of Animals*, 46 RUTGERS L. REV. 721, 731 (1994).

⁴² In *Personhood, Property and Legal Competence* (which Francione cites within the presently disputed quotation), Francione states:

The Declaration on Great Apes requires that we extend the community of equals to include all great apes: human beings, chimpanzees, gorillas and orang-utans. Specifically, the Declaration requires the recognition of certain moral principles applicable to all great apes—the right to life, the protection of individual liberty, and the prohibition of torture.

If these principles are going to have any meaning beyond being statements of aspiration, then they must be translated into legal *rights* that are accorded to the members of the community of equals and that can be enforced in courts of law.

Francione, *Personhood*, *supra* note 26, at 248 (emphasis added). Furthermore, Francione states:

Philosophers such as Tom Regan and Peter Singer have demonstrated convincingly that there can be no moral justification for what Richard Ryder has called 'speciesism', or the determination of membership in the community of equals based upon species. . . . [A] coherent moral view requires that we draw the line [of determining membership in the community of equals] at *sentience*

Id. at 253 (internal citations omitted).

⁴³ Dunayer, *Advancing Animal Rights*, *supra* note 7, at 6.

⁴⁴ Perz, *Anti-Speciesism* (Unabridged), *supra* note 8, at <http://www.speciesismreview.info/#MoralAgency> (internal citations omitted).

⁴⁵ Dunayer, *Advancing Animal Rights*, *supra* note 7, at 6 ("Using the same language that I later would use in *Speciesism*, I wrote: 'Rhesus monkeys learned to pull two chains for food')(quoting Joan Dunayer, *The Nature of Altruism*, THE ANIMALS' AGENDA 27

appropriating content that I first presented ten years before the Francione work that he cites.”⁴⁶ In *Anti-Speciesism*, however, I do not claim that Dunayer appropriates the facts⁴⁷ surrounding the experiments. Rather, I claim that Dunayer appropriates the conclusions and arguments that are made in response to those facts.⁴⁸

Furthermore, Dunayer notes that I claim that *Speciesism*’s “references to

(1990). Dunayer then goes on to further describe the details of the experiment. *Id.*

⁴⁶ *Id.* at 7.

⁴⁷ *See id.* at 6 (detailing the design of the rhesus monkey experiment).

⁴⁸ In “Anti-Speciesism,” I noted the following: “Regarding the claim that since non-human animals are morally inferior to human animals they should not have rights, Dunayer objects by offering evidence that it is solely the latter who undertake immoral actions.” Perz, *Anti-Speciesism* (Unabridged), *supra* note 8, at <http://www.speciesismreview.info/#MoralAgency> (emphasis added). I also observed that Dunayer supports her claim above as follows: “Dunayer notes that the monkeys were more moral than the humans because the monkeys exhibited altruism at considerable expense to themselves whereas the humans did not.” *Id.* When I made the above statement in “Anti-Speciesism,” I cited the page from *Speciesism* that refers to the shock experiments. *Id.* Hence, I focus on Dunayer’s counter-argument to the view that non-human animals should not have rights because they are supposedly morally inferior to human animals, a counter-argument that uses the illustration of the shock experiments to show that non-human animals are indeed more moral, or more altruistic, than human animals. In the same section on Moral Agency in “Anti-Speciesism,” I note that Francione originally presented this counter-argument:

Francione observes that many philosophers, from the ancient Stoics to Immanuel Kant to John Rawls, hold that human animals have no moral obligations to non-human animals and the latter can be excluded from the moral community because they, unlike humans, have no sense of justice and cannot respond to moral obligations or claims of right.

... Francione notes that social contract theory maintains that human animals do not have any moral obligations towards non-human animals because the latter are incapable of making or responding to moral claims, and are thus incapable of helping to form a social contract.

... Francione explains and refutes Carruthers’s [opposing] view [on this issue], but my point here is merely that Francione’s discussion of moral agency is much more nuanced and well argued for than Dunayer’s.

... Similar to Dunayer in 2004, Francione in 2000 argued that human animals who are incapable of devising (or making legal or moral) rights or even understanding (and thus being aware of) the concept of rights, nevertheless are accorded rights, and the same should be true of non-human animals.

Id. Only after providing the above context, do I draw the following conclusion in the “Moral Agency” section of “Anti-Speciesism” that Dunayer quotes: “Again like Dunayer, Francione gives evidence and accounts of non-human animals acting morally Dunayer even uses the same example of discovering more altruism in monkeys than humans via electric shock experiments, with the difference that Francione’s example involves macaque monkeys being shocked whereas Dunayer’s example involves rhesus monkeys.” *Id.* Thus, the point I make in “Anti-Speciesism” is not that Dunayer uses the same example of the shock experiments that Francione uses, but that Dunayer makes similar arguments and conclusions in response to that example. Therefore, Dunayer’s claim that I failed to notice that she originally published the ideas in question is moot, as Dunayer is referring to different ideas.

‘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*.⁴⁹ Dunayer objects that this “theme” is shared intellectual territory and is found throughout *Animal Equality*,⁵⁰ which was published five months after⁵¹ *Introduction to Animal Rights*. Although the *theme* of unnecessary harm is in the public domain, Dunayer’s statements in *Speciesism* are more specific than this general theme. Dunayer argues that the humans who maintain that non-human animals do not have rights due to their supposed moral inferiority are “hypocritical” because it is the humans in question who act immorally, as evidenced in part by their inflicting unnecessary harm upon non-human animals.⁵² That is, Dunayer introduces the argument that only humans are sufficiently moral to deserve rights, and shortly thereafter she states that people advancing such a position contradict themselves by acting more immorally than non-human animals, again, as evidenced by their inflicting harm unnecessarily.⁵³ I state in *Anti-Speciesism*:

Francione argues that the majority of human animals contradict themselves because they *both* accept the humane treatment principle—which says that unnecessary suffering should never be inflicted upon non-human animals . . . *and* they undertake activities which violate that principle; subjecting non-human animals to suffering for entirely unnecessary reasons such as amusement, pleasure and convenience⁵⁴

Note that the humane treatment principle is a principle of both law and morality. Francione argues that humans *say* they accept the moral principle of not causing other animals unnecessary suffering but they contradict themselves when they undertake *actions* that cause such suffering.⁵⁵

Next, Dunayer cites her 1997 letter to the editor that says since hunting

⁴⁹ Dunayer, *Advancing Animal Rights*, *supra* note 7, at 7 (quoting Perz, *Anti-Speciesism* (Unabridged), *supra* note 8, at <http://www.speciesismreview.info/#MoralAgency>) (alterations in original).

⁵⁰ *Id.*

⁵¹ Dunayer states: “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.” *Id.* at 29 n.31. If those hard copies are dated (either directly on the manuscript or through verification with the colleagues Dunayer mentions) before the publication of *Introduction to Animal Rights* and if those hard copies contain exactly the same references to “needlessly” and “unnecessarily” killing and otherwise harming non-human animals for “mere convenience and taste [enjoyment]”—in addition to other similar references that I do not mention in “Anti-Speciesism”—then I stand corrected.

⁵² Dunayer, *SPECIESISM*, *supra* note 5, at 26-27.

⁵³ *Id.*

⁵⁴ Perz, *Anti-Speciesism* (Unabridged), *supra* note 8, at <http://www.speciesismreview.info/#MoralAgency>.

⁵⁵ Francione, *INTRODUCTION TO ANIMAL RIGHTS*, *supra* note 4, at xix-xxiv, 5-30.

and eating non-human animals are unnecessary, these practices are immoral.⁵⁶ Aside from the difficulty involved with *Washington Post* readers remembering the content of a letter from ten years ago, Francione stated in 1996, “On one hand, we all agree with the notion that it is *morally wrong* to inflict ‘unnecessary’ pain and suffering on nonhumans; on the other hand, we routinely use animals in all sorts of contexts that could never be considered as involving any coherent notion of necessity.”⁵⁷ Francione calls this contradiction “moral schizophrenia” and Dunayer calls it “hypocritical.”

Dunayer claims that “Perz falsely accuses me of appropriating Francione’s assertion that humans have no moral right to breed other animals. It should be illegal for any human to breed any nonhuman, I maintain in *Animal Equality*,”⁵⁸ which was published five months after⁵⁹ *Introduction to Animal Rights*. Dunayer’s above characterization, however, is general and does not adequately describe what I say about Dunayer’s and Francione’s views.⁶⁰

⁵⁶ Dunayer, *Advancing Animal Rights*, *supra* note 7, at 7.

⁵⁷ Gary L. Francione, *Animals as Property*, 2 ANIMAL L. 1, 1 (1996) (emphasis added).

⁵⁸ Dunayer, *Advancing Animal Rights*, *supra* note 7, at 8.

⁵⁹ See *supra* note 51.

⁶⁰ What I actually state about their views includes:

Dunayer also takes note of and opposes Singer’s stance that it is morally acceptable to breed and kill some non-human mammalian and all non-mammalian animals if they live pleasantly, die painlessly and are replaced with new individuals after being killed for food. Dunayer responds by arguing that since murdering particular individuals wrongs those individuals, they are not compensated when replaced with new, different individuals; the compensation of murder victims is impossible.

....

Like Dunayer in 2004, Francione in 1996 and 2000 discusses Singer’s argument that since many non-human animals supposedly do not possess desires for the future or continuous mental existences, it is justifiable to painlessly kill them and any harm that this entails to non-human animals is offset by breeding new animals to replace the ones killed. Francione notes that, for Singer, this argument only applies to animals who have lead pleasant lives, as Singer holds that all animals have an interest in not suffering regardless of their mental makeup.

....

... Also like Dunayer, Francione concluded that the domestication and breeding of non-human animals must be abolished, as failing to do so perpetuates their property status.

Perz, *Anti-Speciesism* (Unabridged), *supra* note 8, at <http://www.speciesismreview.info/#MoralAgency> (internal citations omitted). In *Advancing Animal Rights*, Dunayer’s citations from her 2001 *Animal Equality* and a 1991 letter to the editor generally oppose the breeding of non-human animals, but they do not specifically reflect the above context found in Dunayer’s *Speciesism* and Francione’s *Introduction to Animal Rights*. See Dunayer, *Advancing Animal Rights*, *supra* note 7, at 8 (envisioning the emancipation of nonhuman animals as a situation where “[h]umans stop ‘producing’ dogs to be merchandise,” “[a] ban on ‘selective breeding’ ends centuries of inflicting deformity and genetic disease,” and “[t]he number of ‘domesticated’ nonhumans rapidly declines”) (quoting JOAN DUNAYER, ANIMAL EQUALITY: LANGUAGE AND LIBERATION, 176 (2001)).

Similarly, Dunayer claims that “[a]ccording to Perz, I ‘borrow’ Francione’s ‘insight’ that nonhuman animals who can’t be rehabilitated after emancipation should be cared for in sanctuaries. My thoughts on post-emancipation sanctuaries also appear in *Animal Equality*.”⁶¹ Again, *Animal Equality* was published five months after⁶² *Introduction to Animal Rights* and two years after Francione’s *Wildlife and Animal Rights*—a piece that I also cite in *Anti-Speciesism* as containing Francione’s views on placing non-human animals in sanctuaries if they cannot be rehabilitated.⁶³

Dunayer’s final example in support of her claim that the charges of appropriation in “Anti-Speciesism” are false relates to her critiques of Steven M. Wise’s *Drawing the Line* and the Great Ape Project (GAP), and Francione’s critique of the latter. Dunayer accurately, although tersely, summarizes my argument: “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.”⁶⁴ Yes, “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 [objections to the GAP].”⁶⁵ This is the case because the GAP’s guiding principles and arguments are made more specific and practical by Wise’s analysis.⁶⁶ For example, Wise’s 0.0 - 1.0 point

Thus, Dunayer appropriates Francione’s arguments surrounding the breeding of non-human animals, as shown above.

⁶¹ Dunayer, *Advancing Animal Rights*, *supra* note 7, at 8 (internal citations omitted).

⁶² See *supra* note 51.

⁶³ Perz, *Anti-Speciesism* (Unabridged), *supra* note 8, at <http://www.speciesismreview.info/#LegalWelfarism>.

⁶⁴ Dunayer, *Advancing Animal Rights*, *supra* note 7, at 8.

⁶⁵ Perz, *Anti-Speciesism* (Unabridged), *supra* note 8, at <http://www.speciesismreview.info/#GAP>.

⁶⁶ In stating this reason in *Anti-Speciesism: The Appropriation and Misrepresentation of Animal Rights in Joan Dunayer’s Speciesism* (Unabridged), I cited an endnote from Gary Francione’s *Animals—Property or Persons?* (2004). Perz, *Anti-Speciesism* (Unabridged), *supra* note 8. Dunayer objects that *Animals—Property or Persons?* only briefly mentions Wise in the single endnote I cited. This is correct. The final sentence in the *Animals—Property or Persons?* endnote I cited refers readers to Wise’s *Drawing the Line* as an example of an approach that uses characteristics beyond sentience as being necessary for non-human animals not to be treated as property. *Id.* at <http://www.speciesismreview.info/#GAP> (quoting Gary L. Francione, *Animals—Property or Persons?*, in ANIMAL RIGHTS: CURRENT DEBATES AND NEW DIRECTIONS 141 (Cass R. Sunstein and Martha C. Nussbaum eds., 2004)). Within precisely the same endnote, however, Francione provides a half-page discussion of the problems associated with relying on similarities between human and non-human animals beyond sentience to justify the moral significance of the latter. Gary L. Francione, *Animals—Property or Persons?*, in ANIMAL RIGHTS: CURRENT DEBATES AND NEW DIRECTIONS 141 (Cass R. Sunstein and Martha C. Nussbaum eds., 2004). These problems or critiques are then connected to Wise’s views by the final sentence of the endnote. This illustrates my above point that many of Francione’s arguments against the GAP can be directly used against Wise’s arguments. The “A ≈ B, B = C, ∴ A ≈ C” syllogism that Dunayer refers to gains credibility when one considers the “B

= C” element: the textual evidence for Dunayer’s appropriation of Francione’s objections to the GAP.

Regarding Dunayer and the GAP, I write:

Dunayer states that the Great Ape Project (GAP) organization is speciesist because it only advocates personhood for certain non-human animals for the reason they are similar to human animals. Dunayer disagrees with advocating non-human animal personhood on the basis of similarity to humans because doing so is an instance of promoting the speciesist criteria for rights that Dunayer says Singer (and others) advocate Dunayer notes that the GAP requires that non-human animals have certain kinds of emotional and mental capacities in order to be part of the community of moral equals, but Dunayer counters that the mere capacity to experience (i.e. sentience) is sufficient for moral equality. She notes that the GAP justifies it[s] stance that non-human great apes are persons with scientific evidence of their complexity but objects that this suggests ‘that most nonhumans have no claim, or only a weak claim, to legal rights until some indeterminate amount of future research [i.e. vivisection] has demonstrated their complexity to the satisfaction of some indeterminate number of humans. Second, there’s the suggestion that complex individuals are more entitled to legal rights than supposedly simpler ones.’ Dunayer states that it is easier for most humans to see non-human great apes as distinct individuals because they look and behave similarly to humans, and contends that using this situation to help secure them rights is acceptable, but not if it is implied that non-human great apes have greater individuality, and accordingly have a greater entitlement to rights, than other non-human animals—something that the GAP does. Dunayer asserts that non-human great apes are not more or less entitled to rights due to their distinct personalities, habits, ideas and other individual traits. She maintains that such criteria are irrelevant to whether or not non-human great apes have rights. Dunayer asserts that the only relevant criterion for non-human great apes and all other non-human animals having moral equality is sentience. Dunayer writes, ‘As expressed by Gary Francione, denying personhood to nonhuman great apes is *irrational* in light of the demonstrated mental and emotional similarities’ between them and us.’ Then, without citing Francione, Dunayer continues by stating the similarities that Francione speaks of—except for sentience—are irrelevant to according basic rights. She concludes that it is also ‘irrational’ to deny basic rights to non-great apes such as crickets, since they are also sentient. Alluding to her previous rejection of other proposed criteria for rights (such as religious beliefs, moral agency, supposedly greater sentience, self-awareness and inherent value—as discussed and deconstructed above), Dunayer states, ‘linking basic rights to human-like mental capacities is biased and *logically inconsistent*.’ She continues:

I’m not saying that we must emancipate either everyone or no one. . . . emancipating African-Americans didn’t rely on racist arguments, and emancipating the first nonhumans shouldn’t rely on speciesist ones. . . . I completely support efforts to obtain great-ape personhood, provided that they’re non-speciesist. . . . without benefiting some animals at the expense of more-numerous others. . . . without perpetuating the very speciesism that personhood for any nonhumans should *erode* rather than reinforce. . . . Why not seek great-ape personhood in nonspeciesist ways? . . . arguing for great-ape personhood doesn’t require speciesist argumentation of the sort presented by GAP. . . . egalitarian principles [i.e. equality and respect regardless of ‘intelligence’ or capacity to ‘appreciate’ life] could be applied in a legal case seeking rights for, say, chimpanzees or dolphins. . . . arguing based on sentience alone might be less threatening to judges than arguing based on human-nonhuman similarities. . . . GAP enforces a speciesist hierarchy, with great apes ranking above all other animals. If a judge rules that a chimpanzee is a person because chimpanzees are so human-like, yet another speciesist precedent will be set. . . . Humans continually would judge nonhumans

autonomy scale for determining whether members of various species have rights, which Dunayer rightly objects to at length, is simply a more

(especially captives) by the extent to which they demonstrate human-like capacities. . . . advocates should [instead] argue that . . . chimpanzees are clearly sentient.

Perz, *Anti-Speciesism* (Unabridged), *supra* note 8, at <http://www.speciesismreview.info/#TheGreatApeProject> (quoting Dunayer, *Speciesism*, *supra* note 5, at 118-120) (internal citations omitted).

Regarding Francione and the GAP, I write:

All of Dunayer's objections to the GAP discussed above are found in Francione's *Introduction to Animal Rights*. [Gary L. Francione, INTRODUCTION TO ANIMAL RIGHTS 116-119, 213 n.42 (2000).] As Dunayer notes, in '*Personhood, Property and Legal Competence*,' Francione argues that the property status of non-human great apes ought to be abolished and replaced with legal personhood status, and this would constitute an incremental step to the complete abolition of all non-human animal exploitation. It was Francione, however, not Dunayer, who originally argued that sentience should be the only criterion that non-human great ape personhood is based upon. Essentially, Francione's argument, published in 1994, is this. Both human and non-human great apes are sentient. Also, both human and non-human great apes are genetically, psychologically and behaviorally similar. Given these similarities, it would be irrational, arbitrary and contradictory to put one group of great apes (i.e. human) into one legal class (i.e. persons) and another group of similar great apes (i.e. non-human) into a different, opposite, legal class (i.e. property). Thus, to avoid this contradictory, arbitrary and irrational double standard, both groups of great apes should be placed in the same legal category; persons. Francione stresses that the only morally relevant similarity between human and non-human great apes is their sentience, thus leaving the possibility open that other non-human animals will become legal persons as well. [Gary L. Francione, *Personhood, Property and Legal Competence*', in THE GREAT APE PROJECT 253-254 (Paola Cavalieri and Peter Singer eds., 1993)].

Mark the difference between the above non-speciesist argument of Francione's and the one that says human great apes are legal persons, non-human great apes have many of the same, or similar, mental and genetic characteristics that human great apes do, therefore non-human great apes should have the same personhood status as humans. This argument makes the standard of rights human-centric and contains all of the pitfalls that Francione first drew attention to and Dunayer appropriates. [GARY L. FRANCIONE, INTRODUCTION TO ANIMAL RIGHTS 116-119, 213 n.42, 2000.] . . .

From the above summary of Francione's argument in '*Personhood, Property and Legal Competence*,' and from the abovementioned arguments of Francione's in *Introduction to Animal Rights*, it is clear that Dunayer borrows the following points from Francione: it is irrational to deny personhood to non-great apes, connecting closeness to genetic humanity and the mental capacities that are common to humans with personhood is inconsistent and it is possible to abolish the property status of non-human great apes as an incremental step towards total abolition without using speciesist argumentation that enforces hierarchy. [Gary L. Francione, *Personhood, Property and Legal Competence*, in THE GREAT APE PROJECT 248-257 (Paola Cavalieri and Peter Singer eds., 1993); GARY L. FRANCIONE, INTRODUCTION TO ANIMAL RIGHTS 116-119, 213 n.42 (2000); Gary L. Francione, *Animals—Property or Persons?*, in ANIMAL RIGHTS: CURRENT DEBATES AND NEW DIRECTIONS 141 n.94 (Cass R. Sunstein and Martha C. Nussbaum eds., 2004)].

Perz, *Anti-Speciesism* (Unabridged), *supra* note 8, at <http://www.speciesismreview.info/#LegalWelfarism>; *id.* at <http://www.speciesismreview.info/#GAP>.

detailed quantification of what the GAP already says. Accordingly, Francione’s arguments against the GAP are directly applicable to Wise’s arguments.

The examples that Dunayer uses to support her claim that my charges of appropriation are false only serve to strengthen the claims of appropriation: the GAP and Wise, sanctuaries, breeding, unnecessary harm, the counter-argument to denying non-human animals rights on the basis of their supposed moral inferiority and the point of Dunayer’s sentence regarding the treatment of humans as property. Again, in the latter example, Dunayer originally cited Francione and then proceeded to “unintentionally” remove her citation.⁶⁷ Considered together, all of this shows that Dunayer’s assertion that she originated the ideas in question prior to Francione is highly questionable. Therefore, the charges of appropriation in *Anti-Speciesism* are warranted.

IV. COMPOUNDED MISREPRESENTATION

A. Battery Cages

In *Advancing Animal Rights*, Dunayer quotes a three-page passage from *Speciesism* of her argument that all prohibitions of battery cages for hens who are used for their eggs are necessarily welfarist.⁶⁸ Part of that passage is as follows:

In 1981 Switzerland set new egg-industry standards, with full compliance required as of 1992. The standards proved incompatible with caging.

. . . .

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

⁶⁷ Dunayer’s original draft read:

In various eras and cultures, women and children have been the property of men. In other times and places, members of particular ‘races,’ states, or tribes have been enslaved. Today human slavery is illegal worldwide. ‘We do not regard it as legitimate to treat any humans, irrespective of their particular characteristics, as the property of other humans,’ Gary Francione notes. Morally, it’s equally wrong to treat any nonhuman beings as human property. Currently, though, nonhuman slavery is universal.

DUNAYER, SPECIESISM (unpublished) *supra* note 15, at 79 (quoting FRANCIONE, INTRODUCTION TO ANIMAL RIGHTS, *supra* note 4, at xxviii) (internal citation omitted).

⁶⁸ Dunayer, *Advancing Animal Rights*, *supra* note 7, at 12-14.

“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 inches of floor space”) is largely academic.*⁶⁹

Dunayer denies my assertion that she inaccurately depicts Francione’s position as supporting welfare regulations that increase cage-size specifications for hens who are used for their eggs.⁷⁰ Francione advocates a cage prohibition that would fully respect hens’ interest in freedom of movement.⁷¹ As readers can see from the quotations of Dunayer above, Dunayer collapses the distinction between any kind of cage prohibition and an increase in cage-size specifications.⁷²

In *Anti-Speciesism*, I wrote, “Contrary to Dunayer’s depiction, Francione opposes welfare regulations that increase cage-size specifications for hens who are used for their eggs.”⁷³ I stated that this was Dunayer’s depiction because Dunayer’s objections to increasing cage-size specifications

⁶⁹ *Id.* at 13-14 (emphasis added).

⁷⁰ Regarding the three page passage Dunayer quotes from *Speciesism*, Dunayer states: 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 can be ‘consistent with rights theory.’” A prohibition on caging, not an increase in cage size.

.....
[Dunayer] 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.”

Id. at 14-15 (emphasis added) (final alteration in original).

⁷¹ FRANCIONE, RAIN WITHOUT THUNDER, *supra* note 3, at 190-211, 214-219.

⁷² Cages used to torture humans that are slightly bigger than an individual’s body are still cages, as are the larger cages found in human prisons and in non-human animal zoos. Similarly, cages that are used to confine hens are still cages whether they contain 48, 67 or 124 square inches of floor space per hen. As Dunayer notes, the Swiss specification that cages must contain 124 square inches of floor space per hen had the effect of eliminating the battery cages (Dunayer, *supra* note 9, at 69) and replacing them with “aviaries.” DUNAYER, SPECIESISM, *supra* note 5, at 69; HEINZPETER STUDER & PRO TIER INTERNATIONAL, HOW SWITZERLAND GOT RID OF BATTERY CAGES 19-20 (2001), http://www.upc-online.org/battery_hens/SwissHens.pdf). A cage is “a box or enclosure having some openwork for confining or carrying animals (as birds).” Merriam-Webster OnLine Dictionary, “cage” definition 1, *available at* <http://www.m-w.com/dictionary/cage>. From the photographs of the Swiss aviaries, they certainly qualify as relatively large wooden cages that are used to confine birds. HEINZPETER STUDER & PRO TIER INTERNATIONAL, HOW SWITZERLAND GOT RID OF BATTERY CAGES 33, 39 (2001), http://www.upc-online.org/battery_hens/SwissHens.pdf). Dunayer might object to this, as she states that the effect of the Swiss law was the *elimination* of cages. Even if this is so, the Swiss law nevertheless also increased cage-size specifications to the point where the cages became “aviaries,” as noted above. On what non-arbitrary basis can one determine exactly how much bigger a cage must be before increases to its size specifications transform it into an aviary? Is America’s largest aviary, the National Aviary in Pittsburgh, an aviary, a large cage or both?

⁷³ Perz, *Anti-Speciesism*, *supra* note 6, at 54.

in *Speciesism* are immediately followed by her claim that “a caging ban is actually a requirement that enslaved hens have more space,”⁷⁴ which is in turn immediately followed by Dunayer’s assertion that “[e]xplicitly or implicitly, a cage ban [not Francione] does just that: it condones other forms of confinement”⁷⁵ and Dunayer’s further objections to Francione’s highly qualified cage prohibition.⁷⁶ As Dunayer notes, Francione advocates a prohibition on cages that would fully respect hens’ interest in freedom of movement.⁷⁷ Therefore, Dunayer strongly implies that Francione’s advocacy of this prohibition condones other forms of exploitation—especially since she (rightly in my view) equates the two forms of exploitation: cage prohibitions and increases to cage-size specification, as noted above. As I argue in “Anti-Speciesism,” this implication of Dunayer’s is a misrepresentation of Francione’s views.⁷⁸ Dunayer objects, “Again, I don’t indicate that Francione endorses new cage-size requirements or other confinement guidelines. Instead I argue that a ban on caging [which Francione advocates, provided it would fully respect hens’ interest in freedom of movement and satisfy other criteria⁷⁹] is, in effect, a guideline regarding confinement”⁸⁰

In Dunayer’s words, however, any distinction between the above two sentences is “largely academic.”⁸¹ Dunayer further argues that a ban on caging amounts to a guideline regarding confinement “because the egg industry never would or could allow hens complete freedom of movement.”⁸² Dunayer’s response to my objection that Francione’s suggested prohibition of battery cages would fully respect hens’s interest in freedom of movement begins as follows:

[Francione] contends that a change in exploitation can be consistent with rights theory if it fully respects some “interest” or “protoright” of the exploited animals, such as enslaved hens’

⁷⁴ DUNAYER, SPECIESISM, *supra* note 5, at 69.

⁷⁵ *Id.* at 69-70.

⁷⁶ *Id.* at 69-70.

⁷⁷ *Id.* at 69.

⁷⁸ Perz, *Anti-Speciesism*, *supra* note 6, at 51-63. I specifically noted:

[W]hen a rights advocate simultaneously demands an end to the use of battery cages (without suggesting an alternative form of confinement) and an end to all exploitation of non-human animals (which includes *any* other confinement system) and the exploiter fails to meet this demand but instead responds by implementing an alternative form such as coops, Francione’s theory *requires* the rights advocate to continue to respond by relentlessly demanding an end to the use of coops and any other system of confinement, coupled with the repeated demand to abolish the property status of non-human animals completely.

Id. at 59.

⁷⁹ See *supra* note 71 and accompanying text.

⁸⁰ Dunayer, *Advancing Animal Rights*, *supra* note 7, at 15 (emphasis added).

⁸¹ *Id.* at 14 (quoting DUNAYER, SPECIESISM, *supra* note 5, at 70).

⁸² *Id.* at 15.

interest in “freedom of movement.” 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.”⁸³

In the above passage, Dunayer confuses basic and non-basic interests, which are protected by basic and non-basic rights respectively.⁸⁴ Furthermore, I argue that Francione’s proto-rights result in one indivisible interest of the hens being completely respected. This is done (justly) at the expense of the property owner losing her or his interests in profit and unfettered autonomy. The inherently incremental and progressive nature of Francione’s abolitionist method ensures that the hens will not continue to be exploited for their eggs or anything else: one interest after another will be protected until hens and every other non-human animal are not used as property at all. Francione’s guidelines for abolitionist change guarantee that “hens receive, as a first step among many, the space that is adequate to completely respect their interest in freedom of movement—that is, the territory arrangement that would exist in the environment if human animals never took any eggs

⁸³ *Id.* at 16 (internal citations omitted).

⁸⁴ Francione shows how non-basic rights such as those of a hen to spread her wings, a polar bear to be cool or a dog to have daily exercise are meaningless *unless* the individuals who have them also have basic rights at the same time. FRANCIONE, INTRODUCTION TO ANIMAL RIGHTS, *supra* note 4, at 94-95. Basic rights, and the basic interests that they protect, include but are not limited to life, bodily integrity and freedom. Francione notes that the most basic right of all is the right not to be property, or not to be used exclusively as a resource. *Id.* at 93-96. In my view, this suggests three different levels of rights: “A,” the most basic of all rights, the right not to be property; “B,” other basic rights, such as those to life, bodily integrity and freedom; and “C,” non-basic rights, such as a hen’s right to spread her wings or a human’s right to drive an automobile. Rights class “C” is non-basic relative to both “B” and “A” above. Rights class “B” is basic relative to “C” and non-basic relative to “A.” Rights class “A” is basic relative to both “B” and “C.” In my view, certain non-basic rights in class “C” (such as a hen spreading her wings, walking as far as she wishes, pecking the ground and so on) considered together compose one basic right in class “B” (such as freedom of movement). Similarly, the sum total of all basic rights in class “B” (such as life, bodily integrity, freedom and so on) is equivalent to the most basic right not to be property, which is the sole right in class “A.” Francione argues that merely respecting the non-basic rights (which protect the non-basic interests) of individuals—such as those listed by Dunayer above—is welfarist because these non-basic rights cannot be enjoyed without the basic rights of life, bodily integrity and freedom. For example, if a hen is still considered property, respecting her non-basic right to spread her wings without also fully respecting her basic right to freedom of movement merely results in her being exploited more efficiently as property. Conversely, fully respecting a hen’s right from class “B”—such as the right to freedom of movement—is not welfarist because this right, considered in itself, can be fully enjoyed and utilized even without the basic right not to be property, as I note in “Anti-Speciesism.” Perz, *Anti-Speciesism*, *supra* note 6, at 53. In other words, fully respecting a hen’s right from class “B” without also respecting her basic right not to be property nevertheless results in part of the hen’s property status being removed because the exploiter is no longer able to use her in the way that property law normally permits and encourages: safeguarding the property owner’s right to use property in a way that maximizes efficiency of time, owner-autonomy and economic value.

or otherwise exploited them.”⁸⁵

In *Speciesism*, Dunayer objects that securing this territory arrangement for hens in order to fully respect their interest in freedom of movement “isn’t possible.”⁸⁶ In “Anti-Speciesism,” I respond to this objection by illustrating how it is possible with two examples: one hypothetical and the other real. In the hypothetical example, I note that “if” the non-domesticated ancestors of modern chickens were being immorally exploited for their eggs, their interest in freedom of movement could nevertheless be fully respected if they were returned to their native environment and not confined in any way.⁸⁷ I then state, “It might be objected that it is not the ancestors of modern chickens who are kept in battery cages,”⁸⁸ and go on to rebut this objection. Part of this rebuttal includes my second real-life⁸⁹ example of how it is possible for a cage ban to fully respect hens’ interest in freedom of movement:

[A]fter a prohibition against battery cages that satisfies Francione’s stringent criteria, the hens would be placed in an environment that in all respects was the “same” as a sanctuary environment, *with the exception* that eggs would be stolen. Again, although the hens would still be wrongfully exploited as property in this way, their interest in liberty of movement would be fully respected, and this would constitute an incremental step towards respecting *all* of their interests.⁹⁰

Dunayer responds by labeling the first example not impossible, but “unrealistic,” “absurd” and “fantasy.”⁹¹ In “Anti-Speciesism,” however, I state of the first example: “Francione wholly acknowledges that a campaign to introduce such a prohibition is *unlikely to succeed* at this point in history, and focuses instead on its important educational value.”⁹² In other words, Dunayer, Francione and I are in agreement that the possibility of a prohibition of cages that fully respects hens’ freedom of movement succeeding is not realistic. Francione does not advocate pursuing such a

⁸⁵ Perz, *Anti-Speciesism*, *supra* note 6, at 61.

⁸⁶ DUNAYER, *SPECIESISM*, *supra* note 5, at 69.

⁸⁷ Perz, *Anti-Speciesism*, *supra* note 6, at 61.

⁸⁸ *Id.*

⁸⁹ Currently, genuine sanctuaries exist for hens who were formerly exploited for their eggs. When these hens lay eggs, different sanctuaries respond in different ways. Some leave the eggs alone until they rot and then compost them. Other “sanctuaries” break the unfertilized eggs and feed them back to the hens. Still other “sanctuaries” feed the eggs to both the hens and animals of other species who are being protected cared for. There are also egg farms that resemble the aforementioned sanctuaries in every respect, except that the farmer eats the eggs, gives them to other humans for consumption or sells them for human consumption.

⁹⁰ Perz, *Anti-Speciesism*, *supra* note 6, at 62.

⁹¹ Dunayer, *Advancing Animal Rights*, *supra* note 7, at 16-17.

⁹² Perz, *Anti-Speciesism*, *supra* note 6, at 61 (emphasis added).

campaign with the expectation that it would succeed,⁹³ as doing so would be an absurd fantasy.⁹⁴ Rather, Francione presents a prohibition against battery cages (with provisos) as an example of a campaign that is consistent with his five stringent criteria for incremental abolitionist change. Regarding these criteria, Francione states:

[T]he rights advocate may reasonably conclude that *all* attempts to eradicate the institutionalized exploitation of animals through incremental legislation and regulation do not, at this point in the history of the human/nonhuman relationship, represent the most efficacious use of temporal and financial resources. . . . But this does not mean that the rights advocate is left without an incremental program of practical change. On the contrary, the rights advocate is left with a most important and time-consuming project: education of the public through traditional educational means—protest, demonstrations, economic boycotts, and the like—about the *need* for the abolition of institutionalized exploitation on a social and personal level. . . . Moreover, in light of the structural defects of animal welfare, *any* legislative or judicial campaign will need to be accompanied by a vigorous educational campaign.⁹⁵

I comment in “Anti-Speciesism”:

[T]he essence of Francione’s view on incremental abolitionist change is that it should be accomplished through education. If, however, one is bent on perusing legal and regulatory change then Francione argues that one must follow his criteria in order for the change to be abolitionist. Following the criteria is not an absolute, objective guarantee that a change will be abolitionist, but only constitutes a useful negative test or imprecise guide, and the rights activist must further contemplate and examine whether the primary goal of incrementally abolishing the property status of non-human

⁹³ FRANCIONE, RAIN WITHOUT THUNDER, *supra* note 3, at 192, 211.

⁹⁴ Despite Dunayer’s criticisms that my example is unrealistic, she likewise uses examples that are “bizarre” for the purposes of illustrating a point: “If I were in a Nazi concentration camp and someone on the outside asked me, ‘Do you want me to work for better living conditions, more-humane deaths in the gas chamber, or the liberation of all concentration camps?’ I’d answer, ‘Liberation.’ In fact, I’d find the question bizarre and offensive.” DUNAYER, SPECIESISM, *supra* note 5, at 62. In this same passage in the manuscript of *Speciesism*, however, she expressed the view that the above scenario is “bizarre” does not appear. DUNAYER, SPECIESISM (unpublished), *supra* note 15, at 45. Perhaps a manuscript editor made this invaluable suggestion. Regardless, in the final published version of *Speciesism*, Dunayer continues the absurdity: “Some ‘welfarists’ have responded, ‘You’re the one treating the nonhuman context differently from the human one. If *you* were a hen, you’d prefer a larger cage to a smaller one.’ Yes, but I’d want emancipation incomparably more.” DUNAYER, SPECIESISM, *supra* note 5, at 62. Dunayer uses this thought experiment of imagining herself as a chicken to make the distinction that “[a] hen doesn’t know why she’s being held captive. We do.” *Id.* Clearly, then, Dunayer, in her own work, is not opposed to using absurd and fanciful thought experiments in order to make a highly relevant intellectual point.

⁹⁵ FRANCIONE, RAIN WITHOUT THUNDER, *supra* note 3, at 192.

animals is actually being served.⁹⁶

Thus, regarding the meanings of “abolitionist” and “rights,” Dunayer’s charge that “Francione further confuses the issues by sometimes arguing in terms of unrealistic outcomes”⁹⁷ strongly implies⁹⁸ that Francione argues for such outcomes. As shown above, this suggestion of Dunayer’s is a misrepresentation of Francione’s views.

The point of drawing attention to Dunayer’s objections that a cage prohibition which fully respects hens’ freedom of movement is “unrealistic” or “impossible” is that Dunayer uses this claim to support her suggestions that (a) Francione supposedly contradicts himself when he argues that such a prohibition can be consistent with rights theory, and (b) Francione’s advocacy of this prohibition (with its strict provisos) implies that he condones other forms of confinement.⁹⁹ Again, both of these suggestions are misrepresentations of Francione’s views.¹⁰⁰

B. Prohibitions Generally

In “Advancing Animal Rights,” Dunayer cites a passage from *Speciesism* that argues “[b]ans aren’t automatically abolitionist” in her section entitled “Speciesism’s Unique Contributions: Progress Beyond Francione’s Work.”¹⁰¹ In “Anti-Speciesism,” however, I observed that “[t]he first of [Francione’s abolitionist] criteria is that ‘An Incremental Change Must Constitute a Prohibition,’ but it was Francione and not Dunayer who originally argued that this criterion on its own is not enough.”¹⁰² That is, Francione originally argued that “[t]he requirement of a prohibition is a start, but it is only a start because, standing alone, the requirement is arguably incomplete.”¹⁰³ Francione discusses at length why

⁹⁶ Perz, *Anti-Speciesism*, *supra* note 6, at 63.

⁹⁷ Dunayer, *Advancing Animal Rights*, *supra* note 7, at 16.

⁹⁸ Dunayer could object that arguing “in terms” of something is not the same as arguing “for” it. This is one of the examples of Dunayer’s rhetoric that implies a conclusion, but does not explicitly state it. For similar examples, see Perz, *Anti-Speciesism* (Unabridged), *supra* note 8, at http://www.speciesismreview.info/#_edn33; http://www.speciesismreview.info/#_ednref33.

⁹⁹ DUNAYER, *SPECIESISM*, *supra* note 5, at 69-70.

¹⁰⁰ Perz, *Anti-Speciesism*, *supra* note 6, at 54-61.

¹⁰¹ Dunayer, *Advancing Animal Rights*, *supra* note 7, at 15 (quoting DUNAYER, *SPECIESISM*, *supra* note 5, at 152).

¹⁰² Perz, *Anti-Speciesism*, *supra* note 6, at 55.

¹⁰³ FRANCIONE, *RAIN WITHOUT THUNDER*, *supra* note 3, at 194. Francione elaborates: For example, there are legal regulations that require that animals used in experiments be provided with water regularly. This law would not have the same problem as one that required animals to be treated ‘humanely,’ because the latter does not really require any particular human conduct at all; therefore, we cannot say that the latter law prohibits anything. But a law that requires specifically that animals be watered is different because it does prescribe a standard: it prescribes that a particular interest of the animal must be observed. The property owner has a

this is the case.¹⁰⁴ Francione then goes on to argue in favor of four additional criteria that, when combined with the first, are sufficient for abolitionist incremental change.¹⁰⁵

Hence, Dunayer's "unique" contribution that "bans aren't automatically abolitionist"¹⁰⁶ is more accurately described as an appropriation. Indeed, Dunayer's observation that prohibitions on battery cages and other exploitative practices are not necessarily expressed as prohibitions but rather as new requirements reflects Francione's comments regarding the welfarist requirement that non-human animals used in vivisection receive water.¹⁰⁷ It is astonishing that, in her defense of *Speciesism's* originality, Dunayer employs an indisputable example of appropriation that was already mentioned in "Anti-Speciesism."¹⁰⁸

V. CONTRADICTIONS

Dunayer contends that Francione's criteria for abolitionist incremental change are "overly complicated" and "tortuous."¹⁰⁹ In "Anti-Speciesism," however, I show that Dunayer proposes two examples of abolitionist prohibitions that do not satisfy Dunayer's criterion but do satisfy Francione's.¹¹⁰ Hence, it appears that Dunayer does not regard Francione's criteria as being too tortuous to abide by in her own examples. Regarding the first of these, I stated:

[Dunayer] contradicts herself when she both states that such prohibitions do not leave non-human animals in situations of exploitation and offers the example of a ban against leg-hold traps within the fur industry. For, even with Dunayer's suggested prohibition, non-human animals will continue to be exploited for their fur with the use of spring-loaded traps that hold them by the

duty to give water to the animals. And precisely because the standard is correlative with a duty, such a law could be called a prohibition in that it prohibits withholding water from animals used in experiments.

Id. at 194-195. He further states that

[t]he disadvantage of the prohibition requirement as a single criterion for identifying incremental measures is that any law or regulation that does establish a standard with a correlative duty could be regarded as a prohibition even though the standard was agreed to be (even by welfarists) nothing more than a welfarist reform. So, although the requirement of a prohibition is useful and excludes *some* welfarist reform (the rules that prescribe 'humane' treatment and proscribe 'unnecessary' suffering), it is not yet sufficient.

Id. at 195.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 196-219.

¹⁰⁶ Dunayer, *Advancing Animal Rights*, *supra* note 7, at 15.

¹⁰⁷ *See supra* note 103.

¹⁰⁸ Perz, *Anti-Speciesism*, *supra* note 6, at 55.

¹⁰⁹ Dunayer, *Advancing Animal Rights*, *supra* note 7, at 17.

¹¹⁰ Perz, *Anti-Speciesism*, *supra* note 6, at 63-64.

head or mid-section, closing-cage traps and battery cages in fur “farms.” That is, Dunayer has suggested a prohibition against leg-hold traps that substitutes one form of exploitation (leg-hold traps) for another (head/mid-section traps and other methods) and leaves non-human animals in the situation of being trapped and killed for their fur.¹¹¹

Dunayer replied:

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. 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.¹¹²

In this passage, it is not clear what Dunayer means by “a situation of exploitation.” If Dunayer means that, unlike hens who are exploited in cages from birth, fur-bearing animals are *brought into* cages with leghold traps, then Dunayer misunderstands how the fur industry operates. Leghold traps do not bring non-human animals into fur “farms” to be exploited in cages and, in this respect, the fur “farm” industry is no different from the egg industry. The fur “farm” industry has “pelting stock” and “breeding stock.” The former are exploited from birth, and the latter are used to bring more non-human animals into the exploitative situation. Fur “farms” keep extensive breeding records.

Conversely, leg-hold traps are extensively used to trap the members of non-human animal species who are never exploited in fur “farms” due to the difficulty that exploiters have encountered in attempting to domesticate them. When a trapper discovers a living non-human animal in a leg-hold trap, the animal is commonly murdered on the spot. The exploitation of non-human animals who are caught in leg-hold traps solely consists of their forced confinement, assault and murder—all of which take place in forests and other native habitats. So, when Dunayer advocates a prohibition on leg-hold traps within the fur industry, she is advocating that one method of exploitation (leg-hold traps) that is used in one situation of exploitation (forests) be replaced with another method of exploitation (head/mid-section

¹¹¹ *Id.*

¹¹² Dunayer, *Advancing Animal Rights*, *supra* note 7, at 18 (internal citation omitted).

traps) that is used in the *same* situation of exploitation (forests). So, Dunayer contradicts herself when she rejects prohibitions that leave non-human animals in situations of exploitation. Contrary to what Dunayer alleges, a leg-hold trap prohibition would not necessarily reduce the chance of non-human animals being caught because other types of traps would be used to replace the leg-hold traps. Thus, despite her statements to the contrary, it seems that Dunayer indirectly and unintentionally abides by Francione's abolitionist criteria insofar as she advocates a prohibition that "doesn't necessarily abolish an entire industry," such as the pelt industry.¹¹³

If, however, when Dunayer refers to "a situation of exploitation," she simply means the jaws of a leghold trap and subsequent death by thirst, hunger, decompression, clubbing or stabbing, then I agree with Dunayer to the following extent: I maintain that the act of bringing a non-human animal into a situation of exploitation is, in itself, part of that same exploitation. For example, when some humans catch fishes, they claim to do it partly for enjoyment. Sometimes they kill and eat the fishes,¹¹⁴ sometimes they release them alive,¹¹⁵ and sometimes they keep them as "pets."¹¹⁶ From the catching to the killing/releasing/using-as-"pets," all aspects of the practice of fishing are exploitative. Similarly, all aspects of using non-human animals for fur are exploitative, including trapping them. Trapping—considered in itself—violates an animal's interests in freedom and bodily integrity and is part of the fur industry's exploitation. It follows that a prohibition on leg-hold traps would only replace one situation of exploitation (leg-hold traps used in forests) with another (head/mid-section traps used in forests). Again, this prohibition would not necessarily reduce the number of non-human animals who are exploited because the fur industry would simply compensate by using other types of traps or snares more often, using poisons or employing hunters. This is true regardless of whether or not the non-human animals are killed immediately after being trapped or are (as in the interpretation of Dunayer in the preceding paragraph) transported to be exploited in fur "farms." Therefore, Dunayer clearly contradicts herself when she states that abolitionist prohibitions do not leave non-human animals in situations of exploitation, and then offers the example of a prohibition against leg-hold traps in support of her argument.

¹¹³ *Id.*

¹¹⁴ Although so-called "recreational fishing" does not involve industrial fishing (which commonly uses fleets of large ships with large nets that catch fishes for commercial sale), it is nevertheless part of the "angling" industry that is similar to the hunting industry.

¹¹⁵ Some fishes who are caught and live-released nevertheless slowly die afterwards, while others may recover.

¹¹⁶ For example, some children take joy in the exploitative act of catching fishes in "minnow traps." They then continue the exploitation by keeping them as "pets" in fish tanks.

Francione's crucial point is that *any* prohibition short of one that respects the basic right to not be property (which would abolish all exploitation) leaves non-human animals as part of some form of exploitation. According to Dunayer, prohibiting leg-hold traps reduces the chance of fur-bearing animals being caught. Even if this is so, Dunayer misses the point that these animals remain property within a situation of exploitation. As Francione observes, free-living non-human animals are the property of the state; they are not "outside" the situation of being considered and exploited as property.

The second example of Dunayer proposing a prohibition that does not satisfy her own criterion for abolitionist change—but that is nevertheless consistent with Francione's criteria—is a prohibition against exotic "pets." In "Anti-Speciesism," I argue:

A prohibition against the use of exotic or foreign non-human animals for human companionship fails to protect native or local non-human animals. Using one standard for foreign species and a different standard for local species is arbitrary and speciesist. Moreover, a non-human animal who is "exotic" to one part of the world is native to another. Thus, Dunayer's suggested prohibition against the use of exotic "pets," *if applied at the Federal level*, would prohibit chipmunks being used for companionship in Alaska but not Maine. Again, this is arbitrary and it leaves members of the same species of non-human animals in the same situation of exploitation.¹¹⁷

Dunayer responds:

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." 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." 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 (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

¹¹⁷ Perz, *Anti-Speciesism*, *supra* note 6, at 64 (emphasis added).

U.S.). That fact wouldn't make an EU ban on vivisection any less abolitionist.¹¹⁸

Dunayer's proposal for a prohibition of exotic "pets" does not modify the exploitation of non-human animals: it keeps their exploitation exactly the same for members of the same species *within the same jurisdiction*. It follows from this that Dunayer's analogy between my objection (quoted above) and a European Union prohibition of vivisection that does not apply to the United States is faulty. A correct analogy is a European Union prohibition on the vivisection of non-human animals who come from anywhere except for one centralized breeding facility in England. Data obtained through vivisection at this large facility are then sold to companies all over Europe. In this case, the one and only jurisdiction is Europe.

Obviously, this prohibition fails to protect European animals that come from the facility in question. It uses one standard for non-human animals who are bred at a certain location and a different standard for all other non-human animals, and is accordingly morally arbitrary and speciesist. *If applied at the European Union level*, this prohibition would prohibit vivisection upon mice born in France, Germany and the English countryside, but it would not prohibit vivisection upon mice bred in a certain English facility. Again, this is morally arbitrary and it leaves members of the same species of non-human animals in the same situation of exploitation.

Similarly, regarding Dunayer's suggested prohibition of the use of "exotic" pets, the one—and only one—jurisdiction that I referred to in my objection quoted above was the United States at the federal level. Within that sole jurisdiction, Dunayer's prohibition fails to protect native animals. That is, the prohibition applies one standard to exotic non-human animals and a different standard to non-human animals *who may be members of the same species*, but who are native elsewhere within the same jurisdiction.¹¹⁹ Again, the prohibition would merely prevent chipmunks from being used as pets in one part of that singular jurisdiction, but not another.¹²⁰ Thus, my conclusion that Dunayer's suggested prohibition of exotic "pets" is arbitrary and leaves non-human animals in a situation of exploitation stands.

I agree with Dunayer that abolitionist prohibitions do not end all

¹¹⁸ Dunayer, *Advancing Animal Rights*, *supra* note 7, at 18-19.

¹¹⁹ Biologists define "native" and "exotic" species according to the ecosystem in which they evolved. Several of these separate but interconnected ecosystems, in turn, may span one legal jurisdiction (such as the United States) to which a given prohibition would apply. Accordingly, chipmunks are native to an ecosystem in a Maine forest but are exotic to the ecosystem of the Alaskan tundra. Both of these disparate ecosystems, however, are contained within the same federal jurisdiction to which a prohibition on native "pets" could apply.

¹²⁰ Dunayer, *Advancing Animal Rights*, *supra* note 2, at 18.

exploitation, but this view is more consistent with Francione's five criteria for incremental abolitionist change than Dunayer's sole criterion of always removing non-human animals from a situation of exploitation—something that Dunayer's exotic "pet" prohibition arguably fails to do for any one jurisdiction to which it is applied. If Dunayer's statement that "[t]he rationale behind a ban on exotic pets would be such a ban's attainability,"¹²¹ were taken literally, it would entail that any ban can be called "abolitionist" if it is attainable—a notion that Dunayer purportedly rejects.

Also, Dunayer's rhetorical suggestion that "exotic" should not be defined as "non-indigenous" when applied to non-human animals that might be used as "pets" is erroneous. For instance, if "exotic" were defined as "strange, interesting or colorful," it could apply to budgies, who are used as "pets" in the United States. Budgies, however, are native to Australia and commonly fly freely within their native habitats. They are as exotic in Australia as pigeons in the United States. This example shows that Dunayer's apparent preference for a non-biological definition of "exotic" is fraught with difficulty when applied.

In any case, it is clear that Dunayer contradicts herself when she both claims that an incremental prohibition is only abolitionist if it completely prevents a form of exploitation, and then suggests a prohibition of exotic "pets" that fails to prevent exploitation in this way. Francione's five criteria for abolitionist incremental change provide the nuances that are necessary to make sense out of such considerations. Dunayer's criterion that abolitionist change must always completely remove non-human animals from a situation of exploitation is certainly not complex, but it is not necessarily easy to apply, as illustrated by the above examples of Dunayer's exotic "pet" and leg-hold trap prohibitions.

VI. ANIMAL RIGHTS LAW: THEORY AND PRACTICE

In a few instances, Dunayer correctly distinguishes her work from Francione's and she highlights these distinctions in "Advancing Animal Rights."¹²² In doing so, however, Dunayer ignores the correlative objections found in *Anti-Speciesism*.¹²³

First, Dunayer says that Francione discusses the property status of non-human animals but does not discuss the abolition of this status in legal terms.¹²⁴ Dunayer then quotes an excerpt from *Speciesism* that advocates the passage of a new constitutional amendment that would abolish the property status of some or all non-human animals and recognize their legal

¹²¹ *Id.*

¹²² See *infra* notes 124-29 and accompanying text.

¹²³ See *infra* notes 138, 140 and accompanying text.

¹²⁴ Dunayer, *Advancing Animal Rights*, *supra* note 7, at 23.

personhood.¹²⁵ Dunayer notes that such an amendment would require broad public support and a prevalence of veganism in order to succeed.¹²⁶ Alternatively, Dunayer suggests that the property status of non-human animals could be abolished by a Supreme Court ruling.¹²⁷ After quoting the above claims from *Speciesism*, Dunayer, in “Advancing Animal Rights,” asserts that “Francione doesn’t address the legal process of emancipation” and notes that Francione does not think that non-human animal exploitation can be effectively addressed by according these animals constitutional rights.¹²⁸ Dunayer then quotes her objection from *Speciesism* that recognizing the constitutional personhood of non-human animals is the most likely, or the only, way to abolish their property status within the legal system.¹²⁹

In the same section of “Advancing Animal Rights” entitled “*Speciesism’s* Unique Contributions: Progress Beyond Francione’s Work,” Dunayer asks: “What about post-emancipation? Which animals should have legal rights? All sentient beings, I argue.”¹³⁰ In making this statement, Dunayer cites *Animal Equality*,¹³¹ which she previously stated was sent to the publisher before she read Francione’s *Introduction to Animal Rights*.¹³² Dunayer then states, “In *Speciesism* I elaborate and defend my view that all sentient beings should have rights.”¹³³ The casual reader may reasonably conclude from Dunayer’s above statements and citation that one of the distinctions between Dunayer’s and Francione’s work is that Dunayer argues that “all sentient beings” should have rights. This conclusion, however, would be mistaken because the above quotations constitute another example of Dunayer’s rhetorical use of language. The above quotations of Dunayer’s actually mean that, after their property status has been abolished, all non-human animals should have additional legal rights beyond the right not to be property.¹³⁴ This is what Dunayer goes on

¹²⁵ *Id.*

¹²⁶ *Id.* at 24.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.* at 6.

¹³³ *Id.* at 24.

¹³⁴ By “post-emancipation,” Dunayer, *Advancing Animal Rights*, *supra* note 7, at 23, Dunayer means the period after the right of non-human animals not to be property has been legally recognized. By “legal rights,” *id.* at 24-28, Dunayer means rights *in addition to* the right not to be property. Note that all non-human animals are sentient. Therefore, when Dunayer says, “What about post-emancipation? Which animals should have legal rights? All sentient beings, I argue,” *id.* at 24, she actually means that all non-human animals should have additional legal rights beyond the right not to be property after their property status has been abolished. Dunayer’s statement that “In *Speciesism*, I elaborate and defend my view that all sentient beings should have rights,” *id.*, is a correct but entirely separate point.

to argue as a supposedly separate point in her next paragraph.¹³⁵ Later in that paragraph and in those that follow, Dunayer objects that Francione merely argues that non-human animals have the right not to be property but have no other rights.¹³⁶

I agree with Dunayer that many of the views described above are unique to her, but they are nevertheless highly questionable. Although Francione does not discuss the legal process that would be involved in the abolition of the property status of non-human animals at length, he nevertheless argues that, as a matter of logic, it would recognize their personhood.¹³⁷ Francione does not elaborate because he argues that, at this point in history, the law is an ineffective tool to bring about the abolition of non-human animal exploitation. In response to Dunayer's *Speciesism*, I observe in *Anti-Speciesism* that Francione originally argued that legal measures (such as new constitutional amendments) will be ineffective until most humans reject the use of non-human animals for food, experiments and other forms of exploitation. I argue that, when this occurs, the law will inevitably begin to reflect the change in public opinion and recognize non-human animals as persons:

Whether this takes the contrived form of a special new constitutional amendment, a court ruling or some other general recognition that non-human animals are no longer legal property, such legalities will happen as a matter of course after the societal shift in human consciousness. This is what Dunayer fails to realize when she focuses upon future constitutional amendments and future Supreme Court rulings.¹³⁸

Also in response to Dunayer's *Speciesism*, I observe in "Anti-Speciesism" that, when Dunayer falsely depicts Francione as denying all applicable rights to non-human animals, Dunayer supports this contention with a quotation from Francione's *Introduction to Animal Rights*.¹³⁹ Francione, however, makes clear that all non-human animals have morally significant interests, but present-day lawyers attempting to protect those interests with constitutional rights and lawsuits will not succeed in ending their exploitation. Francione argues that if non-human animals had the right to not be property, they would never be bred into existence in the first place. Accordingly, non-human animals would never be subject to harms that might be redressed through the courts. Thus, Francione concludes that

¹³⁵ See Dunayer, *Advancing Animal Rights*, *supra* note 7, at 24 ("Further, I argue that all sentient beings should have equal legal protection, all applicable rights afforded by legal personhood.") (first emphasis added).

¹³⁶ *Id.* at 24-25.

¹³⁷ Francione, INTRODUCTION TO ANIMAL RIGHTS, *supra* note 4, at 100-102.

¹³⁸ Perz, *Anti-Speciesism* (Unabridged), *supra* note 8, at: <http://www.speciesismreview.info/#Misappropriation>.

¹³⁹ Dunayer, *Advancing Animal Rights*, *supra* note 7, at 24-25.

the question of whether non-human animals should have the right to sue in a court of law misses the point. I also note in *Anti-Speciesism*, however, that with the aid of a human analogy, Francione argues that false conflicts between those who are legal persons and those who are legal property would be eliminated by abolishing the property status of the latter.

For those beings who have been wrongfully bred into existence in the past, but who have now been granted the right not to be property while they are still alive, Francione says that these beings might very well be given legal rights to sue, “but only as a ‘stopgap’ measure along the way to the abolition of this unethical practice.”¹⁴⁰

In spite of the above analysis, Dunayer, in “Advancing Animal Rights,” nevertheless depicts Francione as supposedly contending that having the basic right to not be property does not necessarily entail that a being has all other applicable rights.¹⁴¹ Dunayer bases this interpretation on Francione’s statement that “[t]he 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.”¹⁴² Also in Dunayer’s view, when Francione refers to “other rights,” he does not mean rights that are only relevant to humans, such as the right to vote.¹⁴³ Dunayer bases this interpretation on the fact that Francione “includes among ‘other rights’ rights vitally important to nonhumans, such as a right ‘of liberty.’”¹⁴⁴

Curiously, based upon an e-mail from Francione to Dunayer, Dunayer concludes that Francione maintains that all non-human animals have the right not to be property but only some non-human animals have other rights.¹⁴⁵ Dunayer notes that Francione’s e-mail “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 [affording] equal rights to great apes.’”¹⁴⁶ In addition, Dunayer notes that Francione does not contend that non-human animals have all of the *same* rights as humans.¹⁴⁷ Dunayer remarks, “It would be foolish to propose that bonobos, chimpanzees, or any other non-humans have rights, such as freedom of speech, that are relevant only to humans. Therefore, by ‘equal

¹⁴⁰ Perz, *Anti-Speciesism* (Unabridged), *supra* note 8, at: <http://www.speciesismreview.info/#Falsification> (quoting FRANCIONE, INTRODUCTION TO ANIMAL RIGHTS, *supra* note 4, at 154).

¹⁴¹ Dunayer, *Advancing Animal Rights*, *supra* note 7, at 25.

¹⁴² *Id.* (quoting FRANCIONE, INTRODUCTION TO ANIMAL RIGHTS, *supra* note 4, at xxviii).

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* (quoting E-mail from Gary L. Francione to Joan Dunayer (Feb. 29, 2004) (on file with Joan Dunayer)).

¹⁴⁷ *Id.*

rights' Francione must mean equal protection."¹⁴⁸ Dunayer disagrees with this characterization of Francione's views, asserting that—contrary to Francione—Dunayer advocates according all non-human animals equal rights and equal protection.¹⁴⁹ Finally, Dunayer states: "As expressed by Perz, Francione 'is silent on the question of what other rights they may or may not have.' Silence regarding what rights non-humans should have is, to say the least, a major omission in any animal rights theory."¹⁵⁰

Although Francione maintains that the right not to be property is different from other rights because it is basic and constitutes the grounding for all other rights, he nevertheless maintains that the right not to be property encompasses other basic rights that are less basic than the most basic of all rights. Dunayer disagrees, noting that Francione maintains that the right of liberty is included among the list of rights that would be rendered meaningless without the accompanying right not to be property.¹⁵¹ This state of affairs is perfectly logical because of the following points. First, if someone has the right to liberty but is nevertheless used exclusively as a resource (i.e. the being *does not* have the right not to be property), then the individual in question does not have a meaningful right to liberty. For example, if a law were passed that said slaves had the right to liberty—as defined as the freedom of choice to do and go as and where one pleases without harming others—this right to liberty would inevitably come into conflict with the right of slave owners to own and maximize the instrumental value of their slave-property. So, if it were determined that exploiting a human slave for labor or a non-human animal slave for meat required that the slave be forcefully confined under certain circumstances, then the slave's "right to liberty" would be trumped by the slave's property status and the owner's right to maximize the instrumental value of the slave, as argued by Francione. Thus, the first point is that the right to liberty, although basic, is less basic than the right not to be property, and it accordingly follows that the first right would be meaningless without the presence of the second right.

The second point is that when someone *does* have the right not to be property, this right encompasses other rights such as the right to liberty. As expressed by Francione, the right not to be property entails that those who possess it may not be treated exclusively as resources. For example, one way of treating a human animal exclusively as a resource is to deprive her or him of liberty for the purpose of extracting free labor. Similarly, a non-human animal is used exclusively as a resource when he or she is confined for the purpose of maximizing body weight before slaughter.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* (quoting Perz, *Anti-Speciesism* [Unabridged], *supra* note 8).

¹⁵¹ *Id.*

Thus, to deprive individuals of their liberty for these and other purposes automatically entails that they are also being used exclusively as resources, or treated as property. This illustrates that the most basic right not to be property encompasses the right of liberty and other basic rights. Francione states precisely this:

A right is basic if ‘any attempt to enjoy any other right by sacrificing the basic right would be quite literally self-defeating, cutting the ground beneath itself.’ Shue states that ‘non-basic rights may be sacrificed, if necessary, in order to secure the basic right. But the protection of a basic right may not be sacrificed in order to secure the enjoyment of a non-basic right.’¹⁵²

If this point of Francione’s and Shue’s is applied to the two examples of exploitation above, it shows that the right to liberty is non-basic relative to the right not to be property *and* that the right to liberty is basic relative to the right to vote or walk through certain fields unimpeded, for example. Francione further articulates that the right not to be property encompasses other rights:

Although Shue identifies several basic rights, the most important of these is the “basic right to physical security—a right that is basic not to be subjected to murder, torture, mayhem, rape, or assault.” . . . [I]f I have no right to physical security and you have the right to kill me at any time, then my possession of the right to drive or vote becomes meaningless.

If we are going to recognize and protect the interest of humans [and other animals¹⁵³] in not being treated as things, then we *must* use a right to do so. . . . The basic right not to be treated as a thing is the minimal condition for membership in the moral community.

. . . [T]he basic right [not to be property] provides essential protections. It means that we may not buy or sell humans, or use humans in biomedical experiments without their consent, or make shoes out of them, or hunt them for sport.¹⁵⁴

Francione applies the same basic right not to be property, which includes the exact same protections, to non-human animals.¹⁵⁵ Note that most if not all of these activities violate the right to liberty and the rights not to be subjected to murder, torture, mayhem, rape, or assault, as well as the right not to be property.

Significantly, in the e-mail cited by Dunayer, Francione states:

¹⁵² FRANCIONE, INTRODUCTION TO ANIMAL RIGHTS, *supra* note 4, at 95.

¹⁵³ Francione applies exactly the same basic right not to be property discussed above to non-human animals. *Id.* at 98-102.

¹⁵⁴ *Id.* at 95-96.

¹⁵⁵ *Id.* at 98-102.

It is, however, important that you make clear what I mean by a right not to be property. From our earlier exchanges, it appears to me that you may . . . misunderstand what I mean when I discuss a right not to be property. . . . [W]e need to think about a right not to be property, which is simply another way of talking about a right to equal consideration.¹⁵⁶

It follows from the above view of Francione's that if a human, chimpanzee, and chicken all have a similar interest in something, then this interest must be considered in a similar way. For example, if the interest is protected by a right in the case of the human, then the same must be true in the case of the chimpanzee and chicken. Hence, Dunayer's contention that "Francione doesn't think that the right not to be property automatically entails all other applicable rights" is clearly false.¹⁵⁷

Dunayer's objection that "[i]t would be foolish to propose that bonobos, chimpanzees, or any other nonhumans have rights, such as the right of speech, that are relevant only to humans. Therefore, by 'equal rights,' Francione must mean equal protection" is misguided.¹⁵⁸ It is precisely because such a proposal is foolish that Francione exposes it for the fallacy that it is:

There is a great deal of confusion surrounding the public discourse on the moral status of animals. This confusion stems from two sources. First, it is thought by some that the animal rights position advocates that we accord to animals the same rights enjoyed by human beings. This is a misunderstanding of the animal rights position. I am not arguing that our recognition of the moral status of animals means that we are committed to treating animals and humans the same for all purposes, or that we must give animals a right to vote, or a right to own property, or a right to an education.¹⁵⁹

Thus, Francione exposes and rejects the foolish proposal—made "by some" objectors—that animal rights theory entails that non-human animals have rights that are only relevant to human animals. Nevertheless, Francione maintains that *all* animals have the basic right not to be property—and, as I have shown above, all of the rights there encompassed, such as liberty, life, bodily integrity and so on, equally.¹⁶⁰ Importantly, regarding the rights that Francione suggests that non-human animals *might not* have, Francione states, "Just as we cannot protect humans from all suffering, we cannot protect animals from all suffering. Animals in the wild may be injured, or become diseased, or may be attacked by other

¹⁵⁶ E-mail from Gary L. Francione to Joan Dunayer (May 13, 2004) (on file with author).

¹⁵⁷ Dunayer, *Advancing Animal Rights*, *supra* note 7, at 25.

¹⁵⁸ *Id.*

¹⁵⁹ FRANCIONE, INTRODUCTION TO ANIMAL RIGHTS, *supra* note 4, at xxxi.

¹⁶⁰ *Id.* at 98-102.

animals.”¹⁶¹

Although Francione does not explicitly state so, the above passage suggests that whereas human animals may have the rights to medical assistance and police protection from other humans, *free-living* non-human animals do not have the rights to medical assistance or active protection from other non-human animals. Dunayer objects, “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.”¹⁶² Again, although Francione does not directly comment on this point, I maintain that both human and non-human great apes have the non-basic right to make tools, whereas certain other animals such as ladybugs do not have this right because it is not relevant to them. This exemplifies what Francione means when he says that sentience is necessary and sufficient for having the right not to be property, but non-human great apes might be entitled to additional non-basic rights due to their cognitive or other attributes. For Francione, the same is true when one considers the differing non-basic rights between humans only:

[T]he principle of equal consideration does not necessarily direct us to treat everyone as “equals” or as “the same” for all purposes. For example, Simon may have moderate musical talent; Jane may have no musical talent at all. Jane may be a brilliant mathematician; Simon may be hopeless at mathematics. Simon and Jane are equals only to the extent that they are alike for some particular purpose¹⁶³

Here, Francione intimates that Jane may have a stronger interest in receiving a mathematics scholarship than Simon,¹⁶⁴ and I would add that such an interest is protected by a non-basic right to that scholarship. Dunayer correctly notes my observation that beyond the basic right not to be property, Francione is silent on what other rights non-human animals have—although the right not to be property encompasses all basic rights such as life, liberty, bodily integrity, and so on. Dunayer’s objection, however, that “[s]ilence regarding what rights nonhumans should have is, to say the least, a major omission in any animal rights theory”¹⁶⁵ is misleading and absurd. If a general theory of human rights is silent on what non-basic rights humans have, such as the right to a particular scholarship, this omission is obviously not major relative to much more important human rights, such as those found in international charters and declarations.

¹⁶¹ *Id.* at 99-100.

¹⁶² Dunayer, *Advancing Animal Rights*, *supra* note 7, at 25 (quoting DUNAYER, SPECIESISM, *supra* note 5, at 124).

¹⁶³ FRANCIONE, INTRODUCTION TO ANIMAL RIGHTS, *supra* note 4, at 83.

¹⁶⁴ *Id.* at 82-83.

¹⁶⁵ Dunayer, *Advancing Animal Rights*, *supra* note 7, at 25.

Similarly, if a general theory of animal rights is silent on what non-basic rights animals have, such as the right to make tools, this omission is similarly not major relative to much more important non-human animal rights, such as those encompassed by the right not to be property. In any case, it is clear that contrary to Dunayer's depiction of Francione's ideas, he does contend that all sentient beings should have all relevant and applicable rights.

Dunayer further objects that whereas she advocates that non-human animals have a right to own property, Francione does not.¹⁶⁶ When a human steals a cow's milk or cuts down a tree containing a robin's nest, however, the human is using the cow merely as a means to acquiring taste enjoyment and the robin merely as a means to acquiring wood chips to make paper. Thus, whether one says that the cow has a right to own her milk and the robin has a right to own her nest and tree, or instead, that these animals have the right not to be used as mere means, i.e. as property, exactly the same vital interests are being protected by a right. Accordingly, Dunayer's objection is moot.

Similarly, Dunayer objects that "Francione doesn't categorically oppose human home-building in 'areas now occupied exclusively by nonhumans'"¹⁶⁷ and holds that "it might be justifiable to displace field mice, but not humans, from their current homes."¹⁶⁸ In other words, Francione states that *if* it were true that field mice are largely indifferent to which field they inhabit, then this *may* justify their being moved to another field in order to build houses for humans.¹⁶⁹ As a factual matter, if it is correct that mice are not indifferent to being moved from one field to another, it follows from Francione's view described above that doing so would violate their right to stay there and, more basically, their right not to be used exclusively as resources.

Dunayer's final point of distinction between *Speciesism* and Francione's work is this:

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."¹⁷⁰ 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. I write in *Speciesism*, "In my view, according *equal* moral value to nonhumans does require that comparable harm to humans and

¹⁶⁶ *Id.* at 26-27.

¹⁶⁷ *Id.* at 27.

¹⁶⁸ *Id.*

¹⁶⁹ Gary L. Francione, *Wildlife and Animal Rights*, in *ETHICS AND WILDLIFE* 65-81, 76-77 (Priscilla Cohn ed., 1999).

¹⁷⁰ FRANCIONE, INTRODUCTION TO ANIMAL RIGHTS, *supra* note 4, at 184.

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."¹⁷¹

Dunayer bases her above objection on a paragraph from the appendix of Francione's *Introduction to Animal Rights*. Francione's sole example of not punishing the killing of a non-human animal in exactly the same way as the killing of a human would be punished is of someone who, while driving recklessly, hits and kills a raccoon.¹⁷² Francione's stated reason for not prosecuting the driver who kills the raccoon with manslaughter is that "[t]he prosecution of humans who kill other humans serves many purposes that are not relevant to animals."¹⁷³ Francione illustrates this point by noting that criminal prosecutions would not be meaningful to non-human animals and, unlike with human animals, trials do not give the families of crime victims any closure.¹⁷⁴ I will further illustrate Francione's point with additional examples below, which show that Dunayer, in all likelihood, does not consistently maintain that non-human animals should have equality under the law.

It is impossible to walk, drive a vehicle or use public transportation without killing insects—and if one chooses to engage in these activities, that result is certainly foreseeable. If one were to act in ways that are certain to cause the death of other humans, even if one did not have the intent to kill any particular individual, then that conduct would arguably constitute extreme recklessness and satisfy the requirement of malice for common-law murder. At the very least, such conduct would be sufficiently reckless to constitute manslaughter. Therefore, if non-human animals were accorded "equal legal protection" in this situation, then walking or driving a car should be culpable acts, punishable as murder or "antslaughter." Assuming that Dunayer walks or travels in cars, buses or trains—and does not believe that she is guilty of a crime—Dunayer contradicts herself when she attempts to distinguish her work from Francione's by arguing that human and non-human animals should have equal protection under the law.

One might object that applying the crime of murder or an equivalent to manslaughter to the above situations would not be applicable to non-human animals, but this objection would be faulty for the following reason: just as intentionally driving a car into a crowd of humans without having an intent to kill a particular individual is nevertheless highly relevant to those humans, driving a car down the countless roads where insects fly is highly relevant to those insects who will necessarily be killed. Hence, according

¹⁷¹ Dunayer, *Advancing Animal Rights*, *supra* note 7, at 27-28 (quoting DUNAYER, SPECIESISM, *supra* note 5, at 147) (internal citation omitted).

¹⁷² FRANCIONE, INTRODUCTION TO ANIMAL RIGHTS, *supra* note 4, at 184.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

insects applicable equal legal protection in this instance would entail that every human (vegan or not) is guilty of murder, an absurd view that logically follows from Dunayer's argument.

In the paragraph of Francione's that Dunayer objects to, Francione states:

It is certainly true that if we as a society ever really accorded moral significance to animal interests and recognized our obligation to abolish and not merely regulate animal exploitation, we would very probably incorporate such a view in criminal laws that formally prohibit and punish the treatment of animals as resources.¹⁷⁵

In my view, Francione maintains that when the legal property status of non-human animals is abolished, the law should impose serious penalties for their continued treatment as resources—for example, their being killed for meat, vivisection *or any other instrumental use*. Nevertheless, as Francione suggests, there are complex legal issues that must be considered, and Dunayer's simplistic principle of equal legal protection is ill-equipped to do so. For example, differing degrees of foreseeability concerning the likely outcome of human actions might result in different legal obligations. Hitting and killing a raccoon while driving in excess of the speed limit may, as a matter of fact, be less foreseeable than hitting and killing a human. If the criminal justice system were applied to other animals after their property status has been abolished, it would have to be substantially modified because much of its process is concerned with human issues that are simply not relevant to other animals. Again, Dunayer's objection to Francione and her call for equal legal protection ignore these highly relevant subtleties and, in so doing, contradict the realities of everyday life.

VII. "SPECIESISM" REVERTED

Dunayer's original definition of "speciesism" is "a failure, in attitude or practice, to accord any *nonhuman* being equal consideration and respect."¹⁷⁶ In "Anti-Speciesism," I object that this definition includes non-speciesist actions such as a human harming either another human or a non-human animal for reasons unrelated to the being's species.¹⁷⁷ Furthermore, Dunayer's original definition excludes human animals.¹⁷⁸ For example, some so-called animal rights activists have advocated that human prisoners, but not non-human prisoners, be the non-consenting subjects of vivisection.¹⁷⁹ Dunayer's original definition of "speciesism" is speciesist because it "excludes the equal consideration and respect of one group (*homo*

¹⁷⁵ *Id.*

¹⁷⁶ DUNAYER, SPECIESISM, *supra* note 5, at 5 (emphasis added).

¹⁷⁷ Perz, *Anti-Speciesism*, *supra* note 6, at 50.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

sapiens) purely on the basis of their species”¹⁸⁰ I also argue that Dunayer’s definition in *Speciesism* is not supported with valid argument.¹⁸¹

In “Advancing Animal Rights,” Dunayer agrees that her definition of “speciesism” in *Speciesism* excludes human animals, includes non-speciesist actions, and does not refer to species—all of which are valid criticisms.¹⁸² Nevertheless, Dunayer objects that she corrected the flaws in her definition of “speciesism” in a 2005 article that I cite in “Anti-Speciesism.”¹⁸³ Dunayer’s revised definition of “speciesism” is “[a] failure, on the basis of species, to accord anyone equal consideration.”¹⁸⁴ Although Dunayer is correct that this revised definition avoids the above-mentioned flaws, I did not refer to it in “Anti-Speciesism” because it is divorced from Dunayer’s *argument*.¹⁸⁵ More importantly, Dunayer’s new definition constitutes a reversion to Peter Singer’s definition of “speciesism” that Dunayer claims to reject.

Dunayer notes that Singer defines “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.”¹⁸⁶ Dunayer objects that, if the

¹⁸⁰ *Id.*

¹⁸¹ I wrote:

[I]t is noteworthy that Dunayer grounds her questionable definition of speciesism by arguing that it is *not* immoral to kill or otherwise harm human animals *for the reason that* they possess abstract reason, language and so on—and this is so because it is immoral and illegal to kill or otherwise harm *humans* who lack those qualities. This argument begs the question; the alleged truth of its conclusion is contained within its undefended premises. That is, it is logically equivalent to the claim that killing or otherwise harming human animals (who may or may not possess abstract reason and so on) is immoral because it is immoral to kill or otherwise harm *non-human* animals (who do not possess abstract reason and so on). While Dunayer’s claim may be true, she does not support it with valid argument. Dunayer goes on to argue that killing or depriving any human or non-human animal of well-being (except in emergencies) is immoral because, as sentient beings, harming them causes them to suffer and killing them deprives them of future (sense) experiences. Again, without further argument, this is a non-sequitur. Thus, Dunayer’s argument for giving (sentient) human and non-human animals full and equal moral consideration—and her definition of speciesism that is grounded in this argument—are inadequate. In fact, this argument of Dunayer’s is a version of the classic “argument from marginal cases,” which has been refuted. Conversely, in Francione’s *Introduction to Animal Rights*, a unique, well argued moral theory is presented—intended for general audiences—that is grounded in principles that most everyone already accepts.

Id. at 50-51 (internal citations omitted).

¹⁸² Dunayer, *Advancing Animal Rights*, *supra* note 7, at 22.

¹⁸³ *Id.*

¹⁸⁴ Joan Dunayer, *Reply to a Self-Proclaimed Speciesist*, VEGAN VOICE, Sept.–Nov. 2005, at 14 [hereinafter, Dunayer, *Reply to a Self-Proclaimed Speciesist*].

¹⁸⁵ For a discussion of my objections to her argument and prior definition, see *supra* notes 177-181 and accompanying text.

¹⁸⁶ DUNAYER, SPECIESISM, *supra* note 5, at 1 (quoting PETER SINGER, ANIMAL LIBERATION 7 (1975)).

word “species” were replaced with “race,” the above definition would only capture bias against “all other races” but not “*any number* of other races.”¹⁸⁷ In other words, if Singer were defining “racism,” the definition would fail to capture “prejudice against only Semites; prejudice against only Africans . . . prejudice against everyone *except* whites and Asians. Analogously, bias towards 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).”¹⁸⁸

Considered apart from Singer’s other questionable views, his original 1975 definition of “speciesism” does not refer to *all* species, other than one’s own, considered as a whole. Rather, Singer’s definition of “speciesism” refers to all *members* of all species other than one’s own. There is no particular practice that one can point to that is biased or prejudiced toward one species and that discriminates against members of all other species simultaneously.¹⁸⁹ Thus, by “members,” Singer is necessarily referring to *individual* mice, chickens, monkeys and so on. In other words, “members” refers to any number of individuals within any species other than one’s own. By analogy, “a prejudice or attitude of bias toward the interests of *members* of one’s own race and against those of *members* of other races”¹⁹⁰ necessarily includes members of the so-called Semite “race,” the so-called African “race” and so on. Similarly, “a prejudice or attitude of bias toward the interests of *members* of one’s own species and against those of *members* of other species”¹⁹¹ necessarily includes members of the so-called *rattus norvegicus* and *mus musculus* (rat and mouse) “species.” Thus, Singer’s definition can be accurately summarized as a “prejudice or attitude of bias toward the interests of *anyone* within one’s own species against the interests of *anyone* else.” Essentially, Singer maintains that speciesism involves anyone outside of one’s own species having their interests considered in a prejudicial or biased way. This definition is essentially the same as Dunayer’s, which states that speciesism is “a failure, on the basis of species, to accord anyone equal consideration.”¹⁹²

Unlike Dunayer’s revised definition of “speciesism,” Singer’s definition does not capture instances of speciesism directed against the interests of humans or instances that unfairly favor the interests of members

¹⁸⁷ Dunayer, *Advancing Animal Rights*, *supra* note 7, at 20 (quoting DUNAYER, SPECIESISM, *supra* note 5, at 2).

¹⁸⁸ *Id.*

¹⁸⁹ For example, even the very general and widespread practice of consuming animal products spares some species as a whole and their individual members.

¹⁹⁰ Dunayer, *Advancing Animal Rights*, *supra* note 7, at 19 (quoting DUNAYER, SPECIESISM, *supra* note 5, at 2) (emphasis added).

¹⁹¹ DUNAYER, SPECIESISM, *supra* note 5, at 1 (quoting PETER SINGER, ANIMAL LIBERATION 7 (1975)) (emphasis added).

¹⁹² Dunayer, *Reply to a Self-Proclaimed Speciesist*, *supra* note 184, at 14.

of non-human species such as chimpanzees and gorillas. Accordingly, in “Anti-Speciesism,” I state that “perhaps 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.’”¹⁹³

Dunayer complains that my suggested definition of “speciesism” is “unwieldy.”¹⁹⁴ Instead, however, Dunayer breaks up her revised definition into two separate sentences: “A failure, on the basis of species, to accord anyone equal consideration. It’s speciesist to deny anyone equal consideration either because they aren’t human or because they aren’t human-like.”¹⁹⁵ Dunayer further objects that, in “Anti-Speciesism,” I do not state that my suggested definition of “speciesism” accurately characterizes Dunayer’s argument in *Speciesism* that it is speciesist to accord equal consideration only to members of species who resemble humans.¹⁹⁶ I nevertheless quote an extended version of this argument in the unabridged “Anti-Speciesism.”¹⁹⁷

Dunayer asserts that “*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.”¹⁹⁸ As I have argued, however, Dunayer’s revised definition of “speciesism” is a reversion to the Singer-Regan (and Francione) definition,

¹⁹³ Perz, *Anti-Speciesism*, *supra* note 6, at 50.

¹⁹⁴ Dunayer, *Advancing Animal Rights*, *supra* note 7, at 22.

¹⁹⁵ Dunayer, *Reply to a Self-Proclaimed Speciesist*, *supra* note 184, at 14.

¹⁹⁶ Dunayer, *Advancing Animal Rights*, *supra* note 7, at 23.

¹⁹⁷ I quoted:

[E]mancipating African-Americans didn’t rely on racist arguments, and emancipating the first nonhumans shouldn’t rely on speciesist ones. . . . I completely support efforts to obtain great-ape personhood, provided that they’re non-speciesist. . . . Why not seek great-ape personhood in nonspeciesist ways? . . . [A]rguing for great-ape personhood doesn’t require speciesist argumentation of the sort presented by GAP. . . . [E]galitarian principles [i.e. equality and respect regardless of ‘intelligence’ or capacity to ‘appreciate’ life] could be applied in a legal case seeking rights for, say, chimpanzees or dolphins. . . . [A]rguing based on sentience alone might be less threatening to judges than arguing based on human-nonhuman similarities. . . . GAP enforces a speciesist hierarchy, with great apes ranking above all other animals. If a judge rules that a chimpanzee is a person because chimpanzees are so human-like, yet another speciesist precedent will be set. . . . Humans continually would judge nonhumans (especially captives) by the extent to which they demonstrate human-like capacities. . . . [A]dvocates should [instead] argue that . . . chimpanzees are clearly sentient.

Perz, *Anti-Speciesism* (Unabridged), *supra* note 8, at <http://www.speciesismreview.info/#TheGreatApeProject> (quoting DUNAYER, SPECIESISM, *supra* note 5, at 118-120). Later in “Anti-Speciesism,” I argue that the above quotation of Dunayer is an appropriation of Francione’s work. *Id.* at <http://www.speciesismreview.info/#GAP>

¹⁹⁸ Dunayer, *Advancing Animal Rights*, *supra* note 7, at 23.

and her original definition of “speciesism” is itself speciesist.

VIII. CONCLUSION

In “Anti-Speciesism,” I establish that Dunayer’s *Speciesism* repeatedly and systematically¹⁹⁹ appropriates and misrepresents Francione’s animal rights theory. Dunayer attempts and fails to rebut these charges in “Advancing Animal Rights.” Dunayer’s discussion of the paired quotations at the end of “Anti-Speciesism” and her defense of the originality of much of her work only serve to reinforce the evidence of appropriation presented in “Anti-Speciesism.” Furthermore, Dunayer’s claim that she does not misrepresent Francione’s stance on battery cage and other prohibitions does not withstand scrutiny, as I have demonstrated. I have also countered Dunayer’s replies to my observation in “Anti-Speciesism” that her suggested leg-hold trap and exotic “pet” prohibitions do not satisfy her own criterion for abolitionist legal change. When Dunayer correctly distinguishes her work from Francione’s legal analysis, her distinctive views and objections are highly questionable. Finally, Dunayer’s original definition of “speciesism” is itself speciesist and unsubstantiated²⁰⁰ and her revised definition is functionally equivalent to definitions that she claims to reject.

Dunayer concludes “Advancing Animal Rights” as follows:

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.²⁰¹

I could not agree more. In my view, the questions at issue concern precisely what means are unjust and deceptive, and what evidence and analysis underlies this claim. One small example of such evidence is Dunayer’s claim that the similarity between Francione’s comment on the moral illegitimacy of treating any human as the property of others regardless of his or her characteristics is “unintentional”²⁰² despite Dunayer’s having cited and then removed her citation for the comment in question.²⁰³ The depth and extent of the evidence for Dunayer’s appropriation and misrepresentation, however, is fully explored in the unabridged version of

¹⁹⁹ See generally Perz, *Anti-Speciesism* (Unabridged), *supra* note 8.

²⁰⁰ *Id.* at 50-51.

²⁰¹ Dunayer, *Advancing Animal Rights*, *supra* note 7, at 28.

²⁰² *Id.* at 6.

²⁰³ DUNAYER, SPECIESISM (Unpublished), *supra* note 15, at 79.

“Anti-Speciesism.”²⁰⁴ I state in “Anti-Speciesism” that “[t]he 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.”²⁰⁵ I also agree with Dunayer that “[t]o judge fairly, readers must consider . . . the book and articles that [Dunayer] wrote before *Speciesism*.”²⁰⁶ In my view, both “Anti-Speciesism” and the present article demonstrate that it is Dunayer in *Speciesism* and “Advancing Animal Rights,” not I, who “omits crucial facts, deceptively manipulates quotations, and falsely paraphrases and summarizes.”²⁰⁷ Far from advancing animal rights, Dunayer’s *Speciesism* appropriates and adulterates Francione’s theory and practical guidance.

In an effort to substantiate her claims of originality and accuracy, Dunayer peppers “Advancing Animal Rights” with positive editorial reviews of *Speciesism*.²⁰⁸ These positive editorial reviews, however, were withdrawn by two of their authors and significantly altered by another.²⁰⁹ Dunayer asserts that she published the reviews anyway because their authors

had expressed their opinion of the book with the changes pertaining to Francione already in place. Also, neither [editorial reviewer] provided a single example of appropriation or misrepresentation in *Speciesism*. Further, [an editorial reviewer] wrote that his endorsement had been “predicated on the assumption” that my critique of Francione’s work had been “written in good faith,” and that assumption was correct.²¹⁰

²⁰⁴ Perz, *Anti-Speciesism* (Unabridged), *supra* note 8.

²⁰⁵ Perz, *Anti-Speciesism*, *supra* note 6, at 65 (internal citation omitted).

²⁰⁶ Dunayer, *Advancing Animal Rights*, *supra* note 7, at 2.

²⁰⁷ *Id.*

²⁰⁸ *Id.* at 1, 28.

²⁰⁹ Posting of Gary L. Francione to http://groups.google.com/group/AR-News/browse_thread/thread/46ef42d65cb94e03/34bc5578cd564b6b#34bc5578cd564b6b (Sept. 21, 2006 17:37) (declaring that, after Francione informed reviewing Professors David Nibert and Michael Allen Fox that Dunayer purposely misrepresented his work because he refused to write a forward to *Speciesism* that was acceptable to Dunayer, the Professors asked Dunayer to remove their endorsements). Moreover, reviewer Steve Sapontzis reported:

I just sent an e-mail to Joan [Dunayer] containing the following request: At the time I wrote the blurb for *Speciesism*, I was unaware that Gary Francione labelled his animal rights views an ‘abolitionist’ position. My only excuse for this woeful ignorance is that he began publishing books about the same time my degrading vision made it difficult for me to read items of book length. Anyway, since he has now published three volumes detailing his version of abolitionism, it seems unreasonable of me to prophesy that *Speciesism* is destined to become “the definitive” statement of abolitionist animal rights philosophy. It’s also unfair, since I haven’t read his books. So, in all future uses of my blurb for your book, would you please change “the definitive” to “a definitive.”

E-mail from Steve Sapontzis to Gary Francione (Dec. 1, 2004) (on file with author).

²¹⁰ Posting of Joan Dunayer to http://groups.google.com/group/AR-News/browse_thread/thread/46ef42d65cb94e03/34bc5578cd564b6b#34bc5578cd564b6b

Although Dunayer maintains that assumption was correct, the editorial reviewer in question apparently no longer does. Since the publication of “Anti-Speciesism,” there are now plenty of examples of appropriation and misrepresentation for reviewers to recollect. Perhaps the editorial reviewers became more aware of these only after they submitted their original reviews, and that is why they subsequently withdrew them. In any case, now that Dunayer “has set the record straight,”²¹¹ I challenge Dunayer to find any of the editorial reviewers that she mentions²¹² willing to reinstate his praise after having read “Advancing Animal Rights.”

The plight of non-human animals is advanced when activists are guided by progressive, consistent abolitionist theory. To the extent that *Speciesism* summarizes Francione’s theory, it achieves this positive outcome. *Speciesism* does so, however, at the expense of appropriating and misrepresenting Francione’s views while ignoring the substantive supporting arguments behind them.²¹³ In other words, *Speciesism* is rich with (appropriated) abolitionist claims and slogans, but it is poor on justifying those claims.²¹⁴ For readers concerned with the rigorous rationales behind abolitionist ethics, law, and political strategy, I instead recommend Francione’s books and articles. For a clear and compelling summary of Francione’s views, I recommend his new website.²¹⁵ Critically examining the breadth of substantive positions and arguments surrounding animal rights theory and practice is vital in order to benefit non-human animals and to genuinely build a viable and vibrant abolitionist movement.

(Sept. 21, 2006 21:11).

²¹¹ *Id.*

²¹² These reviewers are Professors Steve Sapontzis, Michael A. Fox and David Nibert. Dunayer, *Advancing Animal Rights*, *supra* note 7, at 1, 28; Dunayer, *supra* note 210.

²¹³ After supporting them with evidence and argument, I draw the following conclusions in “Anti-Speciesism”:

Thus, Dunayer’s argument for giving (sentient) human and non-human animals full and equal moral consideration—and her definition of speciesism that is grounded in this argument—are inadequate. . . . Thus, Dunayer’s objections nine years later that Regan fails to accord non-human animals equal inherent value, Regan accords non-human animals less value less due to the traits they lack and this is speciesist and inconsistent with Regan’s claim that all subjects of a life have equal rights are substantially similar to Francione’s conclusions, although the main arguments Dunayer uses to arrive at those conclusions differ significantly in their depth and accuracy from Francione’s. . . . The difference is, unlike Dunayer’s unreferenced claims, Francione’s are defended with argumentation and evidence, are thoroughly and rigorously explained and were made years earlier. . . . [M]y point here is merely that Francione’s discussion of moral agency is much more nuanced and well argued for than Dunayer’s.

Perz, *Anti-Speciesism* (Unabridged), *supra* note 8.

²¹⁴ *Id.*

²¹⁵ Gary L. Francione, *Animal Rights: The Abolitionist Approach*, <http://www.animal-law.org> (last visited May 13, 2007).