

A black and white photograph of three cows standing behind a barbed wire fence. The cows are looking towards the camera. The fence is made of several strands of barbed wire, with the top strand being the most prominent. The background is a blurred field and sky.

Animal Rights: The Abolitionist Approach

Presents

Animal Law

by Professor Gary L. Francione

In the past several years, a number of American law schools have begun to offer courses in “animal law” and an increasing number of lawyers claim to be practicing “animal law.”

This has led some to claim that the law is beginning to recognize animal rights.







That claim is unfounded.

“Animal law” generally means veterinary malpractice cases, pet custody cases, pet trust cases, wrongful pet death cases, and cruelty cases.



These sorts of cases have nothing to do with animal rights and the abolition of animal exploitation, but are concerned with animal welfare and are focused almost exclusively on “pet” animals.

“Animal law” does not challenge the
property paradigm.

“Animal law” reinforces the property status of nonhumans.

For example, if someone wrongfully injures or kills your dog, the usual measure of damages is the fair market value of your dog because your dog is your property.



Some courts are beginning to award greater than market damages because the market value does not adequately compensate the owner.

But courts have always recognized that in some cases, market value may be inadequate because of the sentimental value of the property, such as a family heirloom or a photograph.

The fact that some courts are beginning to analogize “pets” to your grandfather’s pocket watch or pictures of long-deceased relatives does not amount to a change—or a step toward a change—in the legal status of animals as property.





Some states now allow people to set up trusts for their pets.

But the law has always allowed people to set up trusts to “care” for property, such as houses with historic value. So some states are now analogizing “pets” to historic homes and other, inanimate, property.





It is certainly a good thing that people be able to provide for their nonhuman companions after the humans die, but pet trusts merely recognize that people should be able to bequeath their property as they see fit and do not represent any change in the legal status of animals.

“Animal lawyers” often claim that better enforcement of anticruelty laws will provide significant protection for nonhumans.

But because animals are property, anticruelty laws are not effective, and do not even apply to the overwhelming number of instances in which we inflict suffering and death on nonhumans.





Does this mean that the law is not a useful tool for helping nonhumans?

No, not at all. The law can be used to help animals, but the current agenda of most “animal lawyers” is concerned with cases that do nothing more than reinforce the property status of nonhumans.

How can lawyers help in ways that will
change things for animals?

The most important thing is to recognize that the law exists to protect property interests.

Therefore nothing will change for animals until we educate and persuade more people to reject the property status of animals, become vegan, and support the abolition of animal exploitation.

Lawyers can help defend the rights of animal advocates who are trying to educate society through peaceful means about veganism and the abolition of animal exploitation.

There are animal advocates at all stages of the educational process, from grammar school through medical school, who do not want to use any animals in the classroom.





There are people who want access to vegan food and need legal help. For example, students and prisoners often have difficulties in getting schools and prisons to provide vegan food.

There are animal advocates who encounter obstacles when they are seeking to engage in demonstrations, literature distribution, the organization of lawful boycotts, etc.

These advocates need legal assistance
and are often unable to find lawyers
willing to provide it.

But what about those advocates who
are intent on pursuing legislation,
litigation, or the like?

If advocates nevertheless want to pursue change through legislation, regulation or litigation, those campaigns ought to be explicitly targeted at eradicating the property status of animals.

Animal rights advocates should pursue prohibitions rather than regulations.

The prohibition should affect a significant institutional use.

For example, a prohibition on the use of any leghold trap is to be preferred over a requirement that any trapping be done “humanely,” or with the use of a “padded” leghold trap.

A prohibition on the use of any animals in circuses is to be preferred over a law requiring more “humane” treatment of circus animals.

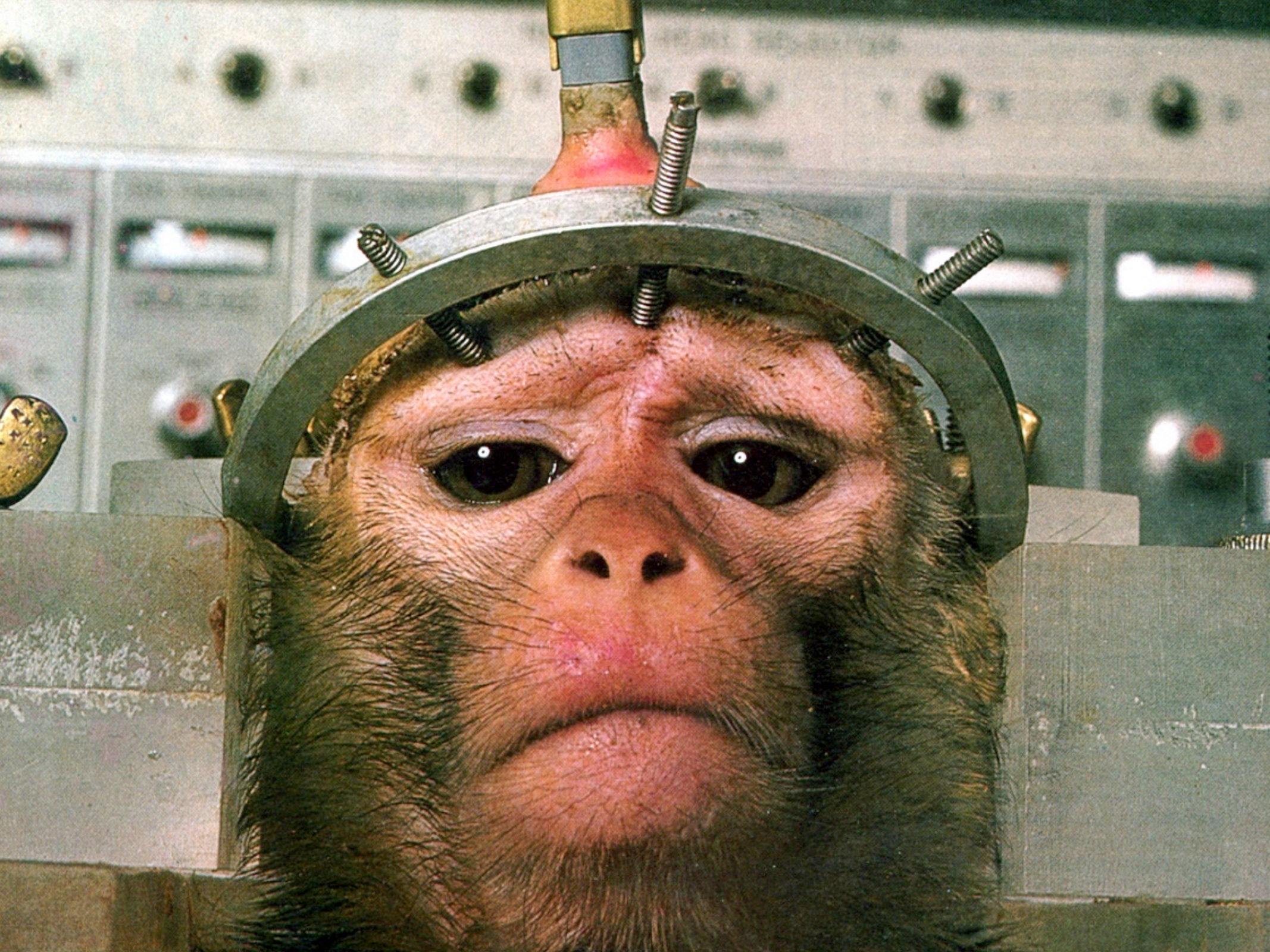


The prohibition should be explicitly promoted as recognizing that nonhumans have interests that must be respected and have value apart from their benefit to humans.

This is important because the only way that incrementalist measures can be effective is if they serve as the foundation for further incremental change, and they cannot do this if they are not explicitly based on the inherent value of nonhumans.

Animal advocates should never be in the position of promoting an alternative, more “humane” form of exploitation, and any incremental legislative or regulatory measure ought to be accompanied by an unrelenting and clear call for the abolition of all institutional exploitation.

An example of the sort of measure that would satisfy these criteria would be a prohibition on the use of animals for a particular sort of experiment, such as a ban on the use of all animals in psychological experiments, based explicitly on the fact that animals have interests in not being used for these or any other experiments irrespective of human benefits.



Given that there is presently very little support for abolition in society, efforts to obtain prohibitions that significantly erode the property status of nonhumans are unlikely to be successful.

OUTRAGE.

Fellow Citizens,

AN

ABOLITIONIST,

of the most revolting character is among you, exciting the feelings of the North against the South. A seditious Lecture is to be delivered

THIS EVENING,

at 7 o'clock, at the Presbyterian Church in Cannon-street.

You are requested to attend and unite in putting down and silencing by peaceable means this tool of evil and fanaticism.

Let the rights of the States guaranteed by the Constitution be protected.

Feb. 27, 1837. *The Union forever!*

That is why it is better for lawyers who care about these issues to focus more on the protection of animal advocates who are trying to educate the public about veganism and abolition.

Meaningful legal change requires a political movement to support that change.

At the present time there is only a movement for “humane” treatment.

The law provides little protection because that standard is meaningless.







Please note: This presentation was not intended to be a complete statement of Professor Francione's views, but only a brief and general introduction to the topic.

*For a further discussion of the property
status of animals, please see our
presentation of:*

Animals as Property

*For a further discussion of why we should
not treat nonhumans as our property,
please see our presentation of:*

Theory of Animal Rights

*For a further discussion on the distinction
between the abolition and regulation of
animal exploitation, please see our
presentation of:*

Animal Rights vs. Animal Welfare

Thanks to the Humane Farming Association and Gail Eisnitz for supplying us with some of the slaughterhouse and factory farm photos used in this presentation.

*Copyright © 2006-2007 Gary L. Francione.
All Rights Reserved.*

*Please do not use without first getting
written permission from the author.*

www.AbolitionistApproach.com

Version 1.0.1

A black and white photograph of three cows standing behind a barbed wire fence. The cows are looking towards the camera. The fence is made of several strands of wire, with the top strand being barbed. The background is a hazy, open field.

*For further discussions of these and other
animal rights related issues, please visit:*

www.AbolitionistApproach.com