Ownership and Justice for Animals

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This article argues that it is not necessary to abolish all incidents of animal ownership in order to achieve justice for them. It claims that ownership does not grant owners a right to absolute control of their property. Rather, it argues that ownership is a much more qualified concept, conveying different rights in different contexts. With this understanding of ownership in mind, the article argues that it is possible for humans to own animals and at the same time to treat them justly: to recognize that they possess moral status; to assign them meaningful rights; and to consider their interests equally.

I. INTRODUCTION

For some thinkers, the most significant obstacle to achieving justice for non-human animals is the fact that they are owned.[1] It is argued that just as the 'property status' of African slaves and married women in the nineteenth century necessarily prevented these individuals from receiving their just entitlements, so the same is true of animals in the present day.[2] As such, these thinkers call for the immediate abolition of all animal ownership, and the liberation of all exploited animals. In contrast to these thinkers, I argue in this article that it is not necessary to abolish all incidents of animal ownership in order to achieve justice for animals. This is because the concept of 'ownership' does not grant owners a single right amounting to exclusive and absolute control over their property. Rather, ownership refers to a set of *relations* governing the possession and use of a particular entity. Importantly, the set of applicable relations varies in different contexts, and each relation is qualified to a greater or lesser extent depending on that context. Moreover, it is my claim that not all of these relations are objectionable, and thus do not stand in the way of achieving justice for animals.

[1] See G. L. Francione, *Animals, Property, and the Law* (Philadelphia, 1995); *Rain Without Thunder: The Ideology of the Animal Rights Movement* (Philadelphia, 1996); *Introduction to Animal Rights: Your Child or the Dog?* (Philadelphia, 2000); and S. M. Wise, *Rattling the Cage* (London, 2000). An earlier advocate of this view is B. E. Rollin, *Animal Rights and Human Morality,* rev. edn. (New York, 1992), pp. 119–26.

[2] P. Cavalieri and P. Singer, 'The Great Ape Project – and Beyond', *The Great Ape Project: Equality Beyond Humanity,* ed. P. Cavalieri and P. Singer (London, 1993), pp. 304–6; Francione, *Rain Without Thunder*, p. 127; and D. W. St. Pierre, 'The Transition from Property to People: The Road to the Recognition of Rights for Non-Human Animals', *Hastings Women's Law Journal* 9 (1998), p. 255.

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Of course, this raises the question of what 'justice for animals' actually entails. Clearly, it would be quite wrong to suggest that there is a set of fundamental principles that all who advocate justice for animals adhere to. After all, our obligations to animals have been addressed and delineated from within a variety of philosophical perspectives.[3] However, for the purposes of this article I will focus on three principles, and assume that in combination they comprise 'justice for animals'. I have chosen these three for two reasons. First, taken together these principles impose strict limitations on what humans may permissibly do to animals, thus providing a robust standard with which to test the basic claim of this article. Second, these principles are specifically endorsed by those animal liberationists who argue most forcefully against the ownership of animals by human beings.[4] Given all of this then, the first principle I take to be a component of justice for animals is the principle of moral status. This tenet states that sentient animals have an independent moral standing of their own which should be recognized in state legislation. Second, there is the principle of animal rights, which claims that sentient animals have certain moral rights based on their most important interests, which should be enforced as legal rights. And finally, there is the principle of equality, which declares that the interests of all sentient animals (including humans) should be considered equally when devising our moral and legal obligations.

Without doubt, all of these principles are hugely controversial in themselves. Indeed, many would question whether animals – lacking the capacities for moral action themselves – even merit *justice.*[5] Nevertheless, the purpose of this article is neither to defend the principles sketched above, nor to prove that animals merit justice. Rather, it is to show that these proposed principles of justice for animals can be realized without abolishing all incidents of animal ownership. As such, the article will simply assume that animals deserve justice, and that justice for animals is comprised by the three stated principles.

In addition, it is also important to note that this article does not seek to provide a *justification* of the ownership of animals, either in any specific instance, or more generally.[6] That is to say, my aim is not to justify a scheme of private property rights pertaining to animals.

[3] For examples see P. Singer, *Animal Liberation*, 2nd edn. (London, 1995); T. Regan, *The Case for Animal Rights*, 2nd edn. (Berkeley, CA, 2004); J. Donovan and C. J. Adams, *Beyond Animal Rights: A Feminist Caring Ethic for the Treatment of Animals* (New York, 1996); A. Linzey, *Animal Theology* (London, 1994); and M. Calarco and P. Atterton (eds.), *Animal Philosophy: Essential Readings in Continental Thought* (New York, 2004).

[4] See Francione, *Introduction to Animal Rights*.

[5] See J. Rawls, *A Theory of Justice*, rev. edn. (Oxford, 1999), pp. 441–2.

[6] For an excellent review of different possible justifications of private property, see L. C. Becker, *Property Rights: Philosophical Foundations* (London, 1977).

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Rather, I simply claim that some forms of ownership need not stand in the way of achieving justice for animals. Whether this ownership, or any other ownership, is justified in itself is a different question that I do not address.

In order to make this argument, the article is divided into four sections. First, I briefly introduce the concept of ownership and defend conceiving of it in terms of a contingent set of relations, rather than a single right of exclusive and absolute control. In the following three sections, I examine each of the basic principles which I take to comprise justice for animals – moral status, rights and equality – and explain why owning animals need not obstruct their realisation.

II. THE CONCEPT OF OWNERSHIP

Some individuals take ownership and property to refer to the absolute control of things by persons. Famously, this view of ownership was explicitly endorsed by William Blackstone in the eighteenth century:

> There is nothing which so generally strikes the imagination, and engages the affections of mankind, as the right to property; or that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe.[7]

Under this conception, property confers on an owner the one basic right to exclusive and absolute control over his or her property. Thus, if I own a book, I may read it, tear its pages out to start a fire, use it as a door-stop, give it away, sell it, and so on. Moreover, you and others cannot take it away from me without my consent. I own the book, and thus have complete and exclusive control over it, under this conception.

However, one does not need to dig very deep to reveal the limitations of this way of viewing ownership. One can think of numerous uncontroversial examples of ownership that do not confer this kind of exclusive and absolute control. For example, if I own a barrel of beer, I cannot simply sell glasses of it to passers-by on the street; if I own a house, I cannot refuse entry to all other people in all circumstances; and if I own a piece of land, I cannot simply build what I like upon it. Such examples have led many philosophers to move away from the Blackstonian 'absolutist' conception of ownership. Ownership is now rarely conceived of as denoting a single right of absolute and exclusive control. Rather, it is more commonly thought to refer to a particular set of 'incidents' or 'relations', which do not constitute the necessary and sufficient conditions required to own a piece of property, but rather the

[7] W. Blackstone, *Commentaries on the Laws of England*, vol. 2: *Of the Rights of Things* (1766; London, 1979), p. 2.

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general and qualified *features* of ownership. The most famous exponent of this relational conception of ownership is A. M. Honoré. In his article 'Ownership', Honoré lists eleven standard relations that an owner can stand in with regard to his property 'X': the right to possess X; the right to use X; the right to manage X; the right to the income from the use of X; the right to the capital value of X; the right to security against the expropriation of X; the power to transfer X to another; the absence of any term on the possession of X; a duty to refrain from using X that may harm others; the liability that judgements against him may be executed on X; and the right that when the claims that others have over X lapse, they will return to him.[8]

To reiterate, then, it is not Honoré's claim that each of these incidents must be present in order for something to be owned by someone. Something might be owned even when certain of these relations are limited, or indeed absent. Nevertheless, these incidents are the common features of ownership according to Honoré.[9]

Without doubt, this more differentiated way of viewing ownership seems much more attuned to the complexities of the ways in which we can be said to own things. Its qualified nature allows us to make sense of the variety of property relations often at play in any example of ownership, such as those involved in the examples of the book, barrel of beer, house and piece of land. However, once we start breaking up the concept in this way, we are left to wonder whether there is anything left of it. Indeed, it is claimed by some that the relational view of ownership leads to the disintegration of the concept. For example, Thomas C. Grey has argued that the concepts of ownership and property confer no definitive information as to the rights and duties of an owner over a particular entity.[10] While I think that this statement is correct, in that ownership conveys no *definitive* information, it still surely conveys *some* information, and has meaning as such. In Honoré's scheme the concept conveys that the owner has a certain bundle of rights, duties, liabilities, and so on, drawn from the pool of incidents he outlines. Importantly, it is also worth pointing out that ownership generally implies that a specified owner has a certain *priority* when it comes to those incidents.[11] Thus, if I own some land, I may not have 'sole and despotic dominion' over it, but ordinarily, I am more entitled than anyone else to possess it,

[8] A. M. Honoré, 'Ownership', *Oxford Essays in Jurisprudence*, ed. A. G. Guest (Oxford, 1961).

[9] J. Waldron, *The Right to Private Property* (Oxford, 1988), pp. 49–50.

[10] T. C. Grey, 'The Disintegration of Property', *Property*, ed. J. R. Pennock and J. W. Chapman (New York, 1980).

[11] Honoré, 'Ownership', p. 134. Also see Waldron, *The Right to Private Property,* p. 60; and J. Tannenbaum, 'Animals and the Law: Property, Cruelty, Rights', *Social Research* 62 (1995), p. 557.

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use it, manage it, derive income from it, transfer it, or whatever other incidents are relevant in that particular case.

While this briefest of summaries of the concept of ownership is far from complete, I do hope to have identified two important aspects of ownership. First, ownership does not convey the single right of exclusive and absolute control. Instead, it refers to a set of incidents or relations which vary in different contexts. Second, although this relational view of ownership does fragment the term, it does not disintegrate it. In other words, ownership does convey *some* information. It signals that an individual or group stands in a certain set of relations with regard to a particular thing, and it specifies that an individual or group holds a certain priority with regard to those relations.

Given this understanding, we are now better placed to examine more carefully whether ownership stands in the way of realizing justice for animals.

III. OWNING ANIMALS AND MORAL STATUS

Some proponents of justice for animals have argued that the ownership of animals precludes recognizing their moral status. The concept of moral status is, quite simply, '. . . a means of specifying those entities towards which we believe ourselves to have moral obligations'.[12] Moral status thus grants an entity a certain standing, meaning that we have obligations concerning that entity for its own sake, and not simply for the sake of someone else. To explain, consider my obligation not to kick a dog lying asleep on the floor. There might be two different explanations of the obligation. First, I might have the obligation not to kick the dog solely because you own the dog and do not wish him to be kicked. In this case, we do not consider the dog to have moral status; you are the being with moral status, and the obligation is fundamentally owed to you. Alternatively, I might have the obligation not to kick the dog even if you encourage me to do so. This might be because the dog will be caused pain, and causing pain to sentient animals is ordinarily wrong. In this case, the obligation would be owed to the dog himself, and thus we would be according him moral status. For proponents of justice for animals, it is imperative that we recognize that sentient animals have moral status of their own, are worthy of moral consideration for their own sake, and that such consideration is not merely dependent on the interests and sentiments of human beings.

The claim that owning animals precludes recognizing their moral status is based on the idea that being owned means that an entity can

[12] M. A. Warren, *Moral Status: Obligations to Persons and Other Living Things* (Oxford, 1997), p. 9.

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only be valued in terms of its utility to its owner, and not for its own sake. As one proponent of this view writes, 'Property implies that we see an object's value through the context of its owner's welfare, a denial of intrinsic value that seems inappropriate in the case of animals.'[13] Of course, one obvious way in which property can contribute to its owner's welfare is through its 'capital value'. Given this, it has been claimed that treating something as owned, as a piece of property, necessarily entails treating it simply as a commodity; that is, as an entity whose value is determined solely by the market, and without moral status of its own. As Gary Francione writes:

> Animals have market prices. Dogs and cats are sold in pet stores like compact discs; financial markets trade in futures for pork bellies and cattle. Any interest that an animal has is nothing more than an economic commodity that may be bought and sold when it is in the economic interest of the property owner. That is what it means to be property.[14]

If it were true that the ownership of animals necessitated treating them as mere commodities, then I do believe that it would preclude the recognition of their moral status. If we took this view of animals, we would treat them solely in terms of their monetary value: welfare would be sacrificed for increased profit, and animals with no market value would be neglected or killed.

Many of the practices of intensive farming seem to support the idea that we treat many owned animals as mere commodities. To reduce costs, animals are crowded into small areas that cause them great discomfort, as epitomized by the practices of confining hens in battery cages and pigs in sow stalls. The market value of animals is increased at the cost of animal welfare, such as when calves are confined in veal crates and geese force-fed to produce foie gras. Furthermore, animals are routinely killed when they have no market value, as evidenced in the routine slaughter of male chicks and 'spent' dairy cows. It would appear, then, that a great many owned animals are treated as mere commodities without moral status.

Despite such examples, however, it is not evident that commodification is *inherent* in the concept of ownership. It is perfectly possible to enjoy rights to possess, use, manage, derive income, and buy and sell an entity, without treating that entity solely in terms of its market value.[15] Indeed, the present situation of many animals shows us that it is perfectly possible both to own them and also to recognize that

[13] A. Simon, 'Cows as Chairs', *People, Property or Pets?,* ed. M. D. Hauser, F. Cushman and M. Kamen (West Lafayette, 2006), p. 6.

[14] Francione, *Introduction to Animal Rights*, p. 79.

[15] The claim that it is possible to separate the monetary and non-monetary values of entities is made by E. Mack, 'Dominos and the Fear of Commodification', *Markets and*

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we have direct obligations to them for their own sake. For there is a raft of legislation in place in many countries across the world specifying the conditions under which owned animals can be kept and used, outlining our obligations to them, and thus restricting what can be done to them for economic gain. For example, consider once again those practices of intensive farming described above. In the UK, as in many other states, there is detailed legislation outlining the necessary size, height and construction of the cages for laying hens. Sow stalls have been banned in the UK since 1999. Owners of calves in the UK have not been permitted to confine their animals in veal crates since 1990. Finally, the production of foie gras is banned in the UK.[16] This legislation is not to protect the economic interests of the animals' owners; in fact, quite obviously, it acts contrary to their interests. Instead, such legislation acts to protect animals' interests for their own sake, recognizing that they are owed obligations due to their status as sentient beings.[17]

Now, of course, it will be objected that such legislation does not go far enough. It will undoubtedly be claimed that this legislation does not meet all of our obligations to sentient animals. After all, confining pigs, chickens and other animals in ways which cause suffering is still routinely permitted in all states, as of course is the killing of male chicks and spent cows. But my point is not to defend the status quo; clearly a huge amount more could and should be done to take the moral status of animals more seriously. Rather, my point is simply that there is nothing inherent in the concept of ownership which precludes doing this. Legislation can be introduced for the direct benefit of animals themselves, without requiring the abolition of all ownership of animals by humans. Ownership does not preclude recognizing the moral status of sentient animals.

IV. OWNING ANIMALS AND RIGHTS

While ownership might not obstruct recognizing animals' moral status, perhaps it does preclude assigning rights to animals. For you will recall that I take recognizing and enforcing animal rights to be the second component of achieving justice for animals. For our purposes, it will be useful to highlight three important elements to the claim that animals should be recognized as having certain rights.

First of all, it is usually argued that animal rights are founded on the interests of the individual right-holder. This interest-based

Justice, ed. J. W. Chapman and J. R. Pennock (New York, 1989); and C. Fabre, *Whose Body is it Anyway? Justice and the Integrity of the Person* (Oxford, 2006), pp. 129–40.

[16] All legislation is available from <www.defra.gov.uk>.

[17] There is legal recognition of this status in the EU thanks to the Treaty of Amsterdam of 1997.

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conception of rights is famously contrasted with the will- or choice-based conception. In brief, the interest-based view claims that the essential feature of any right-claim is that it benefits the right-holder; whereas the will-based theory claims that the essential feature of a right-claim is the presence of choice in the right-holder. The former thus sees the basis of rights as the protection of the welfare of the individual, while the latter sees the basis of rights as the protection of the individual's autonomous sphere of action. Given the need for the capacity for autonomous choice in the will theory, many rights-theorists have pointed out that for the notion of 'animal rights' to even be coherent, they will have to be based on an interest-based approach.[18] Thus many proponents of animal rights argue that sentient animals possess interests, and that their most important interests should be protected through assigning them animal rights.

This brings us to the second important part of the principle. Advocates of this position claim that animals should be assigned rights not simply for symbolic or rhetorical purposes, but because they mark out real and important moral limits on what can be done to an individual. This makes proponents of animal rights different from other campaigners for animals who eschew rights and simply plug animal interests into an aggregative utilitarian framework.[19] Proponents of rights do not just take a cost-benefit analysis of overall consequences when working out what ought to be done. For such an approach can lead to the sacrifice of some individuals in the name of the social good. Rather, these proponents want rights to act as 'trumps' over the social good, preventing such individual sacrifices.[20] Given this, we can see that proponents of animal rights are claiming that some interests of animals are so important that they must be protected by rights, even if that protection incurs costs to the overall social good.[21]

Finally, most proponents of animal rights do not merely wish to confine their claims to the recognition and ascription of animals' *moral* rights. Instead, these moral rights are meant to provide the normative foundation for the ascription of such rights in the actual legislation of states. As such, calls for the recognition of animal rights are calls for animals to be awarded *legal* rights.

[18] J. Feinberg, 'The Rights of Animals and Unborn Generations', *Philosophy and Environmental Crisis*, ed. W. T. Blackstone (Athens, GA, 1974), pp. 49–51; P. Jones, *Rights* (Basingstoke, 1994), p. 35; and H. Steiner, 'Working Rights', *A Debate Over Rights: Philosophical Enquiries*, ed. M. Kramer, N. Simmonds and H. Steiner (Oxford, 1998), p. 259.

[19] Singer, *Animal Liberation*, p. 8.

[20] R. Dworkin, *Taking Rights Seriously* (London, 2004).

[21] Regan, *The Case for Animal Rights*, pp. 276–7.

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Why then might the ownership of animals preclude recognizing their rights? One argument simply states that it is logically impossible for property to possess legal rights. It is claimed that something cannot be owned and at the same time be the bearer of rights.[22] This claim is based on the so-called 'dualistic' nature of the law. According to this interpretation, the law treats entities as either persons or things: the former enjoy full protection under the law and thus possess rights, whereas the latter do not enjoy such protection, and thus have no rights. Since animals are property, they lie in the group of things, and thus possess no rights.[23]

However, this account takes an oversimplified view of the law. When we look at the law, it is not at all clear that all entities which are owned necessarily belong to this mysterious group of 'things' which possess no rights. For example, corporations are clearly owned in that certain individuals have rights to possess, use, manage, buy, sell and derive income from them. Nevertheless, in the law, corporations are recognized as having personhood, rights and even certain responsibilities. Given this, we can see that it is erroneous to regard the law as strictly dualistic. Of particular significance, the status of corporations reveals that it is perfectly possible for an entity to be owned *and* to be the bearer of legal rights.

Importantly, this more complex legal picture is also borne out by the legal situation of animals themselves who do, as a matter of fact, possess legal rights in many countries.[24] After all, anti-cruelty laws confer on animals the legal right not to be subjected to cruel treatment. The recent Animal Welfare Act in England and Wales goes further than this, and not only outlaws cruel treatment, but also establishes upon owners and keepers of animals a 'duty of care' to ensure that their animals' welfare is provided for. In light of such legislation, it is perfectly coherent to claim that owned animals in England and Wales possess a legal right to this minimum standard of care.

Contrary to such arguments, however, Francione contends that anti-cruelty and animal welfare laws do not confer any *meaningful* rights on animals. Once again, this is because of the fact that animals are

[22] D. Hanbrick, 'A Legal Argument against Animals as Property', *People, Property or Pets?*, p. 55; and A. J. Dryden, 'Overcoming the Inadequacies of Animal Cruelty Statutes and the Property-Based View of Animals', *Idaho Law Review* 38 (2001–2), p. 178.

[23] Wise, *Rattling the Cage*, p. 4.

[24] Tannenbaum, 'Animals and the Law: Property, Cruelty, Rights', p. 581; C. M. Sunstein, 'Standing for Animals (with Notes on Animal Rights)', *UCLA Law Review* 47 (1999–2000), pp. 1333–68, at p. 1336; D. Favre, 'A New Property Status for Animals: Equitable Self-Ownership', *Animal Rights: Current Debates and New Directions*, ed. C. R. Sunstein and M. C. Nussbaum (New York, 2006), p. 239; and H. Landemore, 'Why Should One Reject the Motion Intending to Remove Animals from the Status of Property?', *People, Property, or Pets?*, p. 71.

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property. To explain, Francione argues that anti-cruelty legislation is part of a system of 'legal welfarism', or balancing of interests. So when we as a society consider how to treat animals, we balance our human interests against the interests of animals. Because animals are owned, Francione claims that such balancing will always come down in favour of human beings. Accordingly, on occasions it might be in our interests to prevent and outlaw 'unnecessary' animal suffering that we disapprove of, such as cruelty to pets. However, in situations where we have to consider sacrificing our own important interests, such as in animal agriculture and animal experimentation, animals always lose out. This explains why much anti-cruelty legislation exempts the practices of intensive farming and research laboratories: the suffering produced by these practices is deemed to be 'necessary' by the balancing of interests.[25] Because there are no *absolute* prohibitions on what we may do to animals, Francione contends that anti-cruelty and animal welfare laws confer no meaningful rights.

However, Francione is quite wrong here. There is nothing inherent in the concept of ownership which means that property must always lose out in the balancing of interests, and thus never be assigned rights. For example, consider the legislation preventing the production of foie gras in the UK. This law confers on geese the right not to have a metal pole forced down their throats and grain pushed into them until their livers become unnaturally swollen. In keeping with the analysis of rights offered earlier, this right protects an important interest of the geese, even in the face of worse overall consequences for humans. That is to say, foie gras production in the UK might lead to more jobs, cheaper foie gras, happier chefs, more satisfied consumers, and so on. Yet all of these consequences are overridden by the geese's interests, and the law confers on them a right not to be subjected to such actions. Geese and other sentient animals may well be owned, but that does not put them in a class of 'things' which logically lack rights. Anti-cruelty and animal welfare legislation can assign rights to animals, meaningful rights which act contrary to the interests of human property owners. Moreover, while farming and research practices might be exempted from such legislation in some US states, they need not be. For there is a good deal of legislation governing such practices in the UK and elsewhere, despite the fact that the animals involved are owned.

No doubt it will be objected that many of the laws referred to above, and the rights they confer, are insufficient. I agree. However, once again I should reiterate that my aim is not to defend the status quo. Rather,

[25] Francione, *Animals, Property, and the Law*, pp. 4–5; *Rain Without Thunder*, p. 4; and *Introduction to Animal Rights*, p. 55.

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it is to show that there is nothing about the concept of ownership which logically entails that what is owned cannot possess rights.

V. OWNING ANIMALS AND EQUALITY

Some proponents of justice for animals might agree with my claims up to this point. That is, they might acknowledge that ownership does not obstruct recognizing that sentient animals possess moral status and can be granted meaningful rights. But they will point out that so long as animals are owned, they will always be in a subordinate position to their owners. In other words, so long as animals – but not humans – are owned, there can never be equality between animals and humans. And as you will recall, I take equality to be the third and final component of achieving justice for animals.

While it is not the purpose of this article to justify the principle of equality between humans and animals, it is necessary to explain what this principle means. For proponents of justice for animals, equality means 'equal consideration of interests', and not 'equal treatment'. This conception of equality forms the basis of Peter Singer's theory of animal liberation:

> The extension of the basic principle of equality from one group to another does not imply that we must treat both groups in exactly the same way, or grant exactly the same rights to both groups. Whether we should do so will depend on the nature of the members of the two groups. The basic principle of equality . . . is equality of consideration; and equal consideration for different things may lead to different treatment and different rights.[26]

Thus equality between humans and animals does not imply that we should give pigs the vote or vaccinate schoolchildren against foot and mouth disease. Pigs have no interest in voting, and children have no interest in being vaccinated against a disease they cannot contract. What equality does imply is that we should not privilege children's interests over those of pigs, or vice versa. All individuals with interests are entitled to having those interests considered equally, according to this principle.

The important question to consider, then, is whether owning animals, and not owning humans, is an example of unequal consideration. To answer this, we need to establish whether animals, like humans, possess an interest in not being owned. In order to determine this, I will evaluate three incidents of ownership: the right to possess, the right to use and the right to transfer. The reasons for choosing these particular incidents are twofold. First of all, in terms of our ordinary use of the term, these three incidents can be considered as the most

[26] P. Singer, 'All Animals are Equal', *Applied Ethics*, ed. P. Singer (Oxford, 1986), p. 217.

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basic aspects of ownership. Second, it is the interest that humans have in not being subjected to these particular incidents – possession, use and transfer – that generates our fiercest opposition to the ownership of humans. Given this, it makes sense to evaluate whether animals share that same interest.

A. Possessing animals and equal consideration of interests

To possess something is to have physical control of that thing.[27] Being physically controlled, as a slave is controlled by his master, prevents humans from being free, whether one conceives of freedom as non-interference, self-mastery or non-domination.[28] Given that freedom is taken to be a fundamental interest of human beings, possession runs contrary to the interests of most humans.

What then of animals? Does possession also restrict the freedom of animals? Clearly it does. However, it is far from clear that freedom is in the *interests* of all animals.[29] In actual fact, freedom is not even in the interests of *all* humans. Take young children, for example, whose freedom we routinely restrict: we limit their movement with such things as stair-gates; we deny them self-mastery by making them go to school against their wishes; and we dominate them by holding the power to limit or extend their sphere of actions, as parents do when they impose certain rules on their children. None of these paternalistic restrictions are harmful, however, as they would be if they were imposed on adults. This is because, unlike adults, children are not fully autonomous agents. What I mean here is that young children do not have the capacity to frame, revise and pursue their own conceptions of the good.[30] Given such reduced capacities, restricting the freedom of children, as we do in the uncontroversial type of actions outlined above, does not act contrary to their interests. More importantly for our purposes, this also explains why the *possession* of children does not run contrary to their interests. For while we do not ordinarily say that parents *own* their children, we must acknowledge that they stand in at least one property relation to them: they have the right to possess them. Without doubt, this right to physical control is subject to important qualifications, such as the duty to meet the child's basic needs and so on. Nevertheless this right is straightforwardly an incident of ownership.

[27] Honoré, 'Ownership', p. 113.

[28] On these conceptions of freedom, see I. Berlin, 'Two Concepts of Liberty', *Political Philosophy*, ed. A. Quinton (Oxford, 1967); C. Taylor, 'What's Wrong with Negative Liberty?', *Liberty*, ed. D. Miller (Oxford, 1991); and P. Pettit, *Republicanism* (Oxford, 1997).

[29] A. Cochrane, 'Do Animals Have an Interest in Liberty?', *Political Studies* 57 (2009), pp. 660–79.

[30] This definition of autonomy is advanced in C. Fabre, 'A Philosophical Argument for a Bill of Rights', *British Journal of Political Science* 30 (2000), pp. 77–98.

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Returning to animals, then, we can see why possession might not always run contrary to their interests. Like children, most animals lack the capacity to frame, revise and pursue their own conception of the good. This is not to deny that sentient animals have desires, or that they act in order to satisfy them. It is merely to state that they cannot reflect on those desires and form their own life plans in the way that most adult humans can. This lack of autonomy means that freedom is not a fundamental interest of most animals, as it is for most adult humans. Given this, the possession of animals by humans will not always run contrary to their interests. For example, my possession of my cat is very much like a parent's possession of a child. The physical control involved is of course subject to certain qualifications – such as a duty of care – but it is not objectionable simply because it limits the freedom of my cat. Possessing a pet cat is quite unlike possessing an adult human: the interests of each are different in this regard.

Of course, I should make it clear that I am not claiming that *any* possession of *any* animal is harmless. Without doubt, possession can sometimes run contrary to the interests of animals. For example, some animals are more autonomous than others. Indeed, some might claim that certain types of animal, such as the great apes and cetaceans, have sufficient capacities to have a fundamental interest in liberty. If this is right, and there is not the space here to explore whether it is, then the possession of such animals does run contrary to their interests. Moreover, it is also evident that some *non-autonomous* animals have an interest in freedom, and thus in not being possessed. For example, a wild animal such as a fox may not have the autonomous capacities to be described as possessing a *fundamental* interest in liberty akin to that of adult humans, but he is very likely to have a strong *instrumental* interest in liberty. That is to say, being free in the wild might not be valuable to him simply for its own sake, but it might make his life more enjoyable. Given all of this, taking possession of that fox – say by going into the countryside and trapping him – would run contrary to his interests. Quite simply, this is because such possession would cause him to suffer greatly: he would be removed from his familiar habitat; removed from his social network; he would feel threatened and fear for his life; and he would grow frustrated at not being able to escape.

Indeed, these kinds of argument present a compelling case for the view that *all* wild animals have an interest in not being possessed. There would thus seem to be a strong *prima facie* reason to prevent individuals taking possession of animals in the wild. However, the same arguments do not hold for domesticated animals, such as our pets, farm animals, and the like. This is because wild and domesticated animals

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have different interests in this regard. For example, domesticated animals are born into and bred for human society, and are thus not only used to, but sometimes dependent on, human care for their well-being. For domesticated animals, possession does not engender the levels of suffering and distress that it does for wild animals. Thus, possession does not run contrary to the interests of domesticated animals.

In sum, it is possible to possess certain animals and at the same time to consider their interests equally. This is because of the simple fact that some animals have no interest in not being possessed.

B. Using animals and equal consideration of interests

The next incident of ownership that we need to consider is that of being used. Being used for certain purposes is often contrary to the interests of human beings. In particular, it would obviously be objectionable to use human beings in many of the ways we currently use animals. For example, we do not currently raise humans and perform painful medical experiments on them. Nor do we raise humans and kill them for their tasty flesh. Clearly, humans have an interest in not being used in ways that make them suffer or which kill them. But do animals share such interests?

Given their capacity to feel pleasure and pain, it is uncontroversial to maintain that animals have an interest in not being used in ways that make them suffer. This would obviously mean that animals have an interest in not being used in painful medical experiments, or in many of the practices of intensive farming, for example. However, the question of whether animals have an interest in continued life is less clear. Peter Singer, for example, argues that many animals have no such interest, pointing to the fact that many animals are not able to conceive of themselves existing in the future, as most humans are able to do.[31] But while it is true that many animals lack this ability, it is unclear why this inability should mean that they have no interest in continued life. After all, we do regularly assign interests to individuals even when those individuals cannot conceive of the relevant good. For example, a young child may not have the ability to conceive of herself inhaling oxygen and exhaling carbon dioxide. However, it would be strange to say that she has no interest in breathing, for breathing straightforwardly benefits her. In light of this, it is plausible to claim that sentient animals possess an interest in continued life if it can be shown that continued life benefits them. Since continued life affords animals the opportunity for future valuable experiences – an obvious benefit – several proponents of justice for animals have argued that

[31] P. Singer, *Practical Ethics*, 2nd edn. (Cambridge, 1993), p. 119.

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sentient animals do possess an interest in their lives continuing.[32] If this is correct, using animals in ways which kill them runs contrary to their interests.

Given all of this, if we are to consider the interests of humans and animals equally, it will be necessary not to use animals in ways that kill them or that cause them to suffer. Putting this into practice would obviously entail some incredibly radical changes to our current practices: an end to painful animal experiments and raising animals for meat, for example. However, adopting such changes is certainly feasible: it is possible to use animals in ways which do not cause suffering and which do not end in their death. For example, consider a free-range farm which raises cows for milk and which raises chickens for eggs. Such a farm could meet all of its animals' welfare needs and not kill any of them. Clearly, most farms – including free-range farms – do not operate like this. But my point is simply that the adoption of such practices is possible.

However, perhaps even this non-painful and non-lethal use of animals would be inegalitarian. For imagine treating human beings in this way: that is, raising them on farms to use their by-products as food. No matter how comfortable we made those humans, they would still have an interest in not being used like this. For while we do use other humans for a whole range of tasks, the *forced use* of human beings is rightly considered to be a serious harm. And if this is true for humans, then why is it not also true for animals, who are also being used forcibly and without their consent even in free-range conditions? At this point, we need to ask whether animals possess an interest in not being used against their will, even when such use is non-painful and non-lethal. I want to claim that many animals have no such interest. Once again, this is because most animals are not autonomous agents, and are thus unable to frame, revise and pursue their own life plans. Forcing a domesticated animal into a particular form of employment is thus quite unlike forcing an autonomous human into such employment. The freedom to frame, revise and pursue one's own way of life is crucial to the welfare of autonomous human beings; but is of no consequence to a non-autonomous non-human.

At this stage it will undoubtedly be objected that my argument has a serious counterintuitive implication. If domesticated animals lack an interest in being used against their will on the basis that they lack the ability to frame, revise and pursue their own conceptions of the good, then the same must be true for *human beings* who lack such

[32] D. DeGrazia, *Animal Rights: A Very Short Introduction* (Oxford, 2002), pp. 59–64; Rollin, *Animal Rights and Human Morality*, p. 86; and S. F. Sapontzis, *Morals, Reason and Animals* (Philadelphia, 1987), p. 169.

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capacities. In other words, non-autonomous humans such as young children and the mentally disabled must also lack this interest in being used forcibly. So does my argument condone child labour, for example? I do not believe that it does. For it should be pointed out that my argument acknowledges that non-autonomous individuals *do* have an interest in not being used against their will when such use is lethal or causes suffering. And since most instances of child labour *do* cause suffering – in the short and/or long term – the harm inflicted by such practices is recognized by the argument presented here.

However, there is an alternative objection to my argument which has not yet been addressed. Gary Francione calls for the abolition of all uses of animals on the basis that using animals in this way treats them merely as means to humans' ends.[33] For Francione, this kind of 'instrumentalism' violates the interests of animals, is intrinsic to the practice of owning animals, and thus stands as *the* major obstacle to considering the interests of animals equally. Thus, even if we amend our practices so that that when we extract milk from cows, and eggs from chickens, no animal suffers or is killed in the process, we still treat these animals as mere tools for our own purposes, and thus according to Francione violate their interests as such.

But given that most animals are not autonomous agents as I have defined the term, we can question whether this Kantian objection as invoked by Francione has any applicability to animals. After all, Kant's reason for opposing treating individuals as mere means derived from the value he saw in autonomous agents being able to pursue their own ends. Since animals lack autonomy, Kant saw nothing wrong in treating them merely as means.[34] However, let us for the sake of argument adapt this means–ends argument. Suppose then that it is wrong to use any individual *with interests* solely as a means to our ends. Does this mean that the non-lethal and non-painful use of animals is morally problematic? I do not think that it does. After all, for this adapted principle to have any plausibility it must still retain an important Kantian element: that is, we should not treat other individuals with interests *exclusively* as means to our ends. For quite clearly, we treat others as means to our own ends all the time, and without controversy. For example, if I go and see my doctor at her surgery to remedy an illness that I have, I am clearly using that individual as a means to my end of getting better. Few, I imagine, would find this objectionable. What would be wrong would be for me to treat that doctor *exclusively* as a means to my ends. Thus, if I get some other illness at a later date, and notice the doctor playing with her family in a nearby park, it would be

[33] Francione, *Introduction to Animal Rights*, pp. 8–35.
[34] I. Kant, *Lectures on Ethics,* trans. L. Infield (New York, 1963), p. 239.

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objectionable for me to interrupt and demand a cure. Quite obviously this is because the doctor does not exist simply as a means to satisfy my ends, but has her own interests and ends to pursue.

It is my contention that we can use animals as means to our ends, without using them *exclusively* as means to our ends. To treat animals exclusively as means would be to offer no concern for their own basic interests when those interests conflict with our own ends. But in the example of the free-range dairy farm, where animals are used but not made to suffer and are not killed, we do not treat them exclusively as means to our ends. Instead, we recognize that the cows and chickens are sentient beings, give them a good quality of life as such, and take what we want from them in ways that do not cause them to suffer or die. Clearly, and as I have stated before, this is not a reflection of how current farms go about their business. As I have also stated before, it is not my aim to defend the status quo. However, the argument shows that it is possible to use animals for certain purposes and to consider their interests equally.

C. Transferring animals and equal consideration of interests

The final incident of ownership that we must consider is the transferral of possession from one person to another, as is done when animals are bought and sold. Clearly, most humans have an interest in not being transferred based on their interest in not being possessed in the first place. Do animals also have this interest in not being transferred?

First of all, in light of earlier discussions, we can say that if animals do possess this interest in not being transferred, they do not hold it on the basis that transferral necessarily treats them as mere commodities, nor do they hold it on the basis that possession itself harms them. As pointed out earlier in the article, it is perfectly possible to have the power to buy and sell animals, while recognizing that they have a status independent of their market value. And as we have also seen, many animals have no interest in not being possessed.

In light of such considerations then, can we say that all exchanges of animals are harmless? Unfortunately we cannot. Often the transferral of possession can cause significant suffering to animals. This is especially true for those infant animals who are taken from their mothers too young; but it is also true for mature social animals who can suffer greatly when uprooted from familiar environments and social networks.

Of course, this does not mean that being transferred is contrary to the interests of *all* animals. Indeed, a moment's reflection reveals that transferral is not even contrary to the interests of all humans. For example, those humans who have no interest in not being possessed, such as young children, may not always have an interest in not being

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transferred. Indeed, most states permit the transferral of possession of children through such mechanisms as adoption and fostering. This is simply because it makes sense to recognize that for some children – orphans, the abandoned, the abused, the neglected, and so on – being transferred in this way is of great benefit to them. Similarly, it is perfectly reasonable to claim that some animals – perhaps those in similarly unfortunate situations – are also benefited by being transferred.

What then of animals who are not in such unfortunate situations? Whether or not it is in the interests of these animals to be transferred will depend on the circumstances of the case. What we can say, however, is that not all such transfers will be harmful. What is imperative, in terms of the equal consideration of interests, is that the animals do not *suffer* from the transfer.

Of course, if the only transfers that are permissible in the name of equal consideration are those which cause no suffering to the animals involved, this would necessitate much greater regulation than is in place in most states. It would obviously require the breeders and vendors of animals to be closely monitored to ensure that all of the interests of animals are protected when such exchanges take place. For example, presently in the UK any resident over the age of 16 can buy an animal without having to prove that he or she has the knowledge, space, time and resources to look after that animal for the whole of its life. Clearly that does not offer much protection to the interests of animals. Thus, if buying animals is permissible so long as the important interests of animals are protected, it seems crucial that we have some assurances that those interests *will be* protected. Some kind of licensing system would seem to be the obvious way of meeting this need. Once again, however, the argument calls for *regulation* of the system of ownership rather than its abolition. There is nothing inherent in the idea of transferring animals that undermines considering their interests equally.

To end this section on equality, it will be useful to summarize its main points. When proponents of justice for animals advocate equality between animals and humans, what they are really advocating is for the interests of animals and humans to be considered equally. The interests of humans should not be privileged simply because they are *human* interests; instead, each and every interest should be judged on its own merits. The practice of owning animals might seem a straightforward way in which such equality is obstructed. After all, we do not own other humans, so why can we own other animals? Quite simply, the answer comes down to the fact that humans and animals do not share exactly *the same* set of interests. In sum, many animals do not share humans' interests in not being possessed, used and transferred. While

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this conclusion does not serve to justify how animals are currently treated, it does show that it is *possible* to both own animals and consider their interests equally.

VI. CONCLUSION

This article has argued that it is not necessary to abolish all ownership of animals in order to achieve justice for animals. Owning an animal does not convey upon human property-owners the single right to have absolute and exclusive control of that animal. Ownership is rather a much more fragmented concept, conveying different rights and incidents in different contexts. Given this more qualified conception of ownership, it is possible for humans to hold certain property rights over animals, and also to assign them moral status, ascribe them rights, and consider their interests equally. Of course, none of this justifies our present treatment of owned animals, which is far removed from what is required by justice as I have outlined it. Clearly, if we believe that the principles of justice for animals that I have put forward are valid, then we will have to alter or abolish many of our current uses of animals. However, this article has contended that justice for animals can be realized without having to abolish each and every incident of animal ownership. As such, ownership itself does not have the importance that many proponents of justice for animals have claimed.[35]

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