

## BOOK REVIEW

### Animal Rights and Animal Equality. A Review of Three Recent Books

*Animal Rights. Current Debate and New Directions* edited by Cass R. Sunstein and Martha C. Nussbaum. Oxford University Press, 2004.

*Animal Equality. Language and Liberation* by Joan Dunayer. Ryce Publishing, 2001.

*Speciesism* by Joan Dunayer. Ryce Publishing, 2004.

The literature on the topic of animal rights has grown exponentially in the last 15 years, as has the literature on animal welfare. Much has been made of the distinction between animal welfare advocacy and animal rights advocacy, but Cass Sunstein, in his introduction to the *Animal Rights* collection, argues that even animal welfare advocates argue for the right of an animal to be protected from inhumane treatment, and the laws of many jurisdictions do give animals this sort of protection, however poorly they are enforced.<sup>1</sup> Such laws are also limited in the protection they give because they allow hunting and fishing, for example. “What additional rights do animal rights advocates demand?” Sunstein asks. One modest example of an extension of current rights would be to allow animal representatives to step in when enforcement officials do not do their job, by granting standing to these representatives. A further extension would be the regulation of previously unregulated activities to ensure that these activities were conducted humanely. A further, even more radical proposal, staying still within the realm of animal welfare advocacy, is to urge the total elimination of certain practices, such as greyhound racing and eating meat, on the grounds that they cannot be conducted humanely. Finally, the most radical proposal is to eliminate any use of animals by humans that limits an animal’s autonomy. This is the proposal that traditionally divides the animal welfare movement from the animal rights movement and it is a proposal that Joan Dunayer, in her two books, takes most seriously. Dunayer takes the autonomy approach to animal rights with a vengeance, arguing even against Tom Regan that it is speciesist to rank animals in terms of their cognitive abilities to settle conflicts of interest

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<sup>1</sup> Rollin, *Farm Animal Welfare*, p. 28, makes the same point.

in favor of those closest to humans. Sunstein thinks that those advocating this radical approach must answer several important questions.

The first question that the autonomy position should address is whether it applies even to animals who might actually fare better in zoos or as companion animals than they would if left to fend for themselves. A second question Sunstein raises is, which types of animals should be given autonomy rights. To this question, Sunstein says, most autonomists, as I shall call them, argue that animals should be given autonomy rights to the extent that they are similar to humans, especially in their cognitive abilities. Dunayer calls the use of this criterion “new speciesist philosophy,” claiming that the sole criterion should be sentience, and she allows self-defense as the only ground for curtailing an animal’s autonomy (or taking its life).

Sunstein also sees as a major issue in the literature whether animals should be treated as property or regarded as persons, but he thinks that this distinction is not as important as it might seem. On the one hand, we are not allowed to use our property in any way that we wish. On the other hand, even though we are not allowed to regard our children as property, we still are granted the right to exercise considerable control over them.

The collection that Sunstein and Nussbaum have assembled represents, as it says on the book jacket, “an all star cast” that includes professors of law, philosophy, and animal science. Among legal theorists, it includes such familiar names as Richard Epstein, Richard Posner, and Catherine MacKinnon, as well as animal legal rights activist Steven Wise, and Gary Francione. The philosophers include Elizabeth Anderson, Cora Diamond, James Rachels, and Peter Singer. The contributors seem roughly equally divided between those defending the status quo, those arguing for reforms, and those arguing for more radical positions. But only a couple of the contributors avoid the speciesism that Dunayer describes in the book with this title.

By “speciesism,” Dunayer means “a failure, in attitude or practice, to accord any nonhuman being equal consideration and respect.” Her short book is divided into three sections, each of which has three chapters. The parts are Old Speciesism, New Speciesism, and Animal Equality,<sup>2</sup> and the chapters in each part cover philosophy, law, and advocacy. Old speciesist philosophy includes the belief in the superiority of humans over other animals morally and legally as well as the acceptability of using animals exploitatively. This view is typically given justification by claiming that humans are unique in some important way, such as having a soul, or having superior intelligence, or the ability to make and keep contracts, or are morally superior, or have lives that are of moral value, or that humans have a greater capacity to suffer. Dunayer takes issue with most of these claims or argues that they are morally irrelevant.

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<sup>2</sup> Wise in the Sunstein/Nussbaum collection cites Dunayer’s earlier book in note 78 on p. 45.

In the chapter on Old Speciesist Advocacy, Dunayer takes issue with many who consider themselves to be animal rights advocates, including Gary Francione, one of the contributors to the Sunstein-Nussbaum collection. Dunayer is referring to Francione's book *Introduction to Animal Rights. Your Child or Your Dog?* (Temple Univ. Press, 2000). Her complaint against Francione is that, although he warns of the danger of using speciesist language, he fails to heed this warning and uses speciesist language throughout. Speciesist language is the main topic of Dunayer's earlier book, *Animal Equality. Language and Liberation*. This earlier book shows in great detail how "deceptive, biased words sustain injustice toward nonhuman animals" (book jacket).

Dunayer's *Animal Equality* book is divided into twelve chapters, six of which focus specifically on different arenas of the exploitative use of non-human animals by human animals – the subtitle are *The Language of Hunting* (Ch. 4); *The Language of Sportfishing* (Ch. 5); *The Language of Zoos* (Ch. 6); *The Language of "Aquariaums" and "Marine Parks"* (Ch. 7) (note: the quotation marks suggest that the name is inaccurate and a euphemism); *The Language of Vivisection* (Ch. 8); and *The Language of Animal Agriculture* (Ch. 9). The first three chapters make the case that the bigotry that we, as human animals, practice in breeding and forcing nonhuman animals to perform for "show, racing, fighting, or servitude" in circuses, zoos, and rodeos, and in using animals for fur, food, sport, and science, requires self-deception. Speciesism, like sexism and racism, is "a form of self-aggrandizing behavior" and cannot survive without lies. "Standard English usage supplies these lies in abundance. Linguistically the lies take many forms, from euphemisms to false definition. We lie with our word choices. We lie with our syntax. We even lie with our punctuation." (p. 1) According to Dunayer in *Speciesism*, Francione throughout his book "continually euphemizes speciesist abuse (*animal agriculture, fish farms, game ranches...*). He repeatedly labels nonhumans exploitable and disposable (*surplus animals, fur animals, poultry...*). Throughout, he uses the speciesist phrase *humans and animals*, which removes humans from animal kind. His language preserves a traditional speciesist hierarchy: 'animals, including mammals, birds, and *even* fish possess considerable intelligence.'"

In *Animal Equality*, Dunayer draws upon a wealth of examples taken from books, newspaper accounts, and public relations reports of zoos, "aquariums," scientific associations, and the food industry to make her point about how we deceive ourselves and are deceived, quite often deliberately by others, by the words that are chosen to describe nonhuman animals and the way we use them. Here are some obvious examples: leather, fur, and meat, as opposed to *skin, hair, and flesh*; carcass as opposed to *dead body*; zoos and aquariums as opposed to *nonhuman land animal and aquatic animal prisons*.

I think this a wonderful book that is well researched and very convincing and very revealing about ourselves and the way we talk. To counter our speciesist way of talking, Dunayer concludes her book with an eight page Style Guidelines and a fifteen page Thesaurus. The Guidelines to counter speciesism covers dos and donts in our manner of presentation, our sentence structure, word choices, and punctuation. The Thesaurus provides alternatives to speciesist terms, giving the words to avoid and their acceptable alternatives. It is divided into several categories: Pronouns for Nonhuman Animals; Nonhuman/Human Terms; Hunting Terms; Sportfishing Terms; Zoo and Aquaprisons terms; Vivisection Terms; Food-industry Terms; Pet-related Terms; Pelt-industry Terms; and Other Terms of Speciesist Abuse.

Some might object to Dunayer's recommendations that we "police" the way we talk, and dismiss this book as a "must-read for animal activists wishing to develop a politically correct lexicon (See P. Hopwood's review in *Animal Welfare* 2002, 11: 123), but I agree with Dunayer that the way we talk reveals the way we think, about nonhuman animals, about men and women, and about other "races," and changing the way we talk is the first step to changing attitudes that we were not sure we had. Quite appropriately, the book's forward is written by Carol J. Adams. The reviewer in *Animal Welfare* (*op cit.*) claims that this book "adds little to the animal rights arguments of Tom Regan or the animal interests utilitarianism of Peter Singer." What is missing in *Animal Equality* on this score can be found in Chapter 5 of *Speciesism*, under the title New Speciesist Philosophy.

New speciesists, while advocating animal rights, still use humans as the benchmark for deciding which animals have rights and give human animals greater moral consideration when rights conflict. Dunayer takes issue with Singer, Rachels, Regan, and Pluhar as new speciesist philosophers. Her critique of Singer is based largely on what Singer says in his *Practical Ethics*, where he argues that only animals with a significant degree of self-awareness can be said to have a right to life (other animals have a right to avoid having suffering inflicted on them). Animals that do not have a right to life are replaceable, and are thus seen only as "vehicles of happiness" (a criticism that Regan also makes of Singer). While Singer tries to avoid the charge of speciesism by allowing that some humans lack this sense of self-awareness, and perhaps apes and dolphins might have it, Dunayer accuses Singer of speciesism on the ground that he sets what normal humans have as the criterion for having the right to life – the level of self-awareness that normal humans have. Dunayer also objects on the grounds that fish, whose conscious states Singer says are not linked over time, do, in fact have expectations and a sense of past and future (note: Dunayer claims here that there is overwhelming evidence that they do (p. 79). Singer argues that most

animals do not have an interest in staying alive because they have no conception of their future and do not delay gratification

Dunayer is also critical of another argument that Singer uses as justification for valuing human animal lives over nonhuman animal lives – the argument that human animals value social ties more than nonhuman animals do and “these ties make their lives richer and more valuable. (p. 84) Dunayer offers a number of arguments against this thesis: (1) nonhuman animals also have social ties that often affect them deeply; (2) humans who have fewer or no social ties ought to count for less if Singer’s thesis is correct and those with the greatest number ought to count for more; (3) social ties may reduce the quality of our lives as well as enrich them; and (4) since humans create more disutility than other animals do in the way that they treat other animals, human lives ought to be less valuable. Dunayer also accuses Singer of using speciesist language when he says that “Notoriously, some humans beings have a closer relationship with their cat than with their neighbors.” Why the pejorative “*notoriously*,” Dunayer asks.

Dunayer also takes issue with other “new speciesist philosophers” along with Singer in their using the claim that human animals have superior mental powers to other animals to justify the claim that human animal lives have more value than nonhuman animal lives. She charges Rachels and Rowlands, along with Singer, of using human intelligence as the norm and then allowing that the further an animal departs from that norm, the less valuable its life is to it. And either the less it has a right to life, or, if it does have a right to life, its right is somehow less. Dunayer’s arguments against these positions include noting that each type of animal has its own kind of intelligence, which has allowed it to adapt to its environment, that human type intelligence is often a source of the devaluing of life as well as the valuing of it, and there is no way to determine how much a particular type of animal values its own life. She then goes on to take issue on similar grounds with Regan and Pluhar, both of whom rank animals in a hierarchy of consciousness. Regan is most confident of giving rights to life to mammals and birds, but only gives the benefit of the doubt to reptiles and fish, and other “lower” vertebrates, while Pluhar gives them unequivocally to mammals and gives the benefit of the doubt to birds. Dunayer’s criticism of these limitations is based on the various evidence she cites in her last chapter that any animal with a central nervous system and a brain is sentient and should be granted an equal right to life with any other animal. She specifically takes issue with Regan’s well-known life boat example, where either a dog or one of several humans must go over board to save the entire remaining lot. Regan’s solution is to pick the dog because the dog loses less than the human in foregone opportunity. Here I agree with Dunayer that one way to

settle the dispute about who goes overboard is to flip a coin. I argued elsewhere<sup>3</sup> that a way to decide based on justice would be to determine who has already had the greater share of life (who is older), and let that person leave more shares to those who have had the lesser shares to date. (Note that DeGrazia also holds a scaled right to life position in his little book).

In the least three chapters of her *Animal Equality* book, Dunayer outlines her own position on what would count as non-speciesist philosophy, law, and advocacy. In the law chapter (chapter 9), she outlines a program for getting the US courts to recognize animals as persons with constitutional protections. Here is how her argument goes. Although it could be achieved by a constitutional amendment or by Congressional legislation, Dunayer is skeptical about the likelihood of this happening. Instead, the courts might be the best avenue. Just as the Supreme Court in *Minneapolis & St. Louis Railroad v. Beckwith* (1889) and *Noble v. Union River Logging* (1893), ruled that a corporation is a person for the purposes of due process under Amendment 15 and 5, the Court could rule that some or all nonhumans are constitutional persons, perhaps starting with a more popular animal like a dolphin. Dunayer sees this then progressing to even protecting wild-life habitat. Throughout this chapter, Dunayer criticizes Wise, and Regan for drawing lines between different sorts of animal that deserve rights more. She calls this speciesist and insists on drawing the line between the sentient and the non-sentient. I find myself agreeing with most of what she says, though there may be problems protecting wild-life habitat, since there are a number of “invasive” species that have flourished due to human influence, to say nothing of feral cats and pigs.

In the introduction to the Sunstein/Nussbaum collection, Sunstein sketches out some of the legal issues in trying to provide animals with rights. There are eight selections in the first part of the collection and six in the second part. The first selection is by Stephen Wise, who argues that if animals have “practical autonomy” then they should have rights, and there is scientific evidence that many animals have abilities that should thus qualify them. Of course, Dunayer gets on Wise’s case for drawing the line where he does rather than at sentience. The next two selections (Posner and Singer) debate how practical it is to expect people to award animals rights. The fourth article, by Cora Diamond, argues that the issue is not arguments to support animal rights, but lessons about how to regard animals as “fellow creatures.” This is followed by a discussion between Francione and Epstein about the sense it makes to regard animals as property. Epstein sees no problem with seeing animals as property. Rachels challenges the way lines

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<sup>3</sup> “The Muddled Middle: The Search for Ethical Principles to Regulate the Use of Animals in Research.” *Between the Species*, Winter–Spring, 1996, pp. 19–33.

are drawn between which animals deserve protection and which do not, an issue that is picked up by the last selection in part 1. Frankly, I found the entire section somewhat tedious and unenlightening. Here are the authors and titles of the last six contributions. They are listed under the heading **NEW DIRECTIONS**. (9) David J. Wolfson and Mariann Sullivan. "Foxes in the Hen House. Agribusiness and the Law: An American Fable." Here the authors give a depressing picture of how ineffective US animal protection law is, none of which applies to farm animals. (10) David Favre. "A New Property Status for Animals: Equitable Self-Ownership." Favre sketches out a way that, given present ownership laws, owners could be given an animal guardian status and have custodial relations to their animals as a parent to a child. I tend to favor this view. (11) Cass R. Sunstein. "Can Animals Sue?" (They should be able to, Sunstein says). (12) Catherine A. MacKinnon. "Of Mice and Men: A Feminist Fragment on Animal Rights." MacKinnon draws an analogy between women being used for sex and animals for food and criticizes the "liberal" approach to providing protection by assuming sameness. Animals rights need to be addressed on their own terms as animals. (13) Elizabeth Anderson. "Animal Rights and the Values of Nonhuman Life." Anderson identifies different values involved in resolving difficult dilemmas (e.g., predation to save ecosystems). (14) Martha C. Nussbaum. "Beyond 'Compassion and Humanity': Justice for Nonhuman Animals." I found the Nussbaum article the most interesting, and I agree with much of it. Her position is that justice requires that we allow animals to actualize their positive capabilities so that they can flourish, a principle that we should also apply to humans. In developing this position, she criticizes Kantian-Rawlsian contract models as a basis of what we owe animals, and finds fault with both hedonistic and preference satisfaction forms of utilitarianism. There are bad pleasures and our preferences may be determined by oppressive socialization. Where I depart company with Nussbaum is the distinction she draws about how we determine what the capabilities of a creature is. In the case of humans, we should do it on an individual basis, but in the case of nonhuman animals on a species basis. I am not entirely clear why she wants to make this distinction. I also disagree with her uncertainty about whether it is OK to raise animals for food and use them for research. My view is that it is not acceptable.

Nussbaum argues for a non-utilitarian, non-contract theory of nonhuman animal entitlement. It is a matter of justice that animals be allowed to exercise those capabilities that give it dignity. The flourishing of these capabilities enables an animal to live a rich life, just as the flourishing of human capabilities allows for a rich human life. The (good) capabilities that nonhuman animals share with humans, and that animals are entitled to enjoy include life, bodily health, bodily integrity, senses, imagination, and

thought, emotions, practical reason, affiliation, living with other species, play, and control over one's environment. Animals living on their own are entitled to not have the flourishing of these capabilities thwarted by humans. Animals in our care are entitled to have them promoted. Just as the freedom to develop these capabilities in humans should be protected and supported by law and other social mechanisms, human society ought to protect them for animals. This is a matter of justice.

Nussbaum has a number of criticisms of utilitarian based theories of human and animal welfare that are similar to Sumner's (1996) criticisms of hedonism and preference satisfaction versions of this form of subjectivism. One criticism of the preference version, when applied to animals, is that "animals raised under bad conditions can't imagine the better way of life they have never known, and so the fact that they are not living a more flourishing way of life will not figure in their awareness." (p. 305) While the same may be true of humans, the possibility of dialogue with those who seem to accept their oppressive socialization leaves open the avenue to autonomy. Providing a list of good human capabilities, like providing a list of things that standardly have prudential value for a species, leaves open the possibility for individual humans to choose their own version of the good life. But when applied to nonhuman animals, Nussbaum argues for a form of paternalism that remains sensitive to the "different forms of flourishing that different species pursue." (p. 313) While a similar form of paternalism is warranted in raising children, children can also be taught to examine critically their own socialization process. What will enable caretakers to determine which capabilities need to be developed in their animal wards?

By "capabilities," I assume that Nussbaum means both what Aristotle calls first potentialities as well as second potentialities. I may be born with the capability to love others (first potentiality), but actually being able to love others (second potentiality) requires considerable development. To determine what capabilities need to be developed is a way to sort out the good (first potentialities) from the bad. For humans, the criteria seem to be what is consistent with harmonious living, both with others and with the activities associated with other capabilities. Killing others out of spite is not a good capability. For humans, there is a rich body of shared experiences that we can rely on to determine which capabilities support human flourishing. How can we tell this for nonhuman animals? Partly by analogy, animals appear to engage in activities that share similarities with human activities, playing, and being able to move, and socialize, for example. But how can we tell what forms of these and other activities are truly rewarding for the animals that engage in them? There seems to be a lack of the shared forms of life through which humans learn to choose the most rewarding capabilities to actualize. Nussbaum's solution to this problems seems to be

that our experiences with animals enables us to see when they are flourishing and, in fact, we use these examples of flourishing to identify species specific forms of life. These flourishings are the activities that we wonder at and respect in other species. While we know that animals play, how do we identify which forms of activities count as play in a particular species? And how can we tell which possibilities for playful activities might be most rewarding for particular animals were they to be developed under our tutelage? As far as I can tell, Nussbaum uses two criteria. (1) those activities that we wonder at as characteristic of that species, and (2) are genetically enabled. Thus if we can teach a dog that was bred to be a runner how to actualize this potentiality, then we are enabling it to flourish. But if we teach a chimp to use sign language to communicate with humans, we are not enabling it to flourish, since the communication skills of chimps are used to communicate with other chimps, and they don't need human taught sign language to do that. This solution strikes me as problematic, for it assumes that animal wards should associate primarily with their own kind and not with other species, including humans. But we know that animals of one species are quite capable of bonding with animals (including with humans) of other species. At one place in her essay, Nussbaum seems to take each species as setting an evaluative (as opposed to natural) norm for what counts as flourishing, yet this must be qualified.

...a no-evaluation view, which extracts norms directly from observation of animals' characteristic ways of life, is probably not going to be a helpful way of promoting the good of animals. Instead, we need a careful evaluation of "nature" and possible changes. Respect for nature should not and cannot mean just leaving nature as it is, and must involve careful normative arguments about what plausible goals might be (p. 311).

At this point, it seems appropriate to ask Nussbaum two questions. (1) How does her view differ from Rollin's ( e.g., 2004) account of an animal's *telos*? And (2) What role might a *science of animal welfare* play in identifying what those plausible goals may be? Nussbaum also seems to hold an implicit contract view of what we owe farm animals, even though she rejects contractarian moral theories in general. In regard to life entitlements, Nussbaum says that, while the killing of young animals would still be problematic, it "seems unclear that the balance of considerations supports a complete ban on killing for food." What if "animals were really killed in a painless fashion, after a healthy and free-ranging life" (p. 315). In regard to vegetarianism she is hesitant because we do not know what the effects would be on the environment and on some young children if we depended solely on vegetable protein (p. 318). She holds the same ambivalent attitude toward using animals in research (p. 318). I disagree with her on both issues, although I think animals could be used in research in ways that are accept-

able. She is also uncertain about what we owe animals in the wild and whether we should engage in “predation” to control populations in the wild.

Generally, except for the Nussbaum contribution, I found the collection somewhat disappointing and not nearly as exciting, informative, and provocative as the two Dunayer books.

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**RICHARD P. HAYNES**

*Department of Philosophy*

*University of Florida*

*Gainesville, FL, 32611-8545, USA*

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