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***“The Inalienable Rights of the Beasts”¹:
Organized Animal Protection and the Language of Rights in America,
1865-1900***

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ABSTRACT

Contemporary animal rights activists and legal scholars routinely charge that state animal protection statutes were enacted, *not* to serve the interests of animals, but rather to serve the interests of human beings in preventing immoral behavior. In this telling, laws preventing cruelty to animals are neither based on, nor do they establish, anything like rights for animals. Their *raison d’être*, rather, is social control of human actions, and their function is to efficiently regulate the use of property in animals. The (critical) contemporary interpretation of the intent and function of animal cruelty laws is based on the accretion of actions – on court cases and current enforcement norms. This approach confuses the application and function of anticruelty laws with their intent and obscures the connections between the historical animal welfare movement and contemporary animal rights activism.

By returning to the context in which most state anticruelty statutes were enacted – in the nineteenth century – and by considering the discourse of those activists who promoted the original legislation, my research reveals a more complicated story. Far from being concerned only with controlling the behavior of deviants, the nineteenth-century animal welfare activists who agitated for such laws situated them within a “lay discourse” of rights, borrowed from the successful abolitionist movement, that connected *animal sentience*, proved through portrayals of their suffering, to *animal rights*. Understood both as a zone of protection and a series of positive entitlements, rights flowed to animals because of their capacity to suffer emotional and physical pain. Further, because they understood animals’ rights as intrinsic to animal being, nineteenth-century activists wrote laws that protected all animals irrespective of their property status. These laws were thus bound up with rights for animals in two important ways: they were the product of a sentimental lay-rights discourse with its roots in the abolitionist movement; and, they were clearly *meant* to serve animals themselves rather than human property in animals.

¹ Edward P. Buffett, introduction to *The Rights of Animals: An Oration Delivered at the Commencement of Providence-College, September 7, 1791*, by Herman Daggett (1792; reprint, New York: ASPCA, 1926): xi.

1. RIGHTS OF DUMB ANIMALS!! (SCENES FROM THE PAST)

In 1865, Henry Bergh returned home to New York City from his post as diplomat in Russia. Shortly after his arrival, Bergh delivered a lecture at New York's Clinton Hall entitled "Statistics Relating to the Cruelties Practiced Upon Animals." He drew his audience's attention to the daily suffering of the city's draught horses, its butchered animals, and its harassed dogs and cats. Having aroused the sympathies of his listeners with a plea to exercise God-like mercy and abolish these practices, he asked them to stand and sign a document he had penned, the "Declaration of the Rights of Animals." Many of those present obliged, including the ex-Governor and Mayor, John Hoffman, the Harper brothers of publishing fame, John Jacob Astor, and two of the Roosevelts. Carrying such eminent names with him, Bergh took his appeal to Albany and secured a charter for an organization that would enforce the tenets of his "Declaration." On April 10, 1866 the American Society for the Prevention of Cruelty to Animals (ASPCA) was born.²

Two years later, Bergh received a letter from Boston lawyer George Angell inquiring how long the ASPCA had been in existence and what it had accomplished. Angell, it seemed, was interested in starting a similar society in Massachusetts. Bergh replied that in the two years "since we raised the banner of mercy to God's inferior creatures," he and his fellow workers had made cruelty, once the rule of the city street the exception. Not only had this benefited the animals of the city, but also it had taught men to exercise self-control over "the demons of passion and violence" in their hearts. Bergh closed with a rousing encouragement to Angell to

² John J. Loeper, *Crusade for Kindness: Henry Bergh and the ASPCA* (New York: Atheneum, 1991): 13-19.

“keep your noble purpose to stand forth as a champion of the rights of God’s inferior creatures constantly before you!” even in the face of the inevitable scorn of harder-hearted men.³

Angell took Bergh’s advice and founded the Massachusetts Society for the Prevention of Cruelty to Animals in the very same year, 1868. Believing that the success of his work would depend, ultimately, on a revolution in public sentiment, Angell almost immediately began publishing a monthly journal, *Our Dumb Animals*.⁴ In February of 1869, the magazine approvingly reprinted an article by Harriet Beecher Stowe, originally published in her *Hearth and Home* magazine. Entitled “Rights of Dumb Animals,” the text was accompanied by a grizzly picture of freshly-killed fowl, dripping with blood (Figure 1). Stowe expounded on the picture’s suggestive brutality, calling the hunting of animals a “savage” practice. As an alternative, she pointed to the worthy example of pious Martin Luther, who had claimed that when he rode out on a hunt “his sympathies were so entirely with the poor hunted animal” that he always hoped it would escape its oppressors. We ought, Stowe continued, to be like Luther and consider every animal as a piece of the “Creator’s handiwork,” and we ought *not* assume that we have the right to treat animals as expendable commodities, to be disposed of whenever and however it pleases us. Besides the poor hunted animals of the field and forest, Stowe lamented that man also had such a “very imperfect sense of right and wrong” in regard to domestic animals. Old horses, cats, and dogs, for instance, were routinely sold off or abandoned when they became even slightly inconvenient to their owners. Fortunately, she reported, Societies for the Prevention of Cruelty to Animals were being formed across the country. For “if there be any oppressed class that

³ Henry Bergh, “American Society for the Prevention of Cruelty to Animals—Letter from Mr. Bergh,” *New York Times* (March 22, 1868): 11.

⁴ George T. Angell, *Autobiographical Sketches and Personal Recollections* (Boston: American Humane Education Society, n.d.): 9-14.

ought to have a convention and pass resolutions asserting their share in the general forward movement going on in this world,” then surely it must be the animals, “that hapless class” that “can neither speak, read, nor write.”⁵ The rights of animals, Stowe suggested, would depend upon impressing a sense of duty in man, their only potential ally.

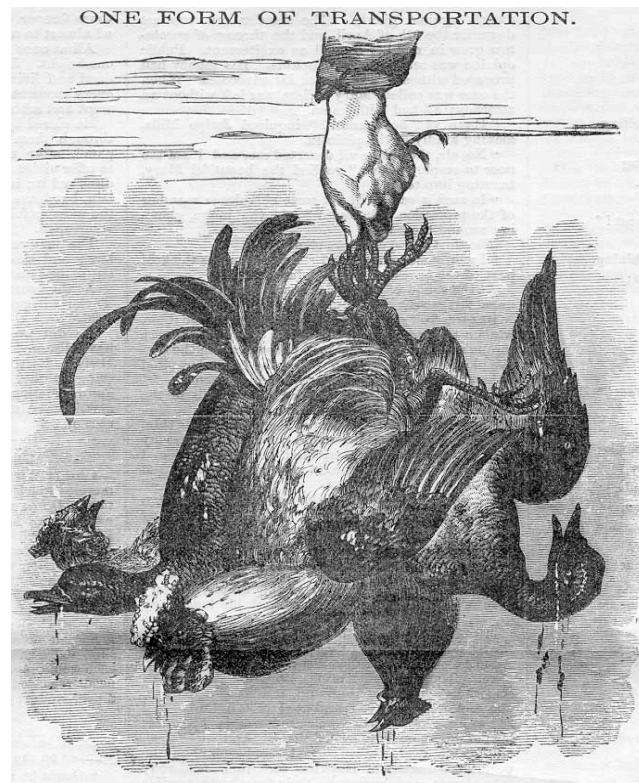


Figure 1: Animal Rights and Human Wrongs

2. RIGHTS OF DUMB ANIMALS?? (ANIMAL WELFARE AND ANIMAL RIGHTS)

However much Bergh, Angell, and Stowe may have thought that the SPCAs of the nineteenth century were establishing animal rights by stamping out cruelty, modern legal theorists and animal activists deny that efforts to prevent and to criminalize cruelty are linked – either in theory or in practice – to the establishment of legal or moral rights for animals. Organizations

⁵ Harriet Beecher Stowe, “Rights of Dumb Animals,” *Our Dumb Animals* 1 (February 1869): 69. Stowe’s article was originally published in *Hearth & Home*.

like the SPCA and the American Humane Society (founded in 1877) are, according to critics like Gary Francione, representative of a “welfare” approach to animals that is historically and philosophically distinct from a “rights” approach. Before the 1970s, all legislation and activism on behalf of animals is said to have been welfare- rather than rights-based.⁶ Under the welfare regime, critics point out, the exploitation of animals has, in the case of factory farming and biomedical research, grown into a major industry, while countless abuses against domestic animals remain unpenalized. At best – and at worst – welfarism has served to regulate rather than to end animal exploitation. The sources of this massive failure to end cruelty or establish rights are, according to most critics, threefold: misguided intentions, ineffectual enforcement mechanisms, and androcentric philosophical underpinnings. Together, these failings render animal welfare a virtually useless strategy for change.

Critics of animal welfarism are fond of pointing out that the real intention of extant anticruelty laws is not so much to protect animals as to regulate the behavior of human beings. What Henry Bergh saw as a secondary benefit to ending cruelty – that it taught men to exercise self-control over “demon passions” – is now taken to be the primary goal of anticruelty legislation.⁷ What bothered the members of the earliest SPCAs, and the judges who enforced protection statutes, was, according to critics, less animal suffering than displays of intemperate violence on the part of animals’ (often) working-class owners and handlers. Designed during the

⁶ Harold D. Guither, *Animal Rights: History and Scope of a Radical Social Movement* (Carbondale and Edwardsville: Southern Illinois University Press, 1998): 1-5; Gary Francione, “Animal Rights and Animal Welfare,” *Rutgers Law Review* 48 (1996): 397-469; Francione, *Animals, Property, and the Law* (Philadelphia: Temple University Press, 1995): 91-114; Helena Silverstein, *Unleashing Rights: Law, Meaning, and the Animal Rights Movement* (Ann Arbor: University of Michigan Press, 1996): 32-34, 231.

⁷ Guither, 1; Francione, *Animals, Property, and the Law*, 123-24; James Turner, *Reckoning with the Beast: Animals, Pain, and Humanity in the Victorian Mind* (Baltimore and London: Johns Hopkins University Press, 1980): 54-59; Thomas G. Kelch, “Toward a Non-Property Status for Animals,” *New York University School of Law Environmental Law Journal* 6 (1998): 540; Jordan Curnutt, *Animals and the Law: A Sourcebook* (Santa Barbara, Denver, and Oxford: ABC Clío, 2001): 28-30; Daniel S. Moretti, *Animal Rights and the Law* (London, Rome, New York: Oceana Publications, 1984): 1.

nineteenth century primarily as instruments of social control, this antique legislation has done little, its critics charge, to stop the institutionalized abuse of animals for the simple reason that it was not meant to serve their interests.

Enacted for what many consider the wrong reasons, anticruelty statutes also come under attack for failing to serve as an effective barrier against human violence toward animals. Not only do these statutes typically exclude entire classes of animals – those used in farming and experimentation – but also the power of enforcement rests solely with public officials (local police and district attorneys) for whom animal abuse is often a low priority. There is, in legal terms, no “private cause of action” in animal protection cases; neither an animal nor a representative of an animal may sue for enforcement of the laws. Animals, in this sense, have no legal standing, which reinforces the claim that it is not their own interest in being free from cruelty, but that of the public in an orderly society, that is represented before the law.⁸ Additionally, their detractors point out, animal cruelty laws ask only that animals be free from “unnecessary” suffering, a standard that does little to protect them from instrumental treatment so long as human consumption, ownership, and use of animals is sanctioned as socially legitimate, or “necessary.”⁹

Critics suggest that these troubles with intention and enforcement can be understood as the result of the “fundamentally different” theories underlying animal welfare and animal

⁸ Francione, “Animal Rights and Animal Welfare,” 426-37; Francione, *Animals, Property, and the Law*, 65-90; Kelch, 540-41; Silverstein, 132-136, 143, 187-89; Cass R. Sunstein, “A Tribute to Kenneth L. Karst: Standing for Animals (With Notes on Animal Rights),” *UCLA Law Review* 47 (2000): 1333-68. Sunstein considers possible remedies for animals’ lack of standing in considerable detail, but does not draw the conclusion, as does Francione, that animals’ current lack of standing reveals the fatal philosophical flaws underlying protection legislation. He contends, rather, that animals currently have considerable rights and that standing may be granted by legislative fiat without a profound revolution in the structure of current law.

⁹ Francione, “Animal Rights and Animal Welfare,” 435-36; Francione, “Animals, Property and Legal Welfarism: ‘Unnecessary Suffering and the ‘Humane’ Treatment of Animals,” *Rutgers Law Review* 46 (1994): 721-770; Kelch, 541.

rights.¹⁰ Welfarists are concerned primarily with alleviating unnecessary suffering, and many believe that incremental measures to alleviate animals' suffering will eventually establish rights for animals. But in the most damning critique of this approach, Gary Francione contends that this is a logical and practical impossibility. Animal welfarists do nothing to challenge, and indeed accept, the dominant structure of human-animal relationships – in which humans are morally and legally superior to animals, whom they may legitimately hold as property. Their approach does not, in other words, challenge Bergh's assumption that animals are "God's inferior creatures." As a result, a strategy based on animal welfare will never be successful in defending animal interests or in establishing animal rights. Because the Anglo-American legal tradition relies on an unbreachable dichotomy between persons and property, so long as animals are defined as property, they will, by definition be regarded as without interests and without rights under the law. Only by attacking the causes of the problem (the identification of animals with property) can its effects (the exploitation of animals) be ended. For this, Francione claims, a consistent theory of rights is necessary: not one that identifies, as do animal welfarists, "virtually any measure thought to lessen animals suffering" with the achievement of rights, but one that is based on an understanding of rights that "precludes the treatment of animals exclusively as means to human ends, or as the *property* of people."¹¹ Such a theory finally would put the horse before the cart; it would – on the basis of a common ability to experience pleasure and pain – establish equality of interests and respect for animals and humans, and would guarantee that animals' interests would not be sacrificed for the benefit of any non-critical human interest.¹² Central to the current argument for animal rights is, then, the notion of

¹⁰ Francione, "Animal Rights and Animal Welfare," 399.

¹¹ Francione, "Animal Rights and Animal Welfare," 398.

¹² Kelch, 537, 582-585; Francione, "Animal Rights and Animal Welfare," 445: "the idea of a right is to recognize an interest that cannot be sacrificed (at least not easily), even though it might benefit others to sacrifice the

sentience.¹³ For it is in humans' and animals' common ability to *feel*, rather than to *reason*, that would-be animal liberators find the basis for our mutual rights.

3. CHAMPION OF THE RIGHTS OF GOD'S INFERIOR CREATURES? (OR, WAS HENRY BERGH LYING?)

Henry Bergh, needless to say, would not recognize this critical account of his life's work or the legacy of the institution that he founded. He, after all, assured George Angell that in just two years the ASPCA had remade the rule on the street, substituting kindness for cruelty. He might be surprised that humans remained so brutal into the twenty-first century, but surely he would not fault America's animal welfare organizations for lack of trying. Much of what contemporary critics say about the animal protection movement is, of course, true – Bergh, Angell, and countless others did sell their movement not just on what it could do for animals, but also on what it could for the human character. Nineteenth-century animal protectionists believed, with William Hogarth, that a man who would cause an animal to suffer would not be long in turning his violence towards his fellow man, and they believed strongly in the reformatory powers of

interest protected by the right. But as long as animals are property, by definition they have *no* interests that are protected in this way.”

¹³ It should be noted that there are two distinct, though often lumped together, strains of contemporary philosophical arguments in favor of granting animals something like moral and legal equality with humans. The first, and most well-known of these, is Peter Singer's utilitarian argument, made most famously in *Animal Liberation* (1975). Here Singer argues not for animal rights (because as a utilitarian he does not believe in rights), but for the equal consideration of animal interests, which minimally include freedom from pain. He bases this on the assumption that there are no morally significant differences between the human and animal ability to feel pleasure and pain. There is, thus, no non-arbitrary way to divide human from animal interests with respect to their interests. Tom Regan, on the other hand, has most famously made the case for animal rights in *The Case for Animal Rights* (1983). Unlike Singer, he is not a utilitarian and holds that if we believe that individuals have inherent value (which he does), then rights can and should function as nearly un-trumpable claims that individuals have against one another. The basis, in Regan's account, for inherent value is that we are beings that are *subjects-of-a-life*; because animals are sentient, they meet this criteria. Though utilitarians and liberals find plenty to argue about with one another in the pages of journals and monographs, for our purposes, it is enough to stress what they have *in common*: the belief that it is animals' sentience that provides the basis for their full inclusion in the moral community.

education to revive the flagging moral sense.¹⁴ Likewise, the vast majority of those involved in early animal protection efforts did not question humans' right to eat or wear animals, or to use animals as beasts of burden.¹⁵ Many saw no incompatibility between their efforts to end animal suffering and their belief in a human-animal hierarchy. As Bergh's words suggest, animals' rights seemed somehow consistent with their status as "inferior creatures." Protectionists based their belief in animal rights on animal sentience and they believed that animals had rights appropriate to their station in the "great chain of being." Hierarchical though they may have been, nineteenth-century animal protectionists did nonetheless think that by ending suffering they were doing *something like* giving animals rights — or at least this is what they said.

There's the rub: how does the historian reconcile what animal protectionists said (that they defended animal rights) with what they did and didn't do (left untouched much animal exploitation; wrote ineffectual laws)? For the case that their contemporary critics make is based almost exclusively on the accretion of actions — on statutes, court cases, and current enforcement norms. Relying on such sources alone, it is easy to say that animal welfare has nothing to do with animal rights, and that the sharp historical and philosophical divide between the two is valid. For the moment, however, I want to suggest that careful attention to the history

¹⁴ British artist William Hogarth (1697-1764) produced his *Four Stages of Cruelty* in 1751. The Stages consists of four scenes in which a man progresses from harming a dog to murdering a woman. Nineteenth-century humane literature often referred to Hogarth and/or reprinted the *Stages*. See, for instance: Henry Crow, *Zoophilos, or Considerations on the Moral Treatment of Inferior Animals* (London: Printed for the Author by J. Seeley, 1819): 82; *The Spirit of Humanity and Essence of Morality: Extracted from the Productions of the Enlightened and Benevolent of Various Ages and Climes. Illustrated with Engravings* (Albany, NY: O. Steele and D. M'Kercher, 1835): 155-169; Henry Bergh, *An Address by Henry Bergh, esq., President of the American Society for the Prevention of Cruelty to Animals, Delivered in the Great Hall of the Putnam County Agricultural Society; on the occasion of the late fair, held at Carmel, on the 19th of September, 1867* (New York: ASPCA, 1868): 3-4; Frederic Rowland Marvin, *Christ Among the Cattle: A Sermon Preached in the First Congregational Church, Portland, Oregon. A New and Revised Edition* (Portland: Oregon Humane Society, 1885): 9.

¹⁵ There have, of course, been periodic outbursts of vegetarianism throughout American history. Not all of these, however, have been motivated by a concern for animals. For antebellum vegetarianism as a path to personal health and salvation (but not to animal rights), see Robert Abzug, *Cosmos Crumbling: American Reform and the Religious Imagination* (New York and Oxford: Oxford University Press, 1994): 163-182. In the postbellum animal protection movement, even the antivivisectionists, the most radical faction with the least instrumental view of animals, had no stand on eating or wearing animals.

and language of the early years of the animal protection movement reveals significant rhetorical and philosophical connections between this past and the present animal rights movement. Far from affirming traditional Western representations of animals, early American animal protectionists launched a vigorous campaign to convince their fellow citizens that animals were sentient, intelligent beings that shared important qualities with humans. The gulf between protectionists' words and deeds is real indeed, but it is only amplified and distorted by contemporary scholarship that is content to stand on one side of another, equally important, gulf — that separating law from language and the present from the past.

4. “THE SAME SENTIENT APPARATUS” (AN EARLIER LANGUAGE OF RIGHTS)

In drawing on the rights-infused language of American liberalism, Bergh, Angell, and Stowe were typical of the animal protection movement that swept across the urban centers of the Northeast in the years following the Civil War. Frequently, the reformers of the newly-founded Societies for the Protection of Animals (SPCAs) voiced their concerns in the language and logic of the dominant American political, ideological, and religious traditions. Animals, they asserted, have rights just as men do—we are bound by this to respect them! Animals, they cried, have minds and souls just as men do—they are equally creatures of God! At the same time, Stowe's focus on the suffering of animals, on animal helplessness, and on the necessity of human sympathy with that suffering was also typical. For in addition to animals' rights, reformers focused on animals' feelings. The men and women of the SPCAs imported the techniques of the sentimental appeal that Stowe herself had perfected some years earlier in *Uncle Tom's Cabin*, encouraging humans to recognize animal suffering and experience it as their own. With these strategies, humanitarians aimed to combat the widely held belief that animals were

fundamentally different from humans, a belief that shunted animals into a separate moral, and thus legal, universe.

Most often, the men and women of the burgeoning animal protection movement chose one of two tools. On the one hand, countless contributors to publications like *Our Dumb Animals* labored to show that animals, like humans, were reasoning beings possessed of a soul. On the other hand, they made the slightly different claim that animals were, also like humans, sentient, feeling beings. Though they aimed toward the same goal – better treatment for animals – these arguments grounded the claim to rights differently, the one in reason and the other in feeling. Freely mixing the language of traditional liberalism with that of sentimentalism, animal welfare reformers groped toward a newer, more expansive vision of the rights-bearing community that would include, as had Stowe, the helpless and dependent. Combining the language of rights, reason, and independence with that of feeling, suffering, and dependence, reformers hoped that their hybrid discourse would one day lead to a world in which all might “respect the right of harmless things to life, liberty and the pursuit of happiness.”¹⁶

A. Reasonable Creatures

Reformers began their push towards a kinder world by adopting the language of classical liberalism to attack the philosophical foundation of human dominion – the claim that man alone possessed reason and an immortal soul. To do so, they had to combat the two strands of thought that posed significant barriers to the notion of animal rights: the notion, most famously expressed by Descartes, that animals were soulless, irrational machines; and, the Lockean assertion that rights depended on reason and independence.

¹⁶ “Extract from a Letter Received,” *Our Dumb Animals* 1 (July 1868): 12.

Descartes, in his effort to conclusively prove that humans have an immortal soul given by God, rested much of his argument on the difference between human and animal life. On many levels, he admitted, we are like the creatures of the forest. Man and beast alike have material bodies and senses that act on the body; men too, both are subject to the forces of those “animal spirits,” the passions. Man’s experience, however, is not circumscribed by sensory input. For in addition to his senses, man has the gift of reason, which Descartes identified with the ability to obtain knowledge, to adapt to new situations, to communicate, and to produce novel ideas. Animals, by contrast, are like machines that are operated by sensory stimuli. “It is nature that acts in them,” Descartes argued, “according to the disposition of their organs.” Against the notion that animals’ often flawless functioning might indicate a conscious inner mechanic, Descartes explained that mere mechanical acumen was no guarantor of consciousness, for animals are not unlike “a clock made only of wheels and springs [that] can count the hours and measure time more accurately than we can with all our powers of reflective deliberation.”¹⁷ Man’s reflective powers, or reason, proved that human beings possess a God-given soul. Descartes contended that reason could not be produced by the body – it had therefore “expressly to be created” by God; and reason, since it was not a property of the body, must be a property of the soul. The “rational soul,” Descartes contended, “is of a nature entirely independent of the body and, consequently . . . is not subject to die with it.”¹⁸ In one fell swoop, Descartes granted to man, and denied to animals, the linked attributes of reason, soul, and immortality. Men were mind, animals matter.

¹⁷ René Descartes, *Discourse on Method and Meditations on First Philosophy*, translated by Donald A. Cress, 3d ed. (Indianapolis and Cambridge: Hackett Publishing Company 1993): 32-33. Descartes argues that animals have no reason, no language, and thus no soul; they are fundamentally different from man. Whatever animals are able to accomplish should be understood as the product of nature, or body, rather than mind: For the influence of Cartesian dualism on the question of animal rights, see Gary L. Francione, *Animals, Property, and the Law* (Philadelphia: Temple University Press, 1995): 8-10.

¹⁸ Descartes, 33-34.

Descartes shadow was a long one. As one writer in *Our Dumb Animals* phrased it, “The notion of Des Cartes [sic], that animals are mere machines, has done much, doubtless, to reconcile philosophers and theologians to the heartless tyranny of man over dumb animals.”¹⁹ So long as animals remained fixed in the dominant political, legal, and philosophical traditions as unreasoning automatons they could be considered both as fundamentally different from man and as his instrument – the horse entitled to no more consideration than the cart to which it was hitched. The men and women who banded together in the first SPCAs knew that they had to prove that, unlike “a piece of mechanism,” an animal could think.²⁰ For ontological status was tied, implicitly and explicitly, to moral and legal status.

The importance of reason was further elevated by a political tradition that identified man’s reason as the basis for his divinely-bestowed rights. In what is perhaps the foundational text of classical liberalism, the *Second Treatise of Government*, John Locke grounded human rights in human reason. Mankind, Locke imagined, began life in a state of nature in which all men were free, equal, and independent, at perfect liberty from “any Superior Power on Earth.”²¹ In this pre-political state, men governed themselves according to the law of nature, which Locke identified as “the Common Law of Reason,” and which taught that each man had a God-given right to his “Life, Health, Liberty, or Possessions.”²² Inevitably, Locke believed, some men would choose to violate the natural rights of others for personal gain. Rather than wage an individual war against each usurper, men would band together for security. When men chose to join themselves in a voluntary social compact, they alienated some of their natural liberty and

¹⁹ Epes Sargent, “What Epes Sargent Says,” *Our Dumb Animals* 1 (July 1868): 14.

²⁰ “Are Animals Machines?” *Our Dumb Animals* 6 (January 1874): 64.

²¹ John Locke, *Second Treatise of Government: An Essay Concerning the True Original, Extent, and End of Civil Government*, in *Two Treatises of Government*, edited with an introduction and notes by Peter Laslett (Cambridge: Cambridge University Press, 1988), 283. My discussion of Locke’s view of reason and rights in the state of nature is generally drawn from Chapter II of the *Second Treatise*, sections 4 – 15 of the text.

²² Locke, 279, 271.

gave it over to the commonweal for mutual aid and protection. They retained, however, that share of liberty not specifically regulated by the laws of the community, and their freedom continued to depend on reason. "The *Freedom* then of Man and Liberty of acting according to his own Will," Locke wrote of men in civil society, "is *grounded on* his having *Reason*, which is able to instruct him in that Law he is to govern himself by." Those who could never obtain reason – "*Lunaticks and Ideots*" were Locke's examples – could never have any rights, for they would never be capable of self-government, or independence.²³ Reason, then, formed the basis of man's independence, his rights, and his understanding of the law in both the state of nature and civil society.

Like Descartes, Locke had no doubt that man's rationality made him fundamentally separate from, and superior to, animals. Unlike other human beings, animals could be treated as means to an end. As freely appropriable objects, Locke used animals to exemplify his theory of human property. The wild hare, he explained, belonged to no one. Once hunted and captured by a man, however, the hare was his since he had "imploy'd so much *labour*" to remove the hare "from the state of Nature" and thus, through his labor, "hath *begun a Property*."²⁴ In addition to using animals as examples of primitive property, Locke frequently used animals to illustrate the limits of community (and the social contract) by likening violent, irrational men to animals, with whom one could never reason. A man who abandoned the rule of reason and used force against

²³ Locke, 308. Italics in original.

²⁴ Locke, 289-290. Italics in original. Locke does not speak to the question of animal intelligence in such direct terms in the *Second Treatise*, though as my examples will demonstrate, he clearly operates on the assumption of animal irrationality. His explicit thoughts on the differences between humans and animals are developed in his *Essay Concerning Human Understanding*. See especially his discussion of human language, Book III, Chapter I [John Locke, *Essay Concerning Human Understanding* (Chicago: Henry Regenery Company, 1956)]. Like Descartes, Locke shares the belief that language is an expression of the rational soul; it is the product of an inner dialogue and represents man's ability to understand the world in terms of ideas and abstractions. For a discussion of the importance of language to the man-animal binary in the philosophical heritage of which Descartes and Locke both form a part, see: R.W. Serjeantson, "The Passions and Animal Language, 1540-1700," *Journal of the History of Ideas* 62 (2001): 425-444. Most Western philosophers conceded that animals could communicate with one another, but believed that they were only capable of experiencing, and thus communicating, the reflexive passions of the body.

another man became, in Locke's mind, like "any savage ravenous Beast," an alien to his fellow man.²⁵ Force, rather than reason, was the rule of the beasts, so any man who committed violence might be destroyed by his victim "for the same Reason, that he may kill a *Wolf* or a *Lyon*; because such Men are not under the ties of the Common Law of Reason."²⁶ Men who abandoned reason became, like animals, outside the community of the social contract. And in Locke's world, to be outside the terms of the covenant of reason was to be without rights, in a state as "wretched" as that of the "Brutes."²⁷

From the beginning of the first European settlement, American laws reflected, and even strengthened, Locke's philosophical fault lines. Denied membership in the community of rights-bearers, animals were protected not on the basis of their natural rights, but instead because of their market worth. To the extent that animals were the subject of any colonial or state legislation, it was as chattel, protected from violation in the same manner as any other form of personal property. As property, animals were without any legally recognized interests of their own.²⁸ The exclusion of animals from civil society was, moreover, not just an artifact of British common law traditions, but was heightened by the form of liberalism crystallized in the

²⁵ Locke, 389.

²⁶ Locke, 279.

²⁷ Locke, 309. Locke did contend that it was wrong to abuse animals, but his objection to cruelty was based on his sense that cruelty to animals would eventually result in a hardened heart capable of violence toward man. This is also true of Kant.

²⁸ Francione, pp. 33-49. Locke in fact considered animals as examples of the first forms of human property. All of nature, including the beasts of the field and forest, was given by God to all of mankind in common. Any man who joined his labor with a part of nature, by hunting and killing a deer, for instance, made that part of nature his property. In settling disputes over the ownership of non-domestic animals, American courts have relied on Locke's labor-based definition of property, thanks largely to its transmigration through the *Commentaries* of William Blackstone. See Francione, pp. 41-42.

Some do argue that the common law and the Massachusetts Bay Colony's 1641 Body of Liberties, in particular, did acknowledge animal interests, or rights, because cruelty to some animals was, under certain circumstances, made punishable by law. [For such arguments, see: E.S. Leavitt et. al., *Animals and their legal rights: a survey of American laws from 1641 to 1968* (Washington, D.C.: Animal Welfare Institute: 1968)]. Cruelty to animals was punishable under the common law, but the first statutory prohibition of cruelty was not enacted until 1828 in New York State. Between 1828 and 1921, all states passed some minimal anticruelty statutes, but well over half of these were passed after 1865 [Margaret C. Jasper, *Animal Rights Law* (Dobbs Ferry, NY: Oceana Publications, 1997): 5; Leavitt et. al., 17].

American Revolution. Individual independence, long important to Locke and other liberals, became the most important criterion for citizenship in the new republic. American legal and political structures defined dependency in economic terms and denied dependents any inclusion in civil society—except through their “virtual” representation by the head of the household of which they formed a part.²⁹ As a species of property, animals clearly failed to qualify as independent beings worthy of rights and capable of citizenship.

At the foundation of this interwoven social, philosophical, and legal framework stood reason. It was this capacity that was the means of man’s knowledge, the content of his soul, the proof of his immortality, and the foundation of his inalienable rights. It is within this context that the pages of America’s oldest and longest-running animal protection journal, *Our Dumb Animals*, featured anecdotes, letters, and stories that demonstrated the everyday reasoning skills of the “brute creation.” Many of these were warm and humorous communiqués, as in the tale illustrating the “Cunning of a Cat.” A certain feline denizen of Paris, it seemed, had figured out how to ring the doorbell at the monastery where it lived, and when a friar came to answer the door, the cat would dart in to steal the distracted man’s dinner. This trick, the tale’s author concluded, could be explained by no “other hypothesis” than that animals often seem “capable of the process of reasoning.”³⁰ Likewise, *Anecdotes of Animals* reported an antic that “could not have been thought of but by an animal of much intelligence.”³¹ The elephant who performed at

²⁹ Joan Gunderson, “Independence, Citizenship, and the American Revolution,” *Signs* 13 (1987): 59-77. Even when unpropertied white men received the right to vote the importance of independence to citizenship was not undermined; instead, independence was redefined as self-ownership. When women’s rights activists began to argue for women’s rights they relied on this equation, enforcing the equation of freedom and independence with self-ownership and obscuring the reality of human dependency. These trends only accelerated after the Civil War with the sanctification of the doctrine of freedom of contract. For women’s rights activists both before and after the Civil War, see: Elizabeth Clark, “Matrimonial Bonds: Slavery and Divorce in Nineteenth-Century America,” *Law and History Review* 8 (1990): 25-54; Amy Dru Stanley, *Conjugal Bonds and Wage Labor: Rights of Contract in the Age of Emancipation*, *Journal of American History* 75 (1988): 471-500.

³⁰ “Cunning of a Cat,” *Our Dumb Animals* 1 (July 1868): 14.

³¹ “The Elephant,” *Our Dumb Animals* 1 (February 1869): 68.

the *Jardin des Plantes* was fond of hiding underwater until an audience gathered to see him, at which point he would lift his trunk and spray the unsuspecting onlookers, dousing them in a cold shower. More than merely funny, animals who contrived to play jokes on humans or to outwit them for food demonstrated to animal protectionists that certain mental functions, such as the ability to connect cause and effect, were not the province of man alone.

While anecdotes of clever animals communicated assumptions about animal reason in light-hearted and often implicit ways, still others approached the task with the solemnity of philosophy and natural science. The liberal Christian magazine *Commonwealth* summarized a lecture by a Mr. Higginson that “aimed to state in popular form some of the intellectual qualities of the brute creation.” Recent scientific investigations, Higginson explained to his audience, had begun to shed light on animals’ ability to communicate, adapt, make progress, invent, and generalize. While science had not yet been able to determine the precise relation between the “highest animal and the lowest man,” these preliminary findings certainly warranted a “more generous treatment of the animal world.”³² Writing a few years later, an anonymous author agreed with much of what Higginson had reported. Instinct, he began, guides animals to do things necessary for survival “without reflection, and without any ulterior object in view.” When guided by instinct, animals behave not unlike Descartes’ soulless machines, responding to stimuli they do not understand or control. By contrast, reason “implies the power of deducing certain facts from given premises, and basing action thereupon, with a specific end in view.” To show that animals did in fact possess such capacities of foresight and logic, the author considered the case of his own dog. Each night before going to bed, he explained, he put on his slippers. One night, instead of doing this at the appointed time, the author sat out on the couch reading.

³² “Thinking Animals, Brief Report of a Lecture by Ccl. Higginson,” *Our Dumb Animals* 4 (December 1871): 154.

His dog, deciding it was time for bed and tired of waiting, went into the bedroom and fetched the man's slippers, laying them at his feet. Having connected the slippers with the act of going to bed, the dog surmised that the appearance of the slippers could cause the going-to-bed to happen. What else to call this, the author concluded, besides logic?³³

Other humanitarian authors presented the capacity to learn as evidence of reason. One correspondent wrote that birds' behaviors, long attributed to mere instinct, were actually the product of education – a wren raised with a robin would sing the robin's song and build the robin's nest. The issue of nest-building similarly took center stage in ornithologist T.M. Brewer's revealing essay, "Can a Bird Reason?" Many schoolbooks, Brewer disapprovingly noted, taught children that birds were obviously not capable of reasoning since they never appeared to improve their nests. The process of improvement, such texts implied, belongs to man, the shaper of nature and builder of complex civilizations. Brewer objected, claiming that America's birds "have undergone or are now undergoing complete change of habit since this country was settled by the white man. They have, all of them, been taught to avail themselves of the society, protection and aid of man, and they all now build their nests in a manner very different from, and in many respects greatly superior to, that in which they were enabled to build before the dwellings of civilization appeared on this continent." The swallow, for one, now places his nest into the sides and ledges of buildings, thereby securing greater protection from the elements, and has also added a sort of side porch to the nest, on which the father sits while watching his wife and children. Clearly, this bird had been "educated into a new life by contact with civilized man."³⁴ In a dizzying chain of associations, Brewer equated instinct with primitive, unimproved nature (and the continent's aboriginal inhabitants), and reason with

³³ S, "Is Reason Distinctive of Man?" *Our Dumb Animals* 5 (May 1873): 301.

³⁴ T.M. Brewer, "Can a Bird Reason?" *Our Dumb Animals* 4 (July 1871): 114.

European culture and the unfolding of history. By being able to learn, adapt, and improve, birds had flown straight from nature into history, soaring upward with civilization's progress, just as Higginson had predicted.

Because animal welfare reformers operated within a Cartesian religious and philosophical heritage, proving that animals possessed reason entailed, for many, a further claim that animals were, like humans, immortal. For if animals could transcend mere matter and instinct through the use of higher mental powers, or mind, then surely they must have a soul. Writing in the *Springfield Republican*, Charles Merriam laid out several common arguments in favor of an animal afterlife. The science of Charles Darwin, he pointed out, had recently proved "that many of the lower animals are possessed of a great degree of intelligence. They reason, reflect; their minds act by the law of association" and they show "progress in knowledge." How then, can we confidently draw the line between mortal and immortal along the same axis as that dividing man from beast? To do so, reason, or mind could no longer be the criterion for soul. "What, on the other hand, of those who die in infancy," asked Merriam to drive his point home, or "of the idiot, imbecile, and the lowest types of savage life?" If it be granted that all these are immortal, then so too must animals be. "If immortality is granted to all," idiots, infants, and animals alike, then "every difficulty is solved."³⁵ If the first link in the chain connecting reason, soul, and immortality proved to belong to the beasts, who could say that the others would remain for man alone?

To these arguments from the shared capacities of humans and animals, Merriam added an argument from divine design. Animals, he reckoned, existed in so many complex and intricate

³⁵ Charles Merriam, "The Immortality of Animals," *Our Dumb Animals* 7 (July 1874): 9-10. Descartes, naturally, had an answer for this problem. He claimed that the fact that even the lowest forms of human life managed to invent means of communicating with one another "attests not merely to the fact that animals have less reason than men but that they have none at all." [Descartes, *Discourse on Method*, 33].

forms, that it seemed unlikely that God would “reveal his skill” in their creation unless he intended for them to live on after death. Likewise, God had created an unbroken chain of being seamlessly connecting the lowest animal with the highest, resulting in a harmonious and balanced universe. To sever this chain in the afterlife would be to introduce disharmony, to shatter the careful balance.³⁶ Surely this could not be part of the plan of a God whose love of right and justice was manifested in the aesthetic terms of beauty and harmony. On this point, many other animal lovers agreed with Merriam. Noteworthy among them was the Harvard biologist Louis Aggasiz whose study of nature had led him to a deep respect for animals not only as reasonable creatures, but also as “instances of incomprehensibly complex and beautiful organization” that revealed their maker’s hand. “God Almighty himself has created these beings,” he reported, “and I cannot doubt their immortality any more than I doubt of my own.”³⁷ Just as biological investigation supported claims about animal intelligence, so too scientific findings were invoked to uphold religious claims that served worldly, and reformist, ends.

Far from being just an abstract theological debate, the issue of animal immortality had contemporary ethical consequences. “If these lower animal races are, not improbably, destined with ourselves to an immortal life hereafter,” stated Charles Merriam, “this should invest them with a new dignity in our eyes, lead us to treat them more humanely, and to regard them, as indeed they are, as marvelous illustrations of the divine wisdom, skill, beneficence and power.”³⁸

A donor to the Massachusetts SPCA expressed similar ideas in a letter entitled “Animals’ Right

³⁶ Ibid, 10.

³⁷ “Aggasiz’s Belief in the Immortality of Animals,” *Our Dumb Animals* 6 (February 1874): 71. Interestingly, Aggasiz was one of the country’s most prominent opponents of Darwinian theory, this in spite of the fact that most, whether they liked Darwin or not, conceded that Darwin’s theory entailed a much closer connection between man and animal than hitherto recognized. Aggasiz clung to the doctrine of special creation (and polygenesis), which held that God had intentionally created each variety of animal on the planet. This too, held rather profound ethical consequences for those that believed that God loved all his creatures equally. See: Cynthia Eagle Russett, *Darwin in America: the Intellectual Response*, 1865-1912 (San Francisco: W. H. Freeman and Company, 1976): 9-10.

³⁸ Merriam, 10.

to Enjoyment.” “Infinite Beneficence,” as he called God, “never could have endowed matter with a sense of feeling except for the purposes of enjoyment” by every being, including every animal. Thus, reasoned the supporter, God must have meant for animals to enjoy their lives, or he would not have made them sentient.³⁹

God’s beneficence was the centerpiece of another point in favor of animal immortality – the doctrine of compensation – which held that earthly suffering would be rewarded in heaven. Many animal protectionists found it hard to believe that a loving and just God could allow animals to suffer such misery during life without providing the solace of an afterlife. “If animals have no future,” wrote Mary Somerville, “the existence of many is most wretched; multitudes are starved, cruelly beaten and loaded during life; many die under a barbarous vivisection. I cannot believe that any creature was created for uncompensated misery; it would be contrary to the attributes of God’s mercy and justice.”⁴⁰ Somerville noted at the end of her piece that she was glad to find that she was not the only one who believed in animals’ souls, and indeed, she shared with others her commitment to just, if heavenly, rewards. “The doctrine of immortality is deeply mingled with that of future retribution,” wrote George Fleming in defense of his favorite creature, the horse. Because the horse suffers most of all, “if any animal deserves a tranquil immortality – a glorious pasturage traversed by never-ceasing streams of water – in the compensation of days, weeks, nay, years of agony, surely it must be the horse.”⁴¹ Unlike Merriam and Aggasiz, such arguments sidestepped the intrinsic qualities of animals and appealed to their worldly condition – in light of God’s goodness – as evidence of an afterlife. Ironically, their pleas for better treatment would, if realized, undermine the very suffering that grounded their theological-moral claim to animal immortality in the first place. Nevertheless, whether

³⁹ “Animals’ Right to Enjoyment,” *Our Dumb Animals* 7 (April 1875): 84.

⁴⁰ Mary Somerville, “Gems from Mary Somerville,” *Our Dumb Animals* 6 (March 1874): 79.

⁴¹ George Fleming, “Immortality of the Horse,” *Our Dumb Animals* 2 (January 1870): 77.

based on God's beneficence or on animals' demonstrated capacity, reformers used the linked attributes of reason and immortality to show that animals were comprised of mind as well as matter.

B. Suffering Creatures

In addition to providing possible evidence that animals *deserved* immortality, suffering took pride of place in a second strategy deployed by animal protectionists. Whereas arguing that animals were reasonable and immortal creatures engaged long-standing elements of the American and European liberal tradition, when humanitarians drew attention to animals' capacity for suffering they tapped into more recent developments within Anglo-American liberalism and they contributed to a slow erosion of the importance of capacities like reason, independence, and immortality to liberalism. They helped to shift the ground underneath the rights-bearing community by arguing that rights might also rest on capacities such as feeling and sentience, and that, on this basis, rights might also extend to the weak, the dependent, and the helpless. To lunatics, idiots, and beasts alike.

For the conceptual and cultural links between suffering, sentience, and rights, animal protectionists had American abolitionists to thank. During the years leading up to the Civil War, abolitionists began to ground their claims for slaves' rights less in the reasoning capacities of slaves and more in their capacity for suffering. Historian Elizabeth Clark, for instance, identifies a genre of "cruelty narratives," which relied on the "trope of the suffering slave," as a critical component of abolitionist strategy.⁴² Publications relating the "gruesome tribulations" of the slave body, began to appear in the 1830s; by 1838, Lydia Maria Child had published her

⁴² Elizabeth Clark, "'The Sacred Rights of the Weak': Pain, Sympathy, and the Culture of Individual Rights in Antebellum America," *The Journal of American History* 82 (1995): 463-493; 467, 463.

Authentic Anecdotes of American Slavery and the next year Theodore Dwight Weld attempted to arouse the country's sleeping moral sense with *American Slavery As It Is: Testimony of a Thousand Witnesses*.⁴³ The 1840s and 1850s witnessed modifications in the genre of such cruelty narratives, with the rise of slave autobiographies and sentimental fiction such as *Uncle Tom's Cabin*, but certain stock scenes of unprovoked whipping, separation of families and individual confinement persisted, apparently indispensable to any effort to tarnish the peculiar institution.⁴⁴

By insisting that slaves suffered, abolitionists relied on the body and the emotions rather than the mind as the grounding for the equality of master and slave.⁴⁵ In Cartesian terms, they suggested that matter, as much as mind, was a source of natural rights. Abolitionists were, by the same token, using the emphasis on empathy and suffering within contemporary liberal, evangelical Protestantism to communicate the "notions of individual integrity critical to liberal political theory."⁴⁶ As American ministers during the first half of the nineteenth century replaced the powerful and awesome Calvinist God with a "maternal and affective" one, they reinterpreted Jesus' sacrifice as an expression of love for man, not a repudiation of sin, and de-emphasized a painful and morally wrenching conversion experience in favor of a doctrine of nearly universal salvation and a gradual, but inevitable growth toward God. Liberal ministers also re-interpreted the meaning and value of suffering, no longer seeing it as part of divine retribution, but as part of "well-doing" in Christ-like fashion, the suffering of the innocent for the guilty. Anguish thus became evidence of a transformative power, and even of innocence, rather than a sign of human

⁴³ Clark, 467.

⁴⁴ Clark, 468-70.

⁴⁵ See also: Karen Sánchez-Eppler, *Touching Liberty: Abolition, Feminism, and the Politics of the Body* (Berkeley: University of California Press, 1993).

⁴⁶ Clark, find quote page #.

weakness and folly.⁴⁷ As pain and suffering lost their didactic and retributive significance, the importance of feeling others' pain was heightened. In the evangelical framework, feelings were elevated to the apotheosis of religious experience and empathy became the glue holding men and women together in a common life.⁴⁸ The abolitionists' focus on the pains of body and soul drew on the spread of a liberalized and evangelical branch of Christianity to create a moral calculus in which emotions, aroused through direct or fantastic contact with suffering, parsed right from wrong.

Antislavery discourse, in turn, formed part of what Clark calls a lay rights-tradition that equated moral right with political and civil rights, and that grounded an expanded vision of individual rights and government intervention in sentient experience. The significance of this lay conception is not just that it served as a viable argument for the extension of rights to new groups, but also that its vision of rights went far beyond the essentially negative liberties guaranteed by the Constitution. Empathy, the ability to imagine that someone else is like oneself, Clark argues, had been critical to the spread of rights; the image of the suffering slave helped to forge new moral and legal norms such as the right to bodily integrity and the right to be free from avoidable pain.⁴⁹ Abolitionists thus provided a model congruent with the sentimental

⁴⁷ Ann Douglas, *The Feminization of American Culture*,

⁴⁸ Clark, 476. David Reynolds discusses how the evangelical emphasis on spectatorship, on moral reform through exposure to immoral practices and their resultant evils, could easily lead into what he calls "immoral didacticism" or "subversive reform." The emotionalism of evangelical reform literature meant that the line between the didactic and the sensational was easily blurred. See, David Reynolds, *Beneath the American Renaissance: The Subversive Imagination in the Age of Emerson and Melville* (Cambridge, Mass. and London: Harvard University Press, 1988), Chapter 2. Karen Halttunen also describes how the humanitarian imperative to expose pain could slide into what she calls a "pornography of pain": "The eighteenth-century cult of sensibility had proclaimed pain unacceptable, but simultaneously discovered it to be alluring" (322). See her "Humanitarianism and the Pornography of Pain in Anglo-American Culture," *American Historical Review* 100 (1995), 303-334.

⁴⁹ Clark, 487-92. For the classic distinction between negative and positive liberties, see Isaiah Berlin, "Two Concepts of Liberty," in *Four Essays on Liberty* (Oxford: Oxford University Press, 1969): 118-172.

humanitarian assumptions of animal protectionists: to prove your object worthy of attention, prove that it feels pain.⁵⁰ To prove rights, in other words, one need only establish wrongs.

Many animal welfare reformers saw themselves as the inheritors of the abolitionist cause, claiming that the Civil War had awakened the nation's conscience to the "rights of the defenseless," and that rescuing the "lower races" of animals was simply the logical outcome of the battles that had so recently torn the country in two.⁵¹ To press the case, reformers circulated anecdotes about Abe Lincoln's boyhood kindness to animals, certain that his early moral logic was identical with the impulse that had made him the great slave liberator. One writer saw clearly that "we owe the Emancipation Act, first of all under God, to Abraham Lincoln's early pity for [animals]. The same tender heart felt to the quick the injuries he afterward saw inflicted upon the slaves at New Orleans; and in the fullness of his mature kindness, the boy, who began by protecting a worm, ended by rescuing three millions of his fellow-man from bondage."⁵² Writers likewise compared the railroad transport of sheep, pigs, and cows across the country to "the 'middle passage,' as full of horrors to [these animals] as it was to the negro slave," and, when feeling besieged, reminded each other that because their work was "akin in magnitude to the overthrow of slavery," they should not find it surprising that "the great mass of people" considered them nothing but "sentimentalists, or 'long-haired come-outers,' as they looked upon

⁵⁰ Abolitionists provided not just rhetorical models for later humanitarians, but also organizational ones. Their methods of organization and publicity, such as tract circulation and speaking on the lecture circuit, were explicitly adopted by animal protectionists. See Richard D. French, *Antivivisection and Medical Science in Victorian Society* (Princeton and London: Princeton University Press, 1975), 228.

⁵¹ "Prevention of Cruelty to Children," *New York Times*, December 29, 1874, p. 2.; Sydney Coleman, *Humane Society Leaders*, 33. Contemporary animal rights activists often also make this comparison between the status of slaves and that of animals. See especially: Marjorie Spiegel, *The Dreaded Comparison: Human and Animal Slavery* (Philadelphia: New Society Publishers, 1988).

⁵² [Anecdote reprinted from the *Church Union*], *Our Dumb Animals* 8 (1875): 6; G.L.C., "Mr. Chaney's Words on Cruelty," *The Ark* (March 2, 1875): 1.

the abolitionists in the days of slavery.”⁵³ Even after more than thirty years of organized effort on behalf of animals, the founder of Boston’s Animal Rescue League complained that “ I cannot help comparing the attitude of mankind toward the lower animals with that of the majority of men and women fifty years ago toward the negro, before the civilized world awoke to the true knowledge and realization of the cruelty of slavery.” That is, she protested, an “astonishing” number of men and women still “regard the lower animals as less than machines,” as a convenient if expendable means to an end.⁵⁴

In the early days of animal protection, just following the Civil War, some activists did indeed move from abolition to animal protection, but more important was the way in which animal advocates imported the rhetoric and the cultural symbols of abolitionist discourse nearly wholesale into their work. Leaders such as Henry Bergh repeatedly stressed the helplessness of animals, their physical suffering, and their capacity to experience pain. “The sufferings of the lower animals are really felt by them,” he explained to the men of the Putman County Agricultural Society. “Theirs is the unequivocal physiognomy of pain,” for they are incapable of dissembling as man is, and do not pretend to sickness and lameness except when it really affects them. Even to the untrained eye, Bergh went on, their suffering is visible, for they “give forth the very indications of agony that we do,” a fact verified by the very vivisectionists who cut them open in the name of science. “When the scalpel of the physiologist lays open the secret recesses of their system,” he said, “there stands forth to view the same sentient apparatus, furnished with the same conductors for the transmission of feeling, to every pore upon the surface.”⁵⁵

⁵³ “Cruelty to Animals in their Lives and at their Deaths,” *Our Dumb Animals* 1 (July 1868): 10; Speech of Edwin Lee Brown, President of the American Humane Association, in American Humane Association, *Doings of the Third Annual Meeting of the American Humane Association*, held at Chicago, Ill., October 8, 9, and 10, 1879 (Boston: Wright & Potter Printing, 1879): 7.

⁵⁴ Animal Rescue League, *First Annual Report* (Boston: Animal Rescue League, 1900): 13, 6.

⁵⁵ Henry Bergh, “Extracts from Address of President Bergh, of New York,” *Our Dumb Animals* 1 (June 1868): 6. Bergh is here actually plagiarizing from another pamphlet at the time. For extracts from the original text,

That pain would be inherent evidence of wrong, as Bergh and others assumed that it was, depended on its medical and theological revaluation. The physicians in the developing field of anesthetics endeavored to transform physical pain from a religious to a medical experience; they suggested that far from being an inevitable fact of life in an impermanent body, or a just trial at the hand of a stern God, pain was a "treatable pathology," and avoidable inconvenience.⁵⁶ In an address before animal welfare reformers, the Reverend Phillips Brooks reflected these developments when he asserted that "pain is an evil which was never meant to exist, and which is a sign of disorder."⁵⁷ At the same time, the same scientists interested in treating pain continued to assume, as had Descartes, that not all creatures suffered equally. Vulnerability to pain was, many medical men believed, a benchmark distinguishing the relatively impervious, the brutish and animalistic (such as Africans, Indians and the criminally inclined), from the more highly developed and civilized (such as whites, women, and the wealthy).⁵⁸ Thus, even as suffering lost its religious import and its medical inevitability, the *ability to suffer* was reinforced as a hallmark of humanity, a marker of one's place in the great chain of being. By emphasizing animals' capacity for suffering, reformers pushed them ever upward in the chain's hierarchy.

see Rev. Dr. Chalmers in *Kindness to Animals, Illustrated by Stories and Anecdotes* (London and Edinburgh: W & R Chambers, 1877): 180-181.

⁵⁶ Quote is from Clark, 472-3. For a fuller treatment of changed medical attitudes toward pain, see Martin Pernick, *A Calculus of Suffering: Pain, Professionalism, and Anesthesia in Nineteenth-Century America* (New York: Columbia University Press, 1985), 77-82. Of course, as Protestants remained split throughout the nineteenth century (and, indeed, up to our own day) over questions like predestination and the nature of God, the value of pain and suffering remained a subject of debate. Some religious men and women, for instance, were opposed to the use of anesthesia in the nineteenth century on predestinarian grounds; if one got sick and suffered, it was a sign from God. To cover the pain was to deny His will and sovereignty. For this controversy, see Pernick, pp. 42-58.

⁵⁷ Reverend Phillips Brooks, "Address of Rev. Phillips Brooks, at our Annual Meeting, March 29, 1870," *Our Dumb Animals* 3 (August 1870): 17-18.

⁵⁸ Pernick, 149-157. On the persistence of the idea of an "ontological scale," see Arthur O. Lovejoy, *The Great Chain of Being: A Study of the History of an Idea* (Cambridge: Harvard University Press, 1961).

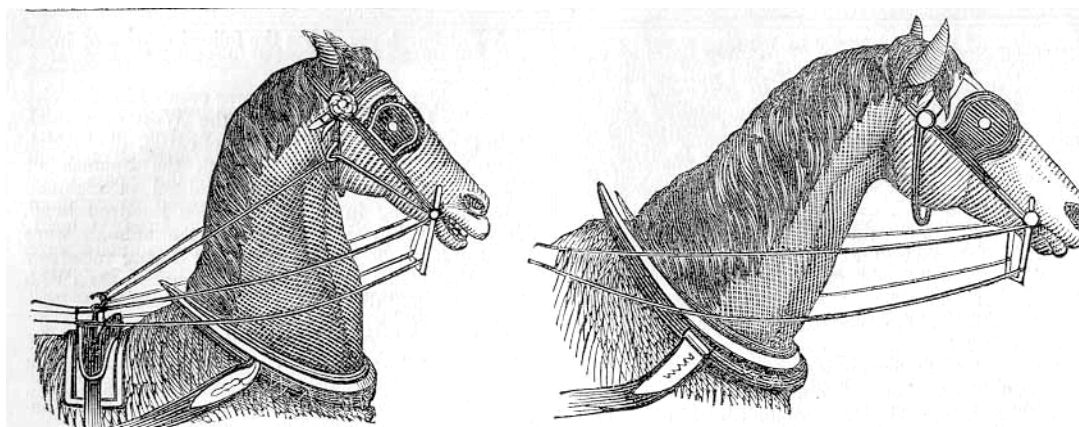


Figure 2: Learning to See Suffering

For those without access to the theaters of surgery where they might, like Henry Bergh, see animals' "sentient apparatus" laid bare before their eyes, the publications of SPCAs trained ordinary eyes to detect the bodily clues of animal suffering. Frequently they did this through use of illustration. For the first ten years of their existence, many animal protection societies labored to eliminate the use of the check-rein on horses. Used by the fashionable and designed to force horses' heads to remain erect and upright at all times, the reins prevented horses from using the full strength of their bodies to pull heavy loads, transferring the stress and strain of draught-work from the larger muscles of the body to the neck, head, and mouth. Protectionists insisted that, while fanciers of the check-rein saw only tidy-looking horses who kept their heads up and looked the part of the proud and noble steed, those trained in the detection of animal suffering could see the expressions of pain emitted by the horse in check. As one article in *Our Dumb Animals* put it, the average carriage driver or rider would look upon such creatures "with admiration, to see how 'handsome' his horse appears, and imagines that the tossing head, open mouth, and gnashing teeth are signs of game and strength." To the humane eye, however, the very same gestures were marks not of nobility but instead were "the most unequivocal evidences of distress

and agony.”⁵⁹ To permanently fix the signs of the horses’ body the magazine provided what it called “infallible proof” of the cruelties of the check-rein: a before and after illustration of a horse in check-rein and accompanying text that described the difference in appearance between a comfortable and a suffering animal (Figure 2). In the “before” picture the viewer was instructed to note that “the corners of [the horse’s] mouth become *raw, inflame, fester*, and eventually the *mouth* becomes *enlarged on each side*, in some cases to the extent of *two* inches.”⁶⁰ In contrast to the grotesqueries of enlargement and inflammation caused by the check-rein, the horse who was allowed to “have his head” would exhibit not only a normal mouth, but also the ability to stretch out his neck, would not foam at the mouth, and would be able to carry his load up hills without strain or collapse. Having illustrated the physiological signs of pain and comfort, the magazine expected its readers to remember them. “Let this be a sign,” it warned, “to every master and servant.”⁶¹

Humanitarian reformers extended this strategy of reinscribing the everyday with marks of suffering and pain by challenging readers to imagine themselves in the position of animals. Continuing the campaign on behalf of horses, the Massachusetts SPCA instructed horse drivers to ask “are these dumb creatures, like ourselves, subject to a variety of pains” and “are they, like ourselves, sensible of acute pain from blows and whipping, from the galling and agonizing pain of blisters produced by tight collars and other harnesses” and do they not, therefore, deserve kinder treatment?⁶² About the check-rein in particular, it asked drivers: “if you were working would you like to have your head buckled up in that manner?”⁶³ An illustration entitled “Is Turn About Fair-Play?” drove the point home (Figure 3). Two men, chained in harness and straining

⁵⁹ “The Check-Rein,” *Our Dumb Animals* 1 (November 1868): 44.

⁶⁰ Ibid, 44. Italics in original.

⁶¹ Ibid.

⁶² “Thoughts for Drivers,” *Our Dumb Animals* 1 (July 1868): 10.

⁶³ “The Check Rein,” *Our Dumb Animals* 1 (July 1868): 10.

with bits in their mouths, struggled to pull a loaded cart while being whipped by their driver, an ox in human clothing. Well-dressed oxen and mules stood and watched while the cart's human cargo, hands and legs tied together and bodies piled one on top of the other, bore the signs of pain and discomfort on their faces. Beneath the illustration a caption asked its viewers "How do you like this?" and explained that *Our Dumb Animals* had purchased this print and several others to induce people to consider how they would react if treated like animals. Imagine the animals asking you "How do you like check-reins now?" the magazine instructed. If it doesn't look comfortable or fair to you, it continued, then your animal friends would probably tell you that "If you don't like it for yourselves, don't do it to us!"⁶⁴

Reversing the position of humans and animals remained a favorite tactic of the animal protection movement throughout the nineteenth century. In the months that followed the publication of "How do you like this?," more illustrations of a topsy-turvy world appeared: birds stole young children from their homes, frogs stoned young boys as they tried to swim, and men screamed in pain as they were plucked alive by geese (Figure 3).⁶⁵ Likewise, year after year, humane publications featured stories of human-animal reversal. In such stories, children suddenly found themselves, like butterflies, captured and pinned to boards by a race of giants, boys were turned into fish, only to find their mouths gored by large hooks, men fell into and became caught in the traps they laid to catch fox or mink, and women dreamed they were ducks, helplessly watching their children being plucked and skinned alive to make fashionable muffs and bed-coverings.⁶⁶ These visual and imaginary depictions inserted pain where mere sport,

⁶⁴ "Is Turn About Fair Play?" *Our Dumb Animals* 4 (June 1871): 110; "How do you like this?" *Our Dumb Animals* 4 (June 1871): 110.

⁶⁵ "Birds Robbing Child's Nest," *Our Dumb Animals* 4 (July 1871): 118; "Dive, Boys, Dive," *Our Dumb Animals* 4 (September 1871): 134; "Geese Plucking!" *Our Dumb Animals* 4 (November 1871): 150.

⁶⁶ Emma Elizabeth Page, *Heart Culture. A Text Book for Teaching Kindness to Animals, Arranged for Use in Public and Private Schools* (San Francisco: Whitaker & Ray Co., 1897): 37-39; Mrs. C.M. Fairchild, *Pleadings of Mercy for the Animal World, and All Other Defenseless Creatures* (Chicago: A.W. Landon, 1883): 56-58; Sarah J.

labor, or fashion had been before, reinscribing common human practices with the taint of cruelty. Likewise, such strategies depended upon the assumption that human and animal suffering were substantially alike, if not identical. For cruelty, explained William Alger at an MSPCA annual meeting, is always the result of “a lack of imaginative sensibility,” always a failure of empathy.⁶⁷ Animals’ rights, on the other hand, spread as far as the bounds of human sympathy would permit.

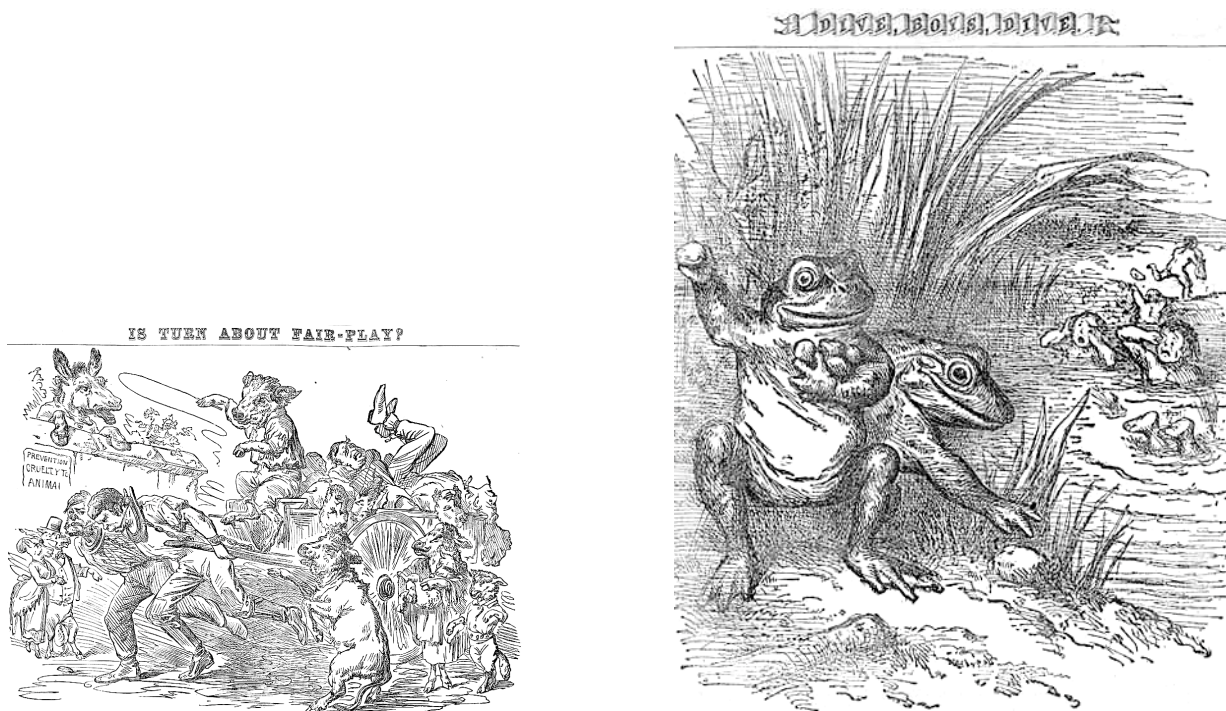


Figure 3: Humans Suffer Animals' Treatment

Eddy, compiler, *Friends and Helpers* (Boston: Ginn and Company, 1899): 135-137; “An Eider-Down Dream,” *Our Dumb Animals* 9 (June 1876): 1.

⁶⁷ Rev. William R. Alger, “Address of Rev. William R. Alger at the Annual Meeting of this Society, March 29, 1870,” *Our Dumb Animals* 2 (1870): 113.



Figure 3: Humans Suffer Animals' Treatment, cont.

Besides a common capacity to suffer, animal protection reformers also argued that animals shared with humans a range of more positive feelings such as love and affection. “Almost all domestic animals are naturally affectionate,” explained one writer.⁶⁸ This general affection flowed towards both other animals and humans. An article reprinted from the *Exchange* told the story of sick horse and his canine nurse. The stable dog, upon seeing that one of the horses had fallen ill, became quite upset and “commenced fawning around him, licking the poor animal’s face, and in various other ways manifesting his sympathy with the sufferer.” The dog even went so far as to fetch their common master each time the horse groaned in pain, and stayed by his side, continuing to tend to and lick him until he recovered.⁶⁹ Even cats, long assumed to be selfish and aloof, were proved to be loving creatures. In Lydia Maria Child’s story of the two cats Pussy Malta and Grizzly Tom, the two formerly antagonistic housemates were transformed into friends by the former’s suffering. Grizzly Tom, Child explained, was a generally grumpy old cat who looked with almost uninterrupted disdain upon Pussy Malta—until the day she entered the house howling in pain. Old Tom was instantly by Pussy’s side, inspecting and tending to her. “I never,” Child reported, “saw any dumb creature express

⁶⁸ A. de Beaupre, “Animals Love Man,” *Our Dumb Animals* 3 (October 1870): 34.

⁶⁹ “Animal Affection,” *Our Dumb Animals* 7 (September 1874): 35.

sympathy so humanly as he did.” Pussy Malta, it turned out, had been pregnant, and though she died giving birth, Grizzly Tom demonstrated another form of affection by becoming the protector of her orphaned kittens. Indeed, the old cat’s sympathetic and paternal urges took physical, and supra-natural, form as he, to the wonder of all in the neighborhood, nursed Pussy’s kittens from his own breast.⁷⁰

As often as the affective bond amongst animals was stressed, so too was that between humans and animals. Known as a beast of supreme loyalty and intelligence, the dog was a favorite exemplar of emotional excellence, and few dogs were more revered in this respect than “Greyfriar’s Bobby,” whose story was told and retold in numerous animal welfare publications. Bobby first surfaced in the United States as the subject of the Pennsylvania SPCA’s handbill, *Strange Story of a Dog* (Figure 4). In the late 1850s, his story went, a very poor man died in Edinburgh and was buried in Grey Friar’s Churchyard. Few mourners attended the burial of the poor man, save for his little Scotch Terrier, Bobby. The graveyard keeper drove the dog out after the ceremony, but Bobby returned unflaggingly each day to his dead master’s grave to keep watch over it. After many attempts to ban the dog, he was finally allowed to make his permanent home in the cemetery, where he kept his vigil faithfully until he himself died in 1872, his limp body flung on top of the spot where his decaying master lay.⁷¹ Some years after Bobby’s death, RSPCA patroness Baroness Burdett Coutts had a statue of the dog erected in the Edinburgh cemetery where he had spent his final years.⁷²

⁷⁰ Lydia Maria Child, “Pussy Malta and Grizzly Tom,” *Our Dumb Animals* 2 (April 1870): 105.

⁷¹ PSPCA, *Strange Story of a Dog* (Philadelphia: Brady, [c. 1867]): 1.

⁷² Timmins, 76.

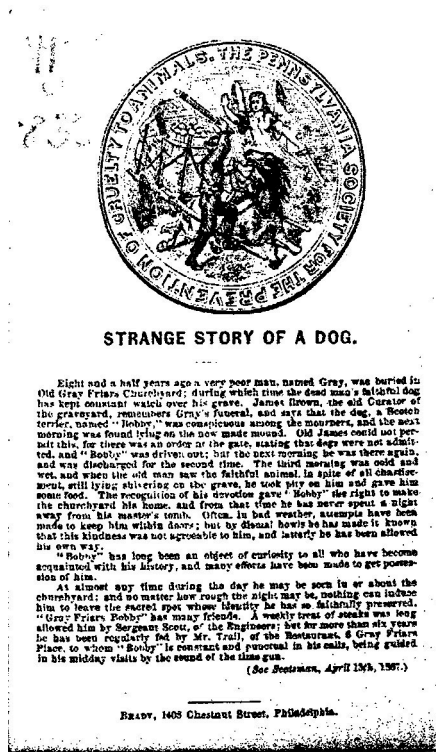


Figure 4: The front and back, respectively, of the PSPCA's *Strange Story of a Dog*

Bobby's dedication to his master argued so forcefully not just for animals' emotional capacities, but also for the tendency of these capacities toward all that was noble and good, that his life was regarded as inherent proof of animals' worthiness and their connection to human beings. After rehearsing Bobby's story, the Rev. Dr. Putnam remarked that it showed "what affectionate friendships sometimes exist between brute and human creatures, and how important a part of the home-bound circles animals often are." In actions such as Bobby's, and by their communicative countenances, concluded Dr. Putnam, animals show that "they are often capable of a depth and tenderness in the eyes, and of a wistfulness of look, and of cries and motions, that should plead with us with more than the power and pathos of any proxied appeal from man's stammer lips in their behalf."⁷³ Animals, dumb though they may be, could, animal protectionists

⁷³ "Golden Words from Rev. Dr. Putnam," *The Ark* 1 (1875): 1. For other rehearsals of this story, see: "Anecdote of a Dog," *Our Dumb Animals* 1 (1868): 29; George T. Angell, *Ten Lessons on Kindness to Animals* (Boston: MSPCA, 1883): 13; Rev. Thomas Timmins, *The History and the Founding, Aims, and Growth of the*

repeatedly suggested, communicate a whole range of complex and highly valued emotions with their bodies.

As Putnam's use of Bobby's story suggests, animal affection was meant to serve as a proxy for their sympathetic tendencies – which should, in turn, arouse human sympathy. The ability of animal affection to prove an important likeness between man and beast depended, at least in part, on the revaluation of human nature that congealed in the doctrine of what historian Norman Fiering calls "irresistible compassion," a sense both that suffering is unnecessary and that man is innately moved to relieve the pain of others. Beginning in the eighteenth century, the Anglo-American world witnessed a series of challenges both to the notion that reason should serve as man's moral guide and to the Puritan and Hobbesian conceptions of human nature, which collectively portrayed man as depraved, motivated by passions, and singularly self-interested. In place of an assessment of the passions as base, Anglo-American philosophers and theologians asserted that emotions and impulses, because they come from God, must be at least instructive, if not good, and that some, such as grief, might reveal the nature of God's moral expectations for us.⁷⁴ Still others rejected the notion that passions were self-interested and

American Bands of Mercy. (Boston: P.H. Foster & Co. Printers, 1883): 35, 76; George T. Angell, *Humane Leaflet, No. 4: 8 Leaflets, 100 Selections, for Schools, Sunday Schools, Bands of Mercy, and Homes* (Boston: MSPCA, n.d.): 3; *Kindness to Animals, Illustrated by Stories and Anecdotes* (London and Edinburgh: W & R Chambers, 1877): 54-6. The dedication of the dog to his dead master was a trope not confined to Bobby's story alone. See Elizabeth Somerville, *Preludes to Knowledge; or, Amusing and Instructive Conversations on History, Astronomy, Geography, Optics, and the Division of Time in Different Countries. Interspersed with Stories, Moral and Entertaining* (London: W. Flint, 1803): 182; *The General Character of the Dog: Illustrated by a Variety of Original and Interesting Anecdotes of that Beautiful and Useful Animal, in Prose and Verse* (New York: George G. Sickels, 1829): 90; Samuel Griswold Goodrich, *Illustrative Anecdotes of the Animal Kingdom* (Boston: Bradbury, Soden & Co., 1845): 97; *Stories About Birds and Beasts* (New York: Clark, Austin & Co., 1851): 45-48; Grace Greenwood, *History of My Pets* (Boston: Ticknor, Reed, & Fields, 1851): 53-57; ASPCA, *Seventh Annual Report* (New York: Cushing, Bardua & Co. Printers, 1877): 42-44 [Elbridge T. Gerry, the ASPCA's chief counsel, is given a silver vase in appreciation of his work. It is engraved with, among other things, a picture of a dog lying on top of a freshly-dug grave]. *Selections for School Exhibitions and Private Reading, Illustrating and Advocating Mercy to the Dumb Creation* (Boston: MSPCA, 1878): 34-36; "Affection of Animals," *The Humane Journal* 6 (July 1878): 7; "Touching Vigil of a German Lad's Dog," *The Humane Journal* 12 (January 1884): 12; G.R.F., "Greyfriar's Bobby," *Our Animal Friends* 28 (February 1900): 127-129.

⁷⁴ Norman S. Fiering, "Irresistible Compassion: An Aspect of Eighteenth-Century Sympathy and Humanitarianism," *Journal of the History of Ideas* 1976, 195-218; 199-200. For the development of this sensibility,

instead harnessed emotion to the general welfare, claiming that human feelings naturally tend toward others and toward the public interest; all those that did not were deemed "unnatural," perversions rather than revelations of our true nature. By the nineteenth century, the notion that God gave man an innate "moral sense," exercised through compassion, was well established in both philosophical and popular circles. Evil, rather than being the product of supernatural forces or original sin, was figured as the product of an unnatural hardening of the moral sense that could, because it represented an unintended deformation, be easily overcome.⁷⁵ Benevolence, it seemed, was a natural, God-given instinct easily aroused by the sight of pain and agony; that animals might experience sympathetic and empathetic reactions to the sufferings of their fellow creatures suggested that they were, in another important respect, more similar to than different from man.

see also: Halttunen, "Humanitarianism and the Pornography of Pain in Anglo-American Culture," 303-334; Keith Thomas, *Man and the Natural World: A History of the Modern Sensibility* (New York: Pantheon Books, 1983); R. S. Crane, "Suggestions Towards a Genealogy of the 'Man of Feeling,'" *ELH* 1 (1934): 205-230. Because the moral sense philosophers assumed that benevolence was natural and ahistorical, they felt no need to explain *why* the humanitarian sensibility, the urge to benevolence, might arise. This, however, has been the subject of some debate amongst historians. Keith Thomas views the rise of humanitarianism through the lens of how men and women have viewed their relationship to nature, contending that the early modern period witnessed a profound shift due to industrialization, the rise of towns, and the formation of a middle-class identity. Other historians have also sought the origins of benevolence in economic changes. See, for instance, Thomas Haskell in "Capitalism and the Origins of the Humanitarian Sensibility, Part 1" and "Capitalism and the Origins of the Humanitarian Sensibility, Part 2," in *The Antislavery Debates: Capitalism and Abolitionism as a Problem in Historical Interpretation*, edited by Thomas Bender (Berkeley; Los Angeles; Oxford: University of California Press, 1992): 107-160. Haskell argues that capitalism gave rise to humanitarian sentiment, not through "the medium of class interest," but through "changes the market wrought in *perception* or *cognitive style*" (111) by creating a sense of connection between oneself and distant others, teaching people to keep their promises and attend to the "remote consequences" of their actions. Some, however, turn from economic to the realm of psychology and culture proper. Lynn Hunt, for instance, has recently noted that the idea of universal human rights has its origins in what she calls "new practices of selfhood." Specifically, from the eighteenth century on, the "increasing sense of separation of bodies from each other," combined with "an increasing sense of empathy between psyches across space," helped to create the idea that all humans are autonomous. Empathy provided evidence of that fundamental likeness and functioned as "the psychological foundation of democracy and human rights." Crucially, Hunt argues that novels served as an important means of cultivating these new practices of selfhood by providing a forum in which, through empathetic identification with its characters, men and women learned to imagine distant others as being essentially similar to themselves. See, Lynn Hunt, "The Psycho-Cultural Origins of Human Rights" (Paper presented at the Sawyer Seminar, Liberal Cultures and their Critics: The Trials of a Transatlantic Tradition, Seminar 3, November 20, 1999): 9-17.

⁷⁵ Fiering, 205-8.

The innate moral sense could, of course, take many forms and, as the stories of Grizzly Tom, Pussy Malta, and Greyfriars' Bobby suggest, reformers' portraits of animal affection often drew upon the same sentimentalized visions of domestic emotions that had structured the appeals of antislavery works such as *Uncle Tom's Cabin*. Writer Dara Dormoore, for instance, asked readers to consider "how very much like animals we are" and listed as proof, alongside a common ability to remember, communicate, and reason, "the moral sentiments of maternal love."⁷⁶ The "Children's Department" of *Our Dumb Animals* showed that maternal love was not just a source of, but also a cause of, moral behavior. Alongside a placid scene of a mother cow and her calf (Figure 5), the magazine included a brief text that instructed young viewers in how to read the scene before them. Look at how the mother cow lays her head on her baby's back, it noted, and see how she does this "as tenderly as a human mother folds her arms about her baby." See how she looks proud of her offspring, for "this, too, is very like a human mother." Taking its readers beyond the scene at hand, the magazine asked them to imagine what might happen if the mother and child were torn from one another. Would the cow suffer? "We know that she does," was the confident reply. To assure that children reached the proper conclusions from the evidence at hand, the moral entailments of maternal affection were drawn out in bold lines: "If, then, the animal creation is bound to us by that strongest and sweetest element of our nature, which we call affection, shall we do not well" to act as Saint Francis did and consider all animals as "part of the great brotherhood of earth?"⁷⁷

⁷⁶ Dora Darmoore, "Animals Immortal," *Our Dumb Animals* 7 (December 1874): 50.

⁷⁷ "Mother and Child," *Our Dumb Animals* 7 (October 1874): 38.

MOTHER AND CHILD.

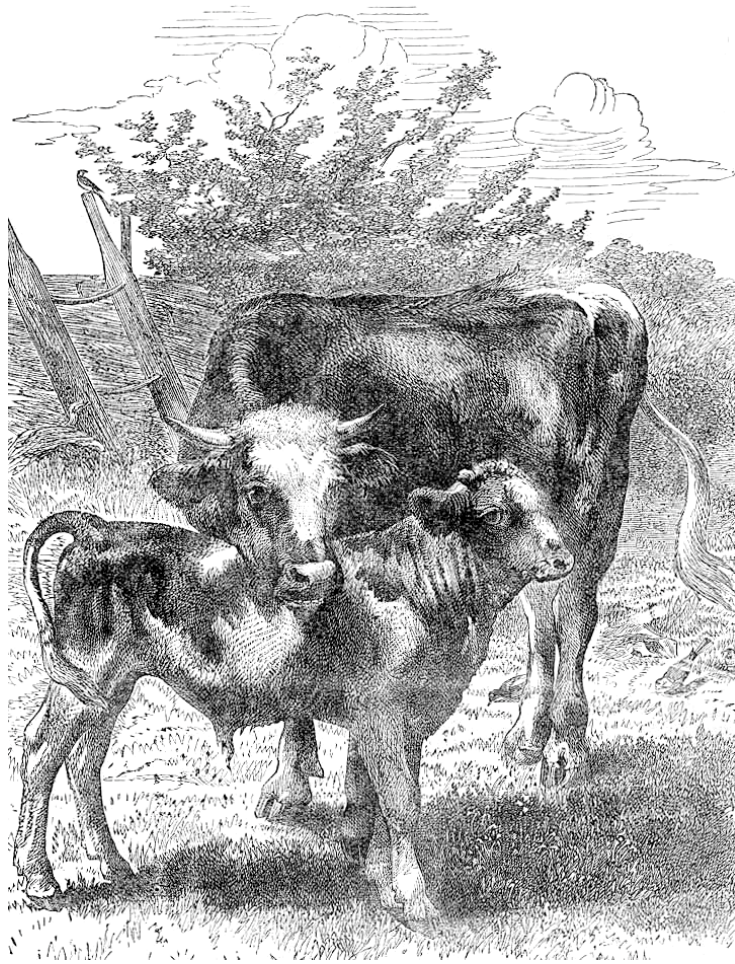


Figure 5: Animal Domesticity

That such appeals to animals' maternal instincts drew on imbedded assumptions about the relationship between familial affections and rights was made clear by "H.J.P." in her protest against the Massachusetts SPCA's efforts to date. The organization, she complained, had paid too much attention to "starved dogs and overworked horses" when the real tragedy lay elsewhere — not in the cities where most SPCA officers patrolled, but in the country, where folks like herself were daily witness to the "evil" of mother animals being separated from their children. It has long been thought, she wrote, that "animals do not care much for their young," but she had seen cows run wildly after calves being led away, had seen ewes follow carts full of their lambs,

bleating plaintively all the while. Lest these anecdotes be dismissed or explained away, H.J.P. reminded her readers that it was not so long ago when many said of the “poor black mother” that she did not care for her children, or that she could get used to the ordeal of having them taken away. To the notion that animals should or could just “get used to it” as slave women had been forced to do, she retorted that this process would be “a kind of dumb submission, a blotting of all hope, just as it would be in the case of a human being under like circumstances.”⁷⁸ Having established that animals possessed deeply rooted maternal instincts, H.J.P. assumed that their existence would, as in the case of slavery, force a recognition of commonality that would, in turn, render the customary suddenly strange and immoral. The hardening of animals’ maternal feelings would be as counter to their natures as it had been for Cassie, Harriet Beecher Stowe’s embittered mulatto mother, stripped of her children only to satisfy the demands of the market in human flesh.

In addition to using the domestic logic of abolitionist texts, animal welfare reformers also traded on the success of first-person slave narratives and fictional slave protagonists. By seeking to establish the identity of man and beast through animal narrators and characters, animal protectionists relied on the empathetic structures of fiction to make readers live animal lives and feel animal pain. Works of fiction, which forced readers to identify with their protagonists – and which had long been critical to the cultural production of empathy – were an ideal form with which to incorporate animals into the family of rights-bearing beings. In essence, they took the subjectivity-swapping logic of the role-reversal a step further.⁷⁹ By contrasting the sentience of the animal narrator with his commodification in the marketplace and his brutal treatment at the hands of men, first-person animal stories created a structural discord between the protagonist’s

⁷⁸ H.J.P., “A Plea for Animal Mothers,” *Our Dumb Animals* 7 (May 1875): 91.

⁷⁹ Hunt, “The Psycho-Cultural Origins of Human Rights,” 9-17. Hunt suggests that the novel’s production of empathy was critical to the spread of the concept of human rights.

internal subjectivity and his external treatment that served, in effect, to establish animals' rights through highlighting human wrongs.

The most famous of the first-person animal narrations is, of course, Englishwoman Anna Sewell's 1877 novel *Black Beauty*, subtitled "the autobiography of a horse." The reception and marketing of Sewell's novel in the United States tellingly links the sentience-based rights discourse of abolitionism to the subsequent animal protection movement. For years before he encountered *Black Beauty*, MSPCA President George Angell had been casting about for a book that "shall be as widely read as 'Uncle Tom's Cabin,' and shall have as widespread and powerful [an] influence in abolishing cruelty to horses as 'Uncle Tom's Cabin' had on the abolition of human slavery."⁸⁰ Angell wanted, in other words, a book that would make its readers see the world anew by forcing them to acknowledge their likeness with, and hence to assume the subjectivity of, the oppressed. It was not until 1890, however, that an American actress forwarded a copy of *Black Beauty* to Angell. He was thrilled. Here at last, he proclaimed, was a worthy successor to *Uncle Tom's Cabin*. Under Angell's direction, the American Humane Education Society (AHES) immediately printed several hundred thousand copies of the novel, which they christened with a new subtitle: the "Uncle Tom's Cabin of the Horse," a moniker that several of the novel's subsequent commercial publishers also adopted.⁸¹ In the years following *Black Beauty's* initial American publication, Angell and others in the humane education movement attempted to stretch the novel's reach by translating it into other languages, offering prizes for the best "equestrian drama" of the novel for the stage, and for the best sequel.⁸² By

⁸⁰ George Angell, *Autobiographical Sketches and Personal Recollections* (Boston: American Humane Education Society, n.d.): 94.

⁸¹ For some examples of the commercial use of this subtitle, see: Lothrop, Lee & Shepherd (Boston: 1890); Rand, McNally & Co. (Chicago: 1892 and 1900); the Frank Miller Company's (New York: 1892, 4 editions); J. Howendon & Company (New York: 1894); H.M. Caldwell (New York: 1894); Charles E. Brown & Company (Boston: 1895); E.A. Weeks and Company (Chicago: 1895).

⁸² Angell, *Autobiographical Sketches*, 99.

presenting audiences with the same stock scenes that had animated abolitionist propaganda (of family separation, physical abuse, and degenerating fortunes at the hands of cruel and powerful men), humanitarians hoped that horses too would be seen as, like the meek and deserving Uncle Tom, man's "faithful slaves."⁸³

Despite Angell's thrill at finding the true successor to *Uncle Tom's Cabin*, Sewell's work was, as other scholars have rightly pointed out, a culmination of the trans-Atlantic genre of animal-autobiography rather than its originator.⁸⁴ In fact, long before *Black Beauty* made his direct appeal to British cabbies and grooms, horses in the pages of *Our Dumb Animals* and other publications had voiced many of the same concerns and plotted their lives along the same course that *Beauty's* would eventually take.⁸⁵ An early example of the protectionist use of this genre, "The Story of a Good and Faithful Horse, Told by Himself," appeared in 1868. Structured as a *bildungsroman*, the installments of the tale tell of a colt's introduction into the ways of the human and adult world and of a slow descent from innocent bliss into worldly experience, from tranquility into pain and servitude. From the outset of the story, the horse looks back to his earliest days, fondly remembering the time before he worked for man, the days when he roamed

⁸³ Rev. J.B. Gross, *A Plea in Behalf of Our Domestic Animals Against the Cruelties of Man* (Philadelphia: J.B. Lippincott & Co., 1869): 3.

⁸⁴ The most extensive research on this point is that of Coleman O. Parsons, "The Progenitors of *Black Beauty* in Humanitarian Literature," parts 1-4, *Notes and Queries* CXCI (1947): 156-158, 190-193, 210-212, 230-232. Parson's research largely explores the British context for Sewell's story, while my own research indicates not only that the same British humanitarian literature was widely circulated in the United States, but also that before Sewell's horse addressed readers directly, American writers experimented with this form quite explicitly. Parsons also fails to mention that the plot structure of Sewell's novel is borrowed most directly from a non-animal, and American, source: *Uncle Tom's Cabin*. For more on this point, see Robert Dingley, "A Horse of a Different Color: *Black Beauty* and the Pressures of Indebtedness," *Victorian Literature and Culture* 25 (1997): 241-251.

⁸⁵ Other examples of direct appeal from horses include: *The Life of a Horse, Supposed to be written by himself; Benevolence Rewarded; The Bird; Ingratitude Punished; The Accident; and, the Faithful Dog* (Boston: Munroe & Francis, [1824]): 1-10; Thomas Craige, *A Conversation between a Lady and Her Horse* (Philadelphia: Thomas Craige, 1851); American Humane Association, *How to Treat Horses* (Albany: American Humane Association, n.d.); [Anonymous], [Untitled], *Our Dumb Animals* 8 (April 1876): 88; "Letter from 'Nellie,' A Family Horse," *Our Dumb Animals* 6 (September 1873): 38; Lucy Larcom, "The Car-Horse," *The Ark* (February 23, 1875): 1; Bucephalus, "An Equine Epistle," *The Ark* 1 (March 2, 1875): 1; "The Horses' Prayer," in *The Horse Aid Society of New York, First Report, from March, 1910 to December, 1912* (New York: n.p., 1912): 12.

free in a large pasture with his mother, drinking her sweet milk, munching dewy grass, and growing into his body by prancing and running through the fields. The horse's utter naiveté is established by his inability to understand human language and his reliance on his mother, "an animal of large experience," to explain the words and ways of the boys and men who came and leaned against the pasture fence, idly observing the horses and casually tossing stones at the birds.

The young horse identifies the world of animals in general with this early innocence and harmony, while he remembers the human world as a disruption and an intrusion. He recalls, for instance, how flocks of birds used to occupy the trees of his pasture and he describes their domestic bliss in terms that mirror his own. "Many happy hours we spent in familiar association" with the local birds, "watching the building of their cosy little nests; their joy over their newly hatched young; the care with which they fed and sheltered them, and their efforts to instruct them." Shattering this tranquility, a human hunter would inevitably come and "break the sweet silence of meadow and grove with the report of his murderous gun." What appeared to humans as custom and sport was transformed, when seen through the eyes of an animal, into needless bloodshed. Having asked the reader to assume his perspective, the horse confidently appealed to his audience to "imagine our feelings when, after watching our charming young friends from the every egg" they were "maimed and wounded" and "the happiness of their brief life was over." Voicing the "naïve reason" of the uninitiated, a position often granted to children in similar stories, the horse observed how strange it was "that idle men should seem to

take pleasure in killing and wounding these harmless creatures.”⁸⁶ Seen from the vantage point of the meadow, how strange indeed!

Soon, however, the inexplicable violence of men turned toward the young horse himself as he moved from observer-of to initiate-into human society. Taken from the prelapsarian pasture into the dark and dank stables for winter, the colt found himself separated from his mother and subjected to the process of being “broken in.” “It seemed,” he recounted, “as if my heart would break.” After neighing his goodbyes to his mother he was tied up and made to suffer the pain and humiliation of having his tail docked; his owner and grooms “cut through flesh and bone and all, and as if this pain was not enough, they brought a red hot iron and seared the bleeding stump and put me in such agony as I cannot describe.” The rest of the story details the colt’s further immersion into the world of man: he learns to take the cold, hard metal of the bit into his mouth; to be combed with a brush to satisfy human vanity; to draw a sleigh and a carriage with passengers; and, he receives his first pair of shoes from a smith. Abruptly, the story ends after this installment, with the horse having just barely begun to experience the ways of the world. He leaves his readers after musing about the smith who shoes him, wondering if “the man realized that although it was a hoof it was a living thing he was filing away.” Thus, although the young horse of this story is introduced to man’s ways and largely accepts human expectations as regard a horse’s lot in the world (even feeling pride at how well he can pull his master and children in carriage), the tension between the perspective of horse and that of human being is never fully reconciled. Having assumed a human-like subjectivity, the horse narrator nevertheless forces the reader to remain, to the end, an animal and an outsider like himself.

⁸⁶ For the concept of “naïve reason,” I am indebted to Peter Hollindale, “Plain Speaking: Black Beauty as a Quaker Text,” *Annual of the Modern Language Association Division on Children’s Literature and the Children’s Literature Association* 28 (2000): 95-111.

The ultimate consequences of the progressive incorporation of the animal into human society were explored by Rob, an elderly horse who also told his life story to the readers of *Our Dumb Animals*. Rob's story, like that of the "good and faithful horse," is one of decline and increasing cruelty at the hands of man. His entrance into human society is charted along an axis that begins in the country and ends in the city — the heart of the world man has made for himself. Rob's life begins happily in a pasture, with his mother by his side and a good master in the house. Forced to squelch his feelings about losing his mother and to learn his duties as a carriage horse, Rob is sold for \$500 in one of Boston's horse markets. From this first sale forward, the plot revolves around the erosion in Rob's status, his health, his treatment, and in his value — and each slide downhill is marked by another sale at market. Given a shoddy pair of shoes by his second master, Rob develops a limp and is sold for a mere \$75 to a horse railroad company, the owners of which want nothing more than to maximize their profits. After depleting Rob's poor injured legs of what little life they had left, the company sells him again, this time for \$15 to a man who sees in the old horse a chance to make a quick dollar. At the hands of this man the horse experiences what he described as "my greatest and last misery from the cruelty of men." Reduced to a mere commodity, Rob is given a "poisonous substance" that makes him appear fatter and healthier than he really is, and his shoes are painfully rigged so that he cannot limp. "I was taken out every day," he recalled, "and in this agony made to show off before buyers." As luck would have it, Rob's first and kindest master attends the market one day and recognized Rob by the white spot on his forehead. The fate of man and animal are momentarily parallel as Rob notes that "[his former master], too, had grown old in the time." Perhaps recognizing himself in the horse, the man buys his old horse back. But, as Rob notes at the story's end, age was where their similarities ended, for "the world had been kind to him,

whilst it had been cruel to me.”⁸⁷ Although Rob’s story is resolved through his reunion with a kind master, the moral of the story is not that good horses will be rewarded, but instead that horses’ fates arbitrarily diverge from man’s, and that being “good and faithful” is no insurance against ill treatment. Throughout the story, Rob remains entirely dependent upon the whims of the humans who treat him ill or well according to their moral character.

A letter from a horse named Caesar made the implications of Rob’s story clear. Complaining that he is misunderstood and mistreated by his master and mistress, Caesar confided that he often conferred with his stable- and field-mates about making a “revolt from slavery forever.” But, realizing their relative helplessness in the face of a human-controlled world, he and his friends inevitably stayed where they were, resigned to the fact that “it is the destiny of horses to be driven by people.” Torn between his resignation and his desire for better treatment, Caesar ended on a more defiant note. “I will only add in conclusion,” he wrote, “that horses have rights, as well as people, and feelings as well as people.”⁸⁸ Equine feelings seemed, indeed, to be basis for equine rights.

5. “SOMETHING MORE THAN MERE PROPERTY” (THE CONTENT OF RIGHTS)

More often than not, animal protectionists made the link between animal feelings and animal rights indirectly, by suggesting, for example, that a humane curriculum in the schools would “help to educate the rising generation into sympathy with animals, and into an appreciation of their rights.”⁸⁹ Only occasionally did reformers explore their own assumptions or ideas systematically. In one such treatise, James Macaulay placed sentience at the center of his moral argument against experimentation on live animals. “You might operate on human subjects with

⁸⁷ Rob, “The Old Horse’s Story,” *Our Dumb Animals* 4 (November 1871): 151.

⁸⁸ Eliza S. Turner, “Equine Correspondence,” *Our Dumb Animals* 4 (July 1871): 119.

⁸⁹ “An Excellent Example,” *Our Dumb Animals* 8 (1875): 36.

no higher intelligence, and of no higher moral condition, and certainly with no more sensitive frame, than the poor brutes that are carried to the vivisector's laboratory. It is the infliction of pain and injury that cannot be justified," he wrote, "whether the victim be an imbecile human idiot, or a docile dog."⁹⁰ Macaulay returned to Locke's limiting cases, and by placing dogs in the same category with mentally impaired humans, he plainly steered the argument for animals' rights from reason to feeling and positioned rights on a ground that transcended species. He followed a line of thinking – that "evidently the reason why it is wicked to torture a man is not because he has an immortal soul, but because he has a highly sensitive body" – through to its conclusion, that "if we have no moral right to torture a man, neither have we a moral right to torture a dog."⁹¹ (For the next half-century, American and British activists would attempt, with very limited success, to give Macaulay's "moral right" the force of a legal one). In granting rights to man and animals alike based on the "highly sensitive body," Macaulay had traveled far from the terms of Descartes' argument to a new philosophical framework.

Like Macaulay, clergyman and writer T.T. Munger also believed that cruelty was wrong not just because it was a failure of the moral sense, but also because "animals themselves have rights which we are bound to respect." Thus, he wrote, an act of cruelty also "becomes an act of injustice."⁹² To defend this view, Munger began by examining the qualities of animals that recommend their inclusion in the moral community. First, Munger suggested, animals earn their rights through their labor. In the Bible, he noted, we find Jewish law prescribing that "thou shalt not muzzle the ox when he treadeth out the corn." This, he went on, is "grounded in a sentiment and a right"; it conveys the sense that the oxen have a right to the corn because they have labored

⁹⁰ James Macaulay, *Vivisection: Is it Scientifically Useful or Morally Justified? A Prize Essay by James Macaulay, A.M., M.D., Fellow of the Royal College of Surgeons, of Edinburgh. Reprinted from the English Edition* (Philadelphia: American Anti-Vivisection Society: 1884): 60-61.

⁹¹ Prof. Newman, quoted in Macaulay, 61.

⁹² T.T. Munger, *The Rights of Dumb Animals* (Hartford: The Connecticut Humane Society, 1898): 12.

to produce it. Echoing Locke's notion that labor creates the first right of property, Munger explained that "when one puts labor into anything one acquires a certain right in it; or, at least, has a right to a return for his labor." This ancient law was, he concluded, "intended to teach the Jews that animals have rights which men are bound to respect." Employing a quasi-contractual logic, Munger argued that we owe respect and kind treatment to the animals that serve us, making human life more convenient, more productive, and more enjoyable.⁹³

Second, Munger continued, we share this world with animals, and must recognize that "they have just as much right here as we have, and their home is here just as ours is." Animals were, in fact, here on earth before we humans were, and lived free of us in a state of nature – that is, until God made man the ruler of earth. But our dominion does not thereby lessen our duty to recognize that we have "dispossessed" our animal friends and that they have "ancient rights" stemming from first possession of the land. This becomes even more binding, Munger elaborated, when we realize that animals were better off before the dawn of man. Wild animals, for instance, "have only an enemy in man and the only thing they have learned from him is to fear and avoid him." Domestic animals, likewise, have sacrificed their natural freedom to man's control and been made to forfeit a "happy, natural order." Unlike Locke's free and rational men who *chose* to make the transition from the state of nature to civil society, animals were alienated from their liberty by force. Echoing the voices of horses like Rob, Caesar, and the "good and faithful horse," Munger recognized that animals' movement from nature to society had been nonconsensual – and he reasoned that humans must therefore accept "a duty of the most stringent

⁹³ Munger, 4-6; This line of reasoning is also echoed in Rev. J.B. Gross, *A Plea in Behalf of Our Domestic Animals Against the Cruelties of Man* (Philadelphia: J.B. Lippincott & Co., 1869): 5-15. Animal welfare publications constantly stressed the labor of horses, oxen, cows, and even dogs – portraying them as "servants," "slaves," and patient toilers. Further, in the early twentieth-century, many large cities began "Work-Horse Parades," and during WWI, special committees for the care and relief of horse and dog "soldiers" were formed. All assumed that animals' service created a claim on humans.

character” towards them.⁹⁴ Were humans to obey the reciprocal logic of contract, they would have to admit that animals, having given over something of not just their labor but also their liberty, were *owed* kind treatment as a matter of *right*.

Those animals that humans have appropriated for their use are, Munger went on, are not mere machines, but have “very nearly the same nervous organization that we have,” and thus they suffer as we do. “Their suffering is, furthermore, not just a matter of body, as is sometimes thought, but also of mind, for they suffer keenly in their minds and hearts, or as we usually say, in their feelings.” We now know thanks to much scientific discovery, he explained, that animals are like us, and we like them – that, for instance, horses and dogs can understand communication, have moral instincts, and a “wide range of intelligence.” Many people who violate animals’ rights must do so, then, only because “they know so little about animals and enter so little into their thoughts and feelings.” Here Munger assumed, as did many others in the animal welfare movement, a straightforward equivalence between heart-felt mercy and principled moral order, between love and justice, and between sympathy and the recognition of rights. Suggesting that empathy was the mechanism by which rights would be extended, Munger concluded confidently that signs of its progress were all around. Someday soon, he ventured, “the rights of whatever can suffer” would be universally recognized.⁹⁵

While writers like Macaulay and Munger endeavored to give some philosophical weight to the connection between rights and sentience, more practically inclined animal protectionists tried to enact laws that would protect animal rights by mitigating suffering. Their first task was to legally encode animals as “more than mere property.”⁹⁶ At the end of the Civil War, pre-

⁹⁴ Munger, 8-11.

⁹⁵ Munger, 12-21. See also, Gross, 4, 10-21.

⁹⁶ This phrase is taken from *Addresses on Vivisection by Members of the Medical Profession* (Philadelphia: American Anti-Vivisection Society [c.1886]): 2.

existing tort laws in most states and common law precedent allowed the owner of an animal to sue for its damage or destruction by another person. Such suits, however, were meant to protect property rights rather than animals. There were no laws, for instance, that could convict a person of damage or destruction to *his own* property, and no laws that punished violence against animals that were wild or otherwise un-owned. Likewise, common law had long held that it was a crime to publicly beat an animal, but here too, the offense was understood not as against the animal, but instead as against the public peace.⁹⁷ When they looked back on the days before animal cruelty legislation, nineteenth-century reformers expressed outrage that prior laws “could regard a malicious injury to a cow in no other light than that in which it would regard a malicious injury to a plow or any other article of property.”⁹⁸

Because animal welfare reformers intended to protect animals rather than property rights, they crafted laws that punished cruelty against “any horse, mule, cow, cattle, sheep, or other animal, belonging to himself [the accused] or another,”⁹⁹ and sometimes went so far as to write laws that explicitly protected all animals “whether wild or tame.” In a pamphlet explaining how anticruelty statutes were prosecuted, Massachusetts lawyer Charles Barnard paused to note the significance of this change. The new anticruelty laws differed, he explained, from common law tort actions “in proceeding more clearly upon the principle that animals have *rights*,” since the crime was now understood as being committed against the animal rather than its owner or the public peace. Furthermore, Barnard stated, in the new laws “the act of *cruelty* alone, irrespective of any other element of crime that may accompany the act, is more plainly indicated as

⁹⁷ Elbridge T. Gerry, “The Law of Cruelty to Animals. A Lecture by Elbridge T. Gerry” (Paper delivered before the Bar of Delaware County, New York, August 16, 1875 and repeated before the Law School of Columbia College Feb. 16, 1876): 15-20.

⁹⁸ “Editorial: John Colam and the Royal Society for the Prevention of Cruelty to Animals,” *Our Animal Friends* 32 (1905): 488.

⁹⁹ See, for instance, Pennsylvania’s “Act for the Punishment of Cruelty to Animals in this Commonwealth,” approved on March 29, 1869 and amended April 3, 1872 and June 1, 1883.

criminal.”¹⁰⁰ The crime consisted, in other words, of actions taken against an animal, not in criminal intent (or *mens rea*), damage to chattel, or disturbing the peace.

Well aware that they were interfering with the sacrosanct rights of property, reformers sought in their publicity campaigns to challenge man’s sense of absolute dominion. Summarizing legislative trends to date, an 1881 MSPCA publication declared: “to that old question, ‘May not a man do what he will with his own?’ [the first anticruelty] law gave an emphatic No!”¹⁰¹ To spread the news, SPCA officials published thousands of copies of their new law, distributed them as handbills, had the law reprinted in local papers, and posted copies in public places. Humanitarians also met with local police departments to explain the new laws, making certain that the officers understood “the rights of property and their invasion under the police power . . . this being the most important and least understood point in humane work and the one most necessary for those engaged in the work to comprehend.”¹⁰² Not just the general public, but also the police officers with whom the new SPCAs had to work, needed education on this point.

In addition to strictly legal re-education, animal welfare reformers sought to introduce a new framework for ownership of animals by suggesting that all creatures belonged, first, to God, and second, to man, whom He had given them to use. Man’s was only a very limited dominion – provisional, temporary, and certainly conditional. A Pennsylvania SPCA book for children asserted that youngsters who had pets should learn how to take care of them properly or be prepared to give them up. “Do not say,” the book admonished, “‘It is mine, and I can do what I please with it,’ but remember that God made every creature, and that not a sparrow falls to the

¹⁰⁰ Charles A. Barnard, *Forms for Complaints, Under Chapter 207 of the Public Statutes of Massachusetts, Relating to the Prevention of Cruelty to Animals, with Sundry Directions for Pleading* (Boston: MSPCA, 1888): 10.

¹⁰¹ MSPCA, *Thirteenth Annual Report* (Boston: MSPCA, 1881): 6.

¹⁰² “Lectures to Police,” *Humane Advocate* 6 (November 1910): 26.

ground that goes unnoticed by His watchful and loving eye.”¹⁰³ Substituting God’s for individual ownership transformed the issue of animal treatment from property rights to proper use. Extending this point, Henry Bergh famously declared the natural relations between animals more important than the relation between a human owner and his chattel. As recalled in *Frank Leslie’s Illustrated Weekly*, Bergh upbraided a man who was taking his cow and her calf to market to sell. The cow’s udder was quite full with milk, but her calf was chained in a manner that prevented its suckling. Her owner, it seemed, wanted her udder as full as possible so that it might “appear to the purchaser that the cow was a great giver of milk.” Bergh stopped the cow’s owner and insisted that he let the hungry calf feed – to which the owner replied that he could do as he very well pleased with the animals since they were his property. “That may be,” Bergh reportedly said, “but the milk is nature’s and belongs to the famishing little being which is now drinking it, and I am going to stop here until it has swallowed every drop that it wants.” With that, Bergh led the calf to its mother and while it dined on her milk the cow, as if according to script, licked her offspring tenderly, “just as a woman kisses her baby.”¹⁰⁴ With statutes, educational pamphlets, and daily interventions like this, animal welfare reformers sought to challenge the absolute rights of property, cognizant that for animals, being a species of unregulated property was scarcely better than being a Cartesian machine.

Reformers like Bergh did not, of course, have animals declared legal persons or otherwise overturn their status as property before the law. Rather, they attempted to secure a series of protections and positive entitlements that they believed represented a guarantee of animals’ natural rights – rights, that is, derived from the nature of *animal being*. The language of New York’s anticruelty legislation is, in this respect, typical. It provides that “a person who

¹⁰³ *Early Lessons in Kindness* (Philadelphia: PSPCA, n.d.): 13.

¹⁰⁴ Biron, “A Rare Even in New York,” *Our Dumb Animals* 3 (July 1870): 11. Reprinted from Frank Leslie’s Illustrated.

overdrives, overloads, tortures, or cruelly beats or unjustifiably injures, maims, mutilates, or kills . . . or deprives any animal of necessary sustenance, food or drink, or neglects or refuses to furnish it such sustenance or drink [as necessary to maintain its health]” will be guilty of a misdemeanor.¹⁰⁵ Animal welfare reformers attempted, in other words, to secure for animals certain negative rights to be free from unnecessary pain and suffering, and certain positive rights to food, shelter, and, in some states, proper exercise. These minimal protections, reformers hoped, would begin to establish rights for animals that were consistent both with their life among, and use by, human beings and with their status as thinking, feeling beings.¹⁰⁶

That nineteenth-century anticruelty statutes did not encode a non-instrumental view of animals does not, as is sometimes charged, indicate that animal welfare reformers cared naught for animals, or that they endorsed an utterly conventional view of the human-animal hierarchy. As the foregoing analysis suggests, they sought quite consciously to promote a vision of animals as sharing important, rights-granting capacities with humans, and they crafted legislation they hoped would recognize animals’ rather than their owners’ interests. While they still viewed many animals, particularly horses, oxen, and cattle, as useful creatures they did distinguish between use and abuse, and between legitimate and illegitimate uses of animals. As Henry Bergh put the matter:

It has been permitted to us by God, to take the lives of such animals as have been created for our food: and the necessities of civilization have demanded that many others should be sacrificed, to afford us clothing and other articles of usefulness. But this permission to kill is only granted to supply our *absolute wants*; and, to

¹⁰⁵ Roswell C. McCrea, *The Humane Movement: A Descriptive Survey* (New York: Columbia University Press, 1910): 33-34. McCrea provides a detailed survey of state legislation c. 1910, including but not limited to: the types of animals included under state laws; whether SPCA agents may confiscate animal property or enter private property in an investigation; provisions regulating transportation of animals; and, whether corporations are liable under the statute. See 321-387. While the basic language of the offense is broadly similar from state to state, these other provisions do vary.

¹⁰⁶ It is significant, in this respect, that recent criticisms of anticruelty legislation and the animal welfare movement focus on enforcement – which is admittedly lax, but need not be – and on judicial interpretations of the intent and purpose of such laws.

take the life on an innocent, unoffending animal, solely because we have the wish or power to do so, is an act of wanton wickedness, which, sooner or later, will bring upon us the punishment that inevitably awaits on sin.¹⁰⁷

Because they believed that God had made some animals specifically to help human beings, it was less a violation than a fulfillment of their nature to use them as God intended. At the same time, by suggesting that God had authored each animal individually, humanitarian reformers insured that violating animals rights would be framed as a species of sin, a rebellion against God's design.

Even as reformers continued to believe that some animals had to be used, they saw a great number of commonplace practices as outside the realm of necessity and, thus, morality. "Men assume without debate," complained one writer in *Our Dumb Animals*, "without a moment's serious thought, that brutes have no right to life if their life interfere with our slightest whim." Thus men conclude, he went on, that any animal life is worth less "than my emptiest pleasures, and this, even if in killing it I produce widespread distress to the living."¹⁰⁸ Indeed, much of the animal welfare movement's popular literature was dedicated to combating this very attitude. Reformers endeavored not just to expand the definition of cruelty and widen the circle of sufferers, but also to redefine "necessity" to include fewer human practices. Chief among those that nineteenth-century SPCAs sought to consign to the dustbin of empty pleasures and slight whims were: plucking birds' feathers for hats and boas; docking horses' tails and using other devices to tailor their appearance to human liking (including blinders and check-reins); horse racing; hunting for sport rather than food (including pigeon-shooting and fox-hunting); separating animal mothers and their young (including the popular trade in live Easter chicks for children); raising veal; abandoning or selling worn-out animals; dog or cock fighting;

¹⁰⁷ "Extracts from Address of President Bergh, of New York," *Our Dumb Animals* 1 (June 2, 1868): 6.

¹⁰⁸ Newman, "The Right to Kill Animals," *Our Dumb Animals* 8 (August 1875): 18.

vivisection; killing insects except in self-defense; taking birds from the nest or taking the nests themselves; and, violently “breaking” animals as a means of training. From the politics of dress and recreation to the manner in which animals were worked and killed, nineteenth-century animal protectionists saw the fact of beastly sentience as the basis for interfering with a wide range of human activities. Animals, to conflate the very terms that modern animal rights activists want to keep separate, had a right to their welfare.

6. “A PRETTY PASS WE’RE COMING TO” (THE CONCLUSION)

That so few of these reforms succeeded, and that anticruelty statutes are today laxly enforced, is perhaps best explained by an article that the editors of *Our Dumb Animals* reprinted from the *Christian Union*. Juries, the author lamented, “have an inexplicable antagonism against anything which looks like interfering with a man’s right to the privacy of his own house, even if he avail himself of the shelter of that privacy to torture every living creature that belongs to him.” In a recent, unsuccessful, trial of a man for beating his horse, the defense attorney had managed to convince the jury that they should acquit his client in order to send a message to meddling reformers everywhere. “A pretty pass we’re coming to,” the attorney reportedly said, “if any sentimental idle gentleman who chooses can stand on the street and tell us how we’re to manage our balky horses.” Happy to oblige, the jury let the alleged horse-beater walk free.¹⁰⁹ They did not realize, apparently, that “the inferior animals have legal rights now in the world.”¹¹⁰ This was a persistent problem. The ASPCA’s second president, John Haines, recalled that even after Henry Bergh had secured New York state’s anticruelty legislation, “courts were disposed to protect the rights of property to an extent which virtually abolished the God-given right of man’s

¹⁰⁹ H.H., Untitled, *Our Dumb Animals* 7 (1874): 15.

¹¹⁰ Bergh, “The Police and the Abused Car Horses,” Letter to the Editor, *New York Times* (May 20, 1872):

dumb servants to immunity from needless suffering.”¹¹¹ Courts, in addition, were inclined to interpret animal cruelty laws as an exercise of the police power, thereby rendering them more consistent and continuous with the common law crime of cruelty (as an offense against public peace) than their drafters had originally intended.¹¹²

The failures of extant anticruelty legislation should not, however, obscure important continuities between the allegedly distinct animal welfare and animal rights movements. To insist on their incommensurability is to rely solely on the written word of the law, and in the present, at the expense of language, context, and history. For the historical animal welfare movement had intentions far more complex and far more radical than contemporary critics allow. Moreover, and more important, the nineteenth-century animal protection movement served as a critical conduit of the “lay discourse of rights” that positioned *sentience* as the grounding for rights — an argument that is, not accidentally, at the heart of the contemporary animal rights movement.

¹¹¹ "Annual Meeting of the American Society for the Prevention of Cruelty to Animals, Address of President Haines," *Our Animal Friends* 25 (February 1898): 121.

¹¹² "Pigeon Shooting in New Jersey," *Our Animal Friends* 32 (July 1905): 494-495. Exemptions for agricultural uses of animals from the provisions of state anticruelty laws were also tacked on over the course of the late-nineteenth and twentieth centuries. For this disturbing history, see: David J. Wolfson and Marian Sullivan, "Foxes in the Henhouse, Animals, Agriculture and the Law: A Modern Parable," in *Animal Rights: Current Debates and New Directions*, edited by Cass Sunstein and Martha Nussbaum (New York: Oxford University Press, 2004), 205-233.