

***“The Inalienable Rights of the Beasts”<sup>1</sup>:  
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.

## **PART ONE.**

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.<sup>2</sup> By 1900 every state in the nation had enacted animal protection laws similar to those in New York, and over 300 SPCAs had been formed in towns and cities across the nation.<sup>3</sup>

Henry Bergh's choice to frame a Declaration of Rights of Animals suggests that he believed that combating cruelty was inherently linked to establishing rights. Modern legal theorists and animal rights activists, however, 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 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.<sup>4</sup>

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. First, animal protection laws were enacted with misguided intentions – they were meant to regulate use of animal property rather than to establish or protect animal rights. Second, animal protection laws are hampered by ineffectual enforcement mechanisms. 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.<sup>5</sup> Finally, and perhaps most damning, is the charge that animal protection legislation is hampered by its androcentric philosophical underpinnings. According to Francione, 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. 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. Taken together, these three failings render animal welfare, and current animal protection laws, a virtually useless strategy for change.

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 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. And therein lies 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 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.

## **PART TWO.**

In drawing on the rights-infused language of American liberalism, Bergh proved to be typical of the animal protection movement that swept across the urban centers of the Northeast in the years following the Civil War. 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 Massachusetts SPCA's flagship journal *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.

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 drew upon 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.

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.<sup>6</sup> 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.<sup>7</sup> 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."<sup>8</sup> 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.<sup>9</sup> Abolitionists thus provided a model congruent with the sentimental humanitarian assumptions of animal protectionists: to prove your object worthy of attention, prove that it feels pain.<sup>10</sup> 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.<sup>11</sup> 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." <sup>12</sup>

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.”<sup>13</sup> 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 1, Appendix). 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*.”<sup>14</sup> 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.”<sup>15</sup>

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?<sup>16</sup> 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?”<sup>17</sup> An illustration entitled “Is Turn About Fair-Play?” drove the point home (Figure 2, Appendix). Two men, chained in harness and straining 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!"<sup>18</sup> These and many other visual and imaginary depictions inserted pain where mere sport, 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.<sup>19</sup> Animals' rights, on the other hand, spread as far as the bounds of human sympathy would permit.

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. 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."<sup>20</sup> 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 3, Appendix), the magazine included a brief text that not only instructed young viewers in how to read the scene before them, but also took its readers beyond the scene at hand. What would happen, the magazine asked them to imagine, if the mother and child were torn from one another? Would the cow suffer? “We know that she does,” was the confident reply.<sup>21</sup>

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.<sup>22</sup> 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 internal subjectivity and his external treatment that served, in effect, to establish animals’ rights through highlighting human wrongs.

A letter from a horse named Caesar made the implications of such first-person narrations 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.”<sup>23</sup> Equine feelings seemed, indeed, to be basis for equine 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.”<sup>24</sup> But beyond their attempts to change attitudes, nineteenth-century animal protectionists did try to enact laws that would protect animal rights by mitigating suffering. Their first task was to legally encode animals as “more than mere property.”<sup>25</sup> At the end of the Civil War, pre-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.<sup>26</sup>

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,”<sup>27</sup> 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 criminal.”<sup>28</sup> 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.

Reformers like Bergh did not, of course, have animals declared legal persons or otherwise overturn their status as property before the law. Nineteenth-century animal welfare reformers attempted, instead, 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.<sup>29</sup> 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.”<sup>30</sup> 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; 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.

### **PART THREE**

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.” 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 dumb servants to immunity from needless suffering.”<sup>31</sup> 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.<sup>32</sup>

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.

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<sup>1</sup> 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.

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

<sup>3</sup> For comprehensive accounts of early animal protection organizations and their activities, see: Bernard Oreste Unti, “The Quality of Mercy: Organized Animal Protection in the United States, 1866-1930” (Ph.D. diss., American University, 2002); Roswell C. McCrea, *The Humane Movement: A Descriptive Survey* (New York: Columbia University Press, 1910); Floyd Morse Hubbard, *Prevention of Cruelty to Animals in New York State*, Bulletin of Social Legislation on the Henry Bergh Foundation for the Promotion of Humane Education (New York: Columbia University Press, 1915); Hubbard, *Prevention of Cruelty to Animals in the States of Illinois, Colorado and California*, Bulletin of Social Legislation on the Henry Bergh Foundation for the Promotion of Humane Education (New York: Columbia University Press, 1916); William J. Schultz, *The Humane Movement in the United States, 1910-1922* (New York: Columbia University Press, 1924).

<sup>4</sup> 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.

<sup>5</sup> 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.

<sup>6</sup> 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.

<sup>7</sup> See also: Karen Sánchez-Eppler, *Touching Liberty: Abolition, Feminism, and the Politics of the Body* (Berkeley: University of California Press, 1993).

<sup>8</sup> Clark, 471.

<sup>9</sup> 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.

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<sup>10</sup> 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.

<sup>11</sup> "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).

<sup>12</sup> 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, see Rev. Dr. Chalmers in *Kindness to Animals, Illustrated by Stories and Anecdotes* (London and Edinburgh: W & R Chambers, 1877): 180-181.

<sup>13</sup> "The Check-Rein," *Our Dumb Animals* 1 (November 1868): 44.

<sup>14</sup> *Ibid.*, 44. Italics in original.

<sup>15</sup> *Ibid.*

<sup>16</sup> "Thoughts for Drivers," *Our Dumb Animals* 1 (July 1868): 10.

<sup>17</sup> "The Check Rein," *Our Dumb Animals* 1 (July 1868): 10.

<sup>18</sup> "Is Turn About Fair Play?" *Our Dumb Animals* 4 (June 1871): 110; "How do you like this?" *Our Dumb Animals* 4 (June 1871): 110.

<sup>19</sup> 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.

<sup>20</sup> Dora Darroore, "Animals Immortal," *Our Dumb Animals* 7 (December 1874): 50.

<sup>21</sup> "Mother and Child," *Our Dumb Animals* 7 (October 1874): 38.

<sup>22</sup> 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. Hunt suggests that the novel's production of empathy was critical to the spread of the concept of human rights.

<sup>23</sup> Eliza S. Turner, "Equine Correspondence," *Our Dumb Animals* 4 (July 1871): 119.

<sup>24</sup> "An Excellent Example," *Our Dumb Animals* 8 (1875): 36.

<sup>25</sup> This phrase is taken from *Addresses on Vivisection by Members of the Medical Profession* (Philadelphia: American Anti-Vivisection Society [c.1886]): 2.

<sup>26</sup> 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, New-York Historical Society.

<sup>27</sup> 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.

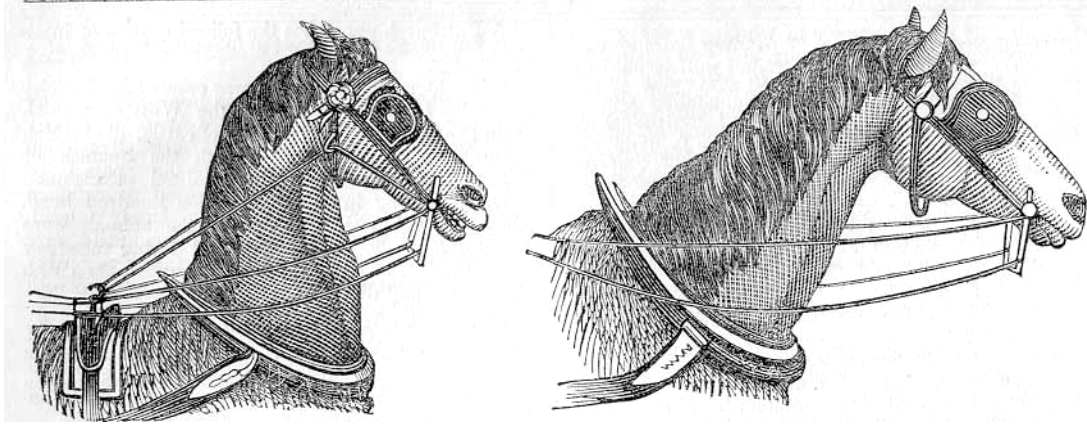
<sup>28</sup> Charles A. Barnard, *Forms for Complaints, Under Chapter 207 of the Public Statutes of Massachusetts, Relating to the Prevention of Cruelty to Animals, with Sundry Directions for Pleading* (Boston: MSPCA, 1888): 10.

<sup>29</sup> 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.

<sup>30</sup> Newman, "The Right to Kill Animals," *Our Dumb Animals* 8 (August 1875): 18.

<sup>31</sup> "Annual Meeting of the American Society for the Prevention of Cruelty to Animals, Address of President Haines," *Our Animal Friends* 25 (February 1898): 121.

<sup>32</sup> "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.



**Figure 1: Learning to See Suffering**



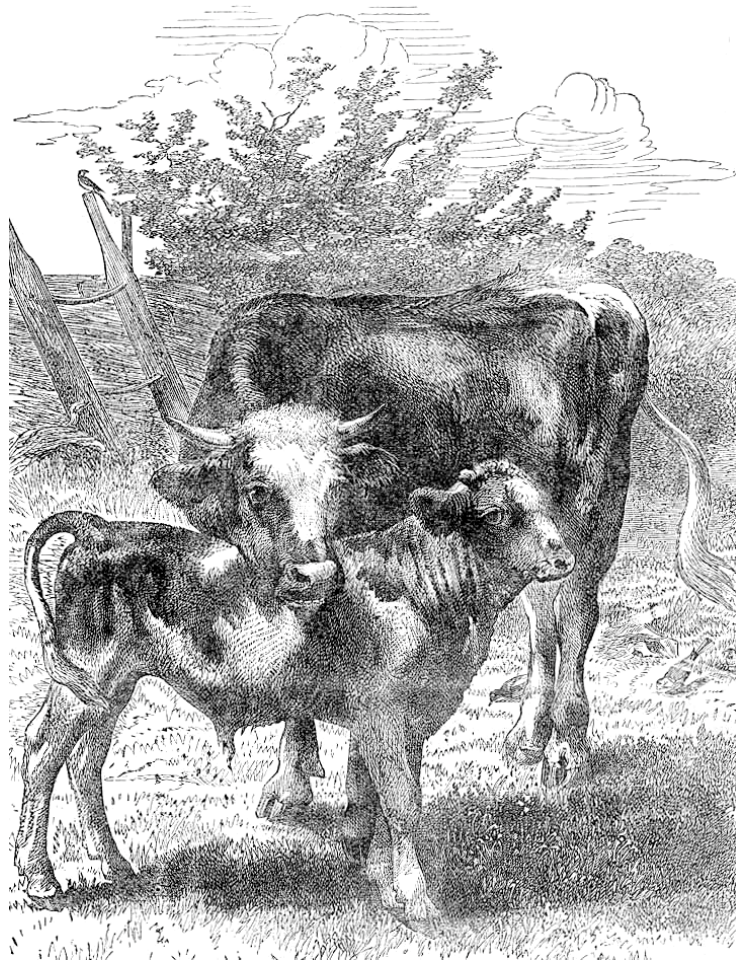
IS TURN ABOUT FAIR-PLAY?



Figure 2: Humans Suffer Animals' Treatment

MOTHER AND CHILD.

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**Figure 3: Animal Domesticity**