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TOWARD A CRITIQUE OF GUILT: PERSPECTIVES FROM LAW AND THE HUMANITIES

SPECIAL VOLUME EDITOR

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THE COW AND THE PLOW: ANIMAL SUFFERING, HUMAN GUILT, AND THE CRIME OF CRUELTY

Susan J. Pearson

ABSTRACT

Nineteenth-century animal protectionists endeavored to frame laws that gave animals direct legal protections, and they conducted large-scale public education campaigns to define the harm of cruelty to animals in terms of animals' own suffering. However, animal suffering was only one of the many possible definitions of cruelty's harms, and when judges and other legal interpreters interpreted animal protection laws, they focused less on animal suffering and more on human morality and the dangers of cruelty to human society. Battling over the definition of human guilt for cruelty, protectionists and judges drew and redrew the boundaries of the law's reach and the moral community.

INTRODUCTION: THE COW AND THE PLOW

Writing in a 1905 edition of the American Society for the Prevention of Cruelty's (ASPCA) monthly journal *Our Animal Friends*, the organization's

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president, John Haines (1905), praised the state of enlightenment that currently characterized the relationship between humans and animals. Looking back into the dark past, Haines expressed outrage that less than half a century prior the law would, as he put it, "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" (p. 488). Comparing animals with plows or other items of personal property offended Haines's moral sense because of what he believed to be the critical difference between the two: sentience. Unlike the plow, the cow was a sentient being having the capacity for suffering and the cow could feel the "malicious injury" in ways that the plow could not. Moreover, Haines believed that the cow demanded legal and moral recognition not as a species of chattel, but as being separate from its owner by virtue of its ability to feel. When a plow was harmed, its injury redounded on its owner, who might have to repair the plow or otherwise suffer the loss of its employ. By contrast, Haines implied, when a cow was harmed, the injury redounded less on its owner and more on the cow itself, who was made to endure agony. To Haines's understanding, to be guilty of cruelty was to be guilty of causing undue suffering in an animal, not to have harmed another's property. Thanks to the work of his organization, the flagship ASPCA, and to the hundreds of other regional and local SPCAs that were formed during the second half of the 19th century, Haines believed that the morally offensive confusion between cow and plow had been eliminated by both legal and propagandistic means. A clear sense of the nature of cruelty's harms, and of human culpability, had been fixed.

The animal protection laws that originated in the 19th century form the basic skeleton of state protection for animals even today, and they have been widely criticized as ineffectual by modern legal scholars and animal rights activists. State anticruelty laws, critics tell us, are not really concerned with animal suffering, but rather with regulating human morality; they have, in this sense, the wrong intent. Due to this androcentric intent, these laws are critiqued as being more concerned with ensuring that humans do not corrupt their own nature than they are with animals and animal suffering per se (Turner, 1980; Moretti, 1984; Francione, 1995, 1996; Kelch, 1998; Curnutt, 2001). As critics see it, guilt for cruelty legally consists not in harming animals, but in harming oneself and other human beings by engaging sordid passions and subjecting others to degrading displays of violence. Wrongly intended and ill conceived, animal protection statutes are, in such cases, accomplices in the continuing exploitation of nonhumans.

Haines' concern to separate cow from plow on the basis of the cow's nature suggests, however, that the story is more complicated than

modern-day recourse to ill intent can account for. As we shall see, 19th century animal protectionist took great pains to write laws that gave animal direct legal protection, and they conducted large-scale public education campaigns to define the harm of cruelty in terms of animal suffering. However, while many protectionists believed that animal suffering alone constituted human guilt, this equivalence did not always hold legal water. For one thing, cruelty itself was an ambiguous term, such that the nature of the violation it designated was often unclear. Did the guilt of cruelty (or its harm) lie in the evil intentions of its perpetrator, or in the suffering of its victims, or in excessiveness, in the lack of balance between means and ends, or did cruelty's harm lie in its affront to common decency and public morality? Protectionists might be inclined to give greatest weight to the second of these possible harms, but justices and legal commentators, and sometimes protectionists themselves, often gave greater weight to other dimensions of cruelty's harms, tipping the balance away from animals and back towards humans. Haines and his compatriots congratulated themselves for definitively separating cow from plow, and for framing new legal codes that placed the sentient animal body at the center of the definition of cruelty; much in the general legal and philosophical heritage in which they intervened served to stack the deck against such a straightforward understanding of what sorts of human actions rendered one guilty of cruelty to animals. And at the center of this ambiguity is not merely the ill intent of such laws, but the very concept of cruelty itself.

The matter of how cruelty is defined and operationalized is not merely technical – for it matters a great deal how guilt is constituted and harm defined. In designating these, the law defines a horizon of visibility, a community of interests, and a theory of social organization and obligation.

BACKGROUND: ORGANIZATIONS, LAWS

To some extent, Haines' original narrative was correct: in the 40 years preceding his comments, animal protectionists in the United States had secured positive laws in every state to criminalize cruelty to animals. The organized movement for the protection of animals from cruelty in the United States began in 1866 when a wealthy citizen of New York City, Henry Bergh, secured a charter from the state of New York to form the ASPCA. Shortly thereafter, Bergh went before his state's legislature and successfully convinced the body to pass a bill that both criminalized cruelty to animals and deputized Bergh's society to enforce the provisions of the

law. Bergh's organization and his law became a model and SPCAs rapidly spread across the country. By 1900, every state in the nation had enacted laws similar to those in New York, and over 300 SPCAs had been formed in towns and cities across the nation.[1]

As Haines's retrospective comments suggest, these early anticruelty activists were not merely moral suasionists – they endeavored to pass and enforce laws that would protect animals by mitigating their suffering. Their first task was to legally encode animals as "more than mere property" (*Addresses on Vivisection by Members of the Medical Profession* (1886), p. 2). In the spring of 1866, when Henry Bergh went before the New York state legislature and asked them to pass a law to protect animals from cruelty, he was introducing not just new legislation, but also a new framework for understanding violence against animals, one that put the suffering of animals more squarely before the eyes of the law. Under the common law that the United States had inherited from Britain the crime of cruelty to animals did not exist. As nineteenth-century legal commentator Joel Prentiss Bishop explained, "Man has always held in subjection the lower animals, to be used or destroyed at will, for his advantage or pleasure." Man's right of property in animals superceded all animal interest in being free from harm, Bishop continued, and so "the common law recognizes as indictable no wrong, and punishes no act of cruelty, which they may suffer, however wanton or unnecessary" (1877, p. 335). Because property was understood as an instrument of its owner's will, to be a victim of cruelty required a status above that of personal property. The identification of animals with property was, as Bishop recognized, a longstanding one. Indeed, virtually every liberal theorist, from Adam Smith and John Locke to William Blackstone, identified animals as the first form of property and suggested that their subordination to man's will – that is, their domestication – was an essential component of the human civilizing process, enabling man's progress from primitive to more advanced states of social organization.[2]

In spite of their designated role as mankind's subordinates, animals, like other forms of real and personal property, were subject to a variety of protections and regulations.[3] Common law did offer animals what Bishop called "indirect" protections. It was, for instance, a crime to injure or kill a domestic animal belonging to another. The crime, however, was a form of malicious mischief, a vengeful destruction of property, and the harm was understood as directed against the animal's owner, not the animal itself. Interpreting violence toward animals as a form of malicious mischief was, to return to John Haines's terms, an example of equating a cow with a plow. Moreover, since malicious mischief was a violation of property rights, this

indirect protection of animals left a man free to harm or kill his own animals as much as he liked – for they were his possessions. In another form of indirect protection, the common law also held that it was a crime to beat an animal in public, but as with malicious mischief, the crime was not against the animal, but instead against the public peace and the public morals. It was a crime of nuisance, an offence against one's neighbors and the social order. In both the instances, neither the welfare of animals nor the concept of cruelty guided the law's sense of criminal harm and criminal culpability. Under such nuisance and mischief penalties, explained Bishop, "protection to the creature as a sensitive being is not the thing sought" (1892, p. 366).

Prior to Henry Bergh's 1866 legislation, several states including New York had some positive law provisions regulating the treatment of animals. As early as 1641 the Massachusetts Bay Colony's legal code, the Body of Liberties, had prohibited beating certain kinds of animals. In the 1820s, Maine outlawed beating cattle or horses, New York banned maliciously killing another's livestock or maliciously beating one's own, and in the 1850s Minnesota, Connecticut, and Vermont made it a crime to kill livestock belonging to another person (Curnutt, 2001). None of these extant laws, however, were truly anticruelty laws. Rather, they were akin to the common law crimes of malicious mischief and public nuisance, and chiefly concerned with property in animals and the public peace. Describing this history, a *Scribner's* feature on Henry Bergh and the ASPCA recounted that "up to 1865 no law for the protection of animals from cruelty could be found on the statute book of any state in the Union. The common law regarded animals simply as property, and their masters, in wanton cruelty, or anger...might torture his sentient chattels without legal hindrance or accountability" (Henry Bergh and His Work, 1879, p. 879).

The innovation of the New York state and subsequent anticruelty laws stated that by isolating cruelty as the chief harm to be prevented and punished, they made the crime consist more clearly of violence against animals themselves rather than the violation of property rights or disruption of the public order. Crucially, anticruelty laws were written such that cruelty was an offense no matter what the relationship of ownership between man and animal – it could be perpetrated against "any living creature," and it was an offense whether it took place in the public square or in a private home. Another distinctive feature of the new anticruelty laws was that they sanctioned not just positive acts of violence against animals, but also various kinds of neglect. Consistent with its concern for the public peace, common law had regulated the keeping of animals, expecting their owners to keep control of them and making owners liable for animals' mischievous

behavior such as stealing food or injuring humans (Negligent Keeping of Animals, 1883; Beven, 1909). As with the prohibition on positive acts of cruelty to animals, the neglect provisions of post-1866 anticruelty laws were quite different from such common law assumptions and requirements. Instead of protecting the public from bothersome animals not well kept, the anticruelty concept of neglect entitled animals to sustenance, protecting them from their owners or caretakers. On the whole, the new anticruelty laws implied that animals had a specific identifiable interest in being free from pain, whether it resulted from the sharp sting of a blow or the protracted agony of starvation. Moreover, by removing property relations from the equation, anticruelty laws constituted guilt as harm to animals, not their owners.

Not long confined to New York, the spread of this new form of legislation, and this new conception of the relationship governing man and animal, was rapid. By 1900, all 47 states had similar positive legislation on their books. Nineteenth century jurists and legal scholars immediately detected the near-revolutionary character of these new laws. Writing in the *Central Law Journal*, Oscar Quinlan (1894), for instance, noted, "cruelty, as such, is punishable only by virtue of recent legislation," and was not indictable at common law. "This prohibition of cruelty," he went on, "is superior to the rights of ownership, and regardless of value, of the animal injured and of the privacy or publicity of the act" (p. 161).[4] Similarly, Bishop insisted that there was no common law basis for the crime of cruelty and that it was a pure product of the 19th century state (Bishop, 1877, 1873, 1892), an attempt, as one Arkansas judge put it, "to transcend what had been thought, at common law, the practical limits of municipal government" (*Grise v. State*, 37 ARK. 456).[5] Interfering in the relations between owner and owned, and between man and animal, by interposing the mediating term of cruelty, was indeed an innovation foisted on states by animal welfare reformers.

Contended to see themselves as revolutionaries on the side of right, animal protection activists themselves generally heralded the groundbreaking nature of state anticruelty legislation. Charles Barnard (1888), an attorney for the Massachusetts SPCA, declared that the new laws "differ from earlier enactments, and from the common law regarding this class of offences, in proceeding more clearly upon the principle that animals have *rights*" (p. 10), by which he meant that the law was concerned principally with animal suffering rather than with the protection of property or the public order. The point of anticruelty laws differed from the indirect protections of the common law. While the latter sought to protect property and preserve human morality and order, the former aimed to protect animals from undue suffering. The common law definition of guilt or harm was, in other words, amended by 19th century SPCAs that sought to replace the old sense of harm – the destruction of property – with a new harm – the suffering of animals themselves. Although such laws served as the foundation for emphasizing animal sentience, and suffering, as the basis of determining a new kind of human guilt, in this new paradigm neither animal suffering nor human guilt were easy to determine.

THE (UNIVERSAL) CORPOREAL LANGUAGE OF PAIN

Alongside their new laws protectionists introduced narratives of human guilt and innocence, complete with a new vocabulary of animal suffering that sought to reinscribe familiar practices with new meanings. By and large, anticruelty legislation did not prohibit specific actions, but instead defined cruelty as the infliction of *unnecessary* pain and suffering, a highly ambiguous definition at best. Parsing the necessity of suffering was not an easy thing, and the extent and acceptableness of animal suffering was a contested issue both inside and outside the 19th century courtroom. In the new crime of cruelty, human guilt was established through two criteria: by proving criminal intent, or *mens rea*, and by proving that the defendant's actions had produced excess, or unnecessary, pain. It is this latter aspect of the crime, proving the existence of animal pain, which absorbed the energies and attention of many animal protectionists. For in addition to bringing animal suffering before the eyes of the law, the crime of cruelty necessitated bringing animal bodies within the juridical gaze. Human guilt was, in other words, established through the evidence offered by animal bodies – what evidences of distress did an animal offer? How should these be interpreted and weighed against human rights and prerogatives?

As often and as forcefully as they could, animal protectionists taught their fellow citizens to recognize and sympathize with animal suffering and they situated the animal body as a crucial source of evidence in their newly scripted narratives of human guilt. To insert the crime of cruelty to animals in public discourse, animal protectionists employed a number of strategies. First, they conducted public education campaigns that aimed to teach men, women, and children to recognize the signs of animal suffering and to understand this agony as avoidable, and to see its presence as clear evidence

of wrongdoing. Second, SPCA officials pioneered new criminal procedures, seizing animals and bringing them directly before magistrates while the signs of cruelty were fresh, and introducing veterinarians as expert witnesses in the courtroom. Underlying these efforts was the goal of transforming animals' pain from a human prerogative to evidence of human guilt, and at the center of this strategy lay a new form of evidence – the wounded animal body.

In their efforts, 19th century animal protection activists had to combat not just a legal system that had historically viewed animals as not more sentient than agricultural instruments (the cow the same as the plow), but also a philosophical heritage that similarly saw them as little more than self-animating machines. According to the reigning Cartesian dualism, mind and body were separate substances that led separate lives, and while animals certainly had bodies, they did not have minds, or souls, and thus could not really suffer. Suffering, Cartesians believed, was a function of consciousness, and consciousness, along with reason, was God's gift to man alone. According to Descartes, animals' lack of consciousness, and hence of suffering, was demonstrated by their lack of language. In this circular logic, the inability of animals to *express pain* seemed a sure sign that they did not *experience* any pain. Animals, Descartes notably declared, 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 (1993) 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" (pp. 32–33).[6] In this logic, which continued to frustrate 19th century animal protectionists, animals, like clocks were convenient if insentient tools, designed for and at the disposal of humankind. Despite earlier challenges by late-18th and early-19th century Romantics (Perkins 2003), Descartes' theories still dogged animal protectionists even in the latter half of the nineteenth century. As one frustrated protectionist complained, "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" (What Epes Sergeant Says, 1868, p. 14).

Against this set of assumptions, 19th century animal protectionists launched a considerable public relations campaign in which they argued that animal and human suffering were essentially identical. Pain, they asserted, crosses the species line. For protectionists, the project of proving human

guilt for cruelty to animals was inextricably linked to the display of suffering. While many freely admitted that animals could not articulate in human language, SPCA activists argued that animal bodies bespoke a corporeal language of suffering, one that could be learned like any other foreign tongue. Among the many tactics they used to establish the identity of human and animal pain, 19th century protectionists repeatedly returned to two noteworthy genres: the role-reversal scenario and the first-person animal narration.

Depicting a topsy-turvy world in which humans suffered at the hands of animals, and designed to equate human and animal suffering, role-reversal scenes appeared in both pictorial and textual form throughout 19th century anticruelty publications. Fig. 1, from an 1871 issue of the Massachusetts SPCA's magazine, *Our Dumb Animals*, is one example. Entitled "Is Turn About Fair Play?" the picture shows two men, chained in harness, straining against the bits in their mouth as they struggle to pull a loaded cart while being whipped by their driver, an ox in human clothing. Well-dressed oxen and mules stand and watch while the cart's human cargo, presumably on their way to the stockyards, lie helplessly tied and piled one on top of the other, showing signs of discomfort on their faces. Beneath the illustration, a caption asks "How do you like this?" If it doesn't look comfortable or fair to you, the accompanying text instructed, then your animal friends would probably tell you that "if you don't like it for yourselves, don't do it to us!" (How do you like this? 1871, p. 110). By placing humans in animals' shoes, SPCAs suggested that the capacity for pain and agony crossed the species line without modification, and that to determine if an animal was suffering, one need only ask "how would I feel in the same situation?" In addition, by pairing the words "comfortable and fair" as a set of standards, protectionists suggested that what was comfortable was also what was fair and that justice could be measured by reference to suffering.

Taking the subjectivity-swapping logic of the role-reversals one step further, animal protectionists also employed the empathetic structures of fiction to establish a bond of sentience between humans and animals, littering their humane propaganda with animal characters and narrators. Although Englishwoman Anna Sewell's *Black Beauty* (1877) is the most famous example of a first-person animal narration, it was not the first. Nearly 10 years earlier, a "good and faithful" horse had told his life story to the readers of *Our Dumb Animals*. Like its famous successor, this story too followed the declension plotline of the wildly successful *Uncle Tom's Cabin*, detailing the horse's life as he moved from his peaceful colt-hood home though a series of progressively more demanding and degraded stations. By

Fig. 1. The Topsy-turvy World of the Role-reversal.

speaking in his own voice and telling his own story, the "good and faithful" horse served to inform his audience not just that animals and humans generally shared a common set of feelings, but specifically that they shared the capacity for suffering. Describing his first initiation into life as a full-grown working horse, the equine narrator recalls two particularly traumatic events, one emotional and the other physical. First, the young horse was separated from his mother and, he reported, "it seemed as if my heart would break." To add insult to injury, this separation was followed by the docking of his tail. The men breaking him in "tied me up and brought a great knife, something like a pair of huge scissors and 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. Oh, how I suffered for weeks and how indignant I felt that I had been so tormented" (Story of a good and faithful horse, 1868, p. 35). Speaking from within the experience of tail-docking, the "good and faithful" horse not only asserted his ability to feel, but also transformed a commonplace practice into an example of torture. Further, suggesting that experiencing this pain

made him "indignant," the horse implied that bodily violation, for horses as much as for humans, infringed on the integrity of the self as well as that of the flesh.[7] In the years following the publication of this equine autobiography, protectionist publications featured the voices of horses, birds, dogs, cats, and other animals telling their tales of woe to readers. As another equine narrator put the matter, these direct appeals were meant to show humans that animals "have rights, as well as people, and feelings as well as people" (Turner, 1871, p. 119).

In role-reversals and animal narrations, protectionists gave voice to animal subjectivity, sentience, and suffering in order to position them as deserving legal protections, but these were not their only tools. Anticruelty reformers also marshaled material evidence of human guilt, metonymically representing animal suffering by collecting and displaying what SPCA publications frequently called "instruments of torture." If you entered the headquarters of the Massachusetts, New York, Illinois, New Jersey, Cleveland, or Pennsylvania SPCA, to name a few, you would encounter an exhibit of whips, prods, clubs, knives, guns, axes, chains, and other devices used to harm animals. SPCAs also traveled these exhibits, bringing them to major nineteenth-century expositions and World's Fairs in Philadelphia, Chicago, New Orleans, and Atlanta. Culled these from the actual cases they prosecuted, anticruelty societies hung such weapons on the walls to show what they termed "evidences of man's inhumanity" (The Society's Museum, 1892).[8] The display of instruments of torture had, of course, a long iconographic and political history, one most recently deployed by British and American abolitionists who had used artifacts of the slave trade and the plantation punishment system to symbolize both slave pain and human barbarity (Wood, 2000). Although the animal body remained absent in the SPCA versions of such displays, the instruments themselves were densely packed with information symbolizing both the infliction of pain and its cessation. The whips and chains hung on the wall called forth a sequence of relationships beginning with that between animal and cruelist, and ending with that between cruelist and protectionist. Each instrument symbolized the pained animal body, the guilty human hand, and the vigorous humanity of the SPCA officer that had stilled the guilty hand, taken its tool, and brandished it as proof of human cruelty.[9] While the arrayed instruments of torture were meant to stand in for and represent the agony they could produce in actual animals, some of these exhibits went so far as to display taxidermied animals. In the headquarters of the New York SPCA, for instance, Henry Bergh stuffed animals that had been used in cock and dogfights, a pigeon wounded in a hunt, an overdriven horse, and even a

vivisected animal. "Even in dumb show," remarked one observer of such an exhibit, the wounds of these animals were "painful to contemplate" (North, 1882, p. 238).

It was not enough, however, to claim that animals could feel pain, for as the Cartesian formula held, the capacity for suffering was inextricably tied to the capacity for language – the latter a means of verifying the former. SPCAs, moreover, faced the specific problem of legal prosecution: how, in a court of law, was one to prove that a specific human action caused a particular animal to suffer, when the chief witness – the victim – lacked the ability to give testimony? Since animals were, in 19th century parlance, "dumb," and were as one SPCA activist put it, "doomed to suffer in silence, unless some such pitying heart…*looked* for the signs of suffering that could not make themselves heard in forms of speech" (PSPCA, 1871, p. 10), it was the task of SPCAs to detect and translate such corporeal signs. And, just as they equated the human and animal *experience* of pain, they also equated the non-verbal expression of pain, insisting that bodily signs were as unambiguous as speech. As Henry Bergh put it, animals "give forth the very indications of agony that we do" and, he went on, "theirs is the unequivocal physiognomy of pain" (Extracts from Address of President Bergh, 1868, p. 6). In addition to claiming that animals suffered pain, anticruelty activists tried to create a visual vocabulary of pain that stood in for animal's own articulation of their suffering. In doing so, they also taught people to resignify seemingly ordinary practices, transforming the acceptable into what the law would regard as a source of "unnecessary" pain. Armed with the proper visual vocabulary of pain, anticruelty activists and citizens alike could practice their arts of detection to uncover cruelty wherever it might lurk.

A good example of the effort to create this nonlinguistic vocabulary can be found in the widespread campaign against the check-rein, a device used to force a horse's head to remain upright by preventing it from lowering its head. SPCA publications pointed out that most people preferred to use the check-rein for aesthetic reasons: they liked to see a horse with its head held high. To such people, the high head signified a lively, gamey horse, the very picture of a noble steed. Protectionists insisted that those trained in the detection of animal suffering would begin to interpret the same scene entirely differently. Humane men and women could see the expressions of pain emitted by the horse in check, what one SPCA publication called "the most unequivocal evidences of distress and agony." Anticruelty publications showed adjacent pictures of horses in and out of check-rein (Fig. 2), and instructed viewers to note that while in check "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." And, as if to answer the Cartesian charge that animals had no consciousness and no language, the anti-check-rein publication went on to assert that "Could these speechless sufferers answer the inquiries – *Why do you continually toss your heads while standing in harness? Why do you stretch open your mouths, shake your heads, and gnash your teeth? Why do you turn your heads back towards your sides, as if you were looking at the carriage?* they would answer: All this is done to get relief from the agony we are enduring by having our heads kept erect and our necks bent by tight check-reins" (The Check-Rein, 1868, p. 10). Here the SPCAs posed evidence of suffering, straight from not just the horse's mouth, but also from the horse's body. In the face of animal silence, anticruelty activists' efforts to train the public in the arts of detection insured that animal bodies, if not their voices, still spoke. Moreover, in focusing on equine suffering, protectionists not only attempted to redefine the "necessity" of the check-rein, but in doing so they also reinforced the lessons of anticruelty legislation: that as more than mere property, animals were also more than mere instruments of human will and desire.

By creating role reversals, animal narrators, and a visual lexicon of pain protectionists strategically established and translated animal pain before a broad public. These tactics, however, did not stand alone, for they both paralleled and were supplemented by SPCA legal efforts. To win convictions for cruelty in court, SPCAs had to establish the existence of pain in specific cases and circumstances. As I mentioned earlier, anticruelty laws were less likely to prohibit certain actions than to sanction their effects. The question in a cruelty trial was whether there was animal suffering, and whether that suffering was unnecessary. By trying to establish a public consensus that

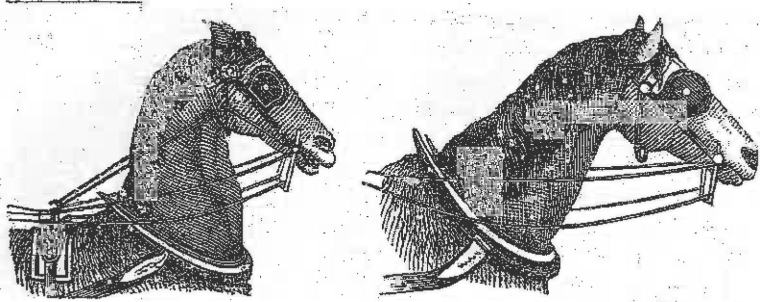

Fig. 2. Learning to See Suffering.

certain actions inevitably produced pain, protectionists hoped to make the causal relationship between action and effect easier to establish, and to establish certain kinds of actions as *prima facie* unnecessary.

Since animals could not take the stand to testify against their tormentors, inside the courtroom animal protectionists had to interpret the suffering of the animal body for judges and juries, and they did this in a few different ways, all of which overlapped with the extralegal public education strategies discussed above. First, they relied on witnesses who had been trained to see suffering. The ASPCA, for instance, instructed its agents, supporters, and members on how to collect evidence of agony and distress, noting that "if the offense was that of driving a horse or other animal with galled neck or shoulders, or other wounds, note the size and location of such wounds – especially if raw, discharging, or in contact with the harness. If the offense was flogging or beating, note the instrument, the number of blows, on what part of the body inflicted, and the effect, if any, on the skin of the animal; if overloaded, carefully observe the symptoms of distress, such as the trembling, falling unusual perspiration, or exhaustion. In every instance observe minutely and note down in writing the facts and details and also the language of the offender at the time" (ASPCA, 1895, pp. 89–90). The public, trained in the arts of corporeal detection, could then usefully enter the courtroom on behalf of the SPCAs.

Since the 19th century, humanitarian narratives had relied on accumulating and relating the details of the suffering body in order to both establish the universality of pain (and hence a common humanity) and to demonstrate the causes and remedies of suffering (Lacquer, 1989). Gathering the corporeal details of suffering in the manner suggested by SPCAs had been long linked to modes of humanitarian inquiry from the novel and the exposè to investigation and prosecution. When 19th century animal protectionists investigated cruelty cases and brought them to court, their emphasis on collecting corporeal detail as crucial evidence of guilt linked humanitarian to legal modes of inquiry on the surface of the animal body. Protectionists regarded the extralegal "evidence" offered by the role-reversal, the animal narration, and the corporeal language of animal pain, as congruent with the structure and elements of the legal definition and proof of cruelty.

Beyond using lay witnesses to translate moral into legal guilt for cruelty, SPCAs also relied on animal experts, employing veterinarians on staff in some locations, and using veterinarians as witnesses in trials. In New York City, when the driver of a horse was arrested, his horse was immediately taken from him and kept in a stable maintained by the SPCA. If the accused driver chose to plead not guilty, the society would send a veterinarian over to inspect the animal and collect evidence for the pending trial (Hubbard,

1915). In one case, for instance, a man was prosecuted for using a horse with large open sores on its shoulders to pull a load of stone up a hill. In lieu of viewing the horse's sore body, the society's veterinarian described the sores to the presiding judge and insisted that "The sores, which measure five by four inches, cause the animal great pain" (Arrests and Prosecutions, 1899, p. 229). Veterinarians, as experts in animal physiology, could be unmatched decoders of animal pain and, hence, critical to the establishment of human guilt in the crime of cruelty.

Besides using veterinary testimony as a stand-in for the animal body, SPCAs also sometimes brought the wounded animals themselves into the courtroom, placing what they considered unimpeachable evidence directly before the eyes of the judge and jury. After photography became more widely available, SPCAs also used photographs of wounded animals as courtroom evidence, allowing the presentation of "fresh wounds" even if a considerable amount of time had elapsed between arrest and trial (Hubbard, 1915). Believing that animal suffering was both real and avoidable, protectionists assumed, as did many other reformers, that evidence of pain was evidence of culpability and that the mere sight of suffering would elicit both sympathy and justice (Lacquer, 1989; Sontag, 2003).[10] Similarly, using photographs to establish guilt intersected not just with the reformist documentary tradition, but also with a new emphasis on photography as a criminological tool. Similar to the detailed report of suffering that might serve both humanitarian and legal goals, the photograph of pain was lodged at the point where reform intersected with law enforcement.

Underlying all these efforts, from public education to the presentation of animal pain in the courtroom, was a common goal not only to make animal suffering visible and legible as a reality, but also to situate it as evidence of cruelty, and so also of human guilt. Overturning the notion that animals were instruments of human will, just like any other form of moveable property, animal protectionists attempted to rescript the human-animal relationship, introducing cruelty as a mediating concept that would insure some minimal barrier between human violence and animal lives. As Henry Bergh used to say, their goal was that "the blood-red hand of cruelty shall no longer torture with impunity" (ASPCA, 1866, p. 12).

WHAT IS CRUELTY? THE LAW'S AMBIGUITY

While protectionists clearly linked cruelty and human culpability to animal pain and suffering, jurists and other 19th century legal experts were less

inclined to see the matter in such an exclusive and straightforward manner. Part of the problem rested with the weight of tradition: it was no small matter to overcome the centuries-old status of animals as property, and anticruelty laws, however much they avoided defining animals in this manner, did not overturn the network of other laws that defined animals as chattel. But judicial resistance to defining the harm of cruelty solely in terms of animal suffering was also built into the very nature of cruelty as a concept. While protectionists often defined cruelty's harm in terms of pain caused, this was but one of the many possible definitions.

In fact, even as Bergh and the animal protection movement stretched the boundaries of legal cruelty by including animals among its victims, they also absorbed the fundamental paradoxes and ambiguity at the heart of cruelty as a concept: chiefly, its shifting and multiple loci. Cruelty was not easy to define or locate, for it seemed at once to consist in its perpetrator's intentions, in the suffering the act of cruelty might cause in its victims, in the relationship of excess between means employed and ends sought, and in the violation of public norms.

Historically, cruelty had been a largely marginal term in both legal and philosophical circles, virtually ignored until the late medieval and early modern period when it came into common currency as a trope to portray both personal violence and political or religious tyranny (Shklar, 1984; Baraz, 2003). Despite the changing status of cruelty as a subject of discussion, the *terms* of its discussion have remained fundamentally similar. Cruelty has always been understood in terms of excess – of irrational emotion in its perpetrator, of pain in its victims, as an excess of force in punishment, or as an action in excess of social standards. As a term of excess, cruelty was often associated with other moral flaws, such as lust, greed, and intemperance, that similarly stem from passions run amok. Its relation to immoderation made cruelty a *relative* rather than an absolute moral term, one that depended on circumstances and social frameworks for its identification.[11] Moreover, cruelty is what the philosopher Bernard Williams (1985) calls a "thick moral concept," one that is derived from evaluations of actions in the real world rather than from timeless, unchanging principles of moral law. This ambiguity and lack of fixedness makes cruelty a powerful and useful *cri de couer*, and one ideal for coalition-building, but it also contributes to its weakness as both a moral and a legal term.

Cruelty's conceptual link to other vices has, for example, often resulted in a lack of specificity with regard to its harm. Protectionists, for example, sometimes portrayed cruel acts as evidence of a general human depravity rather than of a specific affront to a specific sentient being.[12] Animal

protectionists likewise often invoked the centuries-old argument that cruelty to animals was linked to other vices including intemperance, greed, child abuse, and murder. In arguing for better human treatment of animals, then, some reformers made the case not that it was inherently wrong to make an animal suffer, but that animal abuse was a gateway vice, positioned at the top of a slippery slope that quickly descended from horse-whipping to wanton depravity and murder. Following the logic of William Hogarth's famous 18th century woodcut, *Four Stages of Cruelty*, one humane publication explained that children's cruelty to animals, "begun in levity and thoughtlessness," was actually quite pernicious, for it "hardens the heart, and the parents who, unmoved, behold a child torture a kitten or a bird, are really educating that child for cruelty and murder" (Untitled, 1869, p. 72). When cruelty was transformed from a specific act against an individual animal into a general symbol of human vice and antisocial behavior, the nature of its harm was similarly redefined. In this rendering, cruelty was wrong because of the nature of human, rather than animal, being. Its harm redounded on the human cruelist, who would corrupt himself through immoral acts, and on the human community, which would be degraded by the violence in its midst.

Many 19th century legal interpreters were also inclined to fall back on this older view of cruelty, defining its harms in terms of humans rather than animals. When jurists considered whether a man was guilty of cruelty to animals, they could consider four definitions of cruelty: as *mens rea*, or the intent to be cruel; as the production of severe pain; as an excessive amount of force; and, as an action in violation of social standards of decency. Save the second of these four, all available definition made cruelty a problem within human beings and human communities rather than a problem *between* humans and animals.

In any court of law, cruelty legally hinged on the balance between intention and outcome. As one lawyer in an anticruelty trial put it, "the intent and the act must concur to make the offence" (*Commonwealth v. Lewis*, 1891 Pa. LEXIS 839). Anticruelty laws were not novel in this respect, for all criminal laws require the combination of a harmful act and an evil intention – short one of these elements, there is no crime (Bishop, 1877). Cruelty investigations and trials thus typically asked of a perpetrator's actions, did they cause suffering (the outcome), and was that suffering unnecessary? In considering the necessity of suffering, the intention of the perpetrator entered the calculation. If cruelty hinged not on the severity of the pain, but on its justifiability, then the legal focus shifted from animal suffering to the human mind, the seat of purpose and intent. As criminal

codes, anticruelty statutes automatically built in the requirement for *mens rea*, or a criminal mind, and typically specified that the pain inflicted must be done wantonly, maliciously, or with reckless disregard for the animal's welfare. Moreover, very few actions were considered *prima facie* cruel, but instead cruelty was determined on a case-by-case basis that considered, among other things, whether the actions in question were undertaken for a legitimate purpose and with the proper intent (Thornton, 1890; Barnard, 1888). Castrating one's animal, for instance, might cause great pain but would not be, for that reason, considered cruel since the purpose, and thus the intention, was legitimate and the pain produced "necessary" to achieve a legitimate end. Similarly, a man might whip or otherwise strike his animal in the process of training it without approaching cruelty – the distinction that courts drew was between chastisement undertaken for the purposes of training and that which "results from any bad or evil motive; as from cruelty of disposition, from violent passion, [or] a design to give pain to others" (*State v. Avery* 44 N.H. 392).

Establishing the intention behind actions that caused pain was not, however, a simple matter – nor was determining the relative importance of intention versus effect in a given case. On the one hand, intent was a critical element of the crime but, on the other, anticruelty statutes operated, as did all other criminal laws, on the assumption that "every man intends the natural, necessary, and even probable consequences of an act which he intentionally performs" (Barnard, 1888, pp. 11–12). Courts, furthermore, disagreed about the importance of intent and how to define the necessity of certain human actions, such as fox hunting and pigeon shooting (*State v. Bogardus* 4 Mo. App. 215).[13] Anticruelty activists, for their part, undertook public campaigns to redefine "necessity" and to argue that cruelty could result from thoughtlessness (the law's "reckless disregard") as well as from the overt desire to inflict pain on a helpless being. Generally speaking, SPCAs reserved prosecution for cases that they believed fell into the latter category, or those for which ignorance, whether of the law or of the suffering incurred, seemed an untenable excuse. Partly, this reflected the anticruelty movement's faith in moral suasion as the ultimate remedy for human cruelty and, partly, it reflected the difficulties encountered by SPCAs in prosecuting cases in which the intent to harm was less than clear (MSPCA, 1877).

Even when state courts were willing, as they sometimes were, to grant that ill motive or intention might be "immaterial" to the question of whether the crime of cruelty had been committed, their understanding of cruelty's harm nonetheless focused not on animals, but on human morals. An Arkansas

judge, for instance, noted anticruelty legislation's novel departure from the property and public nuisance protections of common law. However, he went on, to construe such statutes literally would result in their being a "dead letter" since, as written, the state "might drag to the criminal bar, every lady who might impale a butterfly, or every man who might drown a litter of kittens." To avoid such "absurdities" the judge admonished that the "laws must be rationally construed." "So construed," he assured, this class of laws may be found useful in elevating humanity, by enlargement with all God's creatures, and thus society may be improved" (*Grise v. State* 1881 Ark. LEXIS 124). Unable to contemplate a legislative intent to establish animal rights, the judge assumed that their intent must have been to forbid the *human* degradation accompanying indulgence in violence. Thus the locus of harm, and the constitutive element of guilt shifted from animal suffering to the morals of the perpetrator and the public at large.

Six years later, the 1887 decision in *Commonwealth v. Turner*, a Massachusetts prosecution for fox hunting, affirmed the view of the Arkansas judge. The court declared that the offense of cruelty was against neither property nor animals' rights, but instead "is against the public morals, which the commission of cruel and barbarous acts tends to corrupt" (1887 Mass. LEXIS 76, 8). Indeed, cruelty laws were most often incorporated under the sections of state criminal code regulating the public welfare and morals (Curnutt, 2001). Similarly, after an extensive review of state court decisions to date, an 1894 article concluded that anticruelty legislation did not establish animal rights but, rather, that the object of the laws was to stem "brutality in man," which is "destructive of that morality and humanity upon which all government is founded" (Quinlan, 1894, p. 161). In such statements, 19th century legal interpreters betrayed their essential unwillingness to depart from a common law framework for understanding harm to animals, hammering the square peg of the new statutes into the round hole of public morals protection.

The identification of specific actions as cruel depended also on establishing the "necessity" of allegedly cruel acts, and determining necessity was, for courts, largely a question of parsing illegitimate from legitimate means and ends. For 19th century jurists, the legitimacy of acts depended on yet another factor: social norms – what the United States Supreme Court has termed the "evolving standards of decency that mark the progress of a maturing society" (*Trop v. Dulles* 356 U.S. 86). Thus, for example, while state slave codes rarely afforded slaves protection from cruel masters, judges were sometimes willing to convict masters for cruelty when their punishments went beyond "the boundaries of custom and law" (Friedman, 1973).

In such cases, masters were convicted either because their actions were excessive in the relationship of their means and ends, or because they were in excess of customary standards for behavior. Set within a legal framework that still overwhelmingly defined animals as property, anticruelty laws largely regulated the manner and not the type of uses to which animal property could be put (exceptions include outright bans on activities like pigeon shooting and staged animal fights). Protectionists, meanwhile, labored to redefine "necessity" and reshape social norms by challenging the inevitability of commonplace practices. Nonetheless, in considering social norms – and whether they permitted activities from fox hunting to tail-docking – courts once again framed cruelty in terms of human morals rather than in terms of animal interests and animal suffering.

Although animal protectionists were genuinely concerned with lessening animal suffering, and though they authored and promoted legislation that placed animals' interests more squarely before the law than ever before, the concept of cruelty, the laws that criminalized it, and the judges who interpreted and applied those laws, all paid substantial attention to human morality. Since cruelty was constituted by an excess of pain and an evil intent, both interpreters and opponents of cruelty vacillated between locating its existence, on the one hand, in the sentient experience of animals and, on the other, in the mind of the criminal. This reflected and contributed to the confusion over the harm of cruelty – and whether it lay in criminal mind, the animal body, or the public morals. Writing in *Law Notes*, one author honed in on "the fundamental question, why men should be restrained by law from acts of cruelty towards the lower animals." Is it, he wondered, because there is "a positive right sanctioned by the sovereign power, so that there is a bond of law between them and men? Or is it a right 'which derives its sanction from the human revolt against the mystery of pain'? Or, is it founded simply upon moral utilitarianism," prohibited because restraining men from such actions improves their character (J. H. L., 1902, p. 141). In the pages of humanitarian publications, appellate court cases, and legal commentaries, J. H. L. could easily have found support for each of his propositions, "moral utilitarianism" not least among these.

CONCLUSION

More than just confusing, the multiple constructions of cruelty's harms and hence of the nature of culpability for cruelty contain different understandings of fundamental issues concerning rights, community, and social

obligation. While many protectionist labored both inside and outside the courtroom to constitute cruelty in terms of animal suffering, many other 19th century legal interpreters constituted cruelty solely in terms of harm to humans. When protectionists introduced a new crime, cruelty, they attached its harm to the suffering endured by animals, but when judges insisted that *mens rea*, or the violation of public order and morals comprised guilt for cruelty, they denied that animal's interests, or bodies, could be harmed or violated by the cruel acts in question. In denying animal interests, the latter both denied animals inclusion in a common community with humans, and they denied that animals had rights, even the limited rights that animal protectionists endeavored to protect through anticruelty legislation. So while John Haines confidently asserted that anticruelty activists had wholly changed the law's orientation to animals – forcing it to separate the cow from the plow – the concept of cruelty itself contained competing definitions of harm, and 19th century jurists interpreted anticruelty laws in ways consistent with animals' common law status as property – without will, interests, or legal personality.

Modern scholars of animal law typically assert that the animal protection laws passed during the nineteenth century were not rights-based and did little to effectively protect animals, let alone establish any animal rights. This failing is usually attributed to the law's intent to regulate human behavior rather than to make animal lives better. There is much to support these claims, particularly in the judicial interpretation of anticruelty laws, but what modern notions overlook is the failure, not of intent, but of the concept of cruelty itself. In addition to factors such as intent and historical context, it is the problematic nature of cruelty as a term that helps explain the gap between, on the one hand, protectionist's focus on animal suffering and their often avowedly rights-based goals, and, on the other hand, the functioning of animal protection laws. While cruelty can be a powerful term with which to protest tyranny and demand rights, it also contains, as we have seen, other, more instrumental, definitions of harm, ones focused more on perpetrators and bystanders than on victims.

When we define the nature of human guilt for cruelty, and we ask how it might be proved, our answers define not just a set of legal procedures, but also the boundaries of our moral community and the nature of our moral obligations. While protectionists may have wanted to extend the boundaries of that community to include animals, their choice to frame violence against animals in terms of cruelty contained other, contradictory, understandings of how such violence reverberated within human communities and across the species line. Finally, cruelty, the very same concept that animated the suffering animal body, could also silence it.

NOTES

1. For comprehensive accounts of early animal protection organizations and their activities (see Unti, 2002; McCrea, 1910; Hubbard, 1915, 1916; Schultz, 1924).

2. Meek (1976) incidentally mentions the subordination of animals in liberal theory, but makes no note of it – his concern is how the idea of the "savage" contributed to the development early social scientific theories about the development and progress of societies. In such theories, societies advance from hunting/gathering to pasturage through agriculture and, finally, commerce. Animals are not only the first glimmer man has of property – in the hunting stage – but also their domestication is what marks the transition from hunting to pasturage, and their successful domestication and propagation prompts the transition from pasturage from agriculture.

3. Jerald Tannenbaum (1995) makes the argument that animals' property status does not preclude their having rights since property has always been regulated and protected. Property has never, liberal myths notwithstanding, conferred absolute dominion – indeed, owning property often entails a number of duties, which are correlated with the rights of those toward whom duties are owed. Animals and the law: property, cruelty, rights.

4. See also: J. H. L. (1902).

5. See also: Thornton (1890).

6. 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 Francione (1995).

7. For a discussion of the relationship between the infliction of physical pain and the dissolution of the self, see Scarry (1985).

8. For contemporary descriptions of these displays and accounts of their whereabouts, see: Henry Bergh and his work, (1879), 875; The instruments of torture, *Humane Journal, 9* (1881): 10;. North, F. D. (1982) The taxidermal art, *The Century* : 238; Their sting is gone, Cleveland, Ohio, News & Herald, 1887; An Interesting Exhibit, *Humane Journal, 16* (1888), 5; The Society's Museum, *Our animal friends, 19,* January (1892), 102; McCarthy (1905).

9. On the ability of instruments of torture to symbolize both the pain of the tortured and the power of the torturer, see Scarry, pp. 14–17.

10. There is an extensive literature on the question of whether the presentation of pain inspires sympathy, justice, and reform, or whether it inspires either compassion fatigue, narcissistic exploration of one's own suffering, or, worse, titillation. Much of this debate forms a part of the more general debate over the politics of sentimentalism, and much of it centers on the politics of white abolitionists' presentation of slave suffering in antebellum America. For some representative works addressing these questions, in addition to Sontag, Wood, and Lacquer, see Clark (1995), Boltanski (1999), Haltunnen (1995), Hinton (1999), McKanan (2002), and Eppler (1993). A subpoint in such debates is the question of whether representing the suffering of the victimized disempowers, abjectifies, or humanizes them since agency lies with the picture's creator and, finally, its audience. The victims remain silent throughout. This is obviously complicated with respect to animals for whom reformers felt obligated to create a voice, and about which the question of humanization is trickier. Though protectionists adopted as their slogan, 'we speak for those who cannot speak for themselves,' they also repeatedly insisted that animals did have voices, if only humans would take the time to understand them. The effort to establish a corporeal language of pain is one such case in point.

11. In articulating this point, I am indebted to Alexander F. Robinson's discussion of greed. Robinson (2001).

12. In helping to articulate this point, I am indebted to Marcus Wood (2000).

13. This decision holds that pigeon shooting contests do not inflict "unnecessary" suffering because they have a legitimate end – to improve marksmanship, which may in turn increase the citizen's value to the state as a potential soldier. By contrast, *Commonwealth v. Lewis*, 7 Pa. C.C. R. 558, found the defendant guilty of cruelty for participating in a pigeon shooting match, arguing that such sports had no legitimate purpose and tended to corrupt the public morals, which the anticruelty statutes were designed to protect. This was reversed by a higher court in *Commonwealth v. Lewis*, (1891), on the grounds that since the object of the match, to shoot pigeons and develop marksmanship, was legitimate, the practice of it was, in this instance, neither needless nor inclined to produce more pain than necessary to achieve the state end – shooting pigeons. Unlike the lower court, the higher court was unwilling to consider the "necessity" of the act in question.

REFERENCES

Addresses on Vivisection by Members of the Medical Profession. ([1886]). Philadelphia: American Anti-Vivisection Society.

Arrests and Prosecutions. (June 1899). *Our Animal Friends*, 26, 229.

ASPCA. (1866). Charter, Objects, Laws, etc., *Relating to the American Society for the prevention of cruelty to animals.* New York: Lange & Brother, Printers.

ASPCA. (1895). *Manual of the American Society for the prevention of cruelty to animals.* New York: ASPCA.

Baraz, D. (2003). *Medieval cruelty: Changing perceptions, late antiquity to the early modern period.* Ithaca: Cornell University Press.

Barnard, C. (1888). *Forms for complaints, under chapter of the public statutes of Massachusetts, relating to the prevention of cruelty to animals, with sundry directions for pleading.* Boston: MSPCA.

Beven, T. (1909). The responsibility at common law for the keeping of animals. *Harvard Law Review*, *22*, 465–491.

Bishop, J. P. (1873). *Commentaries on the law of statutory crimes.* Boston: Little, Brown, and Company.

Bishop, J. P. (1877). *Commentaries on the criminal law*, (6th ed.), Revised and Greatly Enlarged, Vol. I. Boston: Little, Brown, and Company.

Bishop, J. P. (1892). *Bishop's new criminal law.* Chicago: T.H. Flood & Company.

Boltanski, L. (1999). *Distant suffering: Morality, media and politics.* Cambridge: Cambridge University Press.

Clark, E. (1995). The sacred rights of the weak: Pain, sympathy, and the culture of the individual rights in Antebellum America. *Journal of American History*, *82*, 463–493.

Commonwealth v. Lewis. 1891 Pa. LEXIS 839, 4.
Commonwealth v. Turner. 1887 Mass. LEXIS 76, 8.
Curnutt, J. (2001). *Animals and the Law.* Santa Barbara: ABC Clio.
Descartes, R. (1993). In: D. A. Cress (Trans.), *Discourse on method and meditations on first philosophy* (3rd ed.). Indianapolis and Cambridge: Hackett Publishing Company.
Eppler, K. S. (1993). *Touching liberty: Abolition, feminism, and the politics of the body.* Berkeley and Los Angeles: University of California Press.
Extracts from address of President Bergh. (June 1868). *Our Dumb Animals, 1*, 5–7.
Francione, G. (1995). Animal rights and animal welfare. *Rutgers Law Review, 48*, 397–469.
Francione, G. (1996). *Animals, property, and the law.* Philadelphia: Temple University Press.
Friedman, L. M. (1973). *A history of American law.* New York: Simon and Schuster.
Grise v. State. 1881 Ark. LEXIS 124, 6–7.
Haines, J. (Ed.). (1905). Editorial: John Colam and the Royal Society for the Prevention of Cruelty to Animals. *Our Animal Friends, 32*, 487–491.
Haltunnen, K. Humanitarianism and the pornography of pain in Anglo-American culture, *American Historical Review, 100* 303–334.
Henry Bergh and His Work. (1879). *Scribner's Monthly, 17*, 872–884.
Hinton, L. (1999). *The perverse gaze of sympathy: Sadomasochistic sentiments from Clarissa to Rescue 911.* Albany: State University of New York Press.
How do you like this? (1871). *Our Dumb Animals, 4*, 110.
Hubbard, F. M. (1915). *Prevention of cruelty to animals in New York State.* New York: Columbia University Press.
Hubbard, F. M. (1916). *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.
J. H. L. (1902). Cruelty to animals. *Law Notes, 6*, 139–142.
Kelch, T. G. (1998). Toward a non-property status for animals. *New York University School of Law Environmental Law Journal, 6*, 531–585.
Lacquer, T. (1989). Bodies details and the humanitarian narrative. In: L. Hunt (Ed.), *The new cultural history* (pp. 176–204). Berkeley and Los Angeles: University of California Press.
McCarthy, G. M. (1905). *The evolution of a sentiment.* Jersey City, NJ: G.M. McCarthy, Press of John L Compton.
McCrea, R. C. (1910). *The humane movement: A descriptive survey.* New York: Columbia University Press.
McKanan, D. (2002). *Identifying the Image of God: Radical Christians and nonviolent power in the Antebellum United States.* Oxford: Oxford University Press.
Meek, R. L. (1976). *Social Science and the Ignoble Savage.* Cambridge: Cambridge University Press.
Moretti, D. S. (1984). *Animal Rights and the Law.* London: Oceana Publications, 1984.
MSPCA. (1877). *Ninth Annual Report.* Boston: MSPCA.
Negligent keeping of animals. (1883). *Central Law Journal, 17*, 307–310.
North, F. D. (December 1882). The Taxidermal Art. *The Century, 25*, 230–240.
Perkins, D. (2003). *Romanticism and Animal Rights.* Cambridge: Cambridge University Press.
PSPCA. (1871). *Third annual report of the Pennsylvania Society for the prevention of cruelty to animals.* Philadelphia: PSPCA.
Quinlan, O. L. (1894). Have animals rights? *Central Law Journal, 38*, 160–166.
Robinson, A.F. (2001). *Greed: Gut feelings, growth, and history.* Cambridge: Polity Press.

Scarry, E. (1985). *The body in pain: the making and unmaking of the world.* New York: Oxford University Press.
Schultz, W. J. (1924). *The humane movement in the United States, 1910–1922.* New York: Columbia University Press.
Shklar, J. (1984). *Ordinary vices.* Cambridge, MA.: Belknap Press of Harvard University Press.
Sontag, S. (2003). *Regarding the pain of others.* New York: Farrar, Straus and Giroux.
State v. Avery. 44 N.H. 392.
State v. Bogardus. 4 Mo. App. 215.
Story of a good and faithful horse. (1868). *Our Dumb Animals, 1*, 35.
Tannenbaum, J. (1995). Animals and the law: Property, cruelty, rights. *Social Research, 62*, 539–607.
The Check-Rein. (November 1868). *Our Dumb Animals, 1*, 44.
The Society's Museum. (1892). *Our Animal Friends, 19*, 102.
Thornton, W. W. (May 1890). Cruelty to animals. *Criminal Law Magazine and Reporter, 12*, 377–405.
Trop v. Dulles. 356 U.S. 86. Quoted in Note (1966). The Cruel and Unusual Punishment Clause and the Substantive Criminal Law. *Harvard Law Review, 79*, pp. 635–655.
Turner, E. S. (July 1871). Equine Correspondence. *Our Dumb Animals, 4*, 119.
Turner, J. (1980). *Reckoning with the beast: Animals, pain, and humanity in the Victorian mind.* Baltimore: Johns Hopkins University Press.
Unti, B. (2002). *The quality of mercy: Organized animal protection in the United States, 1866–1930.* Ph.D. dissertation, American University.
Untitled. (1869). *Our Dumb Animals, 1*, 72.
What Epes Sergeant Says. (July 1868). *Our Dumb Animals, 1*, 14.
Williams, B. (1985). *Ethics and the Limits of Philosophy.* Cambridge, MA: Harvard University Press.
Wood, Marcus (2000). *Blind memory: Visual representations of slavery in England and America, 1780–1865.* Manchester: Manchester University Press.