The Role of Animal Welfare Legislation in Shaping Child Protection in the United States

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Abstract

The aim of this paper is to study the role that the development of animal welfare legislation had on shaping child protection in the United States. Although it is well known that the same individuals responsible for animal protection were involved in the subsequent creation of child welfare legislation, most historical discussions of child welfare begin only at the intervention of those individuals. We sought to combine the topics, and examine how closely the foundation of animal protection related to child protection in the United States. In order to study the ways in which the animal protective movement influenced child protection in the United States, a review of the relevant literature including books and journal articles on the topics, court cases and documents, and state and federal statutes was conducted. Through our research, we found that the framework for the creation and enforcement of child protective laws was modeled almost entirely after animal protection. Thus, we concluded that child protection in the United States would not be the same if it were not for the preceding animal protection movement. Although the two movements share roots, with time animal and child protection have diverged as a result of the notion of social work for families.

Keywords: Animal welfare, Animal protective legislation, Child protective legislation

1.1 Introduction

During the early part of the nineteenth century, child and animal protection laws were inadequate in a variety of ways and faced the similar hurdles that inhibited their enforcement. In an effort to resolve the issues facing animals, Henry Bergh created the Society for the Prevention of Cruelty to Animals, spurring a movement that eventually gave way to child protection in the United States. Child protection would not be the same in the United States if it were not for the preceding animal protection movement.

2. Animal Protective Legislation

2.1 Development

The development of animal protective legislation in the United States is slightly complicated, because legislation was left to the individual states to pass. Thus the timeline is slightly inconsistent, in the sense that for some states, animal protections existed while they did not in others. In any case, before 1822, animals in the United States were protected by two major legal theories before protective legislation existed.

Criminal prosecution existed primarily under the concept of Malicious Mischief. Malicious Mischief is the charge brought when someone intentionally destroys or damages the personal property of another (Legal Information Institute, 2014). In the State of Alabama vs. Pierce, in 1845, the Supreme Court of Alabama ruled that malicious mischief could only be used as a cause of action if "it could be proven that the animal killed was the property on another" (7 Ala. 728). In 1887 the State of Indiana brought a case for malicious mischief against a man for "cruelly torturing, tormenting, and needlessly mutilating a goose" (12 N.E. 103 (Ind. 1887)). In the Supreme Court of Indiana's decision the court stated,

> "There is a well-defined difference between the offense of malicious mischievous injury to property, and that of cruelty to animals. The former constituted an indictable offense at common law, while the other did not. The former has ever been recognized as an indictable offense as a measure of protection to the owner of property liable to be maliciously or mischievously injured. The latter has, in more recent years been made punishable as a scheme for the protection of animals without regard to their ownership."

Clearly, it was a well-known legal strategy to prosecute animal cruelty based on this concept.

Another legal remedy existed under the concept of "public nuisance" and "breach of public peace." Under this logic, the pain and suffering of the animal was still not the concern of the law. The argument behind this cause of action is that there is a distinct moral impact on humans when they participate in—even just as a witness—something so disturbing as animal cruelty (Favre and Tsang, 1993). In Republica v. Teischer in 1788, the court ruled that "maliciously, willfully and wickedly killing a horse," was a public wrong (1 Dall. 335 Penn. 1788).

2.2 States begin to pass legislation

Many of the first animal protective laws, focused on protecting animals belonging to individuals. For example in 1829, New York passed a law that read, "Every person who shall maliciously kill, maim or wound any horse, ox or other cattle, or any sheep, belonging to another, or shall maliciously and cruelly beat or torture any such animal, whether belonging to himself or another, shall, upon conviction, be adjudged guilty of a misdemeanor" (N.Y. Rev. stat. tit. 6, 26 (1829)). This law went beyond previous law in that this law prohibited individuals from abusing their own livestock. This statute, however had relatively obvious issues. Abusing any productive animal was merely at the brink of criminality (Favre and Tsang, 1993). Additionally, it only protected a very limited list of animals, and explicitly excluded wild animals. The law also required proof that the accused individual was malicious and cruel as opposed to reasonably responding to misbehavior on the part of the animal. Plus, it failed to address neglect. By this law, starving a horse to death would still be possible.

Eventually other states began to take New York's progressive lead. In accordance with the growing public interest in animal welfare over time, these states took measures to improve the 1829 New York law. They all wrote their laws so that they could theoretically be applied to all owned animals, including pets (Favre and Tsang, 1993).

Even though these statutes were becoming more common around the United States, there was still a tremendous amount of confusion surrounding the appropriate interpretation of the laws. For many states, courts were forced to determine what kinds of behavior constituted a violation of their respective laws. One 1856 case in Minnesota highlights the issue the courts encountered. In this case the defendant was indicted for shooting a dog under the Minnesota statute that reads, "Every person who shall willfully and maliciously kill, maim, or disfigure any horses, cattle, or other beasts of another person...shall be punished…" (Minn. Stat. § 96.18). The court refused to hear the case because it did not find that a dog could not be considered a beast. The judge explained "It seems to me, that all animals, such as have, in law, no value, were not intended to be included in that general term…The term beasts may well be intended to include asses, mules, sheep, and swine and perhaps some other domesticated animals, but it would be going quite too far to hold that dogs were intended" (1 Minn. 292).

In addition to the difficulty of interpreting criminal statutes in court, the other major issue plaguing animal protection was the practical enforcement of criminal statutes. No agency existed to enforce compliance. Police were technically responsible as law enforcement officials, but they had a number of responsibilities for which animal welfare was among the least pressing. Lack of enforcement left owners to treat their animals however they saw fit essentially without patrol (Favre and Tsang, 1993). There needed to be an agency specifically responsible for enforcing these laws.

2.3 Bergh era

Henry Bergh sought to fill that void. While traveling in England, he became fascinated with the work of the Royal Society for the Prevention of Cruelty to Animals (Favre and Tsang, 1993). Bergh met with the Earl of Harrowby, who was then president of the Royal Society for the Protection of Animals in England (ASPCA, 2014). With an intricate understanding of the English model, Bergh asked the New York State Legislature to charter the American Society for the Prevention of Cruelty to Animals (ASPCA or NYSPCA).

In its creation, Bergh declared that the purpose of the Society would be, "To provide effective means for the prevention of cruelty to animals through the United States, to enforce all laws which are now or may hereafter be enacted for the protection of animals and to secure, by lawful means, the arrest and conviction of all persons violating such laws" (Rumley and Rumley, 2012). The New York Legislature granted the charter on April 10, 1866 (Favre and Tsang, 1993).

As per the charter, ASPCA agents were not police officers in the full sense. Instead, they were granted limited police power. ASPCA agents received reports of animal cruelty, conducted investigations, wore badges, made arrests, and prosecuted abusers in court (Favre and Tsang, 1993).

After successfully incorporating the Society, Bergh immediately began campaigning for strengthening existing legislation. In 1866 Bergh pushed for amending the progressive-for-its-time 1829 law (Zawistowski, 2014). The first component of the new law read, "Every person who shall, by his act or neglect, maliciously kill, maim, wound, injure, torture, or cruelly beat any horse, mule, ox, cattle, sheep, or other animal belonging to himself or another, shall upon conviction be adjudged guilty of a misdemeanor" (N.Y. Rev. Stat. ch. 682 § 26 (1866); Favre and Tsang, 1993). The 1866 amendment to the 1829 act included a second component which read, "Every owner, driver, or possessor of an old, maimed or diseased horse or mule, turned loose or left disabled in the street, lane or anyplace of any city in this state...for more than three hours shall be adjudged guilty of a misdemeanor" (N.Y. Rev. Stat. ch. 682 § 26 (1866)). This law was the first that dealt with animal abandonment (Favre and Tsang, 1993). A year later in 1867, the New York legislature, under Bergh's efforts, passed "An act for the more effectual prevention of animal cruelty" (N.Y. Rev. Stat. ch. 375, §§ 1-10 (1867)). It was the most comprehensive and progressive animal protection law of its time (Favre and Tsang, 1993). Although punishments for breaking the law still garnered the misdemeanor label, the law covered a wide range of animal welfare topics. (N.Y. Rev. Stat. ch. 375, §§ 1-10 (1867))

2.4 Enforcement of the 1867 Act

With the power to arrest lawbreakers, and a more powerful and comprehensive law on the books, Bergh was well on his way to redefining animal protection. The landmark case that brought the work of the Society and Mr. Bergh to the attention of the general public was nicknamed the "Turtle Case." This issue involved the shipment of live turtles from Florida to New York. The turtles were shipped on their backs, with their flippers pierced and tied together with strings. The animals received no nourishment during their journey (Lane and Zawistowski, 2014). Bergh arrested the captain and crewmembers and brought charges against them under the 1867 Act. Unfortunately, the court considered the turtles to be insects, and did not believe that turtles could feel pain or would suffer from lack of food and water (Lane and Zawistowki, 2008). Without proof of suffering, the court dismissed the charges. The hostile judge also reportedly told Bergh to "mind his own business" (Favre and Tsang, 1993). Although he lost the case, Bergh was quoted as saying, "It was the best thing that ever happened, because overnight everyone knew about the society and its objectives" (Lane and Zawistowki 2008).

2.5 Spread of protective legislation

The work in New York caused a ripple effect in the United States. Overwhelming public sentiment in the United States was in support of the existence of animal protective laws and enforcement agencies. Within a few years of the creation of the ASPCA, many states adopted their own comprehensive animal protective legislation and chartered the creation of protective societies. (Favre and Tsang, 1993).

One place where the states seemed to greatly diverge relates to the punishments they allocated for breaking the welfare laws. New York's law did not explicitly mention the punishments, only explaining that violators shall be charged with misdemeanors. New Hampshire and Massachusetts appeared among the strictest; both had maximum penalties of one year in jail and $250 fine (1878 N.H. Laws 281, Mass. Gen. L. ch. 344 (1869

In many states, the requirements for incorporation of protective societies were minimal. Societies for the Prevention of Cruelty to Animals were "almost universally corporations." They were private, and operated similarly to charities (Williams 8). Some legislatures required the societies to issue periodic reports explaining their doings. In most cases, a state board usually associated with charities inspects and audits, was responsible for monitoring the direct activities (Williams et al., 1914). Powers designated to the respective SPCA's, ranged from full police power, to police power with confirmation, semi-police powers, public employment, and state boards. Some allowed an interest in fines to societies, public appropriating paid or authorized, and some states received no government aid (Williams et al., 1914)

2.6 Courts interpret the new laws

There is a noticeable lack of court records concerning animal law during the late nineteenth and early twentieth century (Favre and Tsang, 1993). One possible explanation is that the fine of being found guilty was less than the cost of a trial; so individuals admitted guilt, and paid the misdemeanor fine from the onset, leaving no record behind. Appellate court data are also limited because when individuals were found guilty, they were prone to pay a small fine and avoid the difficulty of retrial.

One of the largest cases, and perhaps most defining cases of this time period was State of Indiana v. Bruner in 1887 (111 Ind. 98). In this landmark Indiana Supreme Court case, a man poured turpentine on a live goose and set it on fire. The Indiana statute read, ""Whoever overdrives, overloads, tortures, torments, deprives of necessary sustenance, or unnecessarily or cruelly beats, or needlessly mutilates or kills any animal, shall be fined not more than two hundred dollars nor less than five dollars" (Ind. Rev. Stat. § 2101). The court clarified " a man may be guilty of cruelty to his own animal, or to an animal without any known owner, or to an animal which has in fact no owner" (111 Ind. 98). This case affirmed, in Indiana at least, that animal cruelty protections could be extended to animals without owners, including *wild animals*.

In the 1881 case, Grise v. State of Arkansas, the court provided one of the first opinions that discussed the cruelty statute with a view toward assessing the types of animals to be afforded protection by the law. In this case, a defendant was charged for killing a pig that entered his personal property and that the defendant ultimately hit the pig in the head. The court discussed at length the moral responsibility of humans to take care of animals, eventually declaring that "animal statutes embrace all living creatures, and the abstract rights in all animal creation…from the largest and noblest to the smallest and most insignificant" (37 Ark. 456). The court did clarify though, that these statutes should be considered within reasonable limits and that society would surely "…not tolerate a system of laws which might drag to the criminal bar, every lady who might impale a butterfly" (37 Ark. 456).

These early court decisions relating to the statutes are a few examples that played a key role in developing animal protective law. Perhaps most importantly, courts of the time helped define animal cruelty. In the 1897 case State of North Carolina v. Neal, cruelty was defined to "include every act whereby unjustifiable physical pain, suffering, or death is caused" (27 S.E. 81). Combining the decision from this case, and many others like it, the legal definition of animal cruelty came to be seen as a three pronged test, involving 1) human conduct, by act or omission, 2) which inflicts pain or suffering on a nonhuman animal, and 3) which occurs without legally acceptable or justifiable conduct (Favre and Tsang, 1993). Additionally, the courts affirmed that killing an animal falls outside of the definition of cruelty. The 1900 court in Horton v. State of Alabama made an obvious but important point in declaring, "The mere act of killing an animal, without more, is not cruelty, otherwise one could not slaughter a pig or ox for the market, and man could eat no more meat" (27 So. 468). Thus, in order to convict individuals for cruelty to animals, prosecutors, who were often agents of these protective societies, had the difficult job of proving that abusive actions 1) were unnecessary, 2) were in violation of an existing standard of cruelty, and 3) that the animal can feel pain and suffering (Favre and Tsang, 1993).

Henry Bergh's role developing protective animal law in undeniable. Animal welfare laws went from being entirely unenforceable in the few ways they did exist, to being examined in serious detail in courts across the United States in just a matter of years. Additionally, courts played a major role in defining and establishing how seriously animal welfare laws were to be taken. By the late nineteenth century, animal welfare legislation and enforcement was well under way, but the same was not true for child welfare in the United States.

3.0 Child Protective Legislation

3.1 Problems facing children

A number of confounding factors contributed to the abusive conditions that faced many children in the United States. The Industrial Revolution was followed almost immediately by the Civil War (NYSPCC 3). This created a time of widespread poverty, which inevitability contributed to both desolate conditions for children at home, and their exploitation on the streets and in the work force. Additionally, alcoholism was rampant during this time. Furthermore, immigration hit an all-time high during the nineteenth century, and the population in New York increased seven-fold, to over a million people (NYSPCC 3).

At the time, social welfare was not in the hands of the government. Thus, as the number of destitute children was greatly increasing, so was the number of private, charitable attempts to help children in cities (Schene, 1998). Poor or abandoned children were often sent to almshouses. Created to house poor, housed here were also families, paupers, the infirm, the mentally ill, as well as lawbreakers and alcoholics. The majority of inmates were women, many with their children. When in these houses, children found themselves surrounded by "impoverished, insane, or diseased adults" (Schene, 1998).

In 1856, the New York State Senate declared that almshouses "were the most disgraceful memorials of public charity" (Child Protection in America 13). As a result, several states passed laws to try to help children residing in them. In 1861, Ohio passed the first law ordering the removal of children from the state's almshouses. The majority of states followed Ohio's example and, between 1865 and 1890, established state boards of charities to investigate charitable and correctional institutions (Herrick and Stuart, 2005). Individuals also, perhaps more effectively, began to take measures to help children in these arrangements and create charities just for children. However, the majority of the children that received care from such child focused charities were those whose families had either abandoned them, or admitted that they were unable to care for them. These charities did not exist to intervene on behalf of children in order to protect them from abuse (Meyers, 2008).

3.2 Why animal welfare preceded child welfare

One of the major issues stalling child welfare legislation in the United States, and an explanation of why animal welfare legislation preceded child welfare laws, was that families differed greatly across the country. Before there could be child protective legislation, there needed to be a common definition of a child. Childhoods varied greatly depending on the socioeconomic status of the family (Henderick 1994). Some families were able to afford keeping their children in school, while other families relied on their child's ability to work for hours on end to support their family. Therefore, it seemed impossible for the law to regulate how families were to provide for themselves. Another reason for the delay in the appearance of child welfare legislation in the United States is that independence and privacy were highly valued, as was parental autonomy (Schene 1998). Courts emphasized parental discretion in deciding the degree of punishment that was warranted by a given situation (Albstein, 1976). Clearly, the prevailing belief was that it was not the role of the state to tell families how to raise their children. These same attitudes of outright owner discretion did not exist to the same extent for animals, hence why legislation surrounding animal wellbeing existed before the same existed for children.

In spite of this attitude of parental independence, some laws did exist to protect children. The long-standing legal doctrine of parens patriae—the ruler's power to protect minors—also gave the state some right to intervene either on behalf of the child to enforce parental duty or provide care for the child (Schene, 1998). Much like the struggles faced by animals before the development of the SPCA, even though statutes existed, there were several factors that prevented enforcement of such statutes. For one, there was no agency dedicated to protecting children and intervening when there was an issue. In order for the state to intervene, someone had to take it upon him or herself to notice a problem, and personally go to the local government. Given the presiding belief that parents could raise their children however they pleased, this rarely occurred. Additionally, there was no real set standard to demarcate the point at which the state could intervene.

There were limits, however, and in cases of "egregious abuse" the courts intervened. The Illinois Supreme Court famously said, "Parental authority must be exercised within the bounds of reason and humanity. If the parent commits wanton and needless cruelty upon his child, either by imprisonment of this character or by inhuman beating, the law will punish him" (52 Ill. 395).

In 1866, Massachusetts passed a law entitled "An Act Concerning the Care and Education of Neglected Children." This act authorized judges to intervene in the family when, "By reason of orphanage or of the neglect, crime, drunkenness or other vice of parents… a child was growing up without education or salutary control, and in circumstances exposing said child to an idle and dissolute life" (1866 MA Chap. 0283). Unfortunately, as mentioned above, the overwhelming sentiment in society was that parents had the autonomy to run their families as they saw fit, so complaints were seldom filed. (Myers, 2008). Scholars argue it was believed—partially because of the doctrine of parens patriae —that judges had an inherent right and duty to stop abuse when faced with it in the courtroom (Myers, 2008). However, in every state besides Massachusetts, no one had the explicit right to intervene in someone's home on behalf of children, even though at the time it was legal to intervene on behalf of an animal.

3.3 Beginning of organized child protection

The rescue of abused child, Mary Ellen Wilson (*b.* 1863), became the driving force for the development of child protective services in the United States. Mary Ellen, through a series of unfortunate events became the indentured child of Mary Connolly. Mary Ellen, was horribly neglected and cruelly beaten in her life with the Connolly's (Myers, 2006).

In 1873, Etta Angell Wheeler, a religious missionary to the poor, became aware of Mary Ellen and took it upon herself to investigate. Wheeler went to the police who did not have the legal ability to intervene unless there was proof of assault. In other words, at this time, the police lacked the authority to intervene on suspicion of abuse, even though they could do this for animals (Myers, 2006). Wheeler then visited several charities dedicated to helping children, but none had the authority to intervene in the family, they could only help when a family asked for assistance (Schene 1998; Myers, 2006). In April 1874, after four months of no progress, Wheeler had the brilliant idea to contact Henry Bergh, the president of the NYSPCA. Upon an NYSPCA investigator's report, Bergh contacted the lawyer for the animal protection society, Elbridge Gerry, who worked to develop legal means to rescue the child (Myers, 2006).

Gerry apparently found a little used law that is based on the legal doctrine of habeas corpus. Specifically Section 65 of the Habeas Corpus Act allowed for the judge to issue a writ de homine replegiando, which is used to remove a man from prison or out of the custody of a private person (Section One: The Development of Child Abuse and Neglect Laws, 2009). Under the law, Judge Abraham Lawrence issued a warrant authorizing the police to take Mary Ellen into custody. On April 9, 1874, a New York City police officer, assisted by an investigator from the Animal Protection Society and removed Mary Ellen (Myers, 2006). She then was taken to the police headquarters, where she was subsequently brought to Judge Lawrence's courtroom. Gerry informed the judge of the case, who called for an overnight recess. Wheeler's husband worked for the newspaper, and he worked diligently to generate media interest. Thus, by the morning the case was front-page news (Myers, 2006). After several days of testimony, Judge Lawrence agreed to remove Mary Ellen from the Connolly's custody.

According to legend, Bergh argued in court that, "This child is an animal. If there is no justice for it as a human being, it shall at least have the right of cur lost in the street. It shall not be abused" (Myers, 2006). However, it should be dually noted that it was not animal protective laws that saved the child. Instead, it was the same individuals, playing to the fact that laws existed that would have protected an animal from enduring the same treatment that this child was undergoing.

3.4 Creation of the New York Society for the Prevention of Cruelty to Children

Fueled by their success in the case of Mary Ellen, the founders of the ASPCA began to work on extending the same protective measures that existed for animals, to children. Gerry and Bergh drew from their experiences forming the NYSPCA in their incorporation of the NYSPCC, however this time the efforts were headed by Gerry. On December 15, 1874, eleven men gathered to launch the New York Society for the Prevention of Cruelty to Children, here on referred to as the NYSPCC (Myers, 2006).

Earliest cases involved overt child abuse. Additionally, some of the earliest SPCC cases dealt with child labor (NYSPCC 125th Anniversary Packet, 2000). Besides child labor, one of the biggest problems the NYSPCC found was the existence of private nurseries equivalent to modern unlicensed day care facilities (NYSPCC 125th Anniversary Packet, 2000). In its first eight months, the NYSPCC received and investigated several hundred complaints, prosecuted 68 criminal cases and rescued 72 children from abuse and neglect (NYSPCC 125th Anniversary Packet, 2000).

As demonstrated above, agents of the NYSPCC viewed their primary mission as rescuing children from cruelty. Nevertheless, the society did more than prosecute. Often, prosecution was unnecessary, and agent intervention simply helped families connect with social and financial resources. The NYSPCC also assumed responsibility for collecting court ordered child support and prosecuted parents who failed to pay (Myers, 2006). Perhaps most importantly, though, the society worked to obtain comprehensive legislation, just as Bergh had done once he finalized the incorporation of the NYSPCA.

3.5 NYSPCC begins creating laws

Gerry helped enact laws that addressed a broad range of issues in child welfare such as requiring custodians to provide food, clothing, medical care, and supervision to the minors for which they are responsible (1876), required separation of children from adults when arrested (1877, this promulgated what eventually became the Juvenile Justice system) and spearheaded an act prohibiting the employment of children in sweatshops and factories and limiting child labor to 60 hours per week (1887) (Myers, 2006).

By 1900, the NYSPCC had removed 84,000 children from their living situations (NYSPCC 125th Anniversary Packet, 2000). This inevitably placed a significant burden on the NYSPCC to house the children upon their relocation. Although private shelters and charities originally housed such children, they quickly became overwhelmed. Thus the NYSPCC was forced to create a new way for these individuals to obtain temporary housing. In April 1880, the Society purchased a townhouse in New York located at 100 East 23rd Street (NYSPCA, 125th Anniversary Packet, 2000). It functioned as both a head-quarters and a temporary shelter—the first children's shelter the City. In 1888, an adjoining house was added. Finally, in 1893, the NYSPCC built an eight story building on the site, to house such individuals (NYSPCA,125th Anniversary Packet 2000).

3.6 Additional responsibilities of the NYSPCC

According to the NYSPCA 125th Anniversary Packet (2000), the NYSPCC also took on responsibilities in regards to almost all legal matters relating to children, including administrative issues:

- From 1876-1978 the NYSPCC was responsible for enforcing child entertainment laws, and processing of child performance applications.
- From 1878-1948 the NYSPCC was in charge of daily transportation of removed children to and from their court appearances, as well as physically taking them to their new temporary residences.
- From 1880-1931 the NYSPCC took the lead in investigating reports of missing children.
- From 1880-1931 the NYSPCC conducted all child support collection for New York City
- From 1887-1936 the NYSPCC had the important, and often overlooked, job of investigating those who sought to regain custody of their removed children.
- From 1880-1903 the NYSPCC also investigated petitions from families to have their children voluntarily placed in the custody of the NYSPCC.
- From 1880-1886, the NYSPCC conducted all inspections of infant boarding houses and foster homes, however the Department of Health took over this responsibility.

Success of the NYSPCC was overwhelming. By 1900, the NYSPCC had investigated 130,000 complaints, aided 370,000 children, and prosecuted 50,000 cases with a conviction rate of 94% (125th Anniversary Packet, 2000). The New York State Court of Appeals defined the NYSPCC as a quasi-governmental arm of the State. The Supreme Court conducted a review of the Society, and the findings came back, "favorable in every respect."

At the same time that New York was developing more sophisticated child protective legislation, other states, once again began to follow New York's progressive lead. Individuals in other cities began forming protective nongovernmental agencies (Myers, 2008). In many instances, existing animal protection societies expanded their roles to include child protection (Myers, 2006). The news of the success of the NYSPCC travelled so fast that in 1880, there were 37 child protection agencies in the US.

Clearly, across the United States, child welfare protection was experiencing the same boom that the animal welfare movement had undergone a few years before. By 1902 the number of protective societies increased to 161 (Myers, 2006). According to a 1910 state-by-state survey of child protection, all states had laws against sexual abuse. Most all had criminal punishments for abandoning, deserting, or failing to support children (Myers, 2006). Nearly every state made it illegal to sell tobacco or alcohol to minors, and prohibited minors from entering houses of prostitution or saloons (Myers, 2006). Additionally, by this point most states had established juvenile justice systems. The first juvenile court appeared in Chicago in 1899, but other states, including New York quickly followed suit. New York, two years later, also secured a law that reduced almost all crimes committed by children to misdemeanors. By 1922 the number of child protective societies across the US exceeded 300 (Myers, 2008).

With more societies came differences in the beliefs of what the daily actions of a child protective society should do. Note that this was not an issue with the spread of SPCA's; everyone agreed on their mission.

For child protective societies though, there seem to be two diverging beliefs about what their role should be. On the one hand there was, and is, the law enforcement approach. In 1910, Roswell McCrea extolled the virtues of the law enforcement approach to child protection. On the other hand, states, like Massachusetts advocated for a social welfare approach to child protection. In his report, General Agent Frank Fay argued that in only taking the law enforcement approach, they were not solving the root of the issue, only dealing with the problem. He argued that prevention is a better cure than punishment (Myers, 2006). The Massachusetts SPCC also identified that there was something extremely valuable that exists in the bond between parent and child, and that removing a child from a home should be a last resort, as opposed to the only remedy (Myers, 2006). Accordingly, they changed their focus to a more holistic, social work based that became the prevailing attitude in the early twentieth century (Myers, 2006).

3.7 Government intervention

The growing societal approval and recognition for the need for child protection, along with the growing realization that so many children in the US were still unprotected coincided with the increasing role of the government in social services (Myers, 2008). In the early twentieth century, states began strengthening their departments of welfare, health, and labor almost across the board. Similarly, the federal government began devoting more focus to child welfare. In 1912 the government created the federal Children's Bureau (Myers, 2008). Its creation was followed by the 1921 Sheppard-Towner Act, which provided federal funds for health services of mothers and their babies. This funding lasted until 1929, when the economy crashed (Myers, 2008). Additionally, many of the nongovernmental child protective agencies relied on donations, and these donations became substantially less available during the Great Depression. Thus the government's role became even more crucial.

In 1935, as part of Roosevelt's New Deal, the Social Security Act was created. The act reallocated funding to dependent children. Title IV, Section 402 of the Act also provided, "State plans for aid to dependent children." As per the terms of the Section, states were to either "provide for the establishment of a single state agency to administer the plan, or provide for the establishment or designation of a single state agency to supervise the administration of the plan." Another section of the act permitted the Children's Bureau "to cooperate with state public welfare agencies in establishing, extending, and strengthening [child protective societies], especially in predominantly rural areas, for the protection and care of the homeless, dependent, and neglected children, and children in danger of becoming delinquent" (Social Security Act of 1935, § 521, 49 Stat. 620, 633). By 1967, almost every state had laws in place that put the government in charge of child protection (Myers, 2008).

Responsibility for animal welfare still remains split between the government and nongovernmental SPCAs. On the federal level, the Animal Welfare Act was signed into law in 1966. It is enforced by the United States of the Department of Agriculture, and is said to define the minimal acceptable standard of animal care and treatment (USDA, 2014). The responsibility to intervene on behalf of abused animals falls on either the government or an SPCA, depending on the state.

4.0 Conclusion

In the early nineteenth century in the United States, animals and children suffered from the fact that there were limited statutes in effect to protect their welfare. Of the statutes that did exist, similar factors prevented these protective laws from being enforced on any major level. Henry Bergh's establishment of the ASPCA revolutionized animal welfare in the United States. The success of his Society both in terms of the creation of legislation and its subsequent enforcement was obvious from the onset, and prompted the creation of similar nongovernmental anti- animal cruelty societies across the United States. Bergh and Elbridge Gerry then turned their attention to rescuing an abused child, Mary Ellen Wilson. Through their experience in her case, the two men became aware of the troubles facing children. Gerry then employed the same techniques he and Bergh had used in the foundation of the NYSPCA to create the NYSPCC. Once again the success was overwhelming, and nongovernmental child protection agencies came into being across the United States.

Although the relationship between animal and child protective movements in the late nineteenth century is undeniable, there are some major differences in the outcomes of the movements. For one, ultimately, the work of child protective agencies came to be the responsibility of the state, while for animals protection seems to still be, at least in many states, the responsibility of nongovernmental private agencies.

Another major way the work of child protective societies has diverged from that of animal protective societies is manifested through the notion of social work. Clearly, there is something morally different about removing a child from their home and altering the bond between mother and child, than there is about removing an animal from a home. Thus while SPCA's remained grounded in law enforcement, SPCC's took on a new role of aiding families, and trying to keep them together through social work. Interestingly, according to some legal scholars, several authorities on child welfare have recommended at least a partial return to the strictly law enforcement approach of child protective agencies, similar to the case of animal protection (Meyers, 2006). There are many instances in which a misguided parent, with significant reform, can care for a child far better than the state, and this must be remembered, lest our children return to a period of being institutionalized and forgotten.

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