CHAPTER I

INTRODUCTION

The movement for the prevention of cruelty to animals usually dates its beginning in the United States from the year 1866. On April 10th of that year, thru the efforts of Henry Bergh, the American Society for the Prevention of Cruelty to Animals was incorporated by the legislature of the State of New York.¹ Similarly, the movement for the prevention of cruelty to children dates from 1874, when, their sympathies aroused by the brutality of the Mary Ellen case, Mr. Bergh, Mr. Elbridge T. Gerry and Mr. John D. Wright launched the New York Society for the Prevention of Cruelty to Children.²

It should be borne in mind, however, that these dates represent only the commencement of organized humane activities. The history of American protest in word and in act against cruelty to animals and to juveniles began in colonial days. Wanton cruelty had always been punishable under the common law. The Massachusetts Body of Liberties in 1640 made reference to cruelty to animals, and other statutory regulations and prohibitions may be traced to colonial legislation. An early published protest came from the pen of Thomas Paine. There appeared, for example, in the Pennsylvania Magazine for May 1775, a poem from his pen bearing the title, Cruelty to Animals Exposed. The poem describes the author’s vigorous deliverance of a little kitten from the fate of being destroyed by dogs to whom a

²Ibid., p. 135.
"wretch" had thrown her. In his Age of Reason he wrote, "Everything of persecution and revenge between man and man, and everything of cruelty to animals is a violation of moral duty... The only idea we can have of serving God is that of contributing to the happiness of the living creation God has made."[2]

There was little early specific anti-cruelty legislation, but it was possible to prosecute "cruelists"[3] under the common law as committing "nuisances". A Baltimore paper of 1816 noted the following item:

A cartman in Philadelphia has been indicted and found guilty of cruelly beating his horse, and sentenced to pay a fine of thirty dollars with costs of prosecution, and give bond for his good behavior for one year.[4]

One of the earliest anti-cruelty laws was passed by the New York legislature in 1829 as follows:

Section 26. MAIMING AND CRUELTY TO ANIMALS.
—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.[5]

In Massachusetts a statute similar to the above was pro-

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1 Rowley, op. cit., p. 37.
3 The term "cruelist" is used here and in later chapters to denote the perpetrator of a cruel act. The term is widely used in humane circles and will be found in the annual reports of most anti-cruelty societies. Its adoption into current use is only a matter of time.
4 Federal Republican (Baltimore), Dec. 30, 1816.
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13] 4 by a commission appointed by the governor to revise the general statutes of the commonwealth, and was enacted in 1836.

In recommending this provision to the legislature, the commissioners said in their report of the general statutes of the commonwealth (1834):

It probably is not generally known in the community that even when inflicted by the owner, extreme cruelty to animals is an offense punished by the common law. Almost every very revolting instance of such cruelty, particularly with regard to horses. There seems to be less excuse for the commonwealth to adopt some reasonable provision on the subject.

Until the last quarter of the nineteenth century, there was no distinct current of protest against cruelties practiced upon children. In the Rights of Man, which was drawn the expression of an eighteenth-century philosophy, the Rights of Man, the Declaration of Independence, by implication made protest against such cruelty, but individual expression.

The first half of the 16th century witnessed the crusade against slave little reforming enemy did not obtrude itself

1 The avonda for other beings capable of feeling it, as well as one,“—an interpretation of this case of the rights philosophy in David G. Ritchie, Natural Rights (C. S. p. 111).
tion. One such was Samuel J. Pratt, who also protested against the infliction of wanton pain upon animals.¹

The term "humane" as technically used includes both animal and child protection. So it is used in this study. Tradition sanctions this. As has been indicated above, the organized movements in both fields were begun by the same individual, moved by the same humanitarian feelings. During his lifetime, Henry Bergh bestowed fostering care upon the two societies organized by him, although the greater part of his attention was claimed until his death by the American S. P. C. A.

Moreover, at the present time, most humane organizations devote themselves to both fields and entitle themselves "humane societies", rather than societies for the prevention of cruelty to either animals or children. In 1922, of the five hundred and thirty-nine active humane organizations that were members of the American Humane Association, one hundred and seventy-five confined themselves exclusively to animal work, and fifty-seven exclusively to child work. The majority, three hundred and seven, included both activities.²

Nevertheless, there is fundamentally a wide divergence between the two types of activity.³ It has become more and more pronounced with the passage of time, and will continue so in the future. To shield animals from undue pain and suffering is an end and an accomplishment desired reforms, not in itself. Economic motives and factors of public health are successor in accomplishing desired reforms, not in itself.

¹ Samuel J. Pratt, Humanity, or Right Rowley, op. cit., p. 37.  
ating them. The true animal lover regards as incidental the loss of millions of dollars when herds of range stock die every winter for lack of shelter and fodder; he feels their death pangs: he is more concerned over the sufferings of the cows in an ill-kept dairy than at the possibility that their milk may be tainted. In seeking to pass legislation to remedy such abuses, he is ready to make use of the economic and public health arguments, but the problem for the solution of which he is striving, is emotional.  

The early child-protective movement was similarly motivated; today many of its most active workers represent additional ideals. The humanitarian consideration is overlaid by the economic and social. Appeal is made not only to our humanity, but to our sense of citizenship. We are asked to consider the injured child not only as an individual who suffers, but as an integral part of our social system; his loss is our loss, for we shall have to pay out of our own pockets to right the injury done to him. It is forced upon our attention that the neglected or delinquent child of today is the citizen of tomorrow, that the present perversion of his character is a distinct moral loss to the state a generation hence, the state in which he will be our co-partner.

This difference of approach to the problems involves a growing difference of methods. In the infancy of the animal and the child protective movements, the most impor-
tant activities of each were identical and concerned with the most pressing problem—the prosecution of offenders.\(^1\)

This initial duty performed, the ways separate. The animal societies find fields of constructive work in providing watering places, rest-farms, shelters and hospitals for animals, and recently, in forwarding the cause of humane education. Their duty lies clear before them; they need have no fear of overlapping the activities of other organizations.

Those child societies that feel themselves required to do more than prosecute offenders,\(^2\) have before them no such simple program. Once they admit a social responsibility in their work, they find themselves obliged to measure up to very broad standards. They are not relieved of responsibility when an offender is haled into court; the question as to the disposition of the child remains. Perhaps there are other social agencies which will accept responsibility for his destiny; the child-protective societies must have means of easy and rapid communication with them. Perhaps such other agencies do not exist; the child protective societies must develop agencies to meet the problem.

Good-will alone will not produce results; specialization and specialized knowledge are necessary; "case work" becomes a requisite. The instruments of prosecution do not apply here. The agent with police power must be supplemented by the social worker, the list of convictions by case data.

This differentiation between animal and child work is not academic. It is an acute problem before every one of the three hundred and seven humane societies today combining both types of activities. The personnel and material

\(^1\) Cf. McCrea, op. cit., p. 33, et seq.

\(^2\) Cf. infra, ch. xi.
equipments required in each field preclude the possibility of satisfactory combination. In a small society where means are limited, one or the other field will be slighted. If the society be large and have sufficient means at its disposal to allow of specialization in each field, it becomes essentially two separate organizations, each jealous of the possible supremacy of the other, and always threatening division.

Divergent though they be, the two activities must often be united. More than one humane society has begun its history as either a child or an animal protective organization; at some period, it has had abuses in the other field brought sharply to its attention and has generously expanded itself to remedy these abuses. As a single example, the Arkansas Humane Society, now inactive, was originally organized for the protection of animals. In 1909 after a startling case of brutality to a child, it was given jurisdiction over children as well, and was reincorporated as a state-wide organization. From then until the entry of America into the World War, it struggled to maintain both fields with varying success until its demise.

In most small towns and rural districts, it would be practically impossible to support two independent organizations, one to protect children and one to protect animals. Not only would difficulty be found in appealing to residents to provide sufficient income for both, but the necessary interested personnel would be lacking. Therefore, it is the policy of wisdom to combine both activities. Which will be subordinated to the other, will depend upon the personal inclinations of the leaders of the society. Usually animal protection predominates. The problems are simpler, and more capable of direct and immediate solution. The human appeal is uncomplicated by other considerations.

1Cf. McCrea, op. cit., p. 137.
2Manuscript letter of April 4, 1923 from the former secretary of the society.
It is usually found that small humane societies with resources of $2000 a year or less, devote themselves almost exclusively to animal protection. Cases of obvious cruelty are prosecuted, visits are made to stables and farms where animals are improperly kept. An animal fountain may be erected, and some educational and propaganda work done through the schools and children's organizations. The maximum that such a society accomplishes for the children of the district is to initiate prosecution where cruelty is known to exist, and to bring cases of neglect that necessitate attention to the notice of the proper public authorities.

There is thus a distinct cleavage between efforts to protect animals and efforts to protect children. This study must of necessity reflect this cleavage. Insofar as possible, all humane societies will be classified as either animal or child organizations according to the field wherein their efforts preponderate. Mention will, of course, be made of their other activities where essential.

This study, insofar as it deals with the Humane Movement in general, divides itself into two distinct parts. The first is an exhaustive examination of almost the entire field of animal welfare; the second deals with one rather sharply defined and limited group of activities relating to child welfare.

In the first division of this study, it is necessary to draw a line between protection of animals from cruelty, and certain phases of the conservation movement as applied to animals. Every state has on its statute books many game laws. In every volume of session laws, amendments to and modifications of these game laws fill many pages. Within them are sometimes to be found sections which regulate kinds of traps to be used for animals, and time
periods for their visitation, and types of rifles to be used for bird hunting so as to insure a speedy death. The humane import of these sections is very clear and in Appendix I summarizing humane animal legislation, note has been taken of them. But the purpose of the game laws as a whole is not to prevent cruelty but to preserve our rapidly vanishing wild life from immediate extinction. Game laws are more closely allied with regulations for reforestation and the shutting off of the minerals of Alaska from exploitation, than to anti-cruelty legislation.

There are societies and organizations that are doing valuable work in this field of preservation of wild birds and animals. The Audubon Society is the best known; the Campfire Club of America and the League of American Sportsmen should be mentioned. Professor McCrea included in his Humane Movement a detailed account of the activities of these organizations, considering their work so closely allied to protective activities as to deserve mention with organizations for the prevention of cruelty. For the reasons mentioned above, the study of this movement is omitted entirely from this volume.

1 Vide infra, app. i.
2 For information in this field, see the summary of game laws issued by the Biological Survey of the United States.
3 McCrea, op. cit., pp. 127-134.
4 The Migratory Bird Act of 1918 and a more recent Supreme Court decision upon it, raise issues of no small interest to humane workers, and in particular to those laboring for more humane conditions in animal transport, insofar as they relate to the possibility of a congressional statute based on a treaty overriding existing state legislation in this field—legislation that notoriously lags behind even the moderate provisions of the Federal Act of 1906 (vide infra, p. 109).

By the Act of March 4, 1913, certain migratory birds were taken under the custody and protection of the United States government and the game laws of the various states were set aside by a federal statute. On August 17, 1916, by treaty between the United States and Great Britain on behalf
A similar distinction has been drawn between humane work proper, and organized animal activities and legislation motivated by economic considerations and factors of public health. Animals are property and laws relating to property apply to them. They are a specialized form of property, being animate, and hence there are fields of legislation devoted to them in this relationship. Such legislation, which considers animals as property possessing value, is not primarily humane. In protecting animal property from injury, it certainly protects the animals concerned from suffering, but this is only incidental. In this study, only legislation whose motivation is directly humane is considered. For example, in Arkansas, the owner of a dog which

of Canada, the protection for certain of these birds was made international. The statute being subsequently held unconstitutional in United States v. Shauver (214 Fed. 154, see 39 Sup. Ct. Rept. 134), Congress on July 3, 1918, passed a new act regulating the shooting of migratory birds and declared that it was for the purpose of carrying out the treaty. The President promptly promulgated regulations under the statute. Congress, therefore, clearly assumed that under the treaty power it could take control of a subject otherwise not within its power in order to carry out a treaty and the Executive endorsed the opinion of the Legislature.

The statute was reviewed by the Supreme Court (Missouri v. Holland, 252 U.S. 416, 433), and the Court unequivocally negatived the argument that a treaty cannot go further than an act of Congress in derogation of the reserved powers of the states. Mr. Justice Holmes replied to this contention, “No doubt the great body of private relations usually fall within the control of the State, but a treaty may override its power. . . . Here a national interest of nearly the first magnitude is involved. It can be protected only by national action in concert with that of another power. The subject matter is only temporarily within the State, and has no permanent habitat therein. But for the treaty and the statute there soon might be no birds for any powers to deal with. We see nothing in the Constitution that compels the government to sit by while a food supply is cut off and the protectors of our forests and our crops are destroyed. It is not sufficient to rely upon the States. The reliance is vain, and were it otherwise, the question is whether the United States is forbidden to act. We are of opinion that the treaty and statute must be upheld” (ibid, pp. 434, 435).
worries or chases another man's sheep is liable to damages.\footnote{Ark., S. & H., secs. 7296, 7300.}
Examination of the statute shows that the sheep are considered not as animals subject to suffering but as property liable to damage.

An important portion of human sustenance is supplied by animals. Diseased or imperfect animal foods carry the possibility of disease and ill health to those who eat them. Inasmuch as the health of its citizens is a care of the modern state, legislative attention has been bestowed upon the living conditions of our food and dairy animals. In ensuring a supply of healthy animals at the slaughter houses and pure milk from the dairies, the well-being of great numbers of animals has been improved. But again, such legislation has no more right to be considered primarily humane than the Pure Food and Drugs acts similarly motivated. In this study, therefore, it is considered only in passing, and analysis of it has been omitted from the legislative summary in Appendix I.\footnote{Compare with the similar summary in McCrea, op. cit., pp. 321,387.}

The problem of humane education presents a not dissimilar difficulty; in this case, however, a summary of the laws on humane education has been included. Statutes providing for the teaching of humaneness in the public schools of a state are not fundamentally dictated by the desire to add an extra subject to the school curriculum; their primary intention is to prevent possible suffering to animals—by means only slightly less direct than laws punishing cruelists.\footnote{Cf. infra, ch. viii.}

The protection of children from cruelty is but a specialized portion of the broader field of child welfare, and any attempt to limit it must be arbitrary. There are some who would accept a definition confining child protection to
"protection from neglect, and physical and moral injury".\textsuperscript{1}

Undoubtedly, such a definition would hold true for the child protective movement in its early phases. But this movement, as must all such, has undergone a form of evolution, and the above definition would appear to many as altogether too narrow.

To avoid fruitless academic arguments as to what constitutes child protection and what does not, we must approach the problem from another direction. If there are child-protective societies which confine themselves to the narrower definition, there are others that have spread themselves far afield. We shall study the activities of all, accepting them as child protective societies upon their own identification, for such identification reveals their intent. Where we find other agencies occupying themselves either entirely or as a part of a greater plan of work with the protection of children from neglect and physical and moral injury, we shall consider them also as doing child-protective work and study them.

In the summary of legislation for the protection of children included in Appendix II, these principles have been followed as closely as was practicable. Legislation in the fields of public health, institutional provision for dependent and delinquent children, procedure in juvenile courts, illegitimacy and bastardy, is omitted from this summary except where its import is distinctly protective. Nevertheless, more than passing mention is given to this legislation in the body of this study,\textsuperscript{2} as several very important protective societies are active in these fields.

The four chapters following this introduction deal with organized agencies for animal protection. The subject matter of Chapter II is the development of societies for animal protection from 1910 through 1922. The problems

\textsuperscript{1} Vide infra, p. 201.
\textsuperscript{2} Vide infra, ch. x.
which the entry of the United States into the World War in 1917 brought to these societies, are considered in Chapter III, in which is also included an account of the organization of the Red Star. Chapter IV deals with those societies which seek to further animal welfare in other ways than specific protection from cruelty. Chapter V deals with official state agencies for animal welfare.

Chapter VI generalizes the organizational and financial policies of the animal welfare movement. Chapter VII indicates some recent developments of this movement and deals with animal protective legislation.

Since 1910 an ever-increasing share of the energy of animal societies has been devoted to the field of humane education. Consideration is given to this topic in Chapter VIII. A study is made first of all of the activities and accomplishments of humane education societies and those protective societies that make humane education a part of their program. Secondly, attention is paid to humane education as included in public school curricula.

Chapter IX is devoted to the anti-vivisection movement. As no satisfactory study has hitherto appeared in this field, an account is given of the development of the antivivisection movement before 1910, which is continued to date. Differing in this respect from the subject matter of the rest of this study, antivivisection is the center of a heated and bitter controversy. Every effort has been made to avoid partisanship or the writing of an exposition in favor of either group of contestants. Insofar as is possible, explanations of the controversies are included as an integral part of the history of the movement.

Chapters X, XI, XII are concerned with child protection. The growth of the child protective societies is dealt with in Chapter X. An analysis of their aims and accomplishments is made in Chapter XI. Chapter XII treats of official state activities in this field.