CHAPTER III

"BERGH'S BOTHERATIONS": CHALLENGING CRUELTY AND ITS PERPETRATORS

Among the noblest in the land, though he may count himself the least, that man I honor and revere, who without favor, without fear, in the great city dares to stand, the friend of every friendless beast.

Henry Wadsworth Longfellow,
"Tales of a Wayside Inn," 1872.

Longfellow’s 1872 paean to Henry Bergh rightly praised the founder of the American Society for the Prevention of Cruelty to Animals (ASPCA) for his impartiality and his fearlessness. What Longfellow thought to commend, however, others—especially those Bergh targeted in his work—sought to condemn. For every compliment he received from a Longfellow, Lydia Maria Child, or Henry Ward Beecher, there was a scornful disparagement by pigeon shooters, swill milk men, animal fighters, stockyard managers, or streetcar company presidents.

Bergh’s controversial celebrity helped to bring animal cruelty issues before the public for over two decades. Bergh was tireless, thick-skinned, and undaunted by criticism, perhaps a result of his experience as a playwright whose works received dismissive reviews. With limited resources, he adopted a deliberate strategy for getting his cause before the public. Bergh would select an issue like slaughterhouse cruelty, or

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1 Longfellow’s poetical reference to Bergh comes from Part II of Tales of a Wayside Inn, published in 1872 as part of Three Books of Song (London: George Routledge and Sons, 1872), 19. These lines follow Longfellow’s rendering of the legend of the Bell of Atri.
swill milk, or street railway abuse, or dog fighting, and work it incessantly for weeks at a time. Then he would direct his energy toward some other problem for an extended period. While he and his agents could not be everywhere, Bergh counted on the attention the ASPCA garnered to keep these issues before the public, even when the organization was not devoting time to them. "[My] practice, and recommendation," he counseled a Philadelphia colleague, "is to keep agitating; and keep continually in the newspapers with our cause."\(^2\)

Along the way, Bergh gained an impressive array of antagonists, who worked hard to keep his influence in check. These vested interests constructed the complex social and political reality that the ASPCA president confronted in his work on behalf of animals. The campaign against cruelty would be conducted upon many different fronts, and Bergh's genius lay in his ability to exploit opportunities for placing it before the public.

The Mistreatment of Animals Used for Food

Seeking an issue to bring the goals of his new organization into view, Bergh first seized upon the mistreatment of animals used for food. This choice may have seemed strategically sound since it played on concerns about the public health implications of cruelty. Once organized, the ASPCA quickly challenged one of the brutalities that Frank Leslie's had highlighted the previous fall--the practice of carrying calves to market in wagons where fifteen to twenty lay piled one on top of another with their legs tightly

\(^2\) On Bergh and negative reviews, see C. C. Buel, "Henry Bergh and his Work," *Scribner's* 17 (Apr. 1879), 878. For his advice, see Bergh to S. Morris Waln, 24 Apr. 1868, American Society for the Prevention of Cruelty to Animals Archives, New York, NY [ASPCA-NY], LBK 3: 399.
bound. The animals arrived at public markets half-suffocated and often badly injured. The first arrest by the ASPCA, resulting in a $10 fine, was for this offense. Even some butchers condemned the practice, and many citizens believed that it poisoned animals’ flesh. By August 1866, the Board of Health had prohibited it. A year later, Bergh judged that efforts at suppression had been highly successful in New York City.\(^3\)

In June 1866, Bergh attempted to prosecute two men on a charge of plucking chickens while they were still alive. The defense witnesses testified that, Bergh’s claim to the contrary, the birds had been stabbed in the brain with a knife before plucking began. A physician appeared in the defendants’ behalf, stating that “if the brain of an animal was thoroughly penetrated, it became insensible.” Common practice, the defense asserted, required that there be some life left in the animal, to facilitate removal of the feathers. To do so after a bird was dead would pull some flesh out with the feathers and render the product unsaleable. Justice Dowling acquitted the men on the grounds that prosecutors failed to prove willful or malicious cruelty.\(^4\)

When not arguing that the chicken was not an animal under the meaning of the statute, the defendants attempted to avoid prosecution by claiming that poultry did not


feel pain to the same degree as larger animals. Both issues surfaced still more
prominently in an incident that occurred the same month, involving cruelty to turtles.5

The matter began when Bergh went to the Fulton Fish Market to investigate the transport
and display of turtles sold there for food. Inspecting conditions on board the schooner
Active, which had carried them from Florida, he found one hundred turtles tied down with
their fins pierced. They had languished on their backs in the ship’s hold for three weeks
without food or care. Bergh found many of the turtles near death from thirst and
starvation, blood oozing from the wounds through which ropes looped to hold them in
place.6

Initially, Bergh attempted to capitalize on beliefs about the dangerous
consequences of eating meat from cruelly treated animals by seeking the intervention of
the Board of Health. “This society, as you are aware, can only treat this subject in its
cruel relations,” he wrote to Board president Jackson Schultz, “but your authority extends
to its sanitary aspects.” Only after the Board of Health declined to intervene did Bergh
decide to prosecute the case.7

The ASPCA obtained warrants for the arrest of both the captain and crew of the
schooner. In a trial that lasted nine days, defense attorneys asserted that turtles did not
come under the anti-cruelty statute because that law referred only to domestic animals.


6 “Humanity in New York,” N.Y. Tribune, 16 Mar. 1878, 3. On how turtles were caught,
handled, and transported, see “Taking the Green Turtle,” N.Y. Times, 17 May 1885, 6.

7 Bergh to Jackson Schultz, 31 May 1866, ASPCA-NY, LBK 1: 7; and “In Re Tape Worms, Milk,
Turtles, they claimed, were not animals, but fish, and had no capacity to suffer. Louis Agassiz, America's leading comparative zoologist, weighed in on Bergh's side. Nevertheless, Bergh lost the case. Justice Hogan of the Tombs dismissed the complaint after a medical doctor testified for the defense that tying the turtles with cord caused no more pain than putting a knife to an oyster.⁸

The court dismissed ship captain Nehemiah Calhoun's subsequent suit against Bergh for malicious prosecution. Months later, Bergh avowed that the ridicule he suffered had been worthwhile, because the case had brought the ASPCA extensive publicity. He perceived an additional gain in "the increased moral consequences resulting from the contemplation of the quality of mercy . . . as applicable to a class of beings hitherto regarded as being beyond the sphere of the humanities of life." The dismissal of charges against him was important for another reason, Bergh contended. "I deem it useful," he wrote, "that the public should know that so intelligent a judge, has ruled, that it is no evidence of malice, for a citizen witnessing an act of cruelty to a dumb

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animal—to cause the arrest of the offender. Otherwise persons disposed to protect the brute, might be deterred by fear of prosecution.”

Emboldened despite the failed prosecution, Bergh decided to focus his energies on animals more commonly used as food, for whose welfare he believed there might be broader concern. Bergh’s earliest activities in the arena of slaughter reform did not center on the larger abattoirs, but on smaller butchering operations. During the ASPCA’s first several years of activity, he prosecuted several butchers for acts that included the baiting of animals and poking out their eyes with knives. Even when he failed to secure convictions, Bergh enjoyed the support of many citizens.

The situation was more complicated when it came to shehitah, or kosher slaughter. Jews, who apparently employed the methods of ritual slaughter even when not producing for the kosher market, operated many of the city’s butchering operations. Their standard practice of slitting the animal’s throat without the benefit of a stunning blow to the head offended humane thinking on the subject. Humanitarians also

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9 ASPCA, Ann. R. 1867, 5-8; “The Turtle Case,” N. Y. Times 11 July 1866, 3; and Bergh to John R. Young, 10 July 1866, ASPCA-NY, LBK 1: 68. Ten years later, Bergh again cited Agassiz’s letter in campaign to have turtles brought to New York in tanks of water rather than tied down to boards. Fulton Market merchants argued that there was no other convenient means for transporting turtles from Florida to New York, while Bergh framed the issue as one of the merchants’ profit, an arrangement that permitted them to pack more animals aboard every ship. See “The Reversed Turtle,” N. Y. Times, 7 June 1876, 4; “Mr. Bergh on Turtles,” N. Y. Times, 11 June 1876, 5; Editorial, N. Y. Times, 2 July 1876, 6; and “Score One for Bergh,” N. Y. Herald, 12 June 1876, 6. Bergh expressed his convictions about the original arrest in “Henry Bergh’s Lecture,” Sing Sing Republican, 30 May 1872, ASPCA-NY, SBK 5: 25. In 1911, the suffering of turtles shipped on their backs surfaced once again in a court case that the ASPCA lost. See Freel v. Downs, 136 N.Y.S. 440 (1911).

10 Bergh to Jackson Schultz, Undated letter (July), ASPCA-NY, LBK 1: 84-87; “Amusements of Butchers,” N. Y. Times, 10 June 1868, 2; and “Transportation of Cattle and Other Animals to Market,” N. Y. Times, 28 Sept. 1868, 5.
considered the incidental cruelty of dislocating the animals’ legs while hoisting them up unnecessary from the perspective of kosher concerns.11

In 1867, Bergh sent an earnest inquiry to three New York rabbis. One of them, Samuel Isaacs, editor of the Jewish Messenger, responded with a defense of shehitah. Bergh countered that the ritual practice of bleeding to death could still be employed when the animal had been rendered insensible by a blow to the head or the severance of the spinal vertebrae, and condemned the custom of hoisting the animal up by a rope attached to one leg. In December 1867, an editorial, almost certainly penned by Isaacs, appeared in the Messenger. The writer reaffirmed the humaneness of the Jewish method, but cautioned Jewish butchers and shochtim alike to be tender and punctual in leaving no ox to wait in the slaughterhouse or to hang on the line for any amount of time before slaughter.12

Taking further action, Bergh circulated a letter to a number of kosher slaughterers. The butchers resisted his recommendation that a poleax be used to render animals unconscious, as well as his demand that animals not be hoisted up by a chain. Beyond any defense based on ritual, they claimed that animals killed by poleax would not bleed, and the meat’s color would make it unsaleable. After this round of correspondence, Bergh told supporters, “It will be perceived that the mode of slaughtering animals for food, required by the Hebrew faith, although not regarded with favor by the Society, cannot properly be interfered with.” Bergh’s subsequent proposals to regulate the act of

slaughter always included an exemption for Jewish slaughter. Nevertheless, he was not reticent when queried about his attitude toward shehitah, which he thought "heartless."

"I don't like it," Bergh told one journalist.¹³

Bergh found a more trafficable issue in the quality of meat coming from animals consigned to the city's cattle markets—especially those at Communipaw and Weehawken across the river in New Jersey. Many citizens deplored the treatment of animals in these places, and worried about the resulting adulteration of meat. This was ironic, for at least one of these facilities had opened amid great fanfare about its efficiency, cleanliness, and modernity, and they had been conceived, in part, as a solution to the problems generated by the many smaller slaughtering establishments operating in the city.¹⁴ In October 1866, the New Jersey Stock Yard and Market Company opened a slaughtering operation at Communipaw. A railroad track ran directly into the buildings, connecting them with the great rail systems of the West. Operators planned to slaughter and dress animals outside the city, cutting expenses and eliminating objectionable cattle drives through the streets of New York. Jackson Schultz, head of the Board of Health, praised the enterprise as one "that would conduce to the health and well-being of the citizens of New York," and "remove one of the great sources of disease in the city." Schultz also celebrated the


¹⁴ An 1870 estimate placed the population of New York City somewhere between 800,000 and 1,000,000. Its markets received 2,776,492 animals a year, and its meat bill exceeded $30,000,000. There were 1400 butchers in the city. "The Great Metropolis," N. Y. Times, 11 Jan. 1870, 2.
“promised ‘humane’ system,” where a hog could be killed and dressed in seven minutes in a semi-automated process. Slaughterers would cut the throats of cattle suspended in air, without the clumsy step of knocking them over the head.15

For about two years, the mammoth operation at Communipaw continued to draw favorable attention. Frank Leslie’s positive review of the slaughtering process noted that animals were “speared just at the junction of the brain with the spinal marrow. This blow produced instantaneous death, and, if it failed, the animal was not badly harmed.” However, when Bergh and a colleague toured Communipaw in late 1868, they saw men kicking, clubbing, and setting dogs upon animals in order to move them through the killing line. Cattle, Bergh complained, suffered “hoisting by one leg, throat-cutting, dislocation and prolonged agony, a large share of which might be spared . . . by a well-directed blow in the head.” Those animals kept in the pens until slaughter received neither water nor shelter. The two men also saw ulcerated flesh among the vast quantities of dressed beef.16

By mid-1869, nearby residents were actively seeking legal protection from Communipaw’s “abattoir nuisance,” as a shock to the senses and a public health threat. News accounts confirmed that animals arriving by train from the West were woefully emaciated and that many lay “stretched out on the ground, apparently in the last agonies


of starvation, unable to rise.” In 1870, knowledgeable observers agreed that abuses in the handling and slaughter of animals were on the increase at Communipaw. The yards were always packed, filthy, and muddy, and animals received no shelter. The State of New Jersey appointed an inspector to prevent the most notorious abuses. Bergh and his supporters clamored for the Board of Health to condemn the most conspicuously diseased animals before they reached the butcher’s stall, to punish the dealers and drovers responsible for these conditions. “We all suffer,” the Tribune’s cattle market reporter noted, “because it is utterly impossible for the meat of animals subject to such inhuman treatment to be healthy; and putting out of consideration all feelings of mercy which we ought to have . . . let us at least think and act merely in self-defense.” As late as 1873, such admonitions notwithstanding, little had changed at Communipaw.17

The dislocation of animals’ joints by hoisting them off the floor prior to slaughter, so common in smaller butchering operations, also predominated in the larger abattoirs. At Communipaw, a wheel set the process in motion, heaving the cattle high in the air and swinging them around, into an adjoining pen. There, the slaughterer stabbed one animal at a time in the neck, in full view of the others.18 Eventually, the ASPCA’s attempt to challenge such practices led to litigation. Davis vs. Society for the Prevention of Cruelty to Animals had its origins in January 1873, when Bergh and several agents entered a


slaughterhouse on 39th Street where hogs were routinely hauled up a gangway of forty feet by an iron chain passed around one leg. Hoisted into the air, their joints dislocated, they were left to hang by their heels as butchers slit their throats to let the blood run out. Finally, the butchers plunged them, many still alive, into boiling water. Bergh threatened arrest unless the practice was modified. The company, Davis, Atwood, and Crane, responded by seeking an injunction to restrain the ASPCA from any interference.

Elbridge Gerry, Bergh’s attorney, argued that the company’s practices amounted to “needless mutilation and cruelty under the statute” and characterized the injunction plea as “an attempt to evade a criminal prosecution and to induce a court of equity to try the issue, at the same time restraining the society from making arrests.” A. Oakey Hall appeared as plaintiffs’ counsel and Bennett’s Herald supported them. So did the court, which granted a temporary restraining order.19

Another judge dissolved the injunction, and the hog butchers appealed to the state Supreme Court, which upheld the decision against them. Then the case went to the Court of Appeals, where it was argued in November 1877. In January 1878, that court affirmed the right of ASPCA officers to enter slaughtering establishments to ensure that “no uncalled for cruelty was used in killing.” Sometime later, a newspaper reporter followed Bergh on an inspection tour of a slaughterhouse in which animals on all fours were led to their deaths on a moderately ascending gangway. Moving on to other establishments,

however, Bergh found indifference, skepticism, and resistance to his suggestions for improvement.\textsuperscript{20}

Bergh did not fail to emphasize the brutalizing impact of the practice of slaughter on the butcher himself, and newspaper opinion expressed the same concern. However, the brutalization of others, especially children, was even more troubling. In one establishment, Bergh complained, the braining and throat cutting of animals was done in plain sight of the public, and a reporter decried the proximity of one slaughterhouse to a schoolhouse. One editorialist commented that "the Young men and children who are to be entrusted with so great an inheritance as our Republic should not be rendered familiar with and indifferent to the torturing of poor creatures that are at the mercy of us who call ourselves a superior order of beings." In time, Bergh became a consistent champion of legislation to prohibit the slaughter of animals in visible locations in any town with a population exceeding 1,000. He also sought to prohibit the employment of any child under fourteen in slaughterhouses or other establishments where animals were killed.\textsuperscript{21}

In the years following the Davis litigation, the ASPCA continued monitoring slaughtering establishments. In 1886, the ASPCA reported that while failing to suppress altogether the many cruelties attending the slaughter of animals for food, its agents nevertheless limited many practices through their inspection visits. By that time,


however, the organization was, like many other societies, focusing greater attention on the suffering of livestock in transit—a universe of animal misery without equal. This emphasis would perdure until the early years of the twentieth century, when humane methods of slaughter resurfaced as a national objective of the animal protection movement.

The Milk of Human Cruelty

Bergh’s determination to put the ASPCA’s mission into the public consciousness led him to another issue that had been around for some years—the problem of “swill milk” from cows fed not on hay but on distillery slop in order to spare feeding costs. In the last years of that decade, however, Frank Leslie’s began to publish exposés and descriptions of the sickly cows, who lived miserably, each one occupying a stall about two and one half to three feet wide. Chained together in dreadful and unsanitary stables, some holding as many as one thousand animals, they suffered from sores, bloat, and other debilitating conditions. A primitive inoculation against distemper caused many to die and many more to lose their appendages, leaving them “stump-tailed.” In many cases, the cows’ weakness necessitated the use of slings to support them. They never left their stalls unless they were dead or too sick to produce, in which case they were sent to market, where they joined the meat supply, or to the offal contractor. Many suspected that political corruption thwarted efforts at reform. In 1856, for example, the Brooklyn Common Council passed a law requiring adequate space and freedom of movement for

cows. Only a few months later, though, the same council passed a provision exempting the swill dairies from its jurisdiction. Political machinations also derailed the inquiry launched in 1858 in response to the Frank Leslie's agitation, and an 1862-1864 initiative in the state legislature.23

A new phase of the campaign began when Bergh took up the issue in 1867. Because their diet and intensive confinement caused the animals to suffer, the ASPCA was in a position to invoke the anti-cruelty statute. Bergh's agitation culminated in the prosecution of Morris Phelan, a swill dairy operator in Brooklyn, where the ASPCA's statewide charter made it possible for Bergh to act. Bergh testified to the terrible conditions of the Skillman Street cow den, and two medical experts also appeared for the prosecution. Bennett's Herald applauded Bergh for his diligence: "From a charge of cruelty to the cows . . . it is probable that the facts may show a worse form of evil, in the production of poisonous milk." However, despite a grand jury's finding of a bill of indictment, the Brooklyn District Attorney declined to prosecute Phelan and a second swillman the ASPCA had exposed.24


Ultimately, Bergh adopted the approach of attacking the swill establishments from time to time, calling public attention to the health dangers of milk from diseased animals. The Board of Health also fought the menace, and published a weekly list of those caught selling swill milk in the city. Such pressure helped to drive much of the trade to the outskirts of the city and further into Brooklyn.\textsuperscript{25}

Even so, the tolerance by Brooklyn authorities of both the swill trade and the traffic in diseased meat from distillery dairies discouraged Bergh from investing too much energy in the matter. Beyond this, his frankness about their apathy won him no friends across the river.\textsuperscript{26} By the mid-1870s, the problem remained unresolved, even though Bergh's agents and police continued to raid swill dairies, making arrests for watering milk and other practices. In 1874, New York public health authorities identified swill milk as a principal cause of child and infant mortality in Brooklyn. Just one year later, their Philadelphia counterparts blamed swill milk for the prevalence of typhoid fever in that city, after the deaths of over 130 infants in one month. The New York Board of Health began to require numbered identification of all vehicles and cans used by milk


dealers. From time to time, the ASPCA went after the worst of the swill dens, but Bergh was pessimistic about the prospect for convictions. In February 1879, he drew both Dr. Liautard and James Law, another prominent veterinarian, into a Blissville case. Later that year, however, at a forum on “Pure Milk,” he expressed his view that legislation could do no more to prevent adulteration. In 1882, the Brooklyn branch of the ASPCA and the Board of Health were still at war with the swill-milk dealers. Well into the 1890s, the ASPCA continued to make occasional raids on mephitic and unsanitary dairy stables, and to emphasize the impact of cruel and unenlightened husbandry practices on the health of animals.27

In the end, certification, refrigeration, and sterilization provided the solution to the swill dairy threat and the crime of milk adulteration. By establishing rules and regulations for the production, examination, and treatment of milk, health authorities kept adulterated products from reaching the market. Sterilization and pasteurization through

heating destroyed the germs of bovine tuberculosis and other diseases, reducing infant mortality.28

Scientific and technical approaches to enforcement made the difference, not the ASPCA’s campaigns. Nevertheless, the ASPCA’s participation in the controversy points to its important part in helping to address animal-related public health issues in the years before an administrative apparatus responsible for such matters developed within municipal, state, and federal governments, and also reflected its efforts to ensure that the comfort and welfare of animals would receive greater weight in policy debates.

Blood Enthusiasms

New York State prohibited animal fights in 1856. Nearly a decade later, however, journalists reported that cock and dogfights took place every night in both New York City and surrounding areas. The fights continued with little interference from police until Bergh founded the ASPCA. From then on, his steady determination to harass the enthusiasts of animal fighting regularly brought the matter before the public and into the court system.29


From the earliest phase of the ASPCA’s existence, Bergh zeroed in on the Water Street saloon and dog-pit of Kit Burns, a Dickensian habitué of the New York sporting scene. The campaign to close down “Sportsman’s Hall” put Bergh, his agents, and the police at great risk, confronting hostile crowds in dangerous circumstances. One evening in December 1866, police officers accompanying Bergh burst through the skylight of the pit, and arrested Burns and another man. Some days later, however, Judge Dowling acquitted them, noting that the prosecution could produce no spectators to testify that the two had actually set the dogs upon one another. The decision caused Bergh great consternation, for he thought the ASPCA had met the burden of evidence, and he made it a point to remind the judge in public that keeping a pit and being present at a fight were sufficient grounds for conviction.30

One year later, Bergh expressed his dismay at a similar ruling by the justice, after an accused animal fighting enthusiast boasted that he was immune because he “carried 1,000 votes at his back.” Bergh continued to pursue the issue, however, and his persistence paid off. By early 1870, the Times could note that ASPCA agents were responsible for closing down at least three animal fighting establishments.31

For a time, Kit Burns’s establishment avoided this fate. As a dodge, he and his family turned the place over to an evangelist for prayer meetings. But the principal


enthusiasm to be found there was for animal fights, and Burns continued to stage them.
He also took his own animals out to fight at locations in Brooklyn and New Jersey. Not
only was he able to avoid heavy fines; he could sometimes escape conviction
altogether.\textsuperscript{32}

A November 1870 raid on Burns's pit yielded 32 arrests, including that of the
proprietor, on charges of witnessing and participating in a rat-baiting and dog fighting
event. In this instance, agents in plainclothes entered in advance to witness the setting of
animals to fight. The defendants' counsel maintained that a dog fight had broken out
accidentally during a rat-killing "exhibition." By the time the trial commenced in
February 1871, Burns had died. But the outcome would no doubt have warmed his heart,
as Recorder John Hackett told the jury that he did not think the killing of rats by dogs
came within the scope of the anti-cruelty statute. Hackett's opinion was that "rats and
mice were vermin, and why should not cats as well as dogs be interdicted from killing
them?" The jury returned a verdict of not guilty.\textsuperscript{33}

When Bergh's agents brought New York City cases to court, and could marshal
sufficient evidence that a fight had occurred, they could expect cooperation from the
justices. The organizers of an event might be imprisoned for a month, while their patrons were discharged after paying fines of $20 each. On the other hand, in the absence of conclusive evidence, a case might easily be dismissed. The outcome of every case could also depend on the disposition of the justice or magistrate; Recorder Hackett, for instance, was inclined to come down hard on dog fighting when he thought the facts permitted.34

The death of one impresario of blood enthusiasms did not mean the end of animal fights. Although Bergh secured few actual convictions, he helped to push the dog fighters across the river to Brooklyn and New Jersey, where they could often rely on leniency from the courts. Stopping animal fights proved especially difficult in Brooklyn, where the police declined to cooperate with the ASPCA.35

In 1874, on Long Island, Bergh’s agents could not secure sufficient cooperation from police to arrest all parties at a saloon cockfight. The ten men they did arrest returned to the saloon that same evening and resumed the fights until daylight. Several days later at trial, an elderly justice let the defense counsel bully prosecution witnesses. Worse, policemen who had attended the fight made their “hearty sympathy with the sport” clear beyond any doubt, denied knowledge of the pit located just a few doors from


their station house, and hesitated in their identifications. After four hours of farce, Bergh abandoned the courtroom.\footnote{A Warning to Cock-Fighters," N. Y. Times, 28 Feb. 1874, 12; "Mr. Bergh on Long Island," N. Y. Times, 11 Jan. 1874, 8; and "Long Island Cock-Fighters on Trial," N. Y. Times, 14 Jan. 1874, 8.}

The Albany legislature strengthened Bergh's hand in February 1875 with the passage of a law providing for the forfeiture of property tied to cruelty to animals. A few of the city's newspapers, including the \textit{Herald} and the \textit{Sun}, vigorously opposed the bill. However, Bergh managed to secure its passage by conceding explicit exemptions for the horsecar companies and the pigeon shooters.\footnote{Bergh at Albany," N. Y. Herald, 3 Feb. 1875; and "More of Henry Bergh's Folly," N. Y. Sun, 13 Feb. 1875, ASPCA-NY, SBK 6: 183.}

Despite the efforts of Bergh and his successors, animal fighting did not disappear from New York City or its environs. Even with the help of conventional law enforcement agencies, humane agents were unable to suppress it. Animal fighting continued to thrive, if more furtively, further away from the city's central districts, in locations where it was often impossible for officers to approach without discovery, and through the use of public notices cleverly worded so as to avoid official scrutiny. Its survival was a stark reminder that neither criminalization nor public stigma was enough for the suppression of cruelty.\footnote{The Legality of Dog Fighting Considered," Unsourced article (Apr. 1880), ASPCA-NY, SBK 8: 154; "Dog Fighters Arrested," New York Truth, 22 Feb. 1883, and "Raiding a Cock Pit." Long Island City Star, Undated article, ASPCA-NY, SBK 1881-1887; and ASPCA, Ann. R. 1886, 12. One fight was billed as a raffle to help a poor widow. See ASPCA, Ann. R. 1894, 19.}

By the end of 1873, the ASPCA had made 104 arrests for dog or cock fighting. By 1880, the total reached 510, with a high figure of 119 arrests in 1874, the year of the...
statutory change. At times, as between 1891 and 1894, the ASPCA waged extended
campaigns against the surging popularity of both dog and cock fights, but, from 1895
onward, agents perceived a noticeable decline. One attributed this not only to vigorous
enforcement but also to the popularity of “manly athletic sports” that were fast taking the
place of “dog-fighting and kindred brutalities.”

The Miseries of the Urban Horse

Henry Bergh’s major day-to-day preoccupation, and by some accounts the animal
he personally favored, was the horse. Seeking to stem the tide of equine misery they saw
all around them, Bergh, his agents, and regular police officers arrested New Yorkers for
kicking, beating, stabbing, and overworking horses in a wide range of contexts. In the
early years, Bergh and his deputies prosecuted the cases in court on their own. For their
part, attorneys for the accused drivers and their employers disparaged the ASPCA’s
motives and disputed its assessments of their animals’ mistreatment and health.

Just a month after founding the ASPCA, Bergh launched a campaign to end
horsecar and omnibus overcrowding. In tackling the issue, Bergh entered an arena of
considerable pre-existing discontent. The overloading of streetcars annoyed many in the
city. Designed to carry 40 to 74 passengers, they were frequently packed with many
more. “[The] grasping, avaricious companies crowd, cram, and bundle homeward-bound
citizens, setting all sanitary laws at complete defiance, to say nothing of torture and

39 ASPCA, Ann. R. 1874, 11; ASPCA, Ann. R. 1881, 15; ASPCA, Ann. R. 1899, 6, 19-20; and

40 Some typical arrests are described in “Cruelty to Animals,” N. Y. Times, 3 June 1866, 8;
“Cruelty to a Horse,” N. Y. Times, 23 Sept. 1866, 8; “Cruelty to Animals,” N. Y. Herald, 1 Dec. 1869, 8;
inconvenience, in a space capable of seating barely one-third of the number authorized,” an editorialist in Bennett’s Herald clamored. “This overcrowding should come under supervision of Mr. Bergh, as the poor horses are equally as great sufferers.” Many who rode in the cars agreed.41

Bergh’s campaign against streetcar cruelty also converged with broad debates over the condition of the streets, the problems created by traffic blockages, fatal accidents and injuries resulting from reckless driving or inadequate harness fittings, ignorance of traffic regulations, smoke and stench, unreachable safety straps, the menace of pickpockets, the liberties taken with women passengers, and lack of courtesy on the cars. Bergh proposed that the Board of Aldermen require more cars, and forbid the public from entering packed vehicles. He also advocated modifications to lengthen the cars. He asked riders to consider walking in order to alleviate overcrowding and equine immiseration. The Times thought Bergh’s recommendations impractical and unlikely to succeed; lasting improvement would only come, its editorialists counseled, with the advent of “underground or elevated steam roads.” Even so, the Times congratulated Bergh for having frightened some of the lines into providing additional horses. The newspaper also encouraged citizens with proximate destinations to walk instead of crowding onto the streetcars.42


The transportation companies repeatedly ignored Bergh's complaints about the strains caused by long routes, inadequate nourishment, insufficient stable conditions, and deficient shoeing practices. Their stables burned to the ground on a recurrent basis, killing and injuring animals. Sometimes they employed unfit horses in the nighttime to avoid the scrutiny of ASPCA agents, who usually patrolled during the day. The horses suffered from extremes of weather and temperature, wounds, sores, and lameness, treacherous road conditions, and worse. Most lasted only three to five years before being sold for less arduous work. Many finished up at the tannery or glue factory.43

Bergh reminded one supporter that the ASPCA was “laboring under the disadvantage of introducing a novel idea, and in the application of it to powerful monopolies, we are forced to move slowly.” However, he quickly discovered the streetcar companies were not interested in reform, and their indifference to his suggestions for reform exhausted his patience. Finally, the ASPCA president decided that the prosecution of individual drivers guilty of driving a lame or exhausted horse was


the best strategy. While this left Bergh vulnerable to the charge of making poor men suffer for their employers’ policies, the courts had consistently held that unless an officer of a corporation had himself hit a company animal on the head with a shovel or driven it lame, or personally witnessed cruelty on his line without intervention, he could not be held accountable.44

In early January 1868, Bergh and a policeman arrested the conductor and driver of a grossly overcrowded car. The horses struggled so much that passengers had to come to their aid in putting the car in motion. Even so, after their conviction, the men appealed, and one stoked popular prejudice against Bergh by complaining of the hardship his sentence had imposed.45 The successful prosecution of the two men gained notoriety as People v. Tinsdale. Recorder John Hackett’s ruling underscored that “the law does not make president, directors, or other officers of the company responsible for the acts of their employees but only those who have charge of the car.” Employee status, he further concluded, did not constitute an exemption from liability under the anti-cruelty law.

Hackett also rejected the defense’s claim that the overloading was not intended. “If one


45 “A Flagrant Injustice,” N. Y. Sun, 8 Feb. 1868, ASPCA-NY, SBK 1: 184; “A Word to Mr. Bergh,” and “Mr. Bergh on Cruelty and Railroad Employees,” N. Y. Sun, 11 Feb. 1868, ASPCA-NY, SBK 1: 186; “Overcrowded Cars,” N. Y. Telegram, 19 Feb. 1868, and “Overcrowded Cars,” N. Y. Telegram, 21 Feb. 1868, ASPCA-NY, SBK 1: 190; and “The Third-Avenue Railroad Company,” N. Y. Times, 29 Feb. 1868, 4. Shortly thereafter, the Times condemned another railway company after it contended that “a car drawn by two horses . . . and in or upon which car, weighing 8,000 lbs., there were one hundred passengers, making in all 21,000 lbs.,” did not constitute a case of overloading. See “City Railroad Cars,” N. Y. Times, 1 Mar. 1868, 8.
commits a murder," he noted, "it would be absurd to interpose the defense that he did not so intend. If a man overloads a car, beyond the ability of the horses attached to it to draw, he is within the act in question, and guilty of cruelty and therefore responsible. The intention is assumed directly from the act itself." 46

Even with this favorable decision, the ASPCA's prosecution attempts got mired in the system during the late 1860s, as the companies continued to appeal convictions of drivers and conductors in the lower courts. In 1869, the streetcar interests asserted their influence in the legislature to smother the ASPCA's bill limiting the number of permissible passengers in one car. Despite these setbacks, Bergh and his agents kept making arrests, believing that inaction would make the ASPCA a party to cruelty "by permitting sore and bleeding animals to drag the cars to the end of the route." Press reports continued to reveal overcrowding, and the nighttime use of decrepit, spavined, and injured horses. Another ruse was "playing the double," in which operators would lead a lame horse some distance up the road to another car. There, they exchanged the lame horse with the second car's animal, who was then brought down to the halted car as if from the stable. Bergh tried to keep the matter in the press through daytime arrests and nighttime raids. 47 In time, however, presiding judges refused to take the cases in light of

46 People v. Tinsdale, 10 Abb. Pr. (n. s.) 374 (N.Y. 1868); "Thanks to Recorder Hackett," New York Citizen, 15 February 1868, 4; and Charge of His Honor Recorder Hackett in the Case of the Driver and Conductor of One of the Cars of the Bleecker Street and Fulton Ferry Railroad, Delivered February 7, 1868 (New York: ASPCA, 1868).

the pending appeals. It did not help matters that, as Bergh noted, “certain magistrates, and men of political influence, are holders of the stocks of these companies, and hence such corporations possess an immunity from punishment, not enjoyed by smaller offenders.”

In February 1871, after more than four years of campaigning, Bergh provoked a major confrontation. In the midst of a heavy snowstorm, he interfered with two of the horsecar lines on Third and Fourth Avenues. For two hours, during the height of traffic, he forced car after car to unload passengers, until he saw several drawn by four horses each coming into view. Later the same month, Bergh secured the arrest of John Conover, president of the Bleecker Street Line. Conover, frustrated by ASPCA interference, arrived at one of Bergh’s blockages, jumped onto the lead car and drove forward, daring agents to stop him. They did, turning him over to the police. At Conover’s arraignment, however, Justice Dowling concluded that conditions on the street had not warranted the ASPCA’s interference, and excused the defendant. Nevertheless, Bergh had scored a decisive victory, for the companies began to station “hill horses” along their routes, to help pull cars up steep acclivities.

That spring, Bergh again attacked the transport companies, this time for using lame horses. During one week in April 1871, the ASPCA took thirty-three lame horses out of harness from thirty different stages. Agents blocked the lines, stopped

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overcrowded cars, ordered passengers off, forced the return of their fares, and turned the teams back to their stables.50

Among those who did not approve was Mayor A. Oakey Hall, one of the ASPCA’s incorporators who had lost sympathy with Bergh. Hall issued a letter that discouraged the police from cooperating with the ASPCA’s efforts, in view of the inconvenience to passengers and pedestrians. Bergh responded with a vigorous defense, and pointed to the ASPCA charter’s requirement that the police assist in its efforts.51

In 1872, Bergh again exchanged public fire with Mayor Hall, who, though then embroiled in the Tammany scandal, reiterated his displeasure with the cooperation that the ASPCA was receiving in its streetcar campaign. Later in the year, a police commissioner personally interfered with an ASPCA officer’s arrest of a driver, releasing the man, re-harnessing the horse, and, as Bergh complained, “prolonging instead of preventing the cruelty.” An exchange of accusations over the jurisdiction and authority of both agencies ensued.52

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51 “The Mayor and Mr. Bergh,” N. Y. Times, 30 June 1871, 5; “Mr. Bergh and the Mayor,” N. Y. Times, 1 July 1871, 5; and “New York Society,” ODA 4 (July 1871), 116.

Despite widely felt anger toward the railway companies, some passengers resented Bergh’s interference, and apocryphal stories began to circulate of individuals who had died from exposure because of the stoppages. In August 1872, a retaliatory attack on Bergh, linked to Hall, originated within the Board of Health, when a commissioner moved that the Board institute proceedings against the ASPCA president. The premise behind this action was Bergh’s implicit violation of the sanitary code, which prohibited obstruction of the streets by horses and/or vehicles. The commissioner highlighted the case of a woman who, hurrying to the deathbed of her sister, missed a train on account of the stoppages. Bergh refuted the story and blamed the companies, for “when they provide the citizens with sick, sore, lame, and overworked animals, it is clearly not the fault of the law nor its officers if public travel is impeded.” In the present case, Bergh continued, “the obstruction is the natural sequence of a lawful arrest. If a railroad corporation . . . provokes a legal arrest, consequent upon which the public suffers inconvenience, the company is responsible, in law, for that wrong.” Elbridge Gerry, Bergh’s resourceful attorney, added that the statute “leaves out of question the consequences of its enforcement, and as it contains no exception as to the time and place of arrest, none is to be implied.” Newspaper opinion recommended that Bergh make his arrests at the depots—after taking the numbers of the cars, conductors, and drivers—in order to secure the cooperation of the police and the support of the public. However, Bergh and his agents consistently rejected this approach, arguing that to do so would
have imposed an additional burden on suffering animals that most needed their intervention.53

In November 1872, three street railroads filed a suit in equity, suing Bergh for $25,000 each and seeking an injunction to restrain him and his officers from making summary arrests of drivers and compelling conductors to return fares. In court, company attorneys claimed that "the offense of cruelty being merely a misdemeanor . . . [the ASPCA] is . . . without authority to make a summary arrest; that if an arrest is made, it must be on a warrant issued by a magistrate, based on a sworn complaint." They argued further that, "if the misdemeanor was committed at all, it must have been done at the stable . . . by the persons in charge who send out the horses." Meanwhile, Bergh continued to stop crowded cars as winter set in, with the companies attempting to run their lines with two horses per car during a period of heavy snowfall. The confrontations continued into the next year.54

On January 6, 1873, Judge Joseph Daly of the Court of Common Pleas denied the sweeping injunction the companies sought, but restricted the ASPCA's authority to send drivers and horses back to the stables. The judge ordered Bergh and his agents to confine

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themselves to arresting drivers, and then only in the case of "plain and patent violation of the Act of 1867." They were not to take charge of the animals or vehicles, although, within a few months, some companies came to prefer that the ASPCA assume temporary custody of any stage from which it had removed a driver. 55

In April 1873, Bergh arrested Dennis Christie, a driver on the Twenty-Third Street Line, in a dispute over the lameness of a horse. After Christie's acquittal in the Court of Special Sessions, his employer filed a motion in the Court of Common Pleas to have Bergh held in contempt of Judge Joseph Daly's injunction, for having improperly arrested a driver. Chief Justice Charles Daly, once a member of the ASPCA, denied the motion, ruling that Bergh and his agents had at least some grounds for thinking the horse lame. With the encouragement of his employer, Christie then sued Bergh in the Marine Court for false imprisonment, and Judge Shea ordered the arrest of the ASPCA president. In November, however, Judge Shea dismissed the case in an opinion that affirmed the right of Bergh and his agents to arrest any man they thought guilty of neglect or inhumane treatment of an animal. 56


56 "Motion to Punish Mr. Bergh for Contempt Denied," N. Y. Times, 25 Apr. 1873, 2; "The Case Against Mr. Bergh," N. Y. Times, 1 May 1873, 8; "Motion to Punish Mr. Bergh for Contempt of Court Denied," N. Y. Times, 29 May 1873, 2; Christie vs. Bergh 15 Abb. Pract. (n.s.) 51 (N.Y. 1873); and "A Decision in Favor of Mr. Bergh," ODA 6 (June 1873), 4. On Christie's false imprisonment suit, see "Mr. Bergh Arrested," N. Y. Times, 24 Apr. 1873, 8; "Mr. Bergh's Horseflesh," New York Comm. Advertiser,
Jacob Sharp, president of the Twenty-Third Street Line, the city's predominate street railway company, became Bergh's most dogged adversary, and his influence reached deep into the state legislature. In the mid-1870s, Sharp led the opposition to Bergh's campaign for a state law to prohibit salting of the streetcar tracks. Because the freezing, salty slush that resulted could damage the streets as well as injure and ulcerate the animals' hooves, the issue had attracted the attention of municipal authorities even before the formation of the ASPCA. However, Bergh had trouble securing prosecutions under an extant city ordinance on salting. State legislators bowed to corporate influence despite the ASPCA's presentation of petitions signed by thousands of New Yorkers. In 1875, the anti-salting measure went down in the Assembly by a vote of 58-40.57

The street railroads also attempted to challenge the constitutionality of legislation that directed fines collected in cruelty cases to the ASPCA. In January 1873, when the ASPCA arrested John McMahon, another driver for the Twenty-Third Street Line, Sharp instructed him to plead guilty to cruelty through overloading, in order to set up a test case. After McMahon was fined $200 for cruelty to a horse, Sharp's attorneys immediately appealed, and pursued the case through both the New York State Supreme Court and the Court of Appeals, which heard it in May of the same year. The court of

57 In one of Bergh's attempted prosecutions under the city ordinance, Dr. Liautard testified about the effects of salting on horses' hooves. A. Oakey Hall appeared as defendants' counsel. See ASPCA, Ann. R. 1873, 37-40; "Salting the Streets," Frank Leslie's, 1 Mar. 1873, ASPCA-NY, SBK 14; "Salting the Tracks," N. Y. Telegram, 15 Apr. 1874, ASPCA-NY, SBK 6: 92; and "Salting Railroad Tracks," N. Y. Times, 6 May 1875, ASPCA-NY, SBK 6: 222.
last resort ruled in the ASPCA’s favor and ordered the company to pay the fine.58

The ASPCA’s position improved in 1874 because of revisions to the anti-cruelty statute that passed the Albany legislature in a nearly unanimous vote. The revised statute clarified the authority of humane agents to seize and destroy animals, and to secure warrants. It also prohibited interference with them during the course of arrests. Most importantly, the words “owner” and “person” in the new bill were “held to include corporations as well as individuals.” Nevertheless, the railway interests were able to thwart Bergh’s proposals for legislation to require an extra horse for cars when the grade exceeded one foot in fifteen, as well as a series of “No seat, no fare” bills to limit the number of passengers in a car. For his part, Bergh continued to arrest drivers, even as operators defended their right to carry as many passengers as they could.59

In the late 1870s, seeking to reduce costs, the railroads introduced one-horse, or “bob-tail,” cars. These operated without any conductor, and the driver had to manage the collection of fares as well as guide the vehicle. They did not prove popular, and concerns about public safety and lack of police action against reckless drivers abounded. Legislation to limit the number of passengers again failed in Albany, and Justice Kilbreth scuttled Bergh’s attempt at a prosecution for overcrowding in 1878.60

58 “Mr. Bergh Gains a Victory,” N. Y. Times, 20 July 1873, 4.


At about the same time, moreover, legislators enacted a law providing that the obstruction of any lawfully running car could be prosecuted as a misdemeanor. The legislation was originally conceived to prevent obstructions by truckmen and carters who refused to keep their vehicles off of the streetcar rails. Thus, it was a shock when the Christopher Street Railroad launched a test case, insisting upon the arrest of an ASPCA officer for interference. In the end, the railroad president withdrew his complaint when courts and magistrates in several cases upheld the ASPCA’s authority. Some newspaper editorialists admonished Bergh that common sense dictated the expediency of conducting cars led by lame animals back to the terminus of the road. This added a little more to the animals’ suffering rather than forcing the many inconveniences of a stoppage upon the passengers. Other editorials supported Bergh, however, noting that the companies themselves, whenever a horse or pair of horses gave out, transferred horses from the approaching car to the one left standing, and so on throughout the line, until new animals could be brought from the stable.61

By 1884, Bergh and his agents had reached a holding position on the issue of streetcar overloading. “I instruct my officers not to stop public travel, except when the load is so excessive as to leave no doubt of the inability of the horses to drag it,” Bergh

related. "At all grades I insist upon an extra horse being kept . . . and while snow is on
the track [I] require four horses invariably." When necessary, he added, "we stop
overloaded cars and compel the conductor to provide more horses, or insist on the load of
thoughtless passengers being reduced." ASPCA agents also attempted to arrest or
negotiate with the depot foremen in charge of the cars rather than to intervene against
individual drivers.62

Complaints about the mistreatment of New York's streetcar horses continued
right through the 1880s. One month before he died during the Great Blizzard of March
1888, Bergh halted cars on the Vanderbilt line in order to make the drivers "double up."
After his death, and for as long as there were horsecars on the streets, public complaints
continued, and the ASPCA's agents maintained their vigilance, turning out injured and
suffering horses and making occasional arrests.63 In the end, electrified and underground
transit systems, the bicycle, and the motor vehicle delivered urban workhorses from the
suffering and neglect that nineteenth-century life imposed upon them. However, during
the decades that witnessed the harshest utilization of horses in transit and commerce,
those animals had no greater champion than Henry Bergh.


63 "Lot of the Car Horse," N. Y. Times, 18 Mar. 1883, 14; "Mr. Bergh Dumbfounded," N. Y.
Times, 15 Feb. 1885, and "Mr. Bergh on Cable Roads," N. Y. Herald, 16 Feb. 1885, ASPCA-NY, SBK 9:
178; "Worn Out Car Horses," N. Y. Herald, 26 Oct. 1885, ASPCA-NY, SBK 10: 207; "Defending New
York," N. Y. Times, 20 Nov. 1886, 8; "Merciful to the Beasts," N. Y. Herald, 10 July 1887, and
"Neglected and Abused Street Car Horses," Brooklyn Citizen, 3 Aug. 1887, ASPCA-NY, SBK 10: 1;
Y. Times, 21 June 1888, 4; and "Car Companies Raided," N. Y. World, 22 Aug. 1890, ASPCA-NY, SBK
10: 257.
Bergh's Antagonists

The ASPCA's activity upset a range of vested interests, and there were many who could not regard its work as benign or innocuous. Bergh's numerous antagonists actively sought to insulate themselves against his intervention. Sometimes, they went further, launching attempts to limit or eliminate the ASPCA's statutory authority.

One of the preferred methods of self-protection was to seek special exclusion. Animal experimenters moved quickly to secure an exemption from prosecution under the 1867 statute. Early in the 1868 session, the Judiciary Committee of the New York Assembly, under pressure from a variety of interests, stripped an ASPCA omnibus bill before releasing it for a general vote. Streetcar companies scuttled an 1873 initiative to strengthen the anti-cruelty statute, to protect their right to continue salting. Canal carriers, pigeon shooters, and butchers also succeeded in gutting provisions of the bill. In 1874, a similar process of "skinning" legislation occurred.64

There were other forms of resistance as well. Bennett's Herald campaigned against both the 1873 and 1874 anti-cruelty statute revisions. Abattoirs and stage railway corporations sought legal injunctions to thwart Bergh's attempts to intervene against their practices. Even the little man had his means of fighting back; in 1871, an especially combative horse owner successfully sued the ASPCA for false imprisonment.65

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Bergh also drew many ad hominem attacks. Detractors told stories of his having sent a poor man off to prison for months for trivial offenses, and circulated rumors about his callousness as a landlord. Cartoonists lampooned his inconsistencies in supporting capital punishment and flogging for wife-beaters.66

Nor could Bergh and his agents count upon the city’s magistrates to dispense justice. Seven years after the formation of the ASPCA, the New York Times condemned one judge’s handling of cruelty cases as “scandalous.” When a magistrate refuses to guarantee the protection of animals under law, the Times insisted, “he not only renders the law a dead letter, but he encourages the repetition of the very offense which that law was framed to prevent.” Bergh commonly encountered judges who imposed their own definitions of humane treatment, and he rated magistrates alongside politicians as the parties who most frequently stood in the way of the ASPCA’s progress. He was particularly disturbed that they would punish petty theft with the utmost severity while dismissing cases of the most atrocious cruelty.67

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Bergh's opponents also sought to undermine the ASPCA's hard-earned statutory authority. During its first decade, the enforcement powers of the ASPCA were challenged no less than five times through legislation or litigation. The most serious threat came in early 1870, apparently directed by Democratic political leaders of the Irish sixth and seventh wards, who sympathized with the animal fighting rings. Bergh's biographer Edward Buffet believed that stronger political influences within the legislature--like the street railway companies--were at work, too, and noted that the fight over swill milk was very intense at this moment. The Tribune observed that the so-called "Burns bill" would have prohibited summary arrests by the ASPCA by requiring a warrant in all cases. A contemporaneous ASPCA alert, mailed to legislators, deplored the provisions which would forbid its officers "or other persons, from delaying, or interfering with a vehicle, or driver thereof, upon any charge of violation" of the anti-cruelty statute. An ASPCA agent would not have been able to stop a driver long enough to get his name.

While the Herald supported those who argued that Bergh had taken the principle of kindness too far, others, including Lydia Maria Child, came to his defense. "The man who claims a right to abuse the beasts that are in his power is spiritually akin to those

who claimed a right to 'wallop their niggers' without interference,” Child declared.
Ultimately, this attempt to limit the ASPCA’s enforcement power passed in the Assembly but failed in the Senate.69

Another serious challenge came in 1873, when Bergh and Gerry sought legislation to legitimate agents’ de facto power (as previously determined by the courts) “to arrest any person found violating the provisions of the law without warrant, the same as if engaged in a breach of the peace.” One supportive assemblyman suggested that “as there was a possibility of doubt, the provision was put into the bill to anticipate an adverse decision from a higher court.” Opponents of the measure eliminated this clause in committee hearings even before sending the ASPCA’s entire proposed 1873 statutory revision down to defeat. A few years later, after Bergh had antagonized many private and commercial interests whose influence within the legislature exceeded his own, it would prove even more difficult to modify the statute. With virtually all his legislative proposals bitterly contested, Bergh would look back on the legislative gains of 1866 and 1867 with regret that “I did not ask for more when I could so easily have got them.”70

“Mute Animals Share His Compassionate Bounty”: Bonard’s Bequest and the Survival of the ASPCA

The ASPCA did not employ attorneys in routine cases. Typically, Bergh and/or his agents would testify as a magistrate posed questions. Eventually, Bergh obtained authorization to fulfill prosecutorial functions himself under special appointments from the District Attorney and the Attorney General of New York State. However, the growing burden of legal work eventually proved too much. In 1870, Bergh recruited Elbridge T. Gerry as legal counsel. Gerry, grandson and namesake of the fourth vice president and Massachusetts patriot who signed the Declaration of Independence, drafted virtually every bill proposed by the ASPCA until Bergh’s death in 1888. In addition, he represented the ASPCA in a series of contentious court cases. These included complex prosecutions, libel lawsuits, testamentary challenges, restraining orders, contempt citations, and writs of habeas corpus.71

Several of Gerry’s most important cases dealt with contested wills, as the ASPCA had to fight to preserve its claim to bequests in the face of prejudice against the notion of a testamentary gift to the cause of animals. Skepticism and ridicule of the ASPCA’s purpose were the stock-in-trade of opposing attorneys, and hostile press descriptions of testators as misguided, miserly, and misanthropic reinforced such derision. The most notable instance involved Louis Bonard, the man dubbed “the miser of Wooster Street.” The Frenchman had accumulated his fortune in trading with Indians, and, it seemed,

indirectly profited from the trapping of fur-bearing animals. Bonard led a frugal and somewhat enigmatic existence as landlord, investor, and inventor. In February 1871, Bonard called Bergh to his deathbed at St. Vincent’s Hospital to execute a new will, leaving $150,000 in assets to the ASPCA.  

The majority portion of Bonard’s estate was in realty, and, after the old man’s death, Gerry petitioned the state legislature for an amendment to the ASPCA’s charter empowering it to hold real property. The friendly support of William “Boss” Tweed ensured the swift procurement of the amendment only a month later. Establishing the legal validity of Bonard’s will proved more difficult. Sensing a windfall, the French consul contested the will on behalf of the French nation, introducing motions to take testimony and conduct a search for heirs in France. Subsequently, several persons alleging blood relationship turned up as well. The court rejected all of these claims, but Bonard’s mysterious background and loner status haunted the proceedings. Lawyers attempting to overturn the will assailed the dead man’s sanity. Gerry had to neutralize their charge that Bonard was the victim of “an insane delusion . . . that upon his death his soul would pass into the body of some animal, and, therefore, by providing for a society

designed to extend protection to animals, he would himself reap a future benefit from such protection by endowing it with the means to that end."

In the end, Gerry turned back all challenges, and in November 1872 the court declared the will valid. The case took two years to resolve, and became a cause célèbre. It also proved to be the ultimate deliverance of the ASPCA, which used the Bonard bequest, reduced to $115,000, for the purchase of expanded headquarters at the corner of Fourth Avenue and 22nd Street. Bergh erected a gravesite monument to his benefactor in Greenwood Cemetery, complete with a bronze ASPCA seal and a laudatory epitaph.

The Bonard affair, moreover, cemented the already close friendship between Gerry and Bergh. Together, they became avid students of litigation over contested wills, a problem the ASPCA would confront on many subsequent occasions.

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75 Bergh's ASPCA Scrapbooks attest to his interest in such cases, even when the ASPCA was not an affected party. His attention proved prudent. In 1884, the second large bequest left to the ASPCA, by Carrie Welton, was also bitterly contested, and the testator's sanity again disputed, in a trial that lasted almost two weeks. See "Bergh Wins the Case," New Haven Register, 30 Oct. 1886, ASPCA-NY, SBK 9: 300. Three other instances are described in "A Louis Bonard Case," N. Y. Sun, 6 Sept. 1872, ASPCA-NY, SBK 5: 63; "Miss Marx's Will Sustained," N. Y. Herald, 24 Mar. 1886, ASPCA-NY, SBK 9: 253; and "SPCA Gets Bequest," N. Y. Tribune, 8 Aug. 1909, and "Relatives Lose Will Fight," N. Y. Herald, 8 Aug. 1909, ASPCA-NY, SBK 12: 172. Bergh's in-laws challenged his will, contesting his donation to the
Because of Bonard's bequest, the nation's first anti-cruelty organization gained a permanent home. More importantly, Bonard's gift assured the perpetuation of an institution that had, in just a few years, wrought a series of changes in the treatment of non-human animals. During that period, Bergh and his colleagues set pioneering precedents for intervention against a range of cruelties, many of which had gone unchallenged before the formation of the ASPCA. Both he and others were confident that the mere presence of the humane society on the city's landscape had curbed many forms of conspicuous cruelty, and eliminated others altogether.76

Moreover, Bergh became an indefatigable proselytizer, determined to push the case for kindness to animals on a wide range of fronts, and in the face of opposition and opprobrium from a variety of antagonists and skeptics. His campaign to extend the implications of the kindness ethic to the greatest possible degree brought animals within the scope of benevolent philanthropy in the United States. More importantly, it was a pioneering step toward a broader conception of moral community, one going beyond the human race to include other species.