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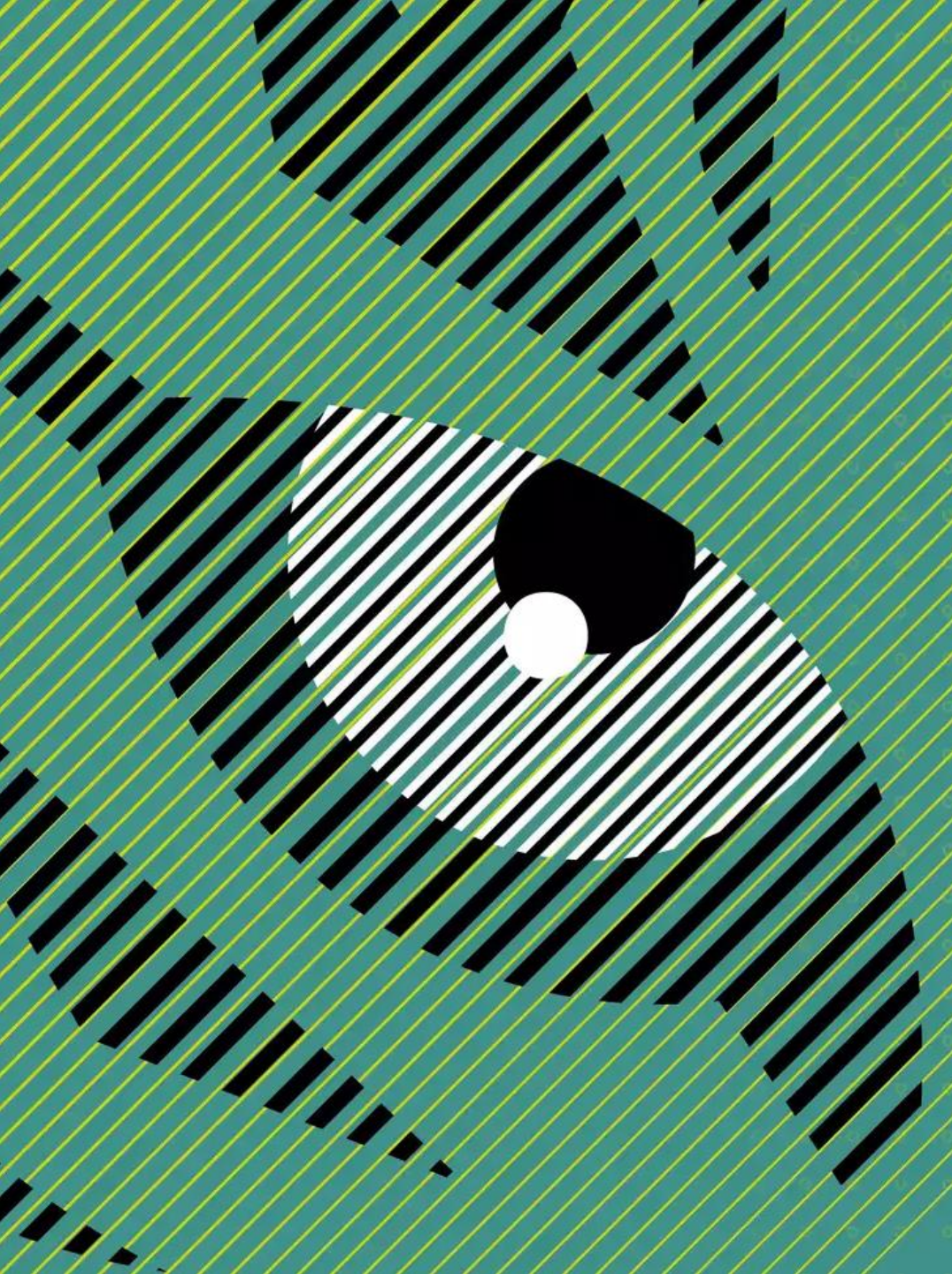


Animal Rights Law

SS 2026

Dr. Felix Aiwanger

www.mpipriv.de/aiwanger



**Unit 1:
Empirical, philosophical, and
historical foundations of
animal rights**

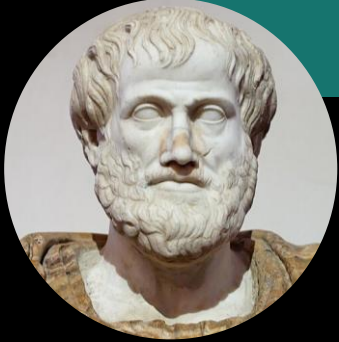
Overview

- 1) Some empirical data on animals and animal rights
- 2) Historical milestones in the philosophy of animal rights
 - Before enlightenment (Aristotle, Aquinas, Montaigne, Descartes)
 - Utilitarianism (Bentham, Singer)
 - Deontological theories (Kantianism: Kant, Regan)
 - Contractualism
 - The „Political Turn“

Special guest contribution by Prof. Shira Shmueli: The History of Animal Law in the U.K.

- 3) Fundamental conceptions
 - Speciesism
 - Sentience, pathocentrism
 - Intrinsic value, inherent value, ultimate value
 - Animal welfare

Before enlightenment



Aristotle (384–322 b.c.)

soul, mind, rational element > body, passionate element
men > women
masters > slaves
humans > animals (made for the sake of men)



Thomas Aquinas (c. 1225–1274)

"[...] by divine providence they [animals] are intended for man's use in the natural order. Hence it is no wrong for man to make use of them, either by killing or in any other way whatever."
⇒ "dumb animals" are **lacking reason** and thus "naturally enslaved"
⇒ ⇒ if prohibition of cruelty, then for the sake of human interests

Before enlightenment



Michel de Montaigne (1533–1592)

- Animals have reason, but it cannot be fully understood by humans
- Animals' suffering is perceptible through empathy
- There are no qualitative, but gradual differences between animals' and humans' reason

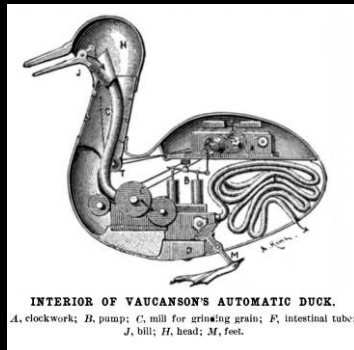


René Descartes (1596–1650)

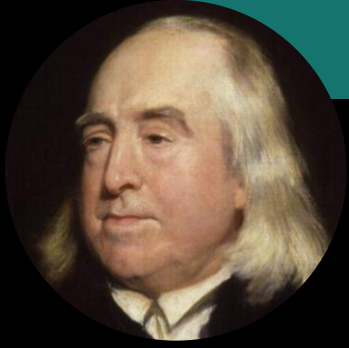
- Animals lack the **ability to speak** \Rightarrow they have **no reason/no thinking soul**
- Animals are comparable to elaborate **machines**:
"[...] it is nature which acts in them according to the disposition of their organs, just as a clock, which is only composed of wheels and weights, is able to tell the hours and measure the time more correctly than we can do with all our wisdom."

\Leftrightarrow **Voltaire**: animals have feelings, memories, ideas

\Leftrightarrow **Rousseau**: due to their sensitivity, animals have "the right not to be uselessly mistreated"



Utilitarianism

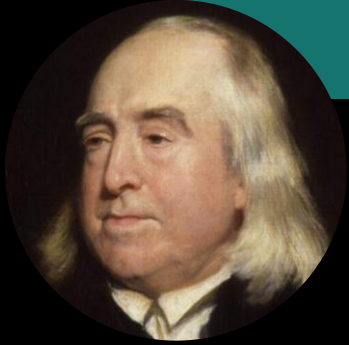


Jeremy Bentham (1748–1832)

„The day has been, I grieve to say in many places it is not yet past, in which the greater part of the species, under the denomination of slaves, have been treated by the law exactly upon the same footing as, in England for example, the inferior races of animals are still. The day may come, when the rest of the animal creation may acquire those rights which never could have been withholden from them but by the hand of tyranny. The French have already discovered that the blackness of the skin is no reason why a human being should be abandoned without redress to the caprice of a tormentor. It may come one day to be recognized, that the number of the legs, the villosity of the skin, or the termination of the os sacrum, are reasons equally insufficient for abandoning a sensitive being to the same fate. What else is it that should trace the insuperable line? Is it the faculty of reason, or, perhaps, the faculty of discourse? But a full-grown horse or dog is beyond comparison a more rational, as well as a more conversable animal, than an infant of a day, or a week, or even a month, old. But suppose the case were otherwise, what would it avail? the question is not, Can they reason? nor, Can they talk? but, Can they suffer?“

(An Introduction to the Principles of Morals and Legislation, 1789, S. 308 f.)

Utilitarianism



Jeremy Bentham (1748–1832)

- Hedonistic utilitarianism: **minimise suffering + maximise happiness** in a community ("the greatest pleasure for the greatest number")
 - Relevant criterion: **ability to suffer** (not: ability to reason or to speak)
 - But: killing animals without suffering is morally right (and may even be required) because animals **cannot anticipate the future and human interests prevail**
- ⇒ Foundation of modern animal welfare law (see [Bentham's draft of an anti-cruelty bill](#))



Peter Singer (*1946)

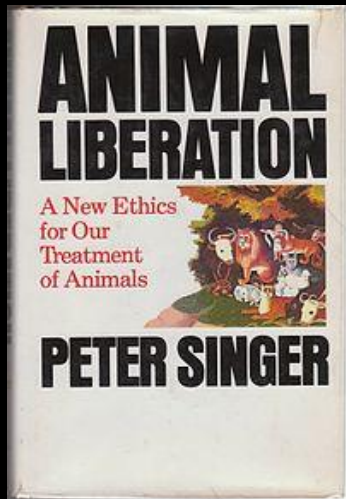
- Differences between groups do not justify treating them unequal (see other liberation movements), but only give rise to different rights ⇒ **Principle of equal consideration of interests**
- ⇒ **sentience** (capacity to suffer or be happy) as prerequisite for having interests
- Preference utilitarianism: positive balance of **all consequences** of an action
 - Different **lives** have **different worth** ⇒ killing animals without suffering is justifiable

Utilitarianism

Peter Singer (*1946)



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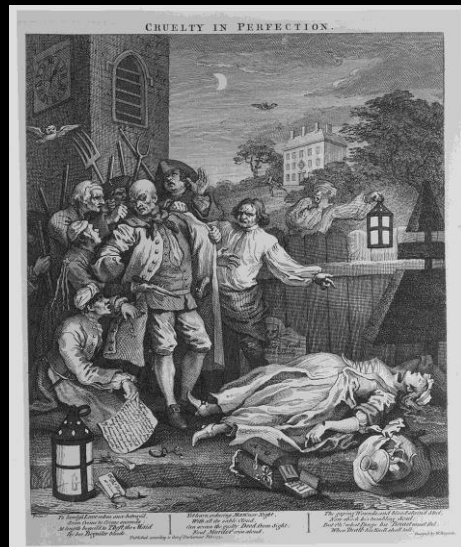
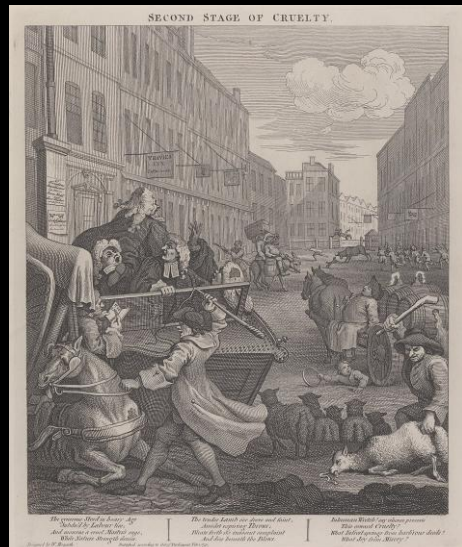
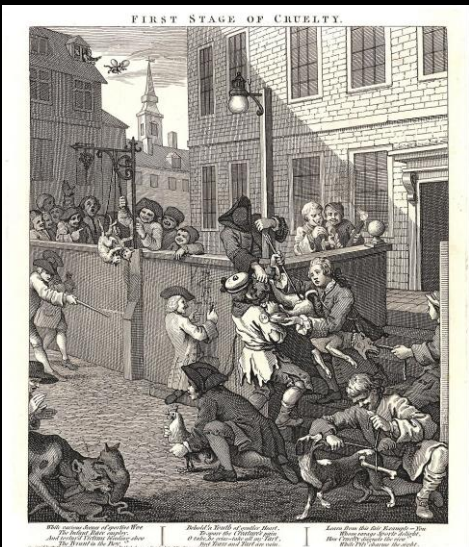


<https://www.youtube.com/watch?v=av22cRQNBiQ>

Deontological theories (Kantianism)

Immanuel Kant (1724–1804)

- Human beings are **ends in themselves** due to their **rationality** (\Rightarrow human dignity)
- Animals are not rational \Rightarrow have **relative value** \Rightarrow can be used as **means to an end**
 \Rightarrow difference between **persons** (ends in themselves) and **things** (means to an end)
- Humans have **indirect duties** towards animals in order not to stifle their moral feelings towards other humans: *"If a man shoots his dog because the animal is no longer capable of service, he does not fail in his duty to the dog, for the dog cannot judge, but his act is inhuman and damages in himself that humanity which it is his duty to show towards mankind."*



William Hogarth,
The Four Stages of
Cruelty (1751)

Deontological theories (Kantianism)



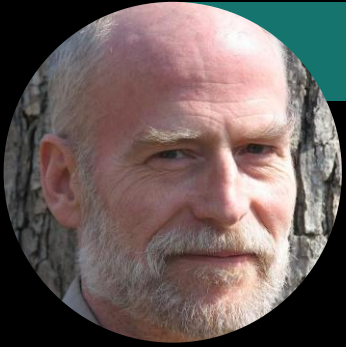
Tom Regan (1938–2017)

"My Aunt Bea is old, inactive, a cranky, sour person, though not physically ill. She prefers to go on living. She is also rather rich. I could make a fortune if I could get my hands on her money, money she intends to give me in any event, after she dies, but which she refuses to give me now. In order to avoid a huge tax bite, I plan to donate a handsome sum of my profits to a local children ' s hospital. Many, many children will benefit from my generosity, and much joy will be brought to their parents, relatives, and friends. If I don ' t get the money rather soon, all these ambitions will come to naught. The once-in-a-lifetime opportunity to make a real killing will be gone. Why, then, not kill my Aunt Bea ? [...] There is very little chance of getting caught. And as for my conscience being guilt ridden, I am a resourceful sort of fellow and will take more than sufficient comfort – as I lie on the beach at Acapulco – in contemplating the joy and health I have brought to so many others."

from: [The Case for Animal Rights](#), in: Peter Singer (ed.), *In Defense of Animals* (1986), p. 185

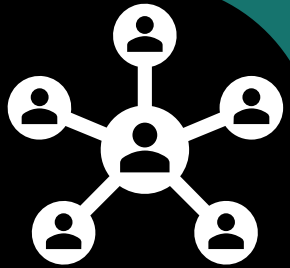
- Individuals have an **inherent, incommensurable value** ⇒ respect
- *Criterion*: being the **"subject of a life"** = subjective experience and goals
- **Individual moral rights** instead of supraindividual balancing/account
⇒ **Protection of life** for (some) animals, prohibition of instrumentalisation

Contractualism and the "Political Turn"



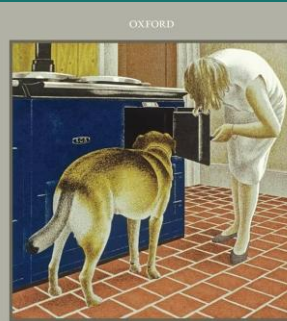
Contractualism (esp. Peter Carruthers, *1952)

- **Hypothetical moral/social contract:** What rules and principles would contractors rationally agree to?
- Condition 1: contractors as **rational agents** (able to reflect their needs and desires)
- Condition 2: contractors can have rights and duties (**reciprocity/symmetry thesis**)
 - ⇒ Only **indirect duties** to animals possible (side effect of direct duties to humans)
 - ⇒ *"those who are committed to any aspect of the animal rights movement are thoroughly misguided"*



The "Political Turn"

- Shift from individual moral duties to duties of society/institutions
- **Donaldson/Kymlicka:** Animals as members of political communities:
 - Wild animals = sovereign communities (separate/independent)
 - Liminal animals = denizens (right to residency, coexistence)
 - Domesticated animals = co-citizens (participation, cooperation)
 - ⇒ Positive and relational duties towards, but also *of* animals



ZOOPOLIS
A Political Theory of Animal Rights

SUE DONALDSON & WILL KYMLICKA

The History of Animal Law In the U.K.

Dr. Shira Shmueli

The Max Planck Institute for Comparative and International Private Law and Tel Aviv University

Octopuses feel pain and need legal protection, say MPs

18 June 2021

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Manish Pandey

Newsbeat reporter

1. **How** did the legal status of animal changed in the past two centuries?

What changed, what is acceptable and unacceptable in human-animal interactions?

2. **Why** did the legal status of animal change?

Social, cultural, and material explanations

3. **Which** animals were granted protection, how it changed, and why?

How the law define animals, is it by species or by other criteria? When and why animals are being included or excluded, is it a linear process?

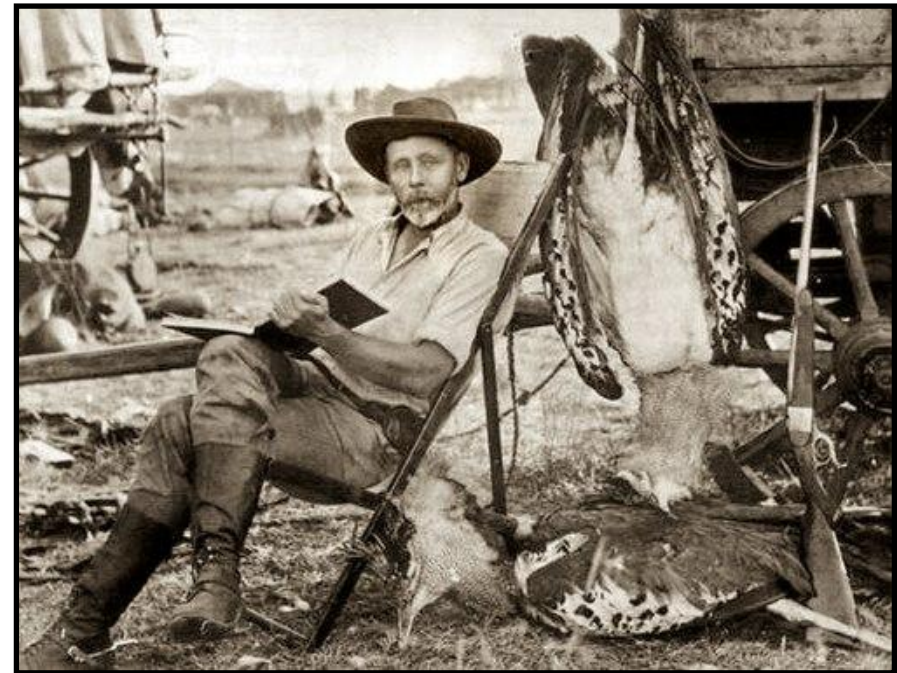


Old Smithfield in 1855, an outdoor market, Wikipedia, Public Domain



William Hogarth, The Cockpit, 1759

Public Domain



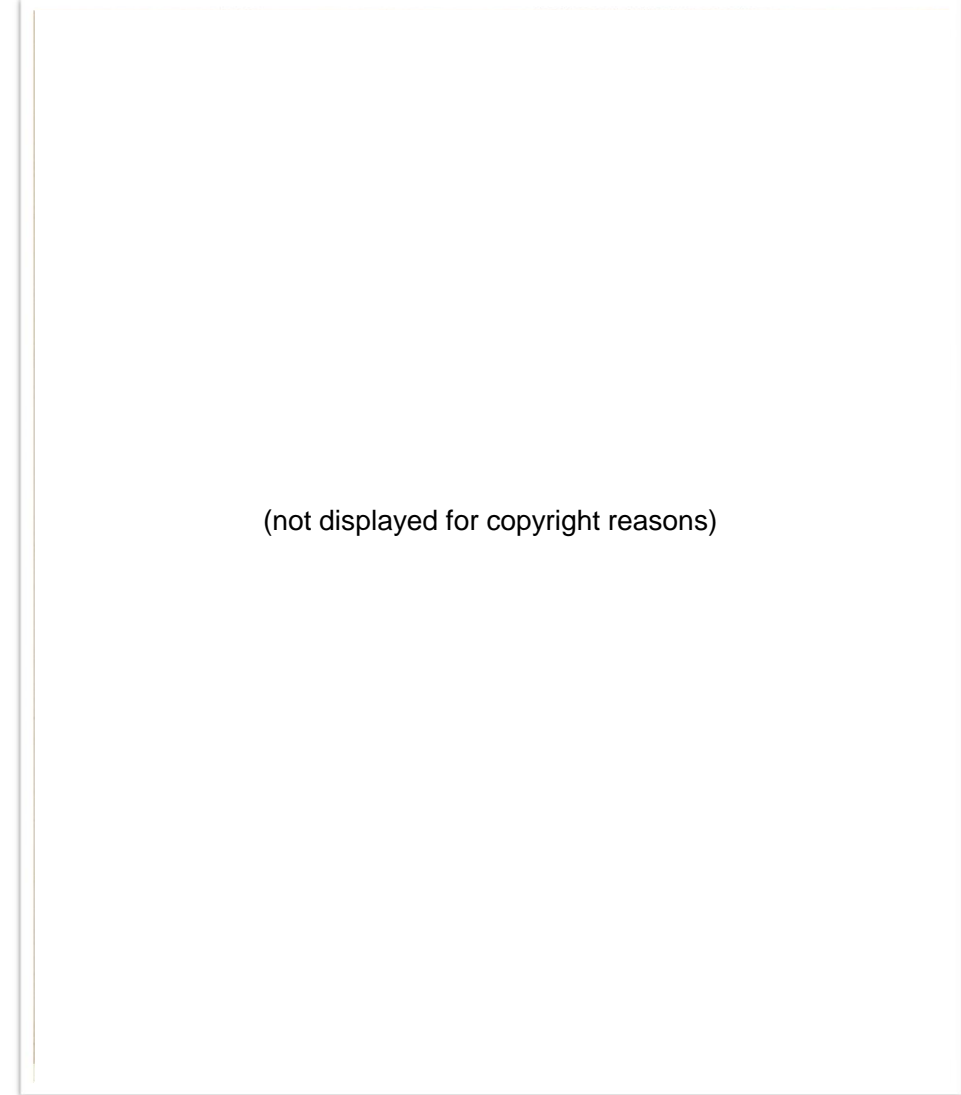
Frederick Courtenay Selous auf [Safari](#) 1880er-Jahre

Frederick Courtenay Selous in Africa with his Holland and Holland rifle and two shot large bustards

Public Domain



Share of the Zoologische Garten in Hamburg, issued 1. August 1864. Wikipedia Public Domain



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* Edward Tyson, 1699. "Orang-Outang, Sive Homo Sylvestris: Or, The Anatomy of a Pygmie Compared with That of a Monkey, an Ape, and a Man"



Martin's Act 1822

“...wantonly and cruelly beat, abuse or ill treat any horse, mare, gelding, mule, ass, ox, cow, heifer, steer, sheep and other cattle.”

P. Mathews, *The Trial of Bill Burns*, 1838~
Public Domain

British Cruelty to Animals Legislation and Case Law, 19th century

	-1822	An Act to Prevent the Cruel and Improper Treatment of Cattle			
	-1833	An Act for the More Effectual Administration of Justice in the Office of a Justice of the Peace in the Several Police Offices established in the Metropolis, and for the More Effectual Prevention of Depredation on the River Thames and its Vicinity, for Three Years			
	-1835	An Act to Consolidate and Amend the Several Laws Relating to the Cruel and Improper Treatment of Animals, and the Mischiefs Arising from the Driving of Cattle, and to Make Other Provisions in Regard Thereto			
	-1839	An Act for Further Improving the Police in and Near the Metropolis			
	1844	An Act to Amend the Law for Regulating Places Kept for Slaughtering Horses			
	1848	,Cattle ,An Act to prohibit the Importation of Sheep for the Purpose of preventing the ,or other Animals introduction of contagious or infectious Disorders			
	-1849	An Act for the More Effectual Prevention of Cruelty to Animals			
	-1854	An Act to Amend an Act of the Twelfth and Thirteenth Years of Her Present Majesty for the More Effectual Prevention of Cruelty to Animals			
1860					
Hague .Clark v					
1863					
Parson .Budge v					
Greenhalgh .Morley v					
					-1869
					The Contagious Diseases (Animals) Act
					Sea Birds Preservation Act
				1871	
				Colam v. Hall	
				1874	
				Pitts v. Millar	
					-1876
					The Cruelty to Animals Act
				1877	
				Murphy v. Manning	
				1878	
				Powell v. Knight	
				Everitt v. Davis	
				1881	
				Swan v. Saunders	
				1883	
				Colam v. Pagett	
				1884	
				Brady v. McArdle	
				1887	
				Lewis v. Fermor	
				1889	
				Ford v. Wiley	
				1890	
				Filburn v. The People Palace and Aquarium Co	
				Adcock v. Murrell	
				1893	
				Aplin v. Porritt	
				1894	
				Harper v. Marcks	
				1896	
				Yates v. Higgins	
				1899	
				Duncan v. Pope	
					-1900 Wild Animals in Captivity Protection Act

What is an “animal”?



1822

"Whereas it is expedient to prevent the cruel and improper Treatment of Horses, Mares, Geldings, Mules, Asses, Cows, Heifers, Steers, Oxen, Sheep and other Cattle [...]"

1835

"[...] if any Person shall [...] wantonly and cruelly beat, ill-treat, abuse or torture any Horse, Mare, Gelding, Bull, Ox, Cow, Heifer, Steer, Calf, Mule, Ass, Sheep, Lamb, Dog, or any other Cattle or domestic Animal [...]"



1849 - added cats.




1854 - “Word Animal shall in the said Act and in this Act mean any domestic Animal, whether of the Kind or Species ... or of any other Kind or Species whatever, and whether a Quadruped or not.. “



“Domestic animals are such as live in or near the habitation of man, and are tame as distinguished from wild.” (1881)

The act “intended to comprise all such animals as have been tamed to serve some useful purpose for mankind [...] The mere caging and keeping in captivity an animal is not enough to make it a domestic animal.” (1894)



(not displayed for copyright reasons)


What is “cruelty”?

The Doctrine of Unnecessary Suffering

Budge v. Parsons, (1863) 3 B. & S. 382. (Cock fighting with an injured chicken)

Justice Whitman:

“[T]he cruelty intended by the statute is the unnecessary abuse of any animal.”



(not displayed for copyright reasons)

Ford v. Wiley, (1899) 23 Q.B.D. 203.

Justice J. Hawkins (sawing of oxen' horns):
The relevant circumstances for the cruelty offence were “the amount of pain caused, the intensity and duration of the suffering, and the object sought to be attained.”



By explaining that pain should be inflicted reasonably and in an amount proportional to a desirable and legitimate object, the decision in Ford v. Wiley embedded the calculability of suffering in animal welfare law, reflecting a similar logic to that which directed the implementation of the Vivisection Act.



CHAPTER 77.

An Act to amend the Law relating to Cruelty to Animals. A.D. 1876.
[15th August 1876.]

WHEREAS it is expedient to amend the law relating to cruelty to animals by extending it to the cases of animals which for medical, physiological, or other scientific purposes are subjected when alive to experiments calculated to inflict pain :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited for all purposes as "The Cruelty to Short title. Animals Act, 1876."

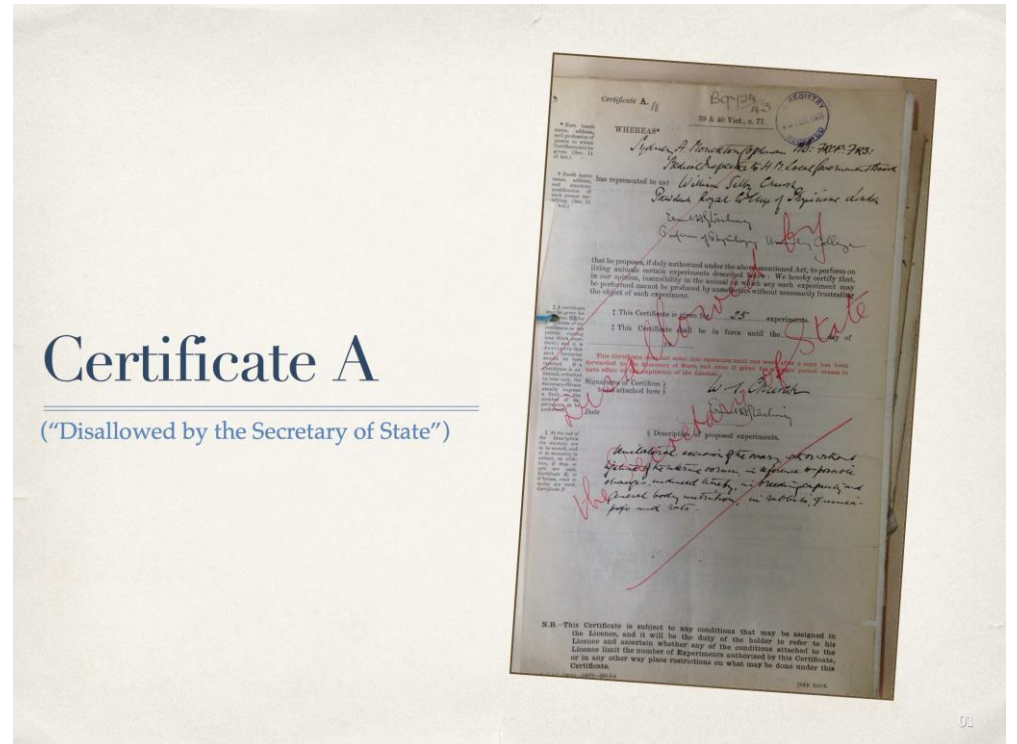
2. A person shall not perform on a living animal any experiment calculated to give pain, except subject to the restrictions imposed by this Act. Any person performing or taking part in performing any experiment calculated to give pain, in contravention of this Act, shall be guilty of an offence against this Act, and shall, if it be the first offence, be liable to a penalty not exceeding fifty pounds, and if it be the second or any subsequent offence, be liable, at the discretion of the court by which he is tried, to a penalty not exceeding one hundred pounds or to imprisonment for a period not exceeding three months.

Prohibition
of painful ex-
periments on
animals.

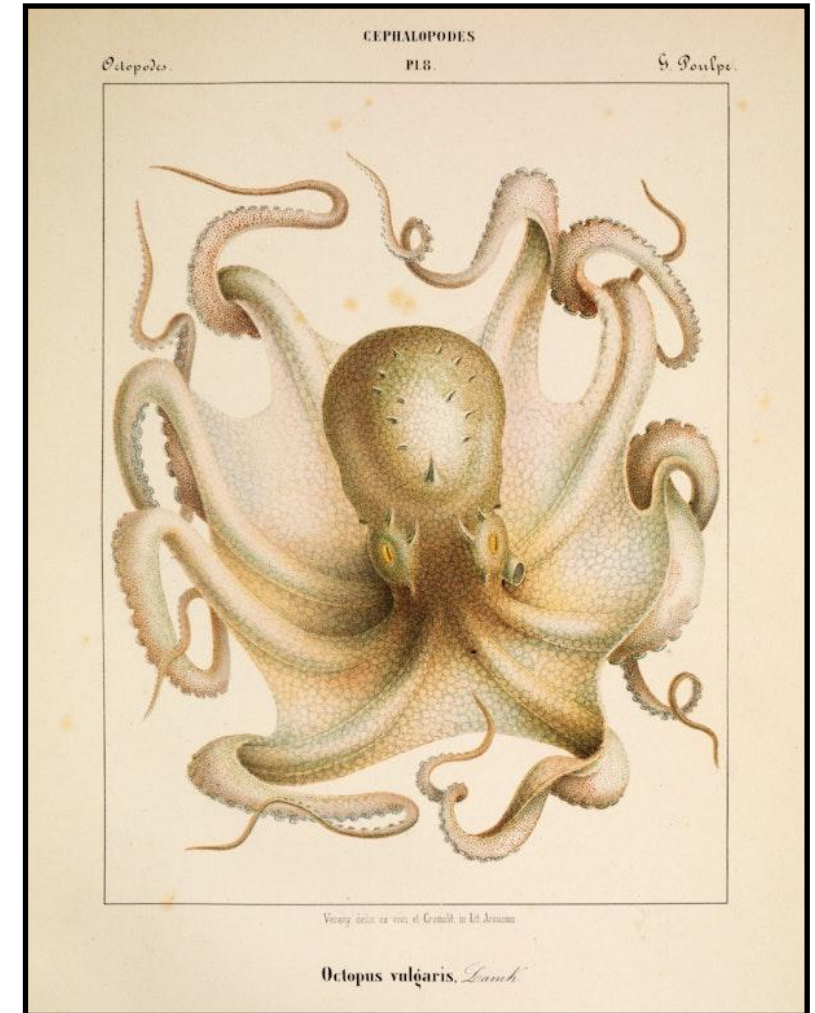
22. This Act shall not apply to invertebrate animals.

Vivisection Act (1876)

- ❖ License to experiment
- ❖ Registration of laboratories (outlaw private premises)
- ❖ Set of prohibitions (for example, experimenting without anesthesia, letting the animal live after procedure) and special certificates
- ❖ Visits by inspectors



Enter the Octopus...



Jean Baptiste Vérany, 1851
Public domain

The Cambridge Declaration of Consciences , July 2012

We declare the following: “*The absence of a neocortex does not appear to preclude an organism from experiencing affective states. Convergent evidence indicates that non-human animals have the neuroanatomical, neurochemical, and neurophysiological substrates of conscious states along with the capacity to exhibit intentional behaviors. Consequently, the weight of evidence indicates that humans are not unique in possessing the neurological substrates that generate consciousness. Non-human animals, including all mammals and birds, and many other creatures, including octopuses, also possess these neurological substrates.*”



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