

## **Confronting Animal Abuse: Law, Criminology, and Human-Animal Relationships**

Piers Beirne (2009) *Confronting Animal Abuse: Law, Criminology, and Human-Animal Relationships* Law, Criminology and Human-Animal Relationships. Rowman & Littlefield Publishers, Inc

**Reviewed by Jennifer Gannett<sup>1</sup>**

### **Introduction**

Piers Bierne's *Confronting Animal Abuse: Law, Criminology and Human-Animal Relationships* is an important addition to the body of work examining the relationships between humans and animals from a multi-faceted perspective. An expert in the fields of criminology, sociology and human-animal relations, Bierne takes us on a fascinating journey through various aspects of human-animal relations throughout the span of many centuries. Through Bierne's careful research, he reveals that a number of important and often seemingly straightforward anti-cruelty laws often had curious roots. Bierne's research and writing is a reminder of our need to amend our collective vision of appropriate ways to safeguard animal's rights and rethink what it means to violate those rights.

### **English Animal Welfare Law as a Tool of Irish Suppression**

Highlighting early complexities in animal protection, Bierne spends the first chapter exploring an obscure Irish law passed in 1635, the Act Against Plowing by the Tayle and Pulling the Wooll Off Living Sheep (1635 Act) (leaving aside discussion of the sheep, Bierne focused entirely on the 1635 Act as it impacts horses). Socio-political events both in Ireland and England during the decades leading up to the 1635 Act contributed to the passage, compliance and enforcement of the legislation in a remarkable way.

Plowing by tail was a popular way for farmers in 17th century Ireland to turn up soil, and, as the term suggests, incorporated a short, relatively lighter plow being attached directly

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<sup>1</sup> Jennifer Gannett is an attorney who advocates for animals and a cleaner environment in New Jersey. Jennifer can be contacted at [jennifer@vegbooks.org](mailto:jennifer@vegbooks.org).

to a horse by the animal's tail. Plowing by tail was slow and inefficient, but an improvement over doing the work by hand. Since this method was most commonly used by impoverished Irish farmers, from their perspective, it was sensible to plow in a way that required no capital investment in harnesses or larger plows since they did not have the means for such expenditures. Though not specifically Irish in origin, the custom persisted in Ireland during the 1600s. The actual level of pain to the horse is unquantified, though Bierne rightly notes that it was a custom that would have exhausted itself if it caused immediate severe damage to the animal. From a utilitarian perspective, causing immediate debilitating damage to one's animal would be counterproductive. However, it is clear that this was an unpleasant, painful experience for the animal.

Rather than focus solely on the suffering of the animal, Bierne gives the reader impressive details regarding the societal framework that existed during the lead up to the passage of this law. Bierne supplies plenty of evidence to establish that these details are crucial to a critical look at what at first blush seems to be an early anti-cruelty law. Bierne's piecing together of the scant historical record pertaining to plowing by tail provides support for his belief that it is likely that the 1635 Act was not enacted simply as an anti-cruelty law with the best interests of the animals as primary motivator but rather used by the colonial English as a tool of oppression against the Irish. Bierne weaves details gleaned from the record on legislative, contemporary socio-political attitudes (usually via English correspondence and other writing) and enforcement to further this idea and posits that there were four main reasons for enactment of the legislative wrangling that finally coalesced into 1635 Act.

The first is that plow fines served as a handsome source of income for the English. The money collected from offenders was an important source of revenue for the English administration in Ireland. Moreover, Bierne notes that British authorities doubtless used the act as a source of graft, reducing payments in return for bribes, or taking payment but never reporting the offense. In the latter cases the 1635 Act served as an illicit tax, rather than a prohibition on the activity.

Second, the criminalization of the activity served as another vehicle through which the English could regulate the Irish. It is difficult to overstate the level of cultural imperialism with which the English approached their role as administrators in Ireland. Bierne cites excerpts from contemporary writers to buttress this position; it is clear not just from Bierne's writings but from any examination of the Irish-English relationship that considerable

effort was made on all levels to make the Irish more English. Bierne makes the unique connection in demonstrating that this may have had an impact on animal-related legislation.

The third prong of the connection is that the 1635 Act was another tool of control over human-animal relationships and perhaps represented a shift into a more animal-friendly way of thinking. Bierne is adamant that this is not the case.

The fourth point was that the Act served to suppress social behavior that the English found undesirable. The Puritan influence during this period meant that strong restrictions were placed upon many practices including drinking, gambling, adultery and dancing. Puritans also criminalized most activities performed on a Sunday that were generally permitted during the rest of the week (i.e. making hay, loading ships, hunting). But what motive might the Puritans have had for promoting welfare? Overlapping with material later in the book, Bierne connects the ideas of these types of laws as civilizing. Criminalization of activities like animal baiting worked to further state control of social behavior.

Bierne also points out other potentially influencing factors in the law's creation, which is the English love of their own horses, their own horse-centric society (including as symbols of nationalism) and, at the time, their hostility and distaste toward both Irish horses as well as the Irish treatment of their equines. Dovetailing with this attitude specifically toward horses was a general increase in husbandry techniques. As England saw a rise in interest in husbandry techniques, including concepts of proper methods of plowing as well as proper horse breeds for plowing, the English grew increasingly convinced that their own practices were superior and that Irish practices bordered on barbaric.

Bierne does an impressive job of scouring through the available records and writings that pertain to the 1635 Act and the events and context that led to the Act. It would be even more intriguing if we could have had a chance to learn more about the Irish perspective regarding the 1635 Act and how the actions of the English impacted their daily lives. The historical record will always be missing this important perspective, especially since Bierne informs us that there is a complete absence of judicial records having to do with this issue.

### **Puritan Regulation of Animal Welfare in the Massachusetts**

After exploring the context of an alleged anti-cruelty law in seventeenth century Ireland, Bierne then moves across the pond to fledgling New England for an equally intriguing look at the state of human-animal relationships in the Massachusetts Bay Colony.

Bidding farewell to all that was familiar to them, the Pilgrims arrived in Massachusetts in 1620. Many of them arrived from areas in England where the previously mentioned husbandry principles had been embraced. The colonists set to work establishing a complicated network of extraction and appropriation of natural resources as well as a thriving economy based on trade in cattle, pigs and sheep. Bierne points to the importance of the trade in animals as part of the impetus for regulation of human-animal relationships. These regulations (and other non-related laws) varied from town to town and soon created a complex hodgepodge of ad hoc rules.

Contributing further to the confusion, large numbers of cattle roamed unattended, trespassing not only upon other colonist's land but also onto land inhabited by Native Americans. These free-roaming animals frequently caused damage to property by destroying fences and eating or trampling crops. In 1635, while Ireland was seeing a finalized version of prohibitions and regulations regarding aspects of animal husbandry, the call was sent out by the governor of Massachusetts Bay Colony to institute a body of laws, based on the concept of the Magna Carta. After several years of permutations and political (to say nothing of religious) wrangling, Massachusetts Bay Colony instituted a mixture of common law, equity, Mosaic commandments and localized input entitled Body of Liberties in 1641.

Two particular mentions of interest specific to the study of animal cruelty and human-animal relationships are found within the Body of Liberties. Liberties 92 and 93 contain language ostensibly pertaining to animal cruelty. Liberty 92 states, "No man shall exercise any Tirranny or Cruelty towards any brute Creature which are usuallie kept for man's use." Liberty 92 is, of course, notable because it is considered the first piece of anti-cruelty legislation established in America.

Liberty 93 pertains specifically to the treatment of cattle, prohibiting cattle from being led or driven "from place to place that is far of, so that they be weary, or hungry, or fall sick, or lambe" - as well as requiring that they be rested "for a competent time."

In an examination of concerns arising around these Liberties, one of the first questions addresses the vague wording -- for example, what was considered tyranny or cruelty? And what of animals kept for human use but usually considered wild animals? A later Liberty entitled Liberties of Servants also discussed cruelty and tyranny-- were servants and animals in the same category? When seeking to answer these questions, or at least attempting to discern a viable interpretation, importance should again be placed on some particular aspects of the historical and social period and especially the Puritan hierarchy, which unequivocally placed God at the top, with "brute Creatures" at the bottom. While non-human animals were

on the lowest rung of the hierarchy, the Body of Liberties placed obligations upon human members of society to ensure that their non-human counterparts were treated with some measure of kindness based on their belief system. Additionally, as previously mentioned, the Puritanical religious and cultural system had strict social rules. With all of the constrictions inherent in Puritan society, it is unsurprising that one of the rationales for instituting laws like Liberty 92 may have been to further serve as controls on unwanted behavior, especially where undesirable behavior intersected with practices involving animals, as in the case of cockfighting.

However, when those directives failed, there was a probability that enforcement and punishment would ensue via the criminal justice system. An examination of extant resources from the period informs our understanding of how the term animal cruelty was interpreted by the Massachusetts Bay Colony: Bierne surveys several early modern colonial American records and finds that despite challenges with its indexing system, the Records and Files of the Quarterly Courts of Essex County Massachusetts 1636-1683 (QCEC) holds the most promise in terms of revealing contemporary ideas of animal cruelty.

Much of the mention of animals in the QCEC, notes Bierne, is simply due to the fact that the economy of the society at the time was based in large part on the aforementioned agricultural relationships-- relationships which obviously featured animals, especially horses, cattle, pigs and poultry to a considerable extent. The QCEC is very limited in revealing many of the facts surrounding the cases, often simply providing one-line dispositions of the case without any further evidence or information. Most of the potential cruelty cases are viewed through the lens of property offenses. Bierne found that between 1636 and 1683 there were fourteen out of approximately three thousand cases dealing with animal cruelty, or approximately one conviction for cruelty in Essex County every three years. In these cases, the defendants were accused of using knives, guns and stakes to torment, wound, maim and kill a wide variety of animals, including dogs, horses, pigs and lambs. Sanctions for those who were guilty of infractions included warnings, fines, an order of restitution, incarceration, whippings and disenfranchisement.

As Bierne points out, in early modern culture, animal cruelty was embedded in everyday life and generally not recognized as problematic by Puritans and their contemporaries. Bierne rightly states that the most significant cruelties were found in the eating habits of the Puritans, including brutal recipes for softening and live roasting various birds, eel and pigs. While roasting live animals has fallen out of favor in the past four

hundred centuries, Bierne's assertion that the kitchen was the destination for the end result of tremendous cruelty still holds true in our modern culture.

Bierne's final comment in this chapter is that Liberty 92 did not represent a predicate for either a more humane worldview or a series of anti-cruelty laws that sought to protect animals for their own sakes. According to Bierne's impressions, it failed on this account because it was enacted with only an eye toward human dominion over animals and, likely, human dominion over fellow humans. While this may be accurate, argument can be made that if the law stopped someone from treating animal cruelly, the intent in crafting the law matters less than the fact that a cruel interaction was avoided. As Bierne clearly illustrates, the Puritans lived in a society in which they were heavily involved in use of animals for agricultural use, as well as food. While our society continues its slow evolution in treatment and attitudes toward non-human animals, a first step was necessary, despite the imperfect launching point.

### **Views on Animal Sexual Assault**

The book's next chapter moves toward an examination of bestiality, referred to by Bierne as animal sexual assault. Bierne deserves credit for crafting a thoughtful treatment on a topic that much of society still regards with varying levels of distain and distaste.

We are first presented with an overview of historical prosecutions of animal sexual assault as well as a survey of some well-known examples in print and film, including cultural, biblical and mythological references such as Leviticus, and a historical treatment of bestiality in Sweden and England.

Strict religious prohibitions on animal sexual assault and other aspects of sexual behaviors guided most Western societies, but with the advent of the mid-nineteenth century, a "drift to tolerance" arose, in which a number of previously non-reproductive sexual practices no longer received strict censure and the shift of social control around animal sexual assault moved from religion and criminal law to a medico-psychiatric process. Within this shift, there has emerged a stereotype of the individuals who engage in animal sexual assault as diseased individuals ("sickos," in popular vernacular) who are simpletons and may have psychopathic personalities. This drift to tolerance is described by Bierne as being influenced by a pseudoliberal stance of tolerance.

To illustrate the pseudoliberal stance of tolerance, Bierne points to a Peter Singer article entitled "Heavy Petting," a review of *Dearest Pet*-- a book about sexual relations between humans and animals. In answer to "Heavy Petting," Bierne makes a number of points relative to the review. The first is that Singer's review accepts that animal sexual assault is both common and legitimate in all societies. Bierne later discusses the problems regarding a lack of statistical confidence, and that existence of a fact does not necessarily legitimize it. The second problem, yet again, is one of definition-- what exactly is bestiality? Without a clear definition, it may be hard for some to realize when it has occurred. Finally, Bierne notes that it is challenging to wrap one's mind around Singer's view that sex with animals without cruelty may not be not wrongful. This, he points out, seems to give assent to animal sexual assault without attendant cruelty, and Bierne then properly enquires whether we should also tolerate the actions of rapists and molesters if their actions are not accompanied by cruelty. This is an interesting argument that Bierne might have expanded upon, with discussion of intent. Is it acts only that incorporate cruelty, or must there also be assaultive behavior? Author Carol Adams asserts that bestiality is always sexual coercion, a viewpoint Bierne embraces but does not completely agree with based on his ideas about consent and power dynamics in sexual congress.

Bierne also reviews the role of sexist and speciesist language. Problems remain with society's use of reductionist language, especially where males continue to use language to both distance and elevate themselves until the others are "less than me." These points support an unfortunate move toward legitimizing sexual assaults on both animals and women.

Bierne undertakes an ambitious project in this chapter identifying and creating of a typology of animal sexual assault. Bierne divided his typology into four categories: commodification, adolescent sexual experimentation, aggravated cruelty and zoophilia. Commodification occurs when animal sexual assault is packaged for sale in a market. This includes a wide range of activities (and therefore markets) including human and non-human animal sexual interaction, crush videos, and in one instance a chimpanzee who performed a striptease at parties. Adolescent sexual experimentation is arguably an extremely prevalent form of animal sexual assault. Bierne notes that the individual incidents vary greatly according to social contexts and may occur individually or in groups. Aggravated cruelty refers to a heightened level of cruelty and this discussion includes some appalling examples of rape and assault against animals. Zoophilia is the term given when animals are favored partners for human sexual activity.

Within zoophilia, three main viewpoints are of import: those who engage in the abuse (“zoos”), psychiatric professionals and sexology professional. Zoos themselves are convinced that they are justified in their assaultive behavior because their relationship involves mutual love and, in their opinion, consent and enjoyment. They employ a vocabulary similar to people who engage in incest and pedophilia and use language to justify their assaultive behavior as well as imply explicitly and implicitly that theirs is a legitimate preference and they are misunderstood and in fact suffer from discrimination. Zoophilia is classified by the American Psychiatric Association as a form of paraphilia, though Bierne seems to caution against taking things at face value and again urges his readers to delve deeper, looking into various statistics for a clearer picture. As with other areas of this book, specifically the section discussing interhuman violence, Bierne addresses the issues that exist regarding challenges in finding clear, accurate data. While the Internet has been utilized by sexologists to gather information, Bierne notes that there are inherent methodological problems associated with gathering evidence in this way.

Bierne calls for a further exploration of the typology that he has devised, and he notes that there are elements in which multiple categories of the typology can overlap, for example, use of what is termed a rape stand by breeders of fighting pit bulls (this type of stand is used because a premium is put on females that are so mean that they might attack a male who attempted to mate with them). Bierne wonders, as all of us must, if this is not an example of both aggravated cruelty as well as commodification?

Finally, Bierne reiterates an important problem in the study and analysis of animal sexual assault – how to obtain comprehensive information on its prevalence? Bierne finds problematic both Alfred Kinsey’s data from his landmark survey on sexuality as well as online sexology surveys, believing that they capture skewed data (or suffer from skewed interpretation). While some information can be gleaned from studies of criminal law, prosecutions for bestiality have generally been very rare, and problems arise in analyzing the reporting practices and witness accounts. Bierne’s research reveals that there are many problems when it comes to animal sexual assault, such as animosity between parties and contemporary social and legal constructs. The prevalence and character of animal sexual assaults remains a difficult research subject for a variety of reasons, including the nature of the crime, the fact that victims cannot communicate with humans in a clear, detailed manner regarding their experiences and, of course, problems with existing data.



## **Why Do We Only Love Some Horses?**

Horses receive special attention in the fourth chapter, entitled “Horse Maiming and the Sport of Kings.” The chapter opens with a vivid description of the moment in time when the public was fascinated by Barbaro, the famous colt who collapsed at the Preakness after injuring his leg. Whisked off by ambulance, the colt had multiple surgeries in order to attempt to save his life. Well-wishes from the public poured in as the media continued to provide frequent updates on his status. His story continued to captivate the public for months afterward until he was euthanized eight months later. We are asked to question where the line may be between human-perpetrated injuries to horses: when are horses seen as victims and when are humans seen as offenders?

Bierne focuses in particular on a series of unsolved brutal horse maimings that occurred in Britain in the 1990s. The assaults of twenty-seven horses who were cut, slashed and burned both internally and externally in Hampshire County, England between 1991 and 1993 are discussed in relation to moral panics. Every moral panic has specific individual factors that contribute to it but generally moral panics have four identifiable properties: (1.) identification as a social problem in need of a solution; (2.) a group of people who emerge as a vanguard of moral fitness who purport to attack the problem; (3.) the vanguard determines the severity of the problem and identifies victims and offenders, usually disseminated to the concerned society via mass media and (4.) call for agents of social control to identify and apprehend the offender(s) and reaffirm the moral values of the community.

Within this context, Bierne provides important details surrounding the horse maimings in Hampshire. Horse maimings in the England are not unheard of, and occurred not infrequently in the past as both a form of social rebellion (in cases of horsekeepers assaulting their masters’ horses) and disputes between craftspeople (often taking out personal differences on their adversary’s donkeys and horses).

One of the most compelling facts about this particular moral panic is that while it was certainly identified as a social problem needing to be solved, and a vanguard did indeed emerge, it had as its central characters animals and not humans. The victimhood in this moral panic was generally ascribed to animals by the vanguard, in stark contrast to the role of animals in previous moral panics as passive agents (i.e. witchcraft trials and mad cow disease) -- though often the owners of the horses saw themselves as victims. Further analysis informs the role of the media, and excerpts from *The Times* are provided by Bierne. These excerpts

reveal a level of explicitness in describing the assaults that further influenced considerations of the moral panic's newsworthiness.

Of particular note, and a theme that is woven throughout the book (and one familiar to most animal advocates) is the dichotomy inherent in the social reaction to the Hampshire maimings, which were universally regarded as morally reprehensible, and the run-of-the-mill, day-to-day treatment of working horses. For illustration, Bierne provides us with information and sad statistics surrounding horse racing, and throughout the chapter sprinkles references to the public show of support for Barbaro as well as the fate of Lauren's Charm, a filly who collapsed during a race and died without fanfare days after Barbaro's injury. Her end was far more typical of that of a racehorse - unnoticed and unheralded. One campaign, Animal Aid's "Racehorse Deathwatch," estimates that British racetracks see 375 deaths annually; an expert states that fatal muscle and bone injuries occurred 0.65 times per 1,000 starts in England and 1.5 times per 1,000 starts in the United States. And what of the animals "retired" from the horseracing industry? Most are sent overseas to slaughterhouses, despite restrictions on shipping horses abroad. Bierne does an excellent job in pointing out the hypocrisies surrounding attitudes and treatment of horses in our society.

### **Exploring the Link and the Progression Thesis**

Throughout the Hampshire County horse maimings, commenters steadily maintained that only sick and disturbed individuals would purposefully injure horses. Chapter 5 explores this specific idea, namely, that a person who perpetuates violence upon an animal is predisposed to violence against humans. This concept that there is a link between violent behavior against humans and animals is so well accepted that it is known simply as "the link." Bierne calls the idea that there is a causal relationship between animal abuse and interhuman violence "the progression thesis," adapting it to usage here from the term's earlier usage in other areas of sociology. For those of us accustomed to hearing about the link, the detailed examination of the progression thesis is elucidating. Bierne is primarily interested in how strong the association is and if there is a strong connection, how is it explained?

Determining these answers from existing data is challenging. For example, the FBI's annual crime report, reporting on crime data throughout the U.S., has no specific categories or entries regarding crimes involving animal abuse. Empirical data, including interviews with human victims of abuse, reports of animal abuse in self-reporting contexts, reporting by

veterinarians, animal control officers, animal shelters, women's shelters and police, does support the idea that companion animal abuse can occur disproportionately in situations where family violence exists. Additional complicating factors include gaps in data, definitional ambiguity in the term animal abuse, unwillingness of subjects to report abuse, and the sensitivity and nature of the way the survey is designed and conducted. Some definitions of animal abuse may leave out clearly abusive situations. A more sensitive and nuanced definition of abuse that includes less severe abuse than society traditionally thinks of such as hitting, tormenting, bothering or being cruel to an animal would likely reveal deeper connections. Bierne finds that his review of existing evidence neither confirms nor refutes the progression thesis; he does not find anything specifically dispositive.

The first portion of the progression thesis proposes that those who are abusive toward are more likely than those who do not to act abusively toward humans. Why might children who engage in assaultive behavior be disproportionately male, anti-social and potentially have mental or characterological challenges? Bierne reviews that available data and finds it is unsatisfactory, serving to open up more questions instead of supplying answers.

The second prong of the progression thesis is that those who act violently toward humans are more likely to assault animals. Bierne walks us through an analysis of this prong and the applicable available data, concluding that there is both non-confirming data as well as counterfactual arguments. Bierne is unsure whether or to what extent that these counterfactual cases weaken the progression thesis. While there are many anecdotal accounts of serial killers who have engaged in animal abuse, the gathering of precise data continues to challenge those studying the link, and specifically those studying the progression thesis. However, Bierne sneaks in an interesting query toward the end of his progression thesis discussion: why do we infer that if an adolescent is fascinated with dead animals that he or she is a potential serial killer and not a potential zoologist or forensic scientist? For example, noted naturalist E.O. Wilson used to kill insects regularly and with great zeal during his youth.

A look at the progression from animal abuse to interhuman violence would not be complete with an examination of how our society views acts of violence and assault toward animals. This analysis begins with a brief look at interhuman violence: one man's killing spree is considered murder but historically, mass killings ordered by governments in the name of God, country and empire are not.

Parallel to this observation, practices that society would consider animal abuse if committed against a cat, dog or other companion animal, for example, are committed regularly against other animals-- namely those killed for food. The annual slaughter of nearly

10 billion chickens in the United States, to name only one example, does not fit particularly well with the image that most people in society have of themselves as compassionate individuals who believe that animal cruelty is untenable. The vast majority of society engages in practices that directly support animal assault at every meal. The humans who engage in directly in the abusive practices, namely the slaughterhouse workers, suffer a significant emotional and physical toll. Their jobs are violent and leave them open to injury. Bierne does not discuss the wide range of animals that are abused during a hunt, for entertainment in zoos and circuses, or in medical and product testing, but the same hypocrisy he points out regarding societal views of these practices as they relate to animal cruelty holds true for these animals as well.

Bierne closes by suggesting that a plausible corollary to the progression thesis may be that children who have been taught compassion for animals may be more likely to become sensitive and gentle adults. This is an idea that merits further exploration, especially as the number of humane education programs continues to grow, though, unfortunately, the opportunities for presenting them are significantly reduced. School districts around the U.S. are restricting curricula, placing tremendous pressure on teachers to teach almost exclusively to standardized tests, and basic related arts programs are either squeezed into shorter time slots or no longer offered at all. If an engaged and morally competent populace is a true goal, the reduction in the scope of our children's education is extremely counterproductive.

## **Conclusion**

Legal scholars and other observers believe that our society is making slow but steady progress – but progress nonetheless – in shifting the way we relate to, care for, interact with, and protect animals. While vast swaths of cruel behaviors remain prevalent in our society, chief among them the systematic confinement, transport and slaughter of billions of animals for food per year in the U.S., social trends for certain animals (i.e. teacup pigs, dogs that fit into one's purse), exploitation of animals in labs, zoos, theme parks and circuses and the continuation of criminally liable human-on-animal assaults, there are bright spots as well. The creation of animal law committees throughout the United States and Canada, the formation of an animal protection litigation section at one of the U.S.'s most mainstream groups, The Humane Society of the United States, and the numerous animal-related non-profits who maintain government relations divisions is particularly heartening. In fact, in

2010, The Animal Legal Defense Fund's annual conference featured a panel discussion on defining the second wave of animal law. While there are many issues that continue to be of import and will challenge animal advocates for years to come, *Confronting Animal Abuse* is an excellent resource for context and information. Bierne's research and writing supports animal advocates as they work to safeguard animals as well as serving as a way for us to measure our progress.