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Constitutional Inclusion of Animal Rights in Germany and Switzerland: How Did Animal Protection Become an Issue of National Importance?

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Abstract

Provisions for animal rights have been included in the national constitutions of Switzerland (1992, 2000) and Germany (2002). Protective constitutional inclusion is a major social movement success, and in view of the other movements also seeking increased political visibility and responsiveness, it is worth asking how and why nonhuman animals were allowed into this realm of political importance. This research seeks to explain how animal activists achieved this significant goal in two industrialized democracies. Using an approach drawn from the mainstream canon on social movements, this comparative study attempts to show how cultural factors, institutional selectivity, and the influence of spontaneous events, along with the tactic of “frame-bridging,” determined the success of both movements.

Keywords

abolition, animal rights, constitutional inclusion, culture, Germany, political opportunity structures, reform, social movements, Switzerland

Switzerland (1992, 2000) and Germany (2002) each included animal protection in their national constitutions in distinctive ways (Nattrass, 2004; Tomoaselli, 2003). Protective constitutional inclusion is a substantive accomplishment for the animal rights movement, and, with groups across the globe seeking increased political visibility and responsiveness for nonhuman animals, one wonders how activists in Germany and Switzerland achieved this demand.

This study examines the process through which animal rights activists in Germany and Switzerland achieved constitutional inclusion of animal rights. The influence of cultural and institutional contexts is illuminated by an examination of the way animal rights activists navigated and utilized those contexts to achieve their demands. In both cases, strategic framing,

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specifically frame-bridging—used to connect animal protection with existing public opinion—proved integral to successful constitutional reform. But the broader implications of this study include how the context of animal protection demands can narrow and mold animal rights movement demands to fit the institutional status quo. This selectivity could stifle the movement by creating innocuous policies ineffective for changing the way that people relate to nonhuman animals as supposedly nonsentient objects (Francione, 1995, 2008). The effect of this dependency on institutional paths is that “animal welfare advocacy is easily absorbed by current systems of domination” (Best & Nocella, 2004, p. 13).

This project involves discussion in two phases: first, how activists achieved constitutional reform and second, the pragmatic effects of that reform. Due to the broad scope of the project, I am focusing, in this first phase, on how animal rights activists navigated the political and cultural context to achieve constitutional reform and how the context steered that demand in specific directions. The second phase, looking at the effects of constitutional reform, is forthcoming.

This Project’s Usefulness to Animal Rights Activists

One major challenge to the cohesion of the modern animal rights movement is that an unhealthy and contentious divide exists between welfarists/reformists and abolitionists. Abolitionists believe that reformist policies are not only ineffective but also have the effect of reifying the predominant social attitude that animals are objects for human use. Welfarists/reformists believe that abolitionist endeavors are ineffective and alienate those unfamiliar with the ethics of animal liberation. Most mainstream animal protection groups (e.g., the Humane Society of the United States, PETA, In Defense of Animals, etc.) have abolitionist intentions but diverge in their choice of tactics. Empirically delineating the effects of welfare-based reform is one step toward healing this tactical divide.

In virtually every social movement there exists a cleavage between purists and those seeking incremental change through reform. Animal rights purists argue that welfare reform leaves activists in a disempowered position, as the laws protecting animal welfare are typically ill enforced by authorities. But most activists acknowledge that substantive enforcement of these laws does occur when animal rights organizations use them to press criminal charges and file civil suits against people accused of animal cruelty. More significantly, through this grassroots form of law enforcement, the legal identity of animals is evolving beyond that of objects (Magnotti, 2006).

In case law there has been a very gradual progression toward granting animals standing in court for cruelty cases, which reflects a slow change from viewing animals as objects toward viewing them as beings legally capable of being wronged. In the broad and long-term pursuit of institutionalizing animal liberation, establishing standing to sue for animals should be the crux of the animal rights movement, as it empowers activists to fight legally against industrialized cruelty and also moves animals out of the conceptual realm of owned objects and into the conceptual realm of sentient beings. Since law both constrains and reflects societal behaviors and beliefs, this legal basis of animals' identities should be a touchstone for activists.

It may appear that simply looking at the changes in social attitudes toward animals over time would illuminate the effects of animal protection reform, but such an examination is confounded by the fact that structural contexts and embedded cultural beliefs may require incremental change in order to create meaningful generational change in the long run. I posit that it is the character of the relationship between the type of incremental change and the structural/social context that determines the long-term effects, meaning that the interaction between activists and the state and between the state and the public are the units of analysis most useful for deconstructing the effects of reformist tactics. As I have suggested, laws both constrain and reflect social attitudes, and in looking at the two campaigns for constitutional inclusion—one that follows the status quo in allowing governmental authorities discretion in defining animal protection (Germany) and one establishing the “dignity of animals” outside governmental discretion (Switzerland)—I will take the first step toward defining the effects of animal rights reformism.

This Project's Usefulness to Animal Rights and Academia

Most of the academic discourse on the animal rights movement examines the movement while neglecting the institutional or cultural context of animal protection policy formation (Garner, 1995). Studies on mobilization, activist tactics, the sociological and psychological characteristics of animal rights activists, and why individuals choose to be members of a particular organization or movement pervade the mainstream discourse (Lowe & Ginsberg, 2002; Herzog, 1993; Jasper & Poulsen, 1991). Literature looking at the institutional and structural components of animal rights activism and animal protection policies is limited to issue-specific journals published through programs concentrating on animals and politics, such as the *Journal of Animal Law* from Michigan State University, Tufts' *Animals and Public Policy Review*, this journal (*Society & Animals*), all of which may be considered peripheral to

the mainstream discourse on social movements (Magnotti, 2006; Tomoaselli, 2003). This research trend instructs the academy to present the animal rights movement as a societal anomaly, whereby the psyches and motivations of activists are isolated and scrutinized as an aberration of human behavior, instead of as reflecting a legitimate social movement vying for legitimate demands. Animal rights activists are conceptually left to “the social psychologist whose intellectual tools prepare him to better understand the irrational” (Gamson, 1990, p. 133). For those who believe that the influence of academia on society is important, this presentation of the animal rights movement is a problem, since it distorts—and squelches—the broader legitimacy and efficacy of the movement.

This is not because of any shortage of cases to study. Most industrialized democracies have some form of animal protection legislation available for study (Tomoaselli, 2003); the United States alone has fifty states with varying statewide animal cruelty laws with different histories, contexts, and actors involved in their inception. Given the multitude of available cases, and the effectiveness of comparative studies for isolating determinant variables in successful claims-making (Snow and Soule, 2010; Garner, 1995; Kitschelt, 1986), it seems that the animal rights movement is left outside traditional social movement theory because of the societal marginalization of the movement.

Ironically, its unpopularity makes the animal rights movement ripe for the most fruitful research, as its strategies and tactics must work without majority support. Since constitutional reform is an instrumental demand (i.e., a policy specifically intended to protect animals), it is most contingent on the political opportunity structures through which the movement made this instrumental demand in each case (Einwohner, 1999; Kriesi, Koopmans, Dyvendak, & Giugni, 1995; Kitschelt, 1986). The movement’s marginalized position in the political context, coupled with its reliance on political opportunity for successful constitutional reform, renders these successful campaigns ideal for illuminating the tactics most effective for achieving policy reform.

For the purpose of the first phase of this project, the two cases (Germany and Switzerland) are defined as social movement successes with impact of high order. Each case satisfies the two components of this degree of social success: the social movement organization’s becoming a legitimate political actor and its achieving demands expected to be beneficial to its members and constituency—in this case, nonhuman animals (Amenta & Caren, 2004; Gamson, 1975, 1990). With this type of target population, “legislation that affects structural reforms favoring the beneficiary group in future dealings with the private target would be considered an impact of high order” (Amenta & Young, 1999). Constitutional inclusion exemplifies this kind of

structural reform, since an animal's well-being is theoretically placed in consideration at the highest level. Since the demand of animal rights activists for animal protection has been institutionalized through the national constitution, in future dealings with private and state institutions in Germany and Switzerland, animals have been given tangible "rights" insofar as they are used within those institutions. Animals therefore have a form of institutional representation. Although only an extension of this first phase of research will prove this kind of efficacy, for the narrow purpose of examining how animal rights activists succeeded, the two cases are seen as having impacts of high order (Amenta & Caren, 2007, 2004; Stepan-Norris & Zeitlin, 1991).

Are social movement organizations' strategies and tactics for carrying out those strategies responsible for their success or failure? Or do the characteristics of those institutions and structures that a social movement organization must access determine the outcome? Which most explains social movement outcomes—the actions of a social movement organization, or the context that drives those actions? The main groups driving the campaigns—the German Animal Protection League and Swiss Animal Protection—appear to have relatively equal resources, and so resource mobilization is not considered. I will therefore narrow my analysis to two factors used to explain social movement outcomes—strategy/tactics and political opportunity.

Germany

In Germany, animal protection has an extensive history; the first national law, passed in 1871, punished anyone who "publicly or offensively beats or plainly mishandles an animal" (Nattrass, 2004, p. 286). The specific campaign for constitutional inclusion of animals began in the late 1980s, as the existing animal protection law, the *Tierschutzgesetz*, proved insufficient for prosecuting animal cruelty cases in court.

For instance, in 1994 a Berlin college teacher filed suit after being denied a permit to perform research, due to the cruelty involved. His proposal included sewing the eyes of newborn monkeys shut for one year, then forcing their eyes open to have a copper electrode implanted; the animal would then be bound to a "primate chair" for up to six months while being coerced to do visual exercises. Under the constitution—more specifically, the Basic Law protecting the freedom of research—the court ruled in favor of the researcher, allowing him to perform this experiment. The Basic Law, or *Grundgesetz*, was a constant obstacle in pursuing cruelty cases, as it protects freedom of artistic expression (sometimes involving animals), freedom of profession, and freedom of research. This drove activists to start a campaign for constitutional

inclusion of animal protection, to assure animals these basic rights (Natrass, 2004).

The weakness of the *Tierschutzgesetz*, or animal protection law, demonstrates the government's false cooptation of animal protectionists' interests into a stranglehold position where their demands are seemingly met, but they are met inadequately, ultimately maintaining the status quo for animals. This leaves activists in a weakened position (Magnotti, 2006). Animal rights activists in Germany used the court system as a political opportunity to pursue their interest in protecting animals, but when confronted by the weakness of the animal protection law, they shifted their focus toward another political opportunity—a constitutional amendment—to address this weakness.

In 1994 the German Bundestag accepted the "Declaration of an Objective of Government" into the constitution, requiring the government to protect the "natural basis of life" as a part of its formal duties, and animal rights activists asserted animals as part of this "natural basis of life" when trying to prevent cases of animal cruelty. But in the case involving the researcher, the courts rejected animals as a part of the "natural basis of life" under the constitution and decided in favor of his constitutional rights (Natrass, 2004).

Constitutional inclusion was blocked by the Christian Democratic majority in parliament throughout the 1990s, until the Red-Green coalition was elected in 1998. The Green "antiparty" party is central to many environmental and animal rights causes, and the animal rights amendment was included in its coalition contract. Every major party except the Christian Democrats offered worthwhile proposals for an animal protection amendment. Eventually a compromise was met to add "and the animals" to the existing environmental clause, Article 20a, to read, "(t)he state protects, in the interest of future generations, the natural basis of life, and the animals, within the framework of constitutional laws and through the making of laws and in accordance with ordinances and through judicial decision."

This reflects how institutional and alliance structures opened up opportunities for animal protectionists to pursue their goals. Germany's multiparty institutional structure allowed the possibility for the Green party to form a coalition with Social Democrats and to assume a position of political power as one of the ruling coalition partners. And, as I mentioned, there was an ideological alliance between the animal rights movement and the Greens.

Germany's electoral system is based on proportional distribution of parliamentary seats and allows for multiple parties—including minor parties like the Greens—to more easily be represented in political office. As a coalition partner, the Greens became the ideal conduit for the animal rights movement's demand for constitutional inclusion. It is the ability to penetrate

government and become a functioning member of it that determines how much importance is given a particular interest when making policy; this is true of most Western democracies, but especially of Germany (Amenta and Caren, 2007; Banaszak, 2005; Santoro and McGuire, 1997; Gamson, 1990). But the Green's influence as a sort of social movement insider on behalf of the animal rights movement was not causal to constitutional inclusion; the Christian Democrats blocked approval during the 1998-2002 legislative periods, despite the coalition, and despite widespread public and Lander (German states) support (Nattrass, 2004). It wasn't until a random event—a Supreme Court decision infamously referred to as the “Slaughter Decision”—that a key dynamic between the movement, the political actors, and the public led to a successful outcome.

Germany's national constitution obliges the federal government to adopt policies that show widespread support throughout the Lander, but the Christian Democratic Union and Christian Social Union's powerful voting bloc in parliament ignored this obligation to its constituents, repeatedly blocking the amendment's approval. The disregard of these parties for their voters and for state legislative demands was not only frustrating to activists; it cut off their ability to protect animals using socially responsible methods. So activists resorted to a controversial method—aligning the campaign with anti-Muslim sentiment.

In 2002 a public uproar occurred after the Supreme Court granted a practicing Muslim permission to perform a style of ritual slaughter involving unnecessary cruelty (Judd, 2003, p. 122). Animal activists utilized the public outcry to increase awareness of the constitutional amendment and to swell favorable public opinion toward it. Activists juxtaposed the repeated denial of the animal protection amendment with the so-called “Slaughter Decision” in favor of Haram/Halal-style slaughter. Their argument was that because animals had been denied constitutional Basic Rights, this decision was made in favor of the right to perform Haram/Halal-style slaughter.

The animal protection community thus capitalized on an existing cleavage in Germany between “native-Christian” and “foreign-Muslim.” Activists, specifically the German Animal Protection League, which spearheaded the campaign, sought to convey that it wasn't the fault of the Muslim religion that cruel Haram/Halal-style slaughter still exists, but that it *was* the fault of individual Muslims who did not recognize religiously accepted alternatives. Informational and press releases claimed that allowing this cultural practice further isolated Muslim citizens (Nattrass, 2004), and so the campaign was framed as an attempt to be helpful to alienated Muslims, rather than condemning them. But the timing of this reframing still ultimately reinforced

ethnocentricity, since it occurred while this marginalized ethnic group was being condemned by society at large.

The Christian Democratic Union and Christian Social Union were largely blamed for the "Slaughter Decision," since they had blocked previous attempts to strengthen animal protection policies, and Edmund Stoiber, then a contender for chancellor with the Christian Social Union, was an influential voter in the Bundestag. Stoiber is argued to be a political xenophobe (Prichard, 1996; Mattson, 1995), and, after the "Slaughter Decision," changed his vote in favor of the animal protection clause and completed the necessary majority. Exploitation of xenophobic tendencies in the country, based on the cleavage between Germans and people who were perceived as foreign Muslims, to establish animal protection, demonstrates a dangerous ability to use socially oppressive beliefs to advance a movement's demands. This tactic exemplifies frame-bridging, whereby one issue is conceptually linked to another, seemingly unrelated, issue (Snow, Rochford, Worden, & Benford, 1986).

Frame-bridging played a similar role in a previous animal protection campaign coinciding with the Nazi regime. The kosher-style slaughter practiced in Judaism is similar to Haram/Halal, and animal advocates before World War II eventually became enmeshed with anti-Semitism and Nazism through their pursuit of a ban of kosher slaughter (Judd, 2003). Although I find no evidence that the animal protectionist and slaughterhouse reform movement was active on the kosher slaughter issue *because of* anti-Semitism, animal protection still became ideologically aligned with anti-Semitism through its pursuit of a ban on kosher slaughter, exemplifying a similar frame-bridging.

Parallels between these two animal protection campaigns in Germany should be an alarm bell to animal rights activists. The intentions of activists can easily be subsumed by the context. If the context, whether systematic or culturally based, has an ideology that is strongly embedded, then even a movement with the most progressive and egalitarian intentions can become aligned with that ideology when trying to utilize it. If short-term instrumental goals, such as an animal protection amendment, are prioritized over long-term goals, such as shifting the paradigmatic way that humans relate to nonhuman animals, then using this tactic is reasonable. But because the effectiveness of law reform as an instrumental goal is questionable, and because alignment with oppressive ideologies is both socially irresponsible and probably detrimental to the animal rights movement in the long run, activists should avoid such alignment.

This aside, the constitutional amendment stated that the environment "and the animals" were to be afforded protection by the German government

on a level with the Basic Rights of humans. The amendment took effect in 2002.

Switzerland

Animal protection reform has been an active issue in the Swiss parliament for decades; constitutionally, animal protection was deemed a federal issue in 1973, as a result of which federal acts regulating industrial animal exploitation emerged with increased enforcement capabilities (Goetschel, 2000; Weber, 1986). The first mention of the “dignity of creatures” occurred in the canton of Aargau’s constitution in 1980, and eventually “brought about a demand from animal welfare circles that the notion of the dignity of the creature be included in the federal constitution” (Goetschel, 2000, p. 12).

In response to the growing national and international debate on transgenic research, Switzerland passed a constitutional amendment in 1992 asserting the regulatory boundaries of gene technology. Along with other guidelines, it stated that the “dignity of creatures,” or the “*Würde der Kreatur*,” must be taken into consideration by researchers (Jaber, 2000; Perez, 2000). Then, in the course of creating a new constitution, a strengthened version of the amendment banning all animal research was rejected in 1998. (Later, in 2000, the original wording from the 1992 amendment was accepted into the revised constitution.) I focus on the 1992 and 1998 events for the purpose of comparing a successful animal rights campaign for constitutional inclusion (1992) and an unsuccessful campaign (1998). Readers will notice that animal protectionists in Switzerland, as contrasted with those in Germany, used only one political opportunity—the country’s system of direct democracy, including the referendum and the initiative—because it is the easiest way for social movements to access policy-making, including constitutional law (Wisler and Giugni, 1996; Kriesi et al., 1995; Weber, 1986).

Switzerland’s method for dealing with social movement demands—giving activists a direct route into policy-making—is argued to have almost eliminated violent animal rights tactics (Weber, 1986). By contrast, Germany’s incorporation of animal rights movement demands is very similar to the strategy used in the United States, whereby demands are incorporated into weak and ill-enforced laws, which leaves activists in a frustrating, stranglehold position. The court system therefore becomes vital to animal rights demands, as it is activists’ only route into effective policy-making and the only way to make their demands heard by the government (Blankart, 1993).

In Switzerland activists have a direct influence on government decision-making, and most of the animal rights movement’s effort, especially during

the campaign for constitutional inclusion, went into this institutional structure. This system reduces the influence of party politics in Switzerland (Kubler, 2001; McAdam et al., 2001), whereas in Germany, party politics plays a large role in constitutional reform. Swiss social movement organizations may mobilize citizens and introduce legislation outside parliament, which diverts activists' efforts from forming necessary alliances with politicians and toward swaying public opinion and conducting petition drives (Blankart, 1993; Weber, 1986; Steinberg, 1976).

Through frame-bridging, activists in both referendum cycles (the successful 1992 cycle and the unsuccessful 1998 cycle) sought to connect the population's fear of genetically modified foods with the cruel animal experimentation that tests and creates those foods. In 1992 activists seized upon the widespread fear of GMOs in food and successfully connected that fear with animal experimentation. In 1998 activists continued to rely on that connection in a second campaign, but unsuccessfully, as their opponents seized upon an even stronger fear. The field of biotechnology, including gene technology, is saturated with animal experimentation, and with two corporate giants in the field, Novartis and La Roche, based in the country, it is Switzerland's biggest industry. Scientists, pharmaceutical interests, research facilities, and universities dependent on animal experimentation and involved in biotechnology were primary opponents of the 1992 and 1998 amendments and much of the reform pursued by animal rights groups.

As genetic engineering advanced into genetically modified food production and other consumer products, Swiss opposition grew to "the introduction of new products like beef treated with growth hormones and food products that include GMOs" (Perrez, 2000, p. 586). Because of the fear of negative health effects, as well as the environmental, ethical, and sociodevelopmental consequences of GMOs, the public's negative opinion of GMOs in their food products increased as biotechnology advanced. In April 1987 the "Beobachter-Initiative," or "observer-initiative," was introduced, eventually leading to the broader regulation of gene technology in the constitution, in which the "dignity of creatures" was eventually established (Skorupinski, Baranzki, et al., 2007). How the animal rights movement in Switzerland pursued its campaign between 1987 and 1992 illuminates frame-bridging as a determining mechanism in its success (della Porta, 1999; Snow & Oliver, 1995; Snow & Benford, 1988).

The possibility that genetically modified organisms would be used in food brought biotechnology and transgenic research into the public eye. Animal activists pounced on the negative public reaction and framed their campaign to present animal research as one cause of GMO production and the cessa-

tion of animal research as the remedy (Koenig, 1997). An amendment to the Swiss constitution defining the legal boundaries of gene technology had already been introduced, and animal activists sought to include animal protection in this amendment. Their method for doing so was to frame abuse in animal research as an integral component of unpopular GM food. Framing to align animal protection with strong public opposition to GMOs in food products drove the passage of the amendment (Article 24 novies) in 1992 (Natrass, 2004; Perrez, 2000).

In 1993, environmental and animal rights groups coordinated a petition drive for the Gen-Shutz initiative, again calling for the abolishment of animal research in gene technology. With public opinion against GMO technology on their side, success seemed likely. They were immediately confronted with a barrage of public declarations from influential scientists in the field arguing, again, that the potential medical benefits of gene technology would be impossible without animal research (Perrez, 2000). Researchers organized demonstrations, held an influential press conference with Nobel laureates, and successfully diverted public attention away from the genetically modified food controversy and back toward the medical need for gene technology (Koenig, 1997; Went, 1997).

After years of this kind of public debate, in 1998 the proposed amendment failed to pass, and animal rights activists again shifted their approach. Those in the food industry and research community apparently “learned lessons of the early days of the animal protection movement by counter-mobilizing effectively” (Jasper & Poulsen, 1993). It should be noted that this social movement cycle coincided with a major constitutional revision in Switzerland, and further research is needed to delineate the effects this revision had on the animal rights movement’s tactics.

After the 1998 amendment failed, animal rights activists went back to the original wording of the amendment, which stated that “the dignity of creatures” would be considered when pursuing biotechnological and genetic research, just as it had asserted before the constitution was revised. Because of the effective mobilization of a countermovement, comprised of scientists as powerful players in animal research, the original amendment wording was accepted into the new constitution in 2000 (Rohlinger, 2002; Perrez, 2000; Meyer & Staggenborg, 1996):

The Federation issues regulations about dealing with germ type and genotype of animals, plants and other organisms. In doing so it takes the dignity of the creature and the safety of man, animals and the environmental into account and protects the genetic diversity of animal and plant species. (Federal Constitution of the Swiss Confederation, Article 2, BV 2000)

In 1992 activists connected animal rights to an existing bias against GMO to push successfully for constitutional inclusion of animal protection. In 1998 activists didn't foresee the opposition's concentration on the medical benefits of animal research, which positively connected medicine and health to animal research to sway public opinion against the amendment. Perhaps if animal activists had concentrated on the negative connection between medical knowledge and animal research, the outcome would have differed.

Discussion: Institutional Selectivity, Cultural Influence, and Event-driven Policy Change

In the mainstream canon on social movement studies, Kriesi et al. offer a model for political opportunities that determine social movement outcomes. The authors present four broader-based societal structures upon which the interactive process of claims-making is contingent. In *New Social Movements in Western Europe*, Kriesi et al. (1995) argue that four structures determine the characteristics of social movement claims-making: national cleavage structures, institutional structures, alliance structures, and the prevailing strategies of the government in dealing with outside demands. My research design in the present project adheres to Kriesi et al.'s four political opportunity structures as the target of claims-making, but causation lies in the nature of the interaction between activists and those structures. I focus on this interaction to describe and explain successful constitutional inclusion of animal rights in Germany and Switzerland.

The characteristics of the interaction between the social movement and political opportunity structures are captured well by McAdam, Tarrow, and Tilly in *Dynamics of Contention*. The authors describe a multitude of causal mechanisms that explain social movement outcomes because they facilitate the interaction between activists and the target of their claims. These mechanisms include brokerage, category formation, elite defection, etc. Although the mechanism of "frame-bridging" is the only common characteristic in both the German and Swiss cases and is therefore causal, it is not independently causal. As I have described in this article, frame-bridging, which reflects activists' agency, would not have pushed their demands to success without the appropriately chosen political structure.

In Switzerland, the institution through which animal rights activists made their demand for constitutional reform was the process used for introducing and approving amendments. One of the important political opportunity structure models in mainstream social movement research defines a country as having an institutional structure that is either open or closed to social

movement demands, without consideration of how variations in the social movement organization or in its tactics are treated differently by particular institutions (Kriesi et al., 1995; Kitschelt, 1986; Eisinger, 1973). But political institutions do not treat varying demands the same way and may be open or closed to demands depending on their nature and depending on policy changes that may occur during the claims-making process (Arzheimer & Carter, 2006; Meyer, 2005; Koopmans & Statham, 1999; Kriesi & Wisler, 1999; Wisler & Giugni, 1996). The two cycles of claims-making in 1992 and 1998 by Swiss animal rights activists show how one institution of direct democracy did not respond the same way to a social movement demand in two different instances but rather was selective in how it considered demands for an animal rights amendment.

The demand for constitutional inclusion in Switzerland was integrated in a way that strongly resonates with Wisler and Giugni's concept of "institutional selectivity" (1996). When the issue of animal cruelty and an animal protection amendment was framed to incorporate the public's existing fear of GMO food production, the Swiss polity was open to this demand, and the amendment passed. But when the amendment was framed as a step to abolish animal research, thereby presenting an economic threat to the biotechnology industry, the Swiss polity refused the demand.

Kriesi and Wisler assert that "political institutions tend to channel preference formation into specific directions and to narrow the vision so that alternatives are not perceived as feasible" (Kriesi & Wisler, 1999, p. 42). The Swiss polity (including citizens who voted for or against the 1998 amendment) channeled the preference for animal protection into the specific direction of considering the "dignity of creatures," instead of the abolishment of animal testing in transgenic research. By voting for the 1992 amendment but against the 1998 amendment, the Swiss preference for animal protection was channeled into the direction of reform that would not threaten the status quo of the animal testing industry. This is because a threat to the status quo of Switzerland's transgenic research industry, which is economically embedded in Swiss government and is therefore a major force in policy-making (Goetschel, 2000), was confronted by a strong countermovement spearheaded by the biotech industry.

The Swiss example further demonstrates how institutions are not static structures but are fluid in their response to demands. The institution's accessibility is different from one type of demand to the next... one type of movement to the next. So the same institution does not necessarily represent the same accessibility to any social movement organization, and cannot be used, alone, as a universal axis for explaining any social movement outcome.

Institutional selectivity in the Swiss case created an interactive dynamic between the government and activists demanding constitutional inclusion of animal rights, whereby animal rights activists failed to adjust their framing and relied on their existing bridging between animal cruelty and the public's fear of genetically modified foods in both cycles of claims-making. In 1998 this frame-bridging failed to override the public's fear of squelching medical advancement through a constitutional ban on animal research, which shows how one institution was selective in its response to animal rights demands. It is the interaction and the characteristics of that interaction that determined the animal rights movement's success.

The Swiss case leaves an interesting question for activists: how does fear factor in? How can the animal rights movement's use of fear in their bridging between animal cruelty and GM foods be incorporated into a viable model? Since that fear is socially constructed and beyond the control of government intervention, it qualifies as culturally based. The German case study strengthens this assertion about the influence of culture and helps illuminate how culture may be included in the mainstream political opportunity structure model to explain social movement outcomes. Incorporating the present case into this political opportunity structure model may illustrate how animal rights studies can better be included in mainstream social movement research.

Culture as an aspect of social movement mobilization and outcomes can be a vague and oftentimes misunderstood topic of study (Arzheimer et al., 2006; McAdam et al., 2001; Koopmans et al., 1999). This comparative study of two animal rights campaigns offers one research method to those dealing with the tenuous, yet ever-present, influence of culture in social movement outcomes.

Much of the cultural context in which social movements act is beyond their sphere of immediate influence and may thus be characterized as a cultural opportunity structure... So far, frame analysts have had difficulty to account systematically for the obvious fact that some frames are successful whereas others, no matter how internally consistent and elaborate they are, fail. (Koopmans, 1999, p. 101)

Why do some animal rights campaigns succeed with a particular framing while others do not? This paper demonstrates that one reason why frames sometimes work is the use of culture by activists as an opportunity structure; it is within a social movement's immediate influence through the use of frame-bridging. German animal rights activists used a cultural factor—xenophobia—as a tool after a national cleavage structure was activated by the “Slaughter Decision.” Food taboos are widely used as tools to further margin-

alize nonmainstream cultures (Lien, 2004). The "Slaughter Decision" was not a random occurrence or a spontaneous event that inadvertently caused a success for an animal rights campaign; this was an event that exploited a preexisting cultural bias against Muslim citizens in Germany.

When this cleavage structure of "native" Christian versus "foreign" Muslim became a political opportunity for animal rights activists, they used frame-bridging to connect animal cruelty to that bias, thereby swinging Stoiber's vote in favor of the amendment. The animal rights movement thereby interacted with that national cleavage structure and inflated support for their amendment by connecting animal cruelty to a culturally based bias against Muslims. Since embedded cultural traits can be determined by national cleavage structures (Landman, 2003), Kriesi et al.'s model of political opportunity structures allows culture to be an examined access point to social movements. In this study, the success of the German animal rights activists lay in the way they negotiated this cultural component through frame-bridging to counteract an unreasonably deterrent Christian Democratic Union. The frame-bridging model presented in this paper offers a reliable and valid method for examining cultural influences on outcomes of animal rights campaigns, and, I hypothesize, for other social movements as well. "Spontaneous events" and their strong influence on social movement outcomes can also be culturally determined, and they are therefore also available as political opportunity.

Spontaneous events can dramatize a social movement's issue to the public and create wider political salience (Kubler, 2001; McAdam et al., 2001; Tarrow, 1994, 1995, 1998). The "Slaughter Decision" dramatized existing xenophobia with regard to a Muslim practice. To varying degrees, these "suddenly imposed grievances" (McAdam et al., 2001, p. 201) triggered the importance of an issue to the broader public and created an opportunity for activists. These dramatic occurrences stir public opinion in one direction, and activists can frame an issue to coincide with that perspective to aid their claims-making. Public opinion is highly influential to political decision-making when it is in "chorus" (Rucht, 1999, p. 212), and spontaneous events can trigger increased public awareness of an issue and shift public opinion, thereby also shifting power distribution through changes in constraints on policy-making actors (Kubler, 2001). So, spontaneous events can be political opportunities for social movement actors.

This paper argues that an event that could be seen as spontaneous and beyond a social movement's control had an impact that was in fact quite calculated because it played upon an existing cultural bias in Germany, which was used as a tool by the animal rights movement. This cultural bias became an opportunity for activists as part of a national cleavage structure, since the

“Slaughter Decision” created a chorus of public opinion against a Muslim practice. The chorus may or may not have been indicative of a pervasive xenophobic sentiment in Germany, but since Edmund Stoiber was the decisive factor in this social movement’s successful outcome, his cultural bias is the determinant factor in this case study. It was not the spontaneous event that caused the social movement outcome in this case, but rather the social movement’s response to a spontaneous event that opened up a chance to use ethnocentricity as a tactic and opened up a national cleavage as a political opportunity. Again, although the use of ethnocentric food taboos in this campaign for constitutional inclusion was successful, it was at the expense of the animal rights movement’s integrity, despite its best intentions and exhausted options.

In the German case, a spontaneous event (the “Slaughter Decision” and the ensuing public outcry) did not cause the social movement outcome. The animal rights movement interacted continuously with the polity and, when presented with a spontaneous event that illuminated a political opportunity structure, they exploited the cleavage structure through issue-framing. Although in the Swiss case the cultural aspect is less substantiated, there the animal rights movement bridged culturally based fears of GMO in food products and animal research/cruelty, but without the influence of a spontaneous event. In both cases, culturally based sentiments and the movement’s ability to form a conceptual connection between animal cruelty and that cultural sentiment determined their success. The two cases offer a resolution of much of the current debate on how to explain social movement outcomes through more static elements (political opportunity structures), but with consideration of an ongoing and constantly changing interaction, which in the case of animal rights activism is highly influenced by cultural factors.

Kriesi et al.’s structure-based model of political opportunity structures together with McAdam et al.’s interaction-based model served this research well as a method of examination. Kriesi et al. define four political structures through which new social movements, such as the animal rights movement, makes claims to the government: national cleavage structures, institutional structures, alliance structures, and prevailing strategies of the government in dealing with outside demands. McAdam et al. focus on a variety of interactional mechanisms used by activists to make their demands. Although each model reflects a drastically different basis of causality—one (that of Kriesi et al.) being structural, and the other (that of McAdam et al.) being agentive—the two cases I have examined demonstrate that the two models in conjunction provide a more nuanced and accurate description of how constitutional inclusion of animal rights occurred in Germany and Switzerland.

Conclusion

It is important for people concerned with animal rights to know what brings about positive change for animals. This project contributes to answering this question, as it helps illuminate the social movement tactics that led to constitutional reform in two industrialized democracies—Germany and Switzerland. In both cases, frame-bridging that connected the animal cruelty issue to an existing issue of cultural importance brought about successful constitutional reform.

But there is a major debate in the animal rights movement over the long-term and practical effects of policy reform, especially policy reform that is welfare-based as opposed to abolitionist. Current literature on social movement consequences acknowledges that the most effective policy reform establishes representation of the social movement within the institution, like establishing a governmental agency as part of a new policy. As animal rights activists working for animal protection know, even this kind of policy reform does not always help prevent animal cruelty. This is illustrated by the inefficacy of the Animal Welfare Act in the United States in protecting animals in laboratories. To actually understand the consequences of reform pushed through by social movements, the process leading up to that reform must be examined. The process of claims-making reflects cultural and political factors that directly influence the implementation of reforms and the effects of that implementation on society.

In Switzerland, although a total ban on the use of animals was not achieved, I hypothesize that the effect will be to establish broader legal protection of animals in areas other than research, since this precedent has been established on biocentric, instead of anthropocentric, and utilitarian, terms (Perrez, 2000; Stepan-Norris & Zeitlin, 1991). I hypothesize that in Germany the protectionist nature of the constitutional reform will render this policy change relatively ineffective for preventing animal cruelty or truly changing the status of animals in that country. The forthcoming second phase of this project will examine the consequences of both amendments for animal rights in each country.

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References

- Amenta, E., & Caren, N. (2004). The legislative, organizational, and beneficiary consequences of state-oriented challengers. In D. A. Snow, S. A. Soule, & H. Kriesi (Eds.), *The Blackwell companion to social movements* (pp. 461-488). Malden, MA: Blackwell Publishing.
- Amenta, E., & Young, M. P. (1999). Democratic states and social movements: Theoretical arguments and hypotheses. *Social Problems* 46(2): 153-168.
- Arzheimer, K., & Carter E. (2006). Political opportunity structures and right-wing extremist party success. *European Journal of Political Research* 45, 419-443.
- Banaszak, L. A. (2005). Inside and outside the State: Movement insider status, tactics, and public policy achievements. In D. S. Meyer, V. Jenness, & H. Ingram (Eds.), *Routing the opposition: Social movements, public policy, and democracy* (pp. 149-177). Minneapolis: University of Minnesota Press.
- Best, S., & Nocella, A. J., II. (2004). Behind the mask: Uncovering the Animal Liberation Front. In Steven Best and Anthony J. Nocella II (Eds.), *Terrorists or freedom fighters? Reflections on the liberation of animals* (pp. 9-64). New York: Lantern Books.
- Blankart, C. B. (1993). A public-choice view of Swiss liberty. *Publius: Communal and Individual Liberty in Swiss Federalism*, 23(2): 83-95.
- della Porta, D. (1999). Protest, protesters, and protest policing: Public discourses in Italy and Germany from the 1960's to the 1980's. In M. Giugni, D. McAdam, & C. Tilly (Eds.), *How social movements matter* (pp. 66-96). Minneapolis and London: University of Minnesota Press.
- Einwohner, R. L. (1999). Practices, opportunities, and protest effectiveness: Illustrations from four animal rights campaigns. *Social Problems* 46(2): 169-186.
- Eisinger, P. K. (1973). The conditions of protest behavior in American cities. *The American Political Science Review*, 67(1), 11-28.
- Francione, G. (1995). *Animals, property and the law*. Philadelphia: Temple University Press.
- (2008). *Animals as persons: Essay on the abolition of animal exploitation*. New York: Columbia University Press.
- Gamson, W. A. (1975). *The strategy of social protest*. Homewood, IL: Dorsey Press.
- (1990). *The strategy of social protest* (2nd ed.). Belmont, CA: Wadsworth.
- Garner, R. (1995). The politics of animal protection: A research agenda. *Society & Animals*, 3, 43-60.
- Goetschel, A. F. (2000, January). Animal cloning and animal welfare legislation in Switzerland; Report by the Foundation for the Animal in the Law, CH-Berne/Zurich. Symposium at the University of Lueneburg, Germany.
- Herzog, H. A. (1993). The movement is my life: The psychology of animal rights activism. *Journal of Social Issues*, 49(1), 103-19.
- Jaber, D. (2000). Human dignity and the dignity of creatures. *Journal of Agricultural and Environmental Ethics*, 13(1-2), 29-42.
- Jasper, J., & Poulsen, J. (1993). Fighting back: Vulnerabilities, blunder and countermobilization by the targets in three animal rights campaigns. *Sociological Forum*, 8, 639-57.
- Jasper, J., & Poulsen, J. D. (1995). Recruiting strangers and friends: Moral shocks and social networks in animal rights and anti-nuclear protests. *Social Problems* 42(4), 493-512.
- Judd, R. (2003). The politics of beef: Animal advocacy and the kosher butchering debates in Germany. *Jewish Social Studies*, 10(1), 117-150.

- Kitschelt, H. P. (1986). Political opportunity structures and political protest: Anti-nuclear movements in four democracies. *British Journal of Political Science*, 16(1), 57-85.
- Koenig, R. (1997). Biologists mobilize against anti-genetics referendum; *Science*, New Series, 275, 607-608.
- Koopmans, R. (1999). Political. Opportunity. Structure. Some splitting to balance the lumping. *Sociological Forum*, 14(1), 93-105.
- Koopmans, R. & Statham, P. (1999). Ethnic and civic conceptions of nationhood and the differential success of the extreme right in Germany and Italy. In M. Giugni, D. McAdam, & C. Tilly (Eds.), *How Social Movements Matter* (pp. 66-96). Minneapolis and London: University of Minnesota Press.
- Kriesi, H., Koopmanns, R., Duyvendak, J. W., & Giugni, M. (1995). *New social movements in Western Europe: A comparative analysis. Social movements, protest, and contention*. Minneapolis and London: University of Minnesota Press.
- Kriesi, H., & Wisler, D. (1999). The impact of social movements on political institutions: A comparison of the introduction of direct legislation in Switzerland and the United States. In M. Giugni, D. McAdam, & C. Tilly (Eds.), *How social movements matter* (pp. 42-65). Minneapolis and London: University of Minnesota Press.
- Kubler, D. (2001). Understanding policy change with the advocacy coalition framework: An application to Swiss drug policy. *Journal of European Public Policy*, 8, 623-641.
- Landman, T. (2003). *Issues and methods in comparative politics: An introduction* (2nd ed.). London, New York: Routledge.
- Lien, M. E. (2004). Dogs, whales and kangaroos: Transnational activism and food taboos. In M. E. Lien and B. Nerlich (Eds.), *The politics of food* (pp. 179-198). Oxford and New York: Berg.
- Lowe, B. M., & Ginsberg, C. F. (2002). Animal rights as a post-citizenship movement. *Society & Animals*, 10(2): 203-215.
- Magnotti, L. (2006). Pawing open the courthouse door: Why animals' interests should matter when courts grant standing. *St. John's Law Review* 80(1), 455-471.
- Mattson, M. (1995). Refugees in Germany: Invasion or invention? *New German Critique*, 64, 61-85.
- McAdam, D., Tarrow, S. G., & Tilly, C. (2001). *Dynamics of contention*. Cambridge: Cambridge University Press.
- Meyer, D. S., & Staggenborg, S. (1996). Movements, countermovements, and the structure of political opportunity. *The American Journal of Sociology*, 10, 1628-1660.
- Meyer, D. S. (2005). Social movements and public policy: Eggs, chicken, and theory. In D. S. Meyer, V. Jenness, & H. Ingram (Eds.), *Routing the Opposition* (pp. 1-27). Minneapolis and London: University of Minnesota Press.
- Nattrass, K. M. (2004). "Und die Tiere." *Constitutional Protection for Germany's Animals*. Unpublished master's thesis. Tufts University School of Veterinary Medicine, Center for Animals and Public Policy.
- Perrez, F. X. (2000). Taking consumers seriously: The Swiss regulatory approach to genetically modified foods. *NYU Environmental Law Journal*, 8, 585-604.
- Prichard, G. (1996). National identity in a united and divided Germany. In R. Bideleux & R. Taylor (Eds.), *European integration and disintegration: East and West* (pp. 154-174). London: Routledge.
- Rohlinger, D. A. (2002). Framing the abortion debate: Organizational resources, media strategies, and movement-countermovement dynamics. *The Sociological Quarterly* 43(4): 479-507.
- Rucht, D. (1999). The impact of environmental movements in Western societies. In M. Giugni, D. McAdam, & C. Tilly (Eds.), *How social movements matter* (pp. 204-224). Minneapolis and London: University of Minnesota Press.

- Santorio, W. A., & McGuire, G. M. (1997). Social movement insiders: The impact of institutional activists on affirmative action and comparable worth policies. *Social Problems*, 44, 503-519.
- Skorupinski, B., Baranzke, H., Ingensiep, H. W., & Meinhardt, M. (2007). Consensus conferences—A case study: Publiforum in Switzerland with special respect to the role of lay persons and ethics. *Journal of Agricultural and Environmental Ethics*, 20(1): 37-52.
- Snow, A., & Benford, R. D. (1988). Ideology, frame resonance, and participant mobilization. In B. Klandermans, H. Kriesi, & S. Tarrow (Eds.), *From structure to action: Comparing social movement research across cultures* (pp. 197-218). Greenwich, CT: JAI.
- Snow, D. A., & Oliver, P. E. (1995). Social movements and collective behavior: Social psychological dimensions and considerations. In K. Cook, G. Fine, & J. House (Eds.), *Sociological perspectives on social psychology* (pp. 571-99). Boston: Allyn and Bacon.
- Snow, D. A., Rochford, E. B., Jr., Worden, S. K., & Benford, R. D. (1986). Frame alignment processes, micromobilization, and movement participation. *American Sociological Review*, 51(4), 464-481.
- Snow, D. A., & Soule, S. A. (2010). *A primer on social movements*. New York: W.W. Norton & Company, Inc.
- Steinberg, J. (1976). *Why Switzerland?* Cambridge, United Kingdom: Cambridge University Press.
- Stepan-Norris, J., & Zeitlin, M. (1991). 'Red' unions and 'bourgeois' contracts? *The American Journal of Sociology* 96: 1151-1200.
- Tarrow, S. (1994). *Power in movement: Social movements, collective action and mass politics*. New York and London: Cambridge University Press.
- (1995). States and opportunities: The political structuring of social movements. In J. McCarthy, D. McAdam, & M. N. Zald (Eds.), *Opportunities, mobilizing structures and framing: Comparative applications of contemporary movement theory* (pp. 41-61). New York and London: Cambridge University Press.
- (1998). *Power in movement: Social movements and contentious politics*. Cambridge, United Kingdom: Cambridge University Press.
- Tomoaselli, P. M. (2003). International comparative animal cruelty laws. Animal Legal and Historical Center, Michigan State University College of Law. <http://www.animallaw.info/articles/qvusiclacl.htm>
- Weber, H. (1986). Democratic expression of public opinion on animal experimentation. *Journal of Medical Primatology* 15, 379-389.
- Went, D. F. (1997) Public vote on transgenic research in Switzerland: Call for scientific support (Letter to the editor). *Transgenic Research*, 6, 421.
- Wisler, D., & Giugni, M. (1996). Social movements and institutional selectivity. *Sociological Perspectives*, 39(1), 85-109.