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# Institutionalizing Harm in Tennessee: The Right of the People to Hunt and Fish

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*What discourses render harm to nonhumans a right? In this article we consider the case of Tennessee's Senate Joint Resolution 30, which proposed to grant citizens "the personal right to hunt and fish." To clarify the institutional logics legitimizing such harm, we analyzed the text of the Resolution as well as statements by politicians and others leading up to the passage of the amendment the Resolution would enact. Logics that supported the Resolution were: (1) claims of the economic utility of hunting and fishing; (2) veneration of the past; and (3) claims of future infringement on said activities. Nonhuman targets of harm go unmentioned in these legitimizing discourses.*

Key words: *Harm, hunting, fishing, legislation, dehumanization*

In this paper we ask how harm to nonhumans becomes legitimized, following a tradition in the social sciences that posits legitimizing logics or discourses as grounds for action. Our contribution is to analyze discourses promoting the legislation of harm as a right.

Senate Joint Resolution 30, adopted by the Tennessee State Legislature March 30, 2010, advanced an amendment to the state constitution that would grant citizens "the personal right to hunt and fish." State Senator Doug Jackson, a Democrat, authored and proposed the Resolution in the Tennessee Senate, whereas Representative Joe McCord, a Republican, and Representative Judy Barker, a Democrat, sponsored the resolution in the House of Representatives. The Resolution passed in the Senate unopposed (30 - 0) in January 2010 and in the House (90 - 1) in March 2010. Adoption of the Resolution resulted in a ballot measure that appeared on Tennessee voter

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ballots on November 2, 2010. The Tennessee Hunting Rights Amendment passed with more than 87 percent of the vote and thereafter became part of the Tennessee State Constitution. The Amendment is a symbolic gesture more than a practical one, as it changes nothing of substance about hunting and fishing in the state.

Our analysis of the text of the Resolution, as well as statements by politicians and others leading up to the passage of the amendment it would enact, uncovered the following supportive logics: (1) claims of the economic utility of hunting and fishing; (2) veneration of the past; and (3) claims of potential infringement on those practices. Through these three logics, speakers identified themselves as guardians of a historical legacy. The discourses revealed in our study constructed speakers and their activities—not animals, nor even the relationship between nonhumans and humans. Other scholars have revealed how nonhuman animals are constructed—for example, as resources (Stibbe, 2001) or sexual objects (Adams, 1994). In legislating the right-to-harm via Senate Joint Resolution 30, speakers neglected to mention their targets altogether. Such exclusions are striking, since extermination of these targets is central to the activities at stake. Nonhuman animals were not identified as agents in the discourse on the license to harm them.

### Acculturation into the Permissibility of Harm

Whereas thought has the reputation of being “independent,” fundamentally taking shape in individual minds, the cultural milieu makes a thorough-going impression on our thinking. Eviatar Zerubavel (1997) considers society as “a critical mediator between reality and our minds” (p. 78) and details the acculturation of each of the following cognitive processes: perception, attention, classification, symbolizing, memory, and timing things. Concerning nonhuman animals, our culture has classified some as harm-worthy and others as care-worthy:

Note that while it is quite common for people to talk to their cats, name them, kiss them, and feature them quite prominently in family photo albums, rarely do they do any of these things with the mice they find in

their kitchens or with their wallets. Such difference, of course, is a result of the way we usually classify nonhuman objects in terms of their perceived proximity to us. Yet such "proximity" is entirely conventional, since cats, after all, are not inherently closer to us than either mice or the wallets we carry on us almost constantly. (Zerubavel, 1997, p. 54)

The acculturation of attention, likewise, has implications for our treatment of nonhuman animals. Zerubavel (1997) notes that through the process of "moral focusing" we draw a "circle of altruism" around certain beings. "Any object we perceive as lying 'outside' this circle ... is essentially considered morally irrelevant and, as such, does not even arouse our moral concerns" (p. 39). Case in point: Beirne (2009) notes that brutality toward companion animals causes horror, galvanizing legal action and scholarly inquiry, more than the institutionalized violence to animals we come to consume. Harm to nonhumans for the sake of eating them tends to be taken for granted. "Eating animals has an invisible quality," writes Jonathan Foer (2009, p. 29). If pondered at all, it is taken to be good, such as a means to good health (Adams, 1994).

How does acculturation operate? Zerubavel (1991) states: "The social construction of discontinuity is accomplished largely through language" (p. 78). A range of social theorists agree: the acculturation process is discursive. Culture consists in texts, or discourses—modes of knowing and communicating. This perspective—indeed, the term discourse—is widely associated with Foucault, who wrote:

Truth is a thing of this world: it is produced only by virtue of multiple forms of constraint. And it induces regular effects of power. Each society has its regime of truth, its 'general politics' of truth: that is, the types of discourse which it accepts and makes function as true; the mechanisms and instances which enable one to distinguish true and false statements, the means by which each is sanctioned; the techniques and procedures accorded value in the acquisition of truth; the status of those who are charged with saying what counts as true. (Foucault, 1984, pp. 72-73)

Others insist that the world has a reality—or truth—that preexists discourse, even as it is shaped by it. Fairclough (1992), for example, observes that material realities work in conjunction with discourse to order social life. Responding to Foucault's work, he states:

While I accept that both 'objects' and social subjects are shaped by discursive practices, I would wish to insist that these practices are constrained by the fact that they inevitably take place within a constituted, material reality, with preconstituted 'objects' and preconstituted social subjects. (Fairclough, 1992, p. 60)

Across the academy, scholars consider how stories animate behavior, providing a script for both individual and group behavior (Bruner, 1990; Polletta, 2006; Sarbin, 1986; White, 1980). While stories, or narratives, are not the only discursive devices that shape behavior, they are especially influential, apparently because people take stories to be uniquely authentic (Polletta, 2006) and because stories lend a dramatic quality to human experience (Bruner, 1990). Accordingly, Presser (2009) calls for a narrative criminology to uncover the story forms and components that promote harmful action.

Largely independent of the aforementioned ideas, sociologists and social psychologists have shown that verbalizations channeled in advance of conduct are consequential to such conduct. They have given such verbalizations different names, including vocabularies of motive (Mills, 1940), neutralizations (Sykes & Matza, 1957), mechanisms of moral disengagement (Bandura, 1999), anticipatory accounts (Murphy, 2004) and, most infamously, propaganda. Criminologists have made extensive use of Sykes and Matza's (1957) five "techniques of neutralization"—denial of responsibility, denial of injury, denial of the victim, condemnation of one's condemners and appeal to higher loyalties—with which actors legitimize crimes before perpetrating them. They have constructed new techniques of neutralization to explain a variety of deviant acts (Maruna & Copes, 2005). None of these scholarly works attends to harm done to nonhuman animals.

Numerous chronicles of genocide, war and terrorism stress the importance of constructing targets in reductive terms (e.g.,

Alvarez, 1997; Collins & Glover, 2002; Gamson, 1995; Hagan & Ryman-Richmond, 2009; Hatzfeld, 2003; Kelman, 1973). Much has been made of dehumanization in particular. Young (2003) observes that “if unfairness provides a rationalization for violence, dehumanization permits it” (p. 403). Kelman (1973) theorizes that “three interrelated processes ... lead to the weakening of moral restraints against violence: authorization, routinization, and dehumanization” (p. 38). In these writings, violence is codified as harm to humans. Nonhumans are excluded, because the process cannot logically apply to them. Here we see that scholars themselves construct harm in ways that permit harm to nonhumans.

Bracing analyses that expose the discursive foundations of harm to nonhumans include work by Carol Adams and Arran Stibbe. Adams (1994) observes: “We have structured our language to avoid the acknowledgement of our biological similarity” (p. 64). For example, “the generic ‘it’ erases the living, breathing nature of the animals and reifies their object status” (p. 64). Stibbe (2001) explores the discourses of the meat products industry in particular. Discourses that legitimize harm to (some) animals include: scientization of the harm; naturalization of human dominance; animals as inanimate resources; and nominalization of harmful practices, which erases the agent and disguises agentive specifics. An example of the construction of animals as resources is the reference to “bird damage” instead of injury in a poultry trade magazine (Stibbe, 2001, p. 155).

In addition to telling us who the target is, our cultural milieu tells us who we are as actors. It sets out characters, such as the archetypical hero and villain. The present study provides answers to the question: How does legislation supportive of harm to nonhumans construct the harm agents and the practices in question?

## Research Methods

Our study concerns the cultural construction of hunting and fishing as rights, and not how people who hunt and fish themselves talk about their actions—talk that is likely to be less idealistic than the talk of advocates (see Presser & Taylor, 2011). It is the idealization (and possible obfuscation) of harm

practices that we wished to explore. Given that focus, we turned to media accounts of the ballot measure in question. We analyzed 14 online news articles and editorials which discussed the measure. These represented all news items that we located through an Internet search (conducted in September 2011) using key words "Tennessee hunting and fishing right." All but one item included in the sample were published between September 2010 and October 2010—just prior to the referendum appearing on the ballot November 2, 2010. The one article that fell outside of this time frame was published months earlier, in January 2010, after the Resolution was adopted by the Senate (The Chattanooga.com, 2010). Table 1 displays detailed information on news outlets and article types.

Table 1. Breakdown of Data Source Outlets and Article Types

Outlets	Editorials	News Stories	Outlet Total
Knoxnews.com	1	1	2
Nashville City Paper	1		1
The Chattanooga	1	1	2
The Memphis Daily News		1	1
My Fox Memphis		1	1
Nashville News Channel 5		1	1
Stateline		1	1
Chattanooga Times Free Press		1	1
WATE.com		1	1
Dryersburg State Gazette		1	1
The Commercial Appeal	1		1
Nashville Public Radio		1	1
<i>Article Type Totals</i>	4	10	14

For the analysis we coded themes raised in discussion of the legislation. We were guided by cultural theories, for as Weber says of content analysis, "texts do not speak for themselves" (Weber, 1990, p. 80). We were influenced by past scholarship on cultural devices used to license the activities in question. Stories, accounts, and neutralizations legitimize action on

the basis of characteristics of the actor, the action, or potential critics. We reviewed and coded all the data by asking and answering the questions: What is the logic or reasoning that is being developed? What propels the legislation? Who is the stakeholder—the legislator or writer—in relation to the activity in question? To code is to place data into categories; the data here are discourses, thus we sought to categorize the various discourses that answered the aforementioned questions.

## Results

We discerned three discourses used to legitimize the Resolution: (1) claims of the economic utility of hunting and fishing; (2) veneration of the past; and (3) claims of future infringement on said activities. In this section we discuss how exactly these discourses, or logics, were put to use.

From the start, we observed that ‘rights’ were a key tool of legitimization. That is, communications in and concerning the Resolution and the Amendment channeled the preeminence of rights. One reporter noted: “Though there is no direct threat to hunting or fishing in the state, supporters of the amendment said it is necessary to ensure that future sportsmen have those rights” (Tang, 2010). Watson (2010) observed that “the right to hunt and fish was considered for inclusion in the U.S. Constitution, but was thought to be such a basic right in the free New World that it was unnecessary to codify.” In each of the aforementioned statements, “rights” are mentioned as the proper instrument for permitting the harm. Rights are self-evident—“basic”—if they are qualified at all. But why this right? For an answer to that question, we had to consider other statements and other themes. Rights were not foundational as a source of legitimacy.

### *Economic Utility*

Hunting and fishing were defended on the grounds that they are profitable. The Resolution reads, in part: “Indeed, hunting and fishing are a vital part of this state’s heritage and economy and should be preserved and protected” (Jackson, 2010). Tang (2010) reports: “Supporters said the amendment will protect a \$2.4 billion a year business in the state, one that creates 30 thousand jobs in Tennessee.” In an

editorial, Representative Eric Watson (2010) commented that such figures do not “count the motel rooms, meals in restaurants, gas purchases and entertainment dollars that hunters and fishermen—from Tennessee and across America—spend in our communities every day” (Watson, 2010). One newspaper account quoted Representative Judy Barker on the economic benefits of hunting and fishing: “When you think of all of the motel rooms, boat and ATV dealers, guides, bait shops and restaurants that depend on hunters and fishermen, you see that it’s big business, not only in West Tennessee but across the state,” said Barker in a press release. “Without even counting the private dollars spent on leasing land by sportsmen, the annual economic impact of hunting and fishing in Tennessee exceeds \$2.4 billion.” She added that the revenues generated by the purchase of hunting and fishing licenses, along with taxes on related equipment, fund the TWRA almost exclusively. “These dollars fund the management of our wildlife and fisheries resources, and they contribute greatly to the open space we all enjoy for not only hunting and fishing, but for hiking, camping, bird-watching and more,” said Barker (Dryersberg State Gazette, 2010, para. 12-14).

Barker enumerates the benefits of revenues in terms of other activities, some of them related to sustaining and appreciating animals. So far, we see that the agent who seeks protection of the capacity to hunt and fish is a member of an economy. But that is not all this agent is. Economic interests are not the only kind that this agent seeks to advance, according to the discourse.

### *Venerating the Past*

In statements concerning the Amendment, what is old and long-standing is good. Senator Doug Jackson stated: “The tradition of hunting and fishing is worth defending” (The Chattanooga.com, 2010, para. 6). Tony Dolle, communications director of Ducks Unlimited, a non-profit wetland conservation group, remarked: “In order to help ensure that our hunting heritage continues, when amendments like this come up we support them” (Trevizo, 2010, para. 43).

The Resolution itself leads with the following statement venerating the past (Jackson, 2010, p. 1):

Whereas, the Legislature finds that hunting and fishing are honored traditions in the state of Tennessee; and whereas, from the time prior to statehood, citizens have enjoyed the bounty of Tennessee's natural resources, including hunting and fishing for subsistence and recreation. Indeed, hunting and fishing are a vital part of this state's heritage and economy and should be preserved and protected.

That which is traditional is "honored" and moreover "vital." Furthermore, it is "the state's duty to honor this heritage and its duty to conserve and protect game and fish," the Amendment continues (Jackson, 2010, p. 1).

Whereas most speakers placed hunting and fishing in a halcyon past, one took a reflexive stance on that story itself. Larry Woody, a Nashville sports writer, describes the role that hunting and fishing play in a desired vision of 'what was':

Unlike our pioneer ancestors, few Tennesseans today hunt and fish for subsistence. Instead it is affirmation of an outdoors heritage and a connection to a nostalgic past, following bird dogs through frost-sparkling fields and wading gurgling trout streams; a time when youngsters shivered with excitement beside their dads in duck blinds instead of being mentally and physically desiccated by video games and television. (Woody, 2010, para. 14)

In that formulation, hunting and fishing evoke the past and thus gain the attraction that the past holds for people generally. Remarkably, hunting and fishing reflect 'life,' including live animals, trout and bird dogs, whereas their alternatives are associated with desiccation, the physical condition of the dead and the dying.

Representative Eric Watson gives a more far-reaching historical account:

The right to hunt and fish has been a central element of human societies for thousands of years. All the way back to ancient Rome, democratic societies have recognized the individual right to hunt and fish. In England, the banning of hunting and fishing for all but the ruling class was one reason for the colonists'

defection to America. In fact, the right to hunt and fish was considered for inclusion in the U.S. Constitution, but was thought to be such a basic right in the free New World that it was unnecessary to codify. (Watson, 2010, para. 13-14)

For Watson, hunting and fishing go beyond Tennessee history to the history of humankind in general.

Watson's rhetoric is consistent with Fiddes' (1999) anthropological observation that "western society has traditionally used the beginnings of hunting as an indicator of the origins of humanity" (p. 225). That indicator, while erroneous in fact, suggests "the hidden message ... that we only became civilized when we began to exercise our ability to dominate other creatures by killing and eating them" (p. 226). If we follow Fiddes' analysis, the emphasis on tradition in the Tennessee discourse is an insistence on the powerful self—an agent who achieves mastery over others. However, as we see next, the powerful self may be threatened.

### *Under Attack*

When speakers referred to the past, they presented hunting and fishing in a positive light. But speakers used negative logics as well. In fact, the most prominent theme in endorsements of the Tennessee amendment, which appeared in 12 of the 14 total articles, referred to protection from threatening others, specifically, those who would oppose hunting and fishing. The person who kills nonhuman animals is under attack. Thus, whereas the theme of tradition advances the self as powerful, this logic advances the self as potentially vulnerable to a loss of power.

Representative Watson explained: "People sort of understand it and know it, but without it being a part of the actual framework of the constitution, it leaves open the opportunity for the government to infringe on people's rights to hunt and fish" (quoted in Trevizo, 2010, para. 8). More straightforwardly, Woody stated: "The amendment would provide a safeguard by allowing hunters and fishermen the means to appeal any challenge to the right to the Tennessee Supreme Court" (Woody, 2010, para. 7).

The experience of other states is an important referent in

the logic of defense. One journalist observed: "Amendment advocates, including Butler, often cite the example of Michigan outlawing the hunting of doves" (Humphrey, 2010, para. 18). Another journalist noted: "While Tennessee hasn't had too many flare-ups with anti-hunting organizations, other states have seen game laws changed or gutted and seasons lost after animal rights organizations spent major dollars to get game laws changed (Hodge, 2010). In these accounts, those who hunt and fish are underdogs threatened by the superior resources of their adversaries. Butler tells the story of a protagonist under siege—a David against Goliath.

What we've known for a long time is that the only protection Tennessee citizens have from the will of the Legislature—other than voting them out of office—is the state constitution. Who's to say that, 20 or 30 years from now, we'll have a majority of the Legislature, willy-nilly, saying, 'We've got to do away with this,' because it's the popular thing to do? (Humphrey, 2010, para. 21)

Woody is certain of the threat:

There is no question that hunting and, to a lesser extent fishing, are under siege in an increasingly urbanized society. Anyone who argues otherwise is either abjectly misinformed or deliberately deceptive. The right to hunt and fish has become like everything else in modern society: If we want it protected, we'd better get it in writing. (Woody, 2010, para. 15)

Others frame the threat as a mere future possibility, though one that is prudent to guard against now: "While there are threats in some states I'm sure ... there haven't been any threats that I know of in Tennessee. It's just good insurance" (Dolle, cited in Dries, 2010, para. 23). "Do you want to buy the alarm when there's someone in your home? No. You buy it first, get it in place, and it protects you," said Michael Butler, CEO of the Tennessee Wildlife Federation (Tang, 2010, para. 7).

If we wait, we will be too late. All over America, people are working to ban hunting and fishing. As Tennessee citizens, if we wait until we need a right to

hunt and fish, we will be too late. Anti-hunting and fishing activists have had success in other states, and they are well funded. They accomplish their objectives legislatively and through the courts. The constitutional amendment will offer much greater protection from frivolous lawsuits, activist judges and misguided legislation. (Watson, 2010, para. 23-24)

Adversaries included the Legislature (Humphrey, 2010), "liberal animal rights groups" (My Fox Memphis, 2010, para. 3) and "activist courts" (Sumerford, 2010, para. 4), both cunning and ignorant (offering "misguided legislation" [Watson, 2010, para. 24]). Hunting and fishing become heroic struggles against these formidable foes. In fact, as noted in one article, People for the Ethical Treatment of Animals (PETA), one of the animal rights groups mentioned, had no designs on limiting hunting and fishing in any state (Dries, 2010). Nevertheless, the story of struggle of the weak against the strong motivates and mobilizes. It has a cultural resonance which those who oppose harm to animals would do well to channel.

### Concluding Remarks

The killing of animals for food—like all other human action—is discursively pre-configured. That is, our desires and justifications thereof are themselves socialized. In defense of Tennessee's Senate Joint Resolution 30 endorsing citizens' rights to hunt and fish, speakers drew upon cultural discourses concerning self, other, and the activities in question. They channeled an economic utility discourse, they insisted on the importance of a cherished past in which hunting and fishing were common, and they conjured a struggle against formidable foes who would threaten hunting and fishing.

Fiddes' (1999) observation that hunting is a signifier for human domination led us to wonder whether an additional, perhaps implicit logic of the legislation was the domination of women by men. The gender order is another system of domination and one that some have linked to domination of nonhumans (see, for example, Adams, 1994). Turning to our data, we observed that several articles made reference to "sportsmen" as the Amendment's stakeholders. Representative Bill Dunn

highlighted the importance of the legislation in terms of preventing future actions by “activist courts” that do things like upset the gender order: “For thousands of years, marriage was between a man and a woman. Courts show up and say no, it can be between a man and a man” (Sumerford, 2010, para. 4). And, while one of the two sponsors of the Resolution in the House of Representatives was a woman (Judy Barker), the sole member of the House of Representatives voting against the Resolution was a woman (Johnnie Turner) (Dryersberg State Gazette, 2010; Humphrey, 2010). Thus we surmise that the discourse advancing the right to hunt and fish is linked with gender conservatism, though the strength of that link is difficult to determine from the evidence at hand.

More generally, the Amendment may be seen as a story its supporters tell. In the past, life was sweet for humans (men) living it. Whereas that life is no more—for reasons not specified in the story—certain adversaries threaten to block even the potential for its return. The Amendment recaptures the past and fends off those adversaries, while also gleaning economic benefits. What goes unsaid in this account are the (nonhuman) lives taken and the fact that economic shifts, and not activists, relegated hunting and fishing to the past. But activists are well suited as adversaries in the larger political agendas of supporters of the legislation. Those supporters target activists but are silent on the activists’ message—that we ought not do harm to nonhumans.

Indeed, speakers had nothing to say about the objects of the harm: they were simply not mentioned. Hence, Judith Butler’s (2004) words apply. Concerning the exclusion of Palestinian deaths due to Israeli violence from *San Francisco Chronicle* obituaries, she writes: “There is less a dehumanizing discourse at work here than a refusal of discourse that produces dehumanization as a result” (p. 36). That which is not said (and is aggressively excluded) is consequential. We have problematized the emphasis on dehumanization, but agree with Butler’s point, that ‘a refusal of discourse’—the work of exclusion—is perhaps the most harm-conducive stratagem of all. That insight is important, because the modern-day machinery whereby animals are raised and slaughtered for their meat and other bodily products—the primary means by which animals are made to suffer in contemporary Western societies—runs on

our dissociation and silence.

Our study stands in contrast to those from the field of human violence, where emphasis is placed on dehumanization. Certainly, those who are not human cannot, logically speaking, be conjured as less human. We find, furthermore, that the target for harm need not be derogated at all. No resentment pertains to appeals to harm nonhuman animals via hunting and fishing. Instead, appeals made to promote the legislation are all "about" the actor her/himself.

It did not surprise us that that actor's economic interests and the economic value of hunting and fishing were key themes in their legitimization. It did surprise us that this utilitarian argument was less prominent than the aforementioned normative ones. Its lesser prominence seems to suggest that when it comes to doing harm, utilitarian appeals do not have the necessary resonance that normative or moral ones do. We view this as a hopeful sign.

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