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Constitutional protection for animals

It appears certain that Germany's constitution will soon require the state to protect the welfare of animals. The Bundestag, the lower house of parliament, voted 543 to 19 in favor of the amendment in May, and the upper house (Bundesrat) is expected to approve the measure very soon. With over 80% of German citizens favoring the amendment, the animal rights movement has achieved a major victory. The failure of scientists to make a convincing public case for their work is particularly worrisome because another critical legislative battle lies ahead. If this fight is also lost, the likely result will be great damage to German biomedical research.

The amendment will add "and animals" to Article 20a of the German Basic Law, so that it will read, "The state takes responsibility for protecting the natural foundations of life and animals in the interest of future generations." Previously the courts have interpreted "life" to mean human life, but the new wording is likely to suggest that animals have a legal right to be protected from avoidable pain. Freedom of academic research was already protected in the German Basic Law. Thus, in the past, when animal welfare conflicted with academic freedom, the courts weighed the rights of researchers more heavily. After the amendment, however, animal protection and academic freedom will have equal legal status, and it is not clear how this new balance will affect future court decisions. For now, animal welfare laws will remain the same, but local authorities and courts may interpret them differently. In addition, the legislature may come under increasing pressure to pass additional laws on a variety of animal-protection issues. "Even the politicians do not know and cannot predict what the consequences of this change to the constitution will be," says Kuno Kirschfeld, who heads the committee on animal legislation at the Max Planck Society.

German animal activists have worked for the last decade to achieve constitutional protection for animal rights, an aim supported by the ruling Social Democratic party and the Green party. Two years ago, a similar attempt was narrowly defeated, falling just short of the two-thirds necessary to amend the constitution. In that vote, the amendment was blocked by the Christian Democrats, who have now reversed their position following a controversial decision by the high court (Bundesverfassungsgericht) in January. The court ruled that Muslims may practice halal slaughtering, in which animals are not stunned before being killed. The decision outraged the public and increased the pressure on parliament to grant constitutional protection to animals. With an election approaching, the Christian Democrats announced in March that they would support the constitutional amendment.

Allowing the opposition to control the terms of the debate has been a critical mistake for the research community. Scientists have not effectively communicated to the public that animal experiments are necessary for medical progress. "People are not informed about

animal research and the problems the constitutional change may cause," says Ivar Aune, a spokesman for the Society for Health and Research, Germany's main lobby group in defense of biomedical research. Aune notes that 85% of people surveyed answer yes to the question, "Are you against animal research?", yet only 15% say yes when asked, "If animal research is the only way to find a cure for cancer or AIDS, are you still against it?" This discrepancy suggests that opposition to animal research, though broad, is not very solid and could be changed by further information. Many scientists feel that Germany's main funding agencies, the Max Planck Institute and the Deutsche Forschungsgemeinschaft (DFG), have not taken a strong enough public stand in defense of animal experiments.

German animal protection laws are already very strict. Every three years, researchers must reapply to their local government for a license to do experiments on animals. According to a previous court decision, the local authorities are prohibited from applying their own ethical standards to these applications; instead they must determine whether the proposed research is permissible under German law. On the rare occasions when the local authority refuses an application, the researcher can go to court and ask a judge to approve it. This process is likely to provide the legal test cases that will ultimately determine the practical effects of the constitutional amendment.

Under current law, researchers can choose whether or not to go to court to defend their work, but animal activists are fighting to overcome this major disadvantage (from their perspective) in the legal system. Activists are lobbying vigorously for a law allowing animal protection groups to sue researchers on behalf of their animal subjects. There is a precedent for such permission in German law; certain interest groups can file lawsuits against violations of environmental protection laws that do not harm them personally. A similar law pertaining to experimental animals would give activists broad power to harass scientists. Regardless of the final outcome, such lawsuits could be very damaging to researchers' careers, as cases can take years to reach the constitutional court and the law provides for laboratories to be shut down until such court proceedings are resolved.

To keep this weapon out of the hands of animal activists, researchers will need to succeed in convincing politicians and the public that animal experiments are valuable to society. This constitutional amendment should serve as a wake-up call to scientists, not only in Germany, but in other countries where animal rights activists are exploring legal challenges to animal research¹. If scientists do not argue more effectively in favor of animal research, they will lose other legal and legislative battles. As Stefan Treue of the German Primate Center in Göttingen concludes, "My view on what went wrong is that we were too quiet for too long."

1. Legal challenges to animal experimentation. *Nat. Neurosci.* 3, 523 (2000).