

Animal Laws and the Politics of Life: Slaughterhouse Regulation in Germany, 1870-1917

Shai Lavi*

What makes modern law and politics modern? What makes the question of "modernity" so central to our understanding of contemporary law and politics? To offer one possible answer to these questions this study examines the changing relationship between animals and humans and, more specifically, the new regulation of the slaughterhouse in turn of the century Germany. If humans and animals meet in the modern agora it is neither because animals are now perceived as more human-like, as champions of progress would have it, nor because humans are perceived as more animal-like, as critics of modernity would suggest. Rather, both animals and humans have undergone a radical transformation, which has put them on the same plane. If life is that which humans and animals share in common, and politics is that which sets them apart, the history of animal laws suggests that modernity entails the radical transformation of both life and politics. This Article strives to understand this change through the transformation of both politics and life into processes, i.e., into that which can be scientifically known and thus manipulated. The different strategies of reformers of slaughtering as well as their opponents are analyzed in light of this fundamental transformation.

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INTRODUCTION

For more than two hundred years, the relationship between humans and animals has undergone a gradual transformation. Different, and at times seemingly contradictory motivations underlie this change. On the one hand, sensitivity to the suffering of animals has become associated with the processes of modernization and especially moral progress and humanism. On the other hand, the concern for animal welfare has been driven by a growing anxiety regarding other aspects of modernization, such as industrialization and urbanization, accompanied by a romantic nostalgia for the loss of an intimate relationship with the natural world. A third and seemingly unrelated set of concerns takes its cue from the emergent understanding that both species share the same environment and that the living conditions of the human race depend, at least in part, on the proper management of the living conditions of animals. The birth of these relatively new sensitivities to animal suffering, nature, and environment, gave rise to a variety of "animal laws," which demanded more humane treatment of domestic animals, mandated the preservation of nature and wildlife, and ordered the regulation of animal livestock. In particular, during the second half of the nineteenth century, advocates motivated by these different concerns succeeded in promoting an extensive reform of the slaughterhouse. As part of this general reform, laws were enacted in Germany, Switzerland, and other European countries requiring the stunning of animals prior to their slaughtering.

The recitation of the tale of animal slaughtering reform in Kaiserreich Germany, as interesting as it may be on its own, is not the central goal of this Article.¹ Nor does our concern lie in documenting the distinctly modern relationship between animals and humans, although this theme is closer to the main interest of this Article.² The paper explores the early history of the

1 There are several important studies of this history. See RICHARD POTZ ET AL., *SCHÄCHTEN. RELIGIONSFREIHEIT UND TIERSCHUTZ* (2001); WINFRIED C.J. EBERSTEIN, *DAS TIERSCHUTZRECHT IN DEUTSCHLAND BIS ZUM ERLASS DES REICHS-TIERSCHUTZGESETZES VOM 24. NOVEMBER 1933*, at 214-53 (1999); Robin Judd, *The Politics of Beef: Animal Advocacy and the Kosher Butchering Debates in Germany*, 10(1) *JEWISH SOC. STUD.* 117 (2003); Dorothee Brantz, *Stunning Bodies: Animal Slaughter, Judaism, and the Meaning of Humanity in Imperial Germany*, 35(2) *CENT. EUR. HIST.* 167 (2002).

2 The most comprehensive account of this historical change remains KEITH THOMAS, *MAN AND THE NATURAL WORLD: CHANGING ATTITUDES IN ENGLAND, 1500-1800* (1996). See also RICHARD D. RYDER, *THE POLITICAL ANIMAL: THE CONQUEST OF SPECIESISM* (1998).

slaughterhouse debate with the intent of shedding light on a much broader and highly debated question, what is it that makes *modern* law and politics modern? But what, one might first ask, can the obscure story of animal slaughtering convey about such a fundamental question? What untold secret do animals hold regarding the nature of our times?

Perhaps, the answer to this question lies closer to us than we may have thought. There has been a long and lasting tradition in political and legal thinking that seeks to understand the human through its relation to the animal. This tradition began with Aristotle's definition of man as a political animal and continues to inform contemporary political and legal theory. Aristotle, as is well known, characterizes human beings as bearers of "life" in two senses: first, *zoe*, life which humans share with the rest of the animal kingdom, and second, *bios*, the distinctly human way of living. Perhaps the most essential difference between the two is that only the bearers of *bios* can partake in political life, which is devoted not to natural life, but to the good life and to the unique capacity of human beings to set out a future for themselves. In Aristotle, natural life was excluded from the *polis* both in the sense that animals never belonged to the *polis* and in the sense that the natural life of human beings themselves was excluded from the *polis* and remained confined to the sphere of the *oikos*, "household."³ In what follows, I will refer to this understanding of humanity as the "masked animal" hypothesis. The masked animal hypothesis is grounded in a dual-assumption regarding the animal-human relationship: life is understood as that which humans share with animals, and politics as that which sets them apart.

The masked animal hypothesis continues to dominate modern political and legal thinking. This is true despite the fact that the way we understand politics today is very different from the Athenian *polis*. The blurring of the distinction between the private sphere and the public sphere and the modern legal and political concern with the biological life of both humans and animals, did not make the masked animal hypothesis obsolete. Quite the contrary, political thinkers have often seen the modern condition as the fulfillment of an ancient prophecy. Thinking of humans as masked animals harbors the potentiality and thus anticipates the possibility that the walls separating the animal kingdom from the human city may one day come down. Contemporary political and legal thinkers, such as Arendt and Agamben (and to a lesser extent Foucault) have turned to the original Greek separation of *zoe* from *bios* in order to understand their modern hybridization,

3 See, e.g., GIORGIO AGAMBEN, *HOMO SACER: SOVEREIGN POWER AND BARE LIFE* 2 (Daniel Heller-Roazen trans., Stanford Univ. Press 1998) (1998).

which has given birth to a whole array of bio-political interventions from humanitarian aid to the more mundane regulation of public health. Thus, the masked animal remains the prevailing image of humanity not only for Aristotle and Kant, but also for some non-liberal and post-enlightenment thinkers.⁴

It may be tempting to see the masked animal hypothesis as the appropriate framework for understanding the growing concern with animal welfare in nineteenth-century Europe. Indeed, this history has commonly been conceptualized either in terms of the growing humanization of humanity and its ascendance from animality to civility, in which case animal protection laws have been viewed as the progressive expansion of humanitarian sensitivities over to the animal domain; or, in diametric opposition, the rise of animal protection laws has been seen as further proof of the blurring distinction between man and animal, manifesting the degradation of human beings into sentient creatures, and perhaps even more radically, into biomedical organisms subject to public health protection and hygiene regulation.

Though the masked animal hypothesis may seem appropriate for understanding animal law regulation in nineteenth-century Europe, it is precisely this framework that I wish to question in what follows. The masked animal hypothesis fails to understand both sides of the animal-human relationship: both "life" as that which humans and animals share, and "politics" as that which sets them apart. First, with respect to life, while it is true that modern politics has become increasingly concerned with the biological existence of humans (e.g., the growing role of social welfare, public health, and demography considerations in policymaking) and with the humane treatment of animals (e.g., the growing role of animal welfare, animal health, and endangered species considerations in policymaking), this growing affinity between animals and humans cannot be understood on the basis of the masked animal hypothesis either in its original version or in its modern subversion. If humans and animals meet in the modern agora it is neither because animals are now perceived as more human-like, as champions of progress would have it, nor because humans are perceived as more animal-like, as critics of modernity would suggest.

4 To be sure, Agamben does not argue that the politicization of life is the simple transformation of politics from *bios* to *zoe*. He depicts a more nuanced picture of bare life as a "zone of indistinction between *bios* and *zoe*." But the underlying logic is the same. The zoological character of human beings, which they have always shared with animals, is the origin of the vitalization of life and a precondition for life's politicization.

Rather, both animals and humans have undergone a radical transformation, which cannot be understood on the basis of their past relation. The very conception of life has changed, and I will refer to this transformation as the vitalization of life. Briefly put, vitalization entails the transformation of life from that which is given by nature into that which is subject to human manipulation. Manipulability, in this context, signifies much more than human intervention in biological processes and includes, among other things, the very understanding of life as a biological process (i.e., as that which is scientifically knowable and thus humanly manipulable). As we shall see, what is at stake in the history of animal laws are the new conceptions of life and the new ways in which life came to be understood as a sensual, national, or biological *process*. It is only the transformation of life into such processes that brought together animals and humans under the auspice of modern law and politics.

The second reason why the masked animal hypothesis fails to illuminate the growing concern with animal life is due to a misconception of modern law and politics. Here the shortcoming is more nuanced. Though Arendt, Foucault, and Agamben have readily acknowledged the radical transformation of modern politics, they have neglected an important aspect of this transformation. If modern politics has radically changed, it is not because "life" formerly confined to the *oikos* has become incorporated into governmental practices. Modernity is not marked by the injection of life into the political sphere, or by any other change in its content, but rather by a transformation of the basic structure of politics itself. It is not simply that modern politics is new in time, but rather it is a new politics of time. It is the temporal structure of modern politics that constitutes its break from the past. In what follows I will refer to this transformation as the historicization of politics. As in the case of the vitalization of life, the historicization of politics also entails the notion of process. Politics becomes a process to the extent to which it views history as a knowable and thus a manipulable sequence of events. Here again, what is at stake is not the trivial ability of humans to intervene in history, but rather their ability to take control over the movement of history itself. Some of our most common legal and political conceptions associated with modernity, such as progressivism, conservatism, romanticism, and fundamentalism; or even less obvious notions, such as development, stagnation, reform, and revolution, manifest this new relationship of time and politics.⁵

The concern with animal welfare in the late nineteenth century and

5 AGAMBEN, *supra* note 3, at 245.

the enactment of laws regulating the slaughter of animals will allow us to examine in more concrete terms the vitalization of life and the historicization of politics as well as their interrelationship. Though the following case study will concentrate on the animal-human relationship, and more specifically on the regulation of the slaughterhouse in turn of the century Germany, the argument could be extended to law and politics more generally. Still, the choice to attend to the legal history and politics of animals is not arbitrary. It is part of a deliberate attempt to free political thinking from the masked animal hypothesis. It is primarily by shifting the focus from humanity to the study of the effects of these processes on animals that one may see how not only human politics has changed but how the underlying understanding of life common to humans and animals has changed as well.

Following a brief presentation of the historical background of the slaughterhouse debate, I will proceed by examining three different ways in which the turning of life and politics into processes has played out in this debate, taking into account both the diversity of these manifestations and their fundamental bond. The Article concludes with an exploration of possible consequences of this study for the understanding of our age.

I. ANIMAL SLAUGHTERING: HISTORICAL BACKGROUND

On February 25, 1886, a petition was filed by the German Society for the Protection of Animals (*Vorstandes des Verbandes Deutscher Tierschutzvereine*, "the German Society") to the Reichstag calling for the regulation of Germany's slaughterhouses.⁶ The petition demanded that slaughtering take place in licensed abattoirs and only be practiced by licensed butchers.⁷ In addition, animal protection activists demanded a change in slaughtering methods, requiring the stunning of cattle prior to killing. It is this latter demand that stirred up vehement opposition and a lively public debate. Jewish communities, along with local butchers, strongly objected to the petition, and more than two thousand counter-petitions were presented to the Reichstag to refrain from considering such a law.⁸ The petitions of both sides

6 To be sure, the question of slaughtering was not exclusively German. Already in 1855 the Swiss canton of Aargau in 1855 passed legislation forbidding the slaughter of conscious animals. See Judd, *supra* note 1, at 120. A similar prohibition on a national scale was enacted in 1893. See ISAAC LEWIN ET AL., RELIGIOUS FREEDOM: THE RIGHT TO PRACTICE SHEHITAH 29-30 (1946).

7 Referred to in EBERSTEIN, *supra* note 1, at 217.

8 Brantz, *supra* note 1, at 167.

were deliberated in the Reichstag in 1887 and again in 1899.⁹ The majority of legislators recognized the importance of regulating the slaughterhouses and generally believed that such regulation had already been enforced locally. Many parliament representatives rejected the imposition of limitations on religious freedom, and supported the right of the Jewish communities to pursue their traditional rituals. Concern with the legal regulation of animal slaughtering diminished in the early 1910s, but reemerged as a national concern in 1933, several months after Hitler rose to power.¹⁰ The early years of the debate, from the 1880s to the 1900s, are, however, of special significance. During these formative years, the diverse motivations underlying the struggle for slaughterhouse reform were clearly distinguishable, motivations which would later be more uniformly tailored to the demands of Nazi propaganda.¹¹

Until the second half of the nineteenth century animals had been slaughtered by individual butchers on private premises or on farms. With urbanization and industrialization meat became a commodity of mass production and slaughterhouses began gradually replacing private butcheries. The new slaughterhouse industry brought with it a host of new concerns. Residents of large cities had numerous reservations about the slaughterhouse, ranging from the fear that the brutality practiced against animals would entice violent spectators and attract deviant characters as employees, to anxieties concerning public health risks due to the abattoir's dirty, bloody surfaces.¹² In addition, the traditional practices of slaughtering

9 *Id.*

10 Still today, the question of traditional slaughtering by Jews and Muslims continues to stir public debate and calls for legal reform. In 1995, for example, the German Federal Administrative Court banned Muslim ritual slaughter. *Entscheidungen des Bundesverwaltungsgerichts [BVerwGE] [Highest Administrative Court] 99, 1.* This ruling suffered a relatively short lifespan, as it was overturned in early 2002 by Germany's Constitutional Court. *Entscheidungen des Bundesverfassungsgerichts [BVerfGE] [Federal Constitutional Court] 104, 337.* See *The Constitutional Court's "Traditional Slaughter" Decision: The Muslims' Freedom of Faith and Germany's Freedom of Conscience*, 3 *GERMAN L.J.* (2002), <http://www.germanlawjournal.com/article.php?id=128#fuss18>; Kate M. Natrass, ". . . Und die Tiere" *Constitutional Protection for Germany's Animals*, 10 *ANIMAL L. REV.* 283 (2004).

11 The stunning debate did not reappear on the Reichstag agenda during the following years, with the exception of a short deliberation in 1911. Then, during the 1930s, a number of countries passed laws that required stunning, thus leading to the prohibition of shehitah. These countries included Norway (1929), Poland (partly, 1936) Sweden (1937) Hungary (1938) and Italy (1938). During the war, countries under German occupation strictly prohibited the traditional practice of slaughtering. See Brantz, *supra* note 1, at 192.

12 Robin Judd, *Jewish Political Behaviour and the "Schächtfrage", 1880-1914*, in

were often identified with Jewish religious practices and the objection to certain methods of slaughtering often stemmed from anti-Semitic inclinations. Such anxieties led reformers in Germany, England, and France to call for the regulation of public slaughterhouses that would be located in the industrial outskirts of the city, hidden from public view.¹³

Even before the petitions to the Reichstag, local regulation of slaughterhouses and the legal sanctioning of stunning were enforced in many parts of Germany by local municipalities and regional legislators. By 1887, there were ninety-seven public slaughterhouses tightly controlled by local police ordinances, which required trained personnel, strict killing procedures, and the prevention of unnecessary cruelty.¹⁴

In particular, reformers voiced their demands for the legal enforcement of new methods of slaughtering. Before the 1870s, animals were seldom stunned prior to being slaughtered, and the butcher's knife would cut through the arteries of the animal fully conscious. In the rare cases in which stunning had taken place, the most widely employed technique was a massive hammer blow to the forehead that knocked the animal unconscious and made it fall to the ground, but this method required great strength and was not very reliable.¹⁵ As a result, animal protectionists advocated new methods of stunning. Three different techniques were promoted:

the bouterole, which covered the animal's head but left a space through which butchers could stun it with a heavy mallet; the Bruneau's Mask, which allowed for a slaughterer to drive a bolt or spike through the animal's skull; and the Sigmund's mask, which was like the Bruneau's Mask but was connected to a revolver.¹⁶

The stunning of animals prior to slaughter deviated from the traditional practice of butchers and contradicted Jewish practices.¹⁷ According to Jewish law, as stated in the Talmudic interpretation of Biblical law, for the meat to be Kosher, the animal must be alive when slaughtered and should not suffer from certain internal injuries either before or as a result of the slaughtering. These restrictions ruled out the stunning of animals for a combination of

TOWARDS NORMALITY? ACCULTURATION AND MODERN GERMAN JEWRY 255 (Rainer Liedtke & David Rechter eds., 2003).

13 Brantz, *supra* note 1, at 169.

14 *Id.* at 183.

15 Judd, *supra* note 12, at 255-56; Brantz, *supra* note 1, at 173.

16 Judd, *supra* note 1, at 121.

17 In fact, the stunning requirement violated Muslim tradition as well, but this concern played a political role only in the second half of the twentieth century.

reasons. First, there was the fear that the effective cause of death would be the stunning, rather than the slaughtering. Second, there was the danger that even if the stunning did not kill the animal, it would cause internal injuries, which would make the animal unfit for slaughtering.

In most places in Germany, even where new regulations were adopted, the Jewish community was granted a special exemption permitting the continuation of the traditional ritual. Only in Saxony, between 1892 and 1910, did the law require the stunning of animals by all and deny special protection to the Jewish practices. The petition to the Reichstag by animal protection societies and other activists had a dual purpose. The first was to implement the local regulations on a national scale, and the second was to revoke the unique status of the Jewish practice.

During the earlier years of the debate three different rationales and three discernible activist groups supported the new stunning techniques. The first group was the animal protection societies which promoted the humane character of stunning and the wish to prevent cruelty to animals. The second group was made up of anti-Semitic associations, which reacted to Jewish emancipation, and denied the possibility of Jewish assimilation into German society. And the third group was strongly supported by veterinarians, and was concerned with public health and the hygienic advantages of stunning.¹⁸

The theoretical hypothesis guiding the following discussion of the legal regulation of animal slaughtering is that these three strands of animal-law politics roughly correspond to three different understandings of both history and life. The protection of animals against cruelty was linked to progressive politics and a humanitarian concern with the suffering of both animals and humans as sentient life forms. Similarly, the anti-Semitic agenda of nationalistic and anti-Semitic groups was based on an agenda of counter-modernization along with organic notions of the life of the German people. And finally, the wish to promote public health was grounded in the understanding that human beings and animals share the same environment and that their living conditions can be engineered for the benefit of humans and animals alike. The temporal structure corresponding to this understanding of life partly overlapped with progressive politics and partly sought to break away from the progressive *telos*. In the following Parts I will discuss each rationale separately, pointing out the connections and correlations among these different animal law movements and the vitalization of life and historicization of politics. The three-part analysis may offer an interpretive framework for understanding the history of animal

18 Judd, *supra* note 1, at 121.

slaughtering law and regulation, but cannot be expected to account for the full historical picture. In the final analysis, history is always more complex than the neatly divided ideal types that interpretative inquiry can offer.

II. PROGRESS AND THE PREVENTION OF CRUELTY

One of the strongest arguments in support of the stunning of animals concerned the unnecessary cruelty associated with traditional methods of slaughter. This humanitarian concern with the *schächtfrage* was part of a deeper cultural transformation of the relationship between animals and humans. Scholars of European history have noted a radical shift in this relationship, drawing particular attention to the rise of a new concern with animal suffering among Europe's upper middle class at the turn of the nineteenth century.¹⁹ The first Animal Protection Society was founded in Great Britain in the early 1820s, and was followed by the founding of the German Society in the 1830s. The German movement for the protection of animals gained popularity and its membership rose to over 50,000 in 1881 and almost doubled by the turn of the twentieth century.²⁰ The German Society protested against a wide range of social practices, from the deliberate cruelty of bating and the daily abuse of horses and dogs, to the more aristocratic game of hunting.²¹

The prevention of cruelty to animals was a general goal of the German Society, but the question of slaughtering drew special attention. It was perceived as a hallmark of human cruelty, leading some advocates to declare that "the intensity and frequency of torturous acts committed against livestock surpasses all other acts of cruelty known in Germany today."²² The suffering of animals during their slaughter was hard to deny, for its appearance was all but self-evident: the crying of the animal prior to slaughter; the torturous movement of the body during the process; and the prolonged pangs of death after the slaughtering was completed.

It is tempting to see evidence of the masked animal hypothesis reflected in these new concerns. According to this plausible account, the new humanitarian sensitivity to the suffering of animals stemmed

19 Much of the modern history of animal-human relations focuses on England. See THOMAS, *supra* note 2; ERICA FUDGE, *PERCEIVING ANIMALS* (2000).

20 Brantz, *supra* note 1, at 170.

21 Judd, *supra* note 1, at 119.

22 Brantz, *supra* note 1, at 172-73.

from a "politics of pity,"²³ in which life as the capacity to suffer became the central concern of human politics in general and of the politicization of human-animal relations in particular. However, a closer examination will reveal that it is only by understanding both animal suffering and human history as processes that the alleviation of suffering and the call for more humane treatment of animals became possible. Suffering, as such, was not the central concern of animal protection advocates, but rather the possibility of its alleviation. Or stated more accurately: suffering became a central concern only to the extent that suffering became a physiological process that could be scientifically measured, diagnosed, and alleviated. Similarly, at stake was not the debasement of humans to the level of animals, but rather the transformation of the human character from an innate nature into a historical process. The humanity of human beings was no longer taken for granted, but instead transformed, under the political worldview of animal societies, into a duty to become human.

Indeed, the debate between animal advocates and supporters of traditional slaughtering practices was not based simply on the taken-for-granted presence of suffering. For pro-animal activists, the question was not whether animals should be slaughtered, nor whether they should suffer during the process, but how could their pain be measured, and whether its magnitude could be reduced. In order to answer this question, animals were removed (at times literally, at times conceptually) from the daily surroundings of the slaughterhouse and the visible presence of their suffering, and placed in the sterile environment of the laboratory and the scientific study of their pain.²⁴ Advocates of stunning argued that while traditional *shehitah* took more than ten minutes and occasionally as long as half an hour, the new method of stunning could reduce the time considerably to as little as two to five minutes.²⁵ The Jewish community replied with its own scientific findings, which were based upon testimony collected from leading physiologists, veterinarians, and slaughterhouse officials. The latter were asked to compare *shehitah* with other methods of slaughter and evaluate their respective degrees of cruelty. The scientists tried to determine the duration of consciousness and intensity of sensation. The majority concluded that

23 For a discussion of "politics of pity," see HANNAH ARENDT, ON REVOLUTION 84-91 (Penguin Classics 1991) (1963); LUC BOLTANSKI, DISTANT SUFFERING: MORALITY, MEDIA AND POLITICS (1999).

24 For a fascinating study of the new science of animal emotions, see Otinel E. Dror, *Techniques of the Brain and the Paradox of Emotions 1880-1930*, 14 SCI. CONTEXT 643 (2001).

25 Judd, *supra* note 1, at 121.

there was no significant difference between the two methods. Due to the cutting of the main blood vessels in Jewish slaughtering, the blood pressure dropped dramatically, and no blood could make it to the brain. The animal remained conscious for thirty seconds and not for ten minutes, and despite the visible signs of a death struggle it did not suffer for long.²⁶ Proponents of traditional practices of slaughtering based their critique on empirical studies of slaughterhouses in addition to scientific studies in laboratories. Their reports convey that stunning tools like the hammer or masque minimized suffering only in theory, and were in fact often crueler than traditional slaughter. Abattoir officials offered gory descriptions of how harmful these instruments could be if handled by a weak or unskilled person. "Animals might suffer tremendously because they would have to be hit again and again, sometimes up to fifteen times, until they fell to the ground."²⁷

The pain and suffering of animals became a human concern primarily on the basis of the measurability of suffering, which was accompanied by the desire to prevent cruelty as a means of human improvement. Indeed, the question of preventing cruelty was closely tied to ideals of moral and political progress. It is true that a new affinity was discovered between humans and animals — the capacity to suffer pain — but the emphasis was put not on the suffering itself, but on the suffering that was brought about by human doing, and therefore could be solved through human betterment. It is no accident that the same animal law activists supported temperance campaigns and the protection of children as well.²⁸ Both of these were understood as man-made problems that were radicalized under conditions of modern industrialization, for which legal prohibition may serve as a safeguard.²⁹ The relation of humans to animal suffering became a shibboleth for the humaneness of society at the turn of the nineteenth century. This ethos, which probably began in England, was spreading throughout Europe. In a famous series of paintings by William Hogarth entitled "The Four Stages of Cruelty," which appeared in 1751, the first stage caricatures different forms of cruelty to animals, while the more

²⁶ Brantz, *supra* note 1, at 180-81.

²⁷ *Id.* at 181. Indeed a fair number of animal protection societies voted against the animal society petitions of 1906 and 1910. See Judd, *supra* note 1, at 128.

²⁸ *Id.* at 119.

²⁹ These societies had several goals. "Resembling associations for the protection of children, mothers, and workers, they sought to advance social welfare through charitable activity, education, and political activism, and to heighten the public awareness of the social problems that manifested themselves in an increasingly differentiated society, and especially in urban centers." Brantz, *supra* note 1, at 170.

advanced stages show how this cruelty spreads to the relationship between humans, including brutal acts of murder, and conclude with the moral lesson that cruelty to any living being is a mark of inhumanity. A century later, in 1865 Germany, Wilhelm Busch famously depicts Max and Moritz, the two youngsters who take sadistic pleasure at torturing Widow Tibbets' poor geese, and whose behavior rapidly escalates into human abuse culminating in their horrifying death as punishment for their inhumanity.³⁰ The animal protection societies initially followed a similar line of reasoning. They promoted anti-cruelty laws not out of concern for animal suffering as such, but rather because acts of cruelty were a sign of general inhumanness. In particular, these laws were limited to acts performed in public, exclusively aiming at the elimination of the spectacle of animal suffering. An effort was made to steer "women and children away from abattoirs, cock fights, and bull-baiting, and it defined unlawful animal mistreatment as that which took place in public."³¹

From the 1870s onward, one may detect a certain shift in the concern for the suffering animals, which has often been described as a turn from a human-centered concern to one that is animal-centered. Indeed, advocates expressed growing anxiety over the existing national code, due to its narrow scope and limited goal of protecting animals only for human needs.³² The German Animal Protection Society (*Verband*) wished to expand the legal prohibitions so that "the animal itself be protected and not only out of regard for the public."³³ Stunning emerged in this context as only one reform sought by advocates of animal protection. In addition, they called for improved methods of transportation used to carry the cattle to the slaughterhouse and the changing of pens that the butchers used to hold down the cattle.³⁴

Without denying the importance of this shift from human-centered to animal-centered motivations, it is perhaps even more important to point out the common ground that determined both political agendas. In many ways the focus remained the same: the suffering of animals caused by human-beings and the identification of progress with the alleviation of pain regardless of whether it was done for the sake of society or for the sake of animals. The main aim was to denounce these activities through the combined enactment of new legislation and improved education. The notion

30 WILHELM BUSCH, *MAX AND MORITZ AND OTHER BAD BOY TALES* (Andy Gaus trans., James A. Rock & Co. Publishers 2003) (1865) (First Trick: The Widow, Final Trick: The Farmer).

31 Judd, *supra* note 1, at 120.

32 Judd, *supra* note 12, at 256.

33 Brantz, *supra* note 1, at 172.

34 Judd, *supra* note 1, at 121.

of progress implied in this struggle was the gradual progress of Man and morality.

Notions of human betterment were employed not only by opponents of *shehitah*. Countering the moralizing of animal advocates, proponents of slaughterhouse regulation responded with their own understanding of political progress. The Jewish community, along with butchers who were trying to protect the venerable tradition of their profession and commercial freedom, used liberal arguments of freedom of religion and freedom of profession to support their rights.³⁵ The protests of the Jewish community were the most vocal. They made claims of equality and demanded emancipation for Jews as a religious minority.³⁶ As one historian observed, "Much like animal protectionists, Jewish communities insisted on progress, but for Jews, social progress entailed greater tolerance, freedom and the right to practice religious traditions without outside and especially state intervention."³⁷

A combination of politics of alleviating suffering with liberal notions of progress can be found in the following petition filed to the Reichstag by Jewish leaders:

[W]e trust that the state will refuse to intrude on religious statutes and hope that the representatives of the German Reich will reject the demands of the animal protection societies, who for the supposed protection of animals against physical torture do not refrain from inflicting an actual severe distress on the conscience of humans.³⁸

The Jewish leaders quite explicitly proposed suffering as the criteria for political reform and compared their own suffering to the suffering of animals, as if there was no stronger argument to be made against the abolition of traditional religious practices than the balancing of the suffering of animals with the anguish of humans.

It is important to note, however, that this form of progressive humanitarianism had relatively restrained ambitions. The aim was not

³⁵ Brantz, *supra* note 1, at 177.

³⁶ "[E]mancipation' lost its older, generally conditioned but exact meaning as the ceremony proclaiming emancipation. The legal institute is absorbed by the temporal design of irreversible proceedings which, by virtue of history, should lead to an ever-extending self-determination of all mankind." REINHART KOSELLECK, *FUTURES PAST: ON THE SEMANTICS OF HISTORICAL TIME* 261 (Keith Tribe trans., MIT Press 1985) (1979).

³⁷ Brantz, *supra* note 1, at 182.

³⁸ *Id.* at 182-83.

to alleviate the suffering of humans and animals as such, but only the excessive suffering caused by human hands. This was a limited search for human betterment that did not seek to alter the conditions of life, but only the habits of human action. This more limited mode of operation had direct implications on the legal instruments employed by the German Society. Reforms turned to criminal law with its relatively limited disciplining ambitions, rather than to regulatory law, with its far reaching dream of social engineering.

Through the use of law, the societies sought the prevention of cruelty to animals, and based their reform on changing specific laws regarding the improvement of transport of cattle, limited shooting of birds, and restricted animal experimentation, or vivisection.³⁹ Individual states adopted animal cruelty legislation, and by the time of unification in 1871 "all German states except the city-state of Lübeck had legal regulations or police orders against animal brutality."⁴⁰

The turning to criminal law and police orders is further proof of the limited belief in the possibilities of social change. Human character could improve but improvement could only take place with time. Humanity could only advance at a given tempo. This modest belief in progress implied an understanding of both human history and animal life as ongoing processes whose pace is limited by natural and historical restrictions. We shall encounter a different understanding of progress later on when we discuss the rising concern with public health.

III. ROMANTICISM AND THE RISE OF THE *VOLK*

The prevention of cruelty and the gradual humanization of modern man were not the only motivations behind the growing support for legal reform of the animal-human relationship. Side by side with the forward-looking progressive ethos of enlightenment, a more conservative agenda accompanied the slaughterhouse reforms. During the turn of the twentieth century, a growing number of Germans became aware of the price of modern development. Those included changes in living conditions, overpopulation in big cities, growing crime rates, unemployment, and declining hygiene.⁴¹

39 GEORG SALKOWSKI, DER TIERSCHUTZ IM GELTENDEN UND ZUKÜNFTIGEN STRAFRECHT DES IN-UND AUSLANDES; INAUGURALDISSERTATION ZUR ERLANGUNG DER DOKTORWÜRDE (1911); see also Judd, *supra* note 1, at 119.

40 Judd, *supra* note 1, at 120.

41 *Id.* at 124.

Conservative ideals and anti-modernistic anxieties were central motivations behind a variety of animal-law reforms in the nineteenth century across Europe. Animal laws were often concerned with protecting this idealized notion of nature including the preservation of the animal world within the new urban setting.⁴² These sentiments, however, did not play a direct role in the slaughter debate. The new conservatism found its expression primarily among anti-Semitic groups.

In the 1890s an important shift took place in the underlying motivations of the struggle for slaughterhouse reform. The earlier petitions of the years 1886-1888 either provided an exemption for Jewish practices or neglected to mention the Jews at all. But after 1890, a growing number of petitions explicitly demanded that Jewish slaughtering be prohibited.⁴³ As opposed to the prevention of cruelty, which was the leading motivation for slaughterhouse regulation during the early years of the debate, from the 1890s onward, the most avid proponents of the regulation of slaughterhouses were not the humanitarian societies for the protection of animals, but rather anti-Semites who seized upon the opportunity to condemn traditional Jewish practices.⁴⁴

The campaign against Jewish slaughter was part of a larger campaign launched by anti-Semitic parliament members against Jewish political emancipation.⁴⁵ Since Jews were often identified with liberal politics and the socioeconomic and political advantages of modernity, the reaction against modernity was also a reaction against the integration of Jews into German society.⁴⁶ During each session, anti-Semitic parties tried to introduce at least one bill before the Reichstag limiting the liberties of Jews. The measure concerning the prohibition on kosher slaughtering was among the most popular, second only to the bill which aimed to restrict Jewish immigration

42 Karl Ditt, *The Perception and Conservation of Nature in the Third Reich*, 15 PLAN. PERSP. 161 (2000).

43 Judd, *supra* note 1, at 122.

44 This is not to say that the *Verband* did not have its own anti-Semitic constituency, but anti-Semitism was not their main motivation. See Brantz, *supra* note 1, at 191.

45 Since this study is devoted to the slaughterhouse debate in the Reichstag, our main attention is devoted to parliamentary anti-Semitism and we will not consider here broader anti-Semitic trends in politics and culture.

46 On the rise of anti-Semitism in German politics and society during this period, see SHULAMIT VOLKOV, *THE MAGIC CIRCLE: GERMANS, JEWS AND ANTI-SEMITES* (2002) (Hebrew); RICHARD S. LEVY, *THE DOWNFALL OF THE ANTI-SEMITIC POLITICAL PARTIES IN IMPERIAL GERMANY* (1975).

from Eastern Europe. The anti-Semites hoped that this measure would succeed, because it would win the support of other political parties.⁴⁷

The anti-Semitic overtones of the slaughter debate became more pronounced following the 1893 election in which anti-Semites gained sixteen seats in the Reichstag out of 399.⁴⁸ The issue of livestock killing was introduced shortly thereafter and for several years parliamentary representatives with clear anti-Semitic agendas lobbied for a ban on Jewish slaughtering.⁴⁹ On one occasion, where the question was actually debated on the floor of the Reichstag, Karl Schrader of the Freethinking Union exposed the underlying motivations that were clear to all: "[A]nti-Semitism was the motivating force behind this proposal and whoever listened to today's speeches will not doubt for a moment that it's not only the interest in animal protection but also the fight against our fellow citizens of Jewish faith that has led to this proposal."⁵⁰

Scholars who have examined the history of animal slaughtering have often seen the anti-Semitic campaign against Jewish slaughtering as opportunistic. As a recent scholar has argued, "Clearly the issue had become a rhetorical battleground for political conflicts that had little to do with the protection of animals but much with the spread of anti-Semitism."⁵¹ Without denying the opportunistic nature of anti-Semitic politics, one may wonder whether there exists a deeper connection between the anti-Semitic intervention in the slaughterhouse debate and the broader questions that concern us here regarding the historicization of politics and the vitalization of life. As we shall see, the anti-Semitic position stemmed from a different relation to time, and specifically from a conservative political agenda, which rejected both the liberal politics of emancipation and the promise of science to diagnose and alleviate animal suffering. Furthermore, underlying the anti-Semitic opposition to Jewish slaughter was a different understanding of life, which was grounded not in humanitarian concerns with suffering, but rather in the organic unity of the German People and fear of its contamination.

At first, and perhaps throughout the debate, the humanitarian concern with the prevention of cruelty was not entirely separate from nationalistic commitments. In fact, the progressive "march to humanity" often took the form of a competition among nations in which the pace of progress became a measure of success. In Germany, as in any other leading European

47 *Id.* at 168.

48 Brantz, *supra* note 1, at 188.

49 *Id.* at 189.

50 *Id.* at 190 (quoting Karl Schrader).

51 *Id.* at 191.

country, anxieties developed regarding the possibility of falling behind other civilized nations (*Kulturstaat*). But in Germany, the ambition to become a leader among the European nations became particularly pronounced after unification (1869-1871).⁵² Indeed, during the 1887 deliberation at the Reichstag, the head of the commission of petitions, Sivijs Goldfus, argued that Germany obviously lagged behind other cultured nations with respect to animal protection. Goldfus compared the situation in Germany to that of Great Britain, Switzerland, and the U.S., and found the latter to have much stricter anticruelty laws.⁵³

Nationalistic motivations had, however, a more conservative side to them, one which was less committed to human progress and more concerned with romanticism and the purity of the nation. German animal protection advocates suggested not only that Germany's moral reputation was at stake but also that if such forms of brutality existed, "they could infect the entire population."⁵⁴ Fears of impurity and contamination did not remain abstract and gained a corporal existence as an accusing finger was pointed to specific social groups, and quite commonly to the Jews, as embodying the danger of racial and moral contamination.

Indeed, in contrast to the *Verband's* progressive ethos, anti-Semites manifested a different, and in many ways diametrically opposed ethos that was based on a reaction to the processes of modernization and an appeal to pre-modern notions of nature, anti-urbanization, and anti-institutionalization, embracing, or perhaps inventing, a past in which a closer relationship existed between Man and Nature, humans, and animals.⁵⁵ As one contemporary scholar observed, "The campaign against kosher butchering shared several themes with the chauvinistic impulse of the time: a concern with Jewish particularity and brutality, a desire to eradicate deviance from society, a longing to return to a "utopian" past, and an anxiety concerning political, economic, and social changes."⁵⁶ Evidently, these anxieties were part of a broader context of political conservatism in which the veneration of nature emerged as a reaction to rapid industrial expansion.⁵⁷ Unequivocal anti-Semitic support for the slaughterhouse reform was voiced by Otto Böckel,

52 PAUL WEINDLING, *HEALTH, RACE AND GERMAN POLITICS BETWEEN NATIONAL UNIFICATION AND NAZISM, 1870-1945*, at 4 (Charles Webster & Charles Rosenberg eds., 1989).

53 Brantz, *supra* note 1, at 184-85.

54 Judd, *supra* note 1, at 122.

55 Brantz, *supra* note 1, at 176.

56 Judd, *supra* note 1, at 124; Judd, *supra* note 12, at 266.

57 WEINDLING, *supra* note 52, at 8.

the first anti-Semite elected to the Reichstag. Böckel, who spent his student years in Marburg studying folklore, exposed the troubles of German peasants in times of rapid industrial development. "Böckel naturally drew a comparison between the idyllic past, which he discovered in folklore, and the woeful present. Eventually this comparison led him into anti-Semitic politics."⁵⁸ Böckel idealized rural life and imagined the peasants as "a Germanic tribe (*Volksstamm*) sedentary for almost two millennia, tilling the soil of their fathers, great in their humble works and holding honorably to the way of their ancestors."⁵⁹ Characteristic of the anti-Semitism of the time was its understanding of the Jewish problem as a national or racial problem and not a religious one. "Proclaiming a nation of Germans, [Böckel] declared that if Jews wanted to be Germans, they had to accept German customs,"⁶⁰ but he never thought that Jews would be able to do so.

In a similar vein, a contemporary scholar has noted that

the dozens of laws concerning *shehitah* that were promulgated between 1890 and 1914 marked a shift in governmental policy toward minorities. As part of a governmental attempt to solve society's "social problem," protect the public's health and delineate jurisdiction over a religious minority, the regulations illuminate the ways in which state and municipal administrations moved from protecting differences to intervening in previously autonomous affairs. This shift toward homogenization was part of a larger trend within the German state in the aftermath of unification and emancipation.⁶¹

In addition to the purity of the nation, another aspect of the anti-Semitic propaganda was a rejection of scientific authority. As previously mentioned, one of the strategies used by proponents of *shehitah* was to compile scientific evidence proving that traditional slaughtering did not inflict more pain on the animal than the new methods of slaughtering. "The experts approached the ethics of killing as a matter of physiology rather than sentiment. They concluded that kosher slaughter should not be considered crueler than other existing methods."⁶²

The anti-Semitic opposition to Jewish slaughtering stemmed from a different connection between the vitalization of life and the historicization of politics. Anti-Semitic politics was based on nostalgia for a lost past

58 LEVY, *supra* note 46, at 44.

59 *Id.* at 46 (quoting Otto Böckel).

60 Brantz, *supra* note 1, at 186.

61 Judd, *supra* note 1, at 135.

62 Brantz, *supra* note 1, at 182.

and a hope for reunifying a fragmented nation. The progress of time was conceived as a process that needed to be stopped and, in fact, reversed, and the life that had to be protected and quite plausibly invented was the life of the people. The law that could accommodate this conservative politics was not criminal law, but "constitutional law," understood as the law that binds a people together. The liberal constitution that offered political emancipation to racial minorities had to be rejected on the grounds that equal rights for Jews threatened the unity of the German people.

The outcome of the Reichstag debates was quite predictable. Though the animal protection societies won the day, the anti-Semitic agenda remained a vocal minority. Their dismissal of scientific discourse and chauvinism toward religious minorities had a backlash effect. At the end of the day, the majority of Reichstag representatives believed that the slaughterhouse should be regulated, but special exemptions should be granted to Jews who wished to maintain their traditional practices. Consequently, and at times even prior to the Parliament's decision, many towns and cities, such as Berlin, enacted special police ordinances that "regulated the swift killing of animals."⁶³ It is to these regulations that we now turn in order to uncover yet another set of motivations for the slaughterhouse reform.

IV. PUBLIC HEALTH AND THE REGULATION OF HYGIENE

The third prominent motivation underlying the struggle for reform was based neither on a humanitarian concern for animal suffering, nor on a romantic regard for nature and nation, but rather on public health and other welfare concerns. This new political agenda offered a radically new approach to the question of life and an ambivalent approach to history. On the one hand, the new politics of life shared the same progressive temporal structure that has been earlier identified with liberal humanitarian concerns; on the other hand, it sought to break away from the limits of progressivism and set its own pace unrelated to the march of enlightenment.

Most prominent, in the politics of public health, were hygiene considerations, which were evoked in support of the prohibition of Jewish slaughter. The symbolic fear of national contamination, expressed by anti-Semites, was replaced by a medical fear of food contamination, expressed by public health experts. While some of these objections cannot be taken at face value and may be understood as covert anti-Semitism, others were

63 *Id.* at 187.

based on more sound grounds. What is important for present purposes is the very fact that public health rhetoric and genuine concern became central in the political debate.

According to opponents of *shehitah*, meat derived by traditional slaughtering rots faster and thus poses a greater threat to public health than the meat of animals that are stunned prior to being slaughtered.⁶⁴ One of the reports presented before the International Society for the Protection of Animals in Dresden by a leading protector of animal rights maintained that

[t]he slaughtering method, known as *shecheta*, in which the cattle are tied and cast down and often violently struggle before as well as after the cut through the neck, seems . . . to be not so recommendable as many have hitherto thought it. . . . The meat of the animal killed by the Jewish method was always the first to become tainted, then came that of the transfixed calf, and the meat of the stunned animal was always the last Thus the opinion, which is still held by many butchers, that the meat of non-stunned animals is more emptied of blood and keeps longer, is totally false; just the opposite is the case.⁶⁵

As we have witnessed with the question of cruelty, advocates of the Jewish slaughter were quick to counter such arguments, claiming quite to the contrary, that not only was kosher slaughtering as safe as stunning methods, but that for a variety of reasons it was safer. These arguments too were supported by scientific experimentation.⁶⁶ Perhaps the most thorough study of the question of animal slaughtering was undertaken by Jacob A. Dembo, a Jewish physician from St. Petersburg, whose work was published in Germany in 1894. Dembo's study is a systematic comparison of the Jewish method of slaughter with other methods. His work is devoted to the exploration and scientific refutation of many of the arguments against the traditional Jewish practice, including humanitarian, hygienic and economic concerns.

Dembo's study of the hygiene issue is of special interest. He explains that after death the body of the animal undergoes a process of death-rigidity in which the muscles become hard and the joints stiff. Due to the high level of acidity in this *rigor mortis* state, the animal flesh is protected against contamination. Thus, the sooner the death-rigidity sets in, the longer the meat will be untainted and fit for use. Dembo then moves on to prove

⁶⁴ Judd, *supra* note 1, at 121.

⁶⁵ Quoted in ISAAK A. DEMBO, THE JEWISH METHOD OF SLAUGHTER COMPARED WITH OTHER METHODS FROM THE HUMANITARIAN, HYGIENIC, AND ECONOMIC POINTS OF VIEW 94-95 (London, Kegan Paul, Trench, Trubner 1894).

⁶⁶ Brantz, *supra* note 1, at 176.

that meat of "animals, which are slaughtered without previous stunning . . . becomes rigid sooner than that of stunned animals,"⁶⁷ leading him to the conclusion that animals slaughtered by the Jewish method have an advantage from the standpoint of hygiene and public health.

The struggle to impose stunning methods was not limited to the traditional Jewish practices of slaughter. Quite to the contrary, the challenge that advocates of stunning had to face was that similar methods of neck-cutting (*Halsschnitt*) were commonly practiced by many Christian butchers, who insisted that their traditional practices were better for a variety of hygienic and economic considerations. As one butcher emphatically confessed,

I am myself not a Jew, but, as is well-known in Berlin, I have for the last fifteen years had just the same instrument used for killing as the Jewish "shochet" or slayer . . . I have during these years weighed many animals when alive and their meat when dead, to ascertain the proportion of meat yielded by the different methods, and I have repeatedly proved to the cleverest and most experienced men in the trade, that the flesh of cut animals keeps much longer than that of stunned.⁶⁸

The only argument that even supporters of the more traditional methods of slaughtering found hard to deny was the gastronomic superiority of meat produced from stunned animals over slaughtered ones, the flesh of the former being "juicier" than that of the latter. Dembo acknowledged this point but underplayed its importance with a snide, "There are certainly a number of people who have a fondness for meat of a *high* flavour (as also for *high* cheese); but such disgusting, nay dangerous, *gôût*, is confined to a few gourmands, whilst the great majority of people could not bring themselves to touch such meat." He thus counters the preference of taste by appeal to dietary logic, and treats Francophile snobbery with the medicine of ridicule.

The concern with public health issues during the turn of the century may be better understood in light of its broader historical context. It was during these years that the German state became ever more involved in the regulation of living conditions. Recent scholarship has dated the rise of the German welfare state precisely to this period.⁶⁹ The emergence of public health concerns was related to what one scholar has termed the "sciencing" of

⁶⁷ DEMBO, *supra* note 65, at 63.

⁶⁸ *Id.* at 51.

⁶⁹ GEORGE STEINMETZ, *REGULATING THE SOCIAL: THE WELFARE STATE AND LOCAL POLITICS IN IMPERIAL GERMANY* (1993). For an account of the governance of society under the "old regime," see MARC RAEFF, *THE WELL-ORDERED POLICE*

health,⁷⁰ and gave rise to a variety of governmental techniques aimed at the regulation of the health environment. Specifically, during these years, "[t]here was a system of medical police with powers to quarantine, disinfect and, in the case of certain contagious diseases and mental illnesses, to detain in custody in hospital. Beyond its policing function, medicine was an agent of informal processes of socialization."⁷¹

The new regulatory regime was aimed both at the regulation of the public health environment and at the regulation of what could be called, by way of analogy, the "moral environment." Indeed, "The activists admonished that the slaughter of conscious animals could affect people's behavior toward one another and lead to domestic violence, verbal abuse, and drunken scuffles."⁷² Thus, the point of departure was no longer the prohibition of individual acts of a butcher, but rather the ordering and reeducation of workers and the creation of safe environments. During the 1890s and the early 1900s, many German towns and states engaged in some form of debate concerning animal stunning and the Jewish method of animal slaughter. The new regulatory scheme had direct implications for slaughterhouse reform, as one scholar has noted:

During this period local, regional and state authorities maneuvered to position themselves as guarantors of social stability The abattoir regulations were part of the impetus by government and science to control a violent space, move it to the city's edge, and regulate its employees and practices. In their efforts to protect the public's health, all levels of government claimed some form of jurisdiction over the abattoir.⁷³

The regulatory framework also meant thinking beyond criminal law prohibitions for the prevention of cruelty, and replacing the binarism of legal/illegal with a more complex set of regulations.

Yet, though hundreds of towns debated possible bans, only 22 prohibited Jews from slaughtering animals according to the Jewish method. Instead, a majority of towns instituted laws that restricted the Jewish rite in a way that did not change the practice completely. These regulations prohibited non-Jews from practicing shehitah, mandated

STATE: SOCIAL AND INSTITUTIONAL CHANGE THROUGH LAW IN THE GERMANIES AND RUSSIA, 1600-1800 (1983).

70 WEINDLING, *supra* note 52.

71 *Id.* at 4-5.

72 Judd, *supra* note 1, at 117.

73 *Id.* at 128.

the licensing of shohtim [butchers], restricted the times when kosher butchering could be performed, limited the number of cattle that could be killed, and demanded improvements in the ways in which animal were restrained before slaughter.⁷⁴

In addition to the public health and moral health arguments, opponents of traditional slaughter raised economic arguments, primarily a concern with the loss of valuable by-products such as blood. This argument, which was not taken too seriously at the end of the nineteenth century, became a central concern during World War I. Yet, even at the time of great need, the Reich Chancellor himself explained,

There is no intention to prohibit Jewish Shehitah also. The preservation for human use of that blood which is now lost as a result of the Jewish ritual Shehitah-cut is not of such vital importance as to justify ignoring the religious oppression of orthodox Jewish fellow citizens and invading the statutes of a recognized religious community in Germany with penal laws.⁷⁵

Consequently, the Bundesrat decree of June 2, 1917, made allowance for the practice of *shehitah* during the war.

What does this new interest in public health regulation, and more broadly the new interest in the state's government of health, urban space, economic scarcity, and the working population reveal about the vitalization of life and the historicization of politics? As mentioned, at the basis of this new political agenda was a radically new understanding of life. Life was no longer identified with "nature" as that which can be improved by human intervention or as that unfettered soil to which modern humanity must strive to return. Rather, life was now identified with the notion of "environment," which implies that power of humanity to create and manage the natural conditions of its own existence. Under this more radical understanding of life, humanity is no longer limited to the gradual pace of progress, and is free to break from history and to create and sustain a new biopolitical environment. This more radical break from history was not part of the public health agenda of the early 1900s, but as we well know, it was soon to become the political underpinning of a rising totalitarian regime.

⁷⁴ *Id.* at 128-29.

⁷⁵ LEWIN ET AL., *supra* note 6, at 26.

V. HISTORICIZING POLITICS AND VITALIZING LIFE RECONSIDERED

The historicization of politics and the vitalization of life are quintessential modern phenomena. Taking the study of modern law and politics seriously requires us to press forward the question of their common ground. Through the close study of the history of slaughterhouse reform we have seen how specific political worldviews correspond to specific notions of life. We have encountered the ways in which animal protection societies, for example, endorsed a progressive political agenda based on the accompanying understanding of life as sentient suffering and on the belief that such suffering could be alleviated through human betterment. Similarly, we have seen how anti-Semitic politicians grounded their romantic worldview on an organic notion of both animal life ("nature") and human life ("volk") and identified a need to preserve these life forms in the face of a modernization process. And finally, we encountered the way in which scientifically-oriented veterinarians and public health officials advanced a regulatory regime based on bio-medical notions of life and on the power to regulate the hygienic environment of slaughterhouses. In all three instances political agendas were translated into corresponding legal instruments, from criminal laws and police ordinances enforcing public morals, through legislation aimed at reflecting national norms, to regulatory regimes governing public health and hygiene.

Beyond the concrete and arguably contingent relationships between different temporal dimensions of politics and different historical articulations of the problem of life, one may wish to raise, by way of a conclusion, a more fundamental question. On what grounds is the connection between the vitalization of life and the historicization of politics at its core made possible? What do modern "life" and "politics" share in common that makes specific combinations of the two so prominent? Though it may be premature, in the absence of further historical research, to establish the necessary connections between the two, some further speculation may be offered.

First, it may be helpful to remember that the historicization of politics is part of the more general modern phenomenon of the historicization of time, as depicted by the philosopher and historian Reinhart Koselleck. Koselleck has shown how "[f]rom the second half of the eighteenth century on . . . [t]ime is no longer simply the medium in which all histories take place; it gains a historical quality. Time becomes a dynamic and historical

force in its own right."⁷⁶ The historicization of time, however, had, in his opinion, clear political implications. After all, if history does not consist of isolated events, but is rather a continuous and, to a certain extent, predictable process, it would make sense for modern citizens to wish to play an active part in bringing this process under their control. It is in this context that Koselleck quotes Lessing's famous characterization of the modern figure who, like the old-age prophet, often "takes well-judged prospects of the future," but unlike the latter "he cannot wait for the future. He wants this future to come more quickly, and he himself wants to accelerate it . . . for what has he to gain if that which he recognizes as the better is actually not to be realized as the better within his lifetime?"⁷⁷

This new understanding of time gave rise to a variety of political approaches. We are used to distinguishing between political world-views on the basis of their substantive political ideals. Koselleck, however, offers us a different perspective on these political forms and gives preference to their temporal structure over their ideological content. Despite their clear differences, liberals, conservatives, and radicals shared the notion of a new dynamism of history against which all types of politics would now have to measure themselves.

[D]isagreement prevailed only on the question of the tempo and the direction which had to be taken. . . . From that time on, historical time exercised a compulsion that no one could escape. It was up to us, wrote Baader in 1834, "to either become masters of time, or revolutionize it against ourselves by neglect of the evolution that it promotes or the reformation which overtakes this."⁷⁸

Thus, the historicization of politics entails both the subordination of political action to overarching historical processes and the active attempt to bring these processes under human control. One may further contend that if the historicization of time lends modern politics and law their temporal structure, then the vitalization of life gives politics and law their vital function, or put differently, "life" in its different forms becomes the *raison d'être* of political endeavors. And by the same token that the turning of history into a process is implicit in a variety of political worldviews, we have seen how the common theme of life as process underlies a variety of political agendas.

The inherent connection between the historicization of politics and the

⁷⁶ KOSELLECK, *supra* note 36, at 246.

⁷⁷ *Id.* at 17-18.

⁷⁸ *Id.* at 258.

vitalization of life could have been formulated in terms of the masked animal hypothesis. One could have argued that the turn of modern politics to the problem of life emerged after modern Man lost his traditional bonds to history. An argument along these lines was advanced by Arendt in her discussion of the bedrock of modern politics, the French Revolution.

Historical rights were replaced by natural rights, "nature" took the place of history, and it was tacitly assumed that nature was less alien than history to the essence of man. The very language of the Declaration of Independence as well as of the *Déclaration des Droits de l'Homme* — "inalienable," "given with birth," "self-evident truths" — implies the belief in a kind of human "nature" which would be subject to the same laws of growth as that of the individual and from which rights and laws could be deduced.⁷⁹

Our historical inquiry has sought to challenge this hypothesis. Though the hypothesis is based on a wide range of historical and theoretical texts and is highly suggestive, in the final analysis it falls short of offering a satisfying account of the connection between the historicization of politics and the vitalization of life. As we have seen, these modern phenomena have little to do with the animalization of humans. First, even if one accepts the dual character of Man, it is not through the allegedly "low," "animalistic" nature of human beings that modernization takes place. Quite the contrary, it is through the higher capacities of humanity, in particular through the uniquely human notions of progress, human intellect, and science and technology that modernization processes are formed. Second, while it is true that human beings have become increasingly concerned with their biological existence and with the well-being of animals, this growing affinity between animals and humans is not a consequence of the relapse of humans into their "pre-given" animalistic nature, but rather follows from a radical transformation of the understanding of both animals and humans. One of the mistakes of the masked animal hypothesis is the assumption that the nature of animals remains a historical constant, while in fact the character of animals has changed along with a change in the character of humans. Third, unmasking humanity and animalization only point to the privative side of modernization, and focus on the sense of loss of history and the degradation of persons into zoological existence. Modernity, however, should not only be understood through nostalgia to days past, but rather through a reinvention and recreation of the human condition of history and

79 HANNAH ARENDT, *THE ORIGINS OF TOTALITARIANISM* 298 (3d ed. 1966).

life. As we have seen, the reinvention of life and history can accurately be described through the desire of modern humanity to bring them under the power of human control and regulation. Finally, the possibility of the subordination of life and history to the human will is not itself dependant on the will of humans but rather on a new understanding of both history and life as *processes*, i.e., as that which is never given but always avails itself to human understanding and making. The changing character of politics and life to historicized and vitalized processes is what allowed them to come under the will of human mastery.

What historicization and vitalization point to is the transformation of both history and life into processes. Though Agamben's interpretation of Arendt and Foucault has emphasized their debt to the masked animal hypothesis, at other places in their writings they clearly acknowledge the radical break between modernity and its past, and more specifically the centrality of notions of process to the independent understanding of modernity.

In her important essay on history, Arendt discusses the connection between history and nature in the following way:

The connection lies in the concept of process: both imply that we think and consider everything in terms of processes and are not concerned with single entities or individual occurrences and their special separate causes. The key words of modern historiography — "development" and "progress" — were, in the nineteenth century, also the key words of the then new branches of natural science, particularly biology and geology, one dealing with animal life and the other even with non-organic matter in terms of historical process.⁸⁰

Process is not merely something that happens in history and life but represents a new way for history and life to be. Process, in this context, has two main attributes. First, the notion that nothing is given, all is in the making. Second, the subordination of a multiplicity of singular events to a general scheme, which is scientifically knowable and manipulable. Process in this sense contrasts not with stagnation or decline, for both already presuppose the notion of process, but rather stands in contrasts to a pre-vitalized life, in which nature is understood as given, and to a pre-historicized time, in which time is comprised of the singular and idiosyncratic events. If for the Greeks, as Arendt points out, life was understood as given, and similarly history was understood through the singular events of great deeds, the coming together

80 HANNAH ARENDT, BETWEEN PAST AND FUTURE: EIGHT EXERCISES IN POLITICAL THOUGHT 61 (1993).

of the life of humans and their history has nothing to do with the collapse of one category into the other, but rather with the binding of the two through a new third.

CONCLUSION

Exploring the various relationships of humans to animals in fin-de-siecle Germany has allowed us to take a fresh look at the two-century-old question, what is modernity? This new perspective has freed the study of modernity from its narrow focus on humanity. Consequently, we were able to reject the hypothesis that modernization is best understood through the humanization of humanity, either in the Kantian sense, in which humanization refers to the human capacity to overcome animality, or in the sense that Agamben extracts from Arendt and Foucault, in which humanization is itself the process of animalization. In both cases humans are understood to be masked animals, and as a result always in danger of regressing back into their natural animal state.

Rejection of the masked animal hypothesis is, however, only one consequence of the new position advanced by this study. Perhaps a more fundamental insight lies in the rejection of the very attempt to understand modernity solely on the basis of its past. Both Kant and Agamben base their analysis of modernity on the dual nature of humanity inherited from the Greeks. While the Greeks may have correctly understood humans to be dual creatures, this historical observation offers limited insight into the study of the present. For both Kant and Agamben, the understanding of modernity is based on the assumption of a world-historical process that is either in ascent or decline, in which modernity simply constitutes one moment. But the ultimate question is whether categories from the past are at all relevant to the understanding of our present. The problem arises regardless of whether one wishes to base such an understanding on notions of progress, decay, dialectic movement, or even on Agamben's more sophisticated, but not necessarily more revelatory, analysis of modernity as a zone of indistinction between animality and humanity. The problem lies in the fact that if modernity, the new-time, is to be taken seriously, it must be recognized as being precisely the moment in time in which the present has divorced itself from the past. Consequently, it would contradict the very notion of modernity if one were to understand the *Neuzeit* through its relationship to any concrete content from the past.⁸¹ Thus, for example, secularization

81 This is not to assume as Blumenberg does that modernity can ground itself. See

theories of modernity, which interpret modern political and legal concepts as secularized theology, are erroneous for not seriously considering the reality of secularization itself — which claims a radical break with all that is religious. More generally, one may argue that modernity is best understood not through a relation to any concrete content in its past, but rather through its structural relation to the past, which constitutes a radical break.⁸² The historicization of politics and the vitalization of life form precisely such a break.

HANS BLUMENBERG, *LEGITIMACY OF THE MODERN AGE* 89-102 (Robert M. Wallace trans., MIT Press 1983) (1966).

82 A similar problem occurs with theories of secularization in which the present is understood on the basis of theological concepts that are taken from a religious past. The problem here too is that if secularization is to be taken seriously, one must accept the unbridgeable gap between the religious and the secular and thus reject any possibility of learning about the present from secularized concepts of the past.