Capture Theory & State Regulation of Animal Cruelty

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In this thesis I theorize that regulatory capture impacts animal cruelty laws in several different ways. Capture theory is the process by which regulatory agencies eventually come to be dominated by the industries they were charged with regulating. Regulatory caput happens when a regulatory agency, formed to act in the public's interest, eventually acts in ways that benefit the industry it is supposed to be regulating, rather than the public. Animal cruelty regulations are an important factor in the way that everyday products are produced. Capture theory affecting animal cruelty is an important look at the growing concern with animal rights. In analyzing the 50 American states for their strength in regulations having to do with animal rights and animal cruelty, many factors have been produced that may influence them. These factors include the size of various industries, political parties, contributions, etc. I anticipate finding that where agricultural products industries are strong; the regulation of animal cruelty will be weak.

Introduction

Animal cruelty, we've all heard it being talked about. Why would someone intentionally hurt a poor animal? How can the government allow this sort of thing to happen? The answer to the first question is that no one, but people with no moral compass, has the intent to inflict harmful damage to an animal just for the fun of it besides those ignorant of an animals suffering. However some farm practices do inflict unnecessary pain, for example the use of electric cattle prods to get cattle to move in a certain direction., such as those seen in the calf shuts in rodeos such as the Buckhorn Rodeo in Britton SD. Other things that could be considered cruel are things such as living conditions, and the separation of cows from their calf. These practices then may fall under the government's regulation. To answer the second question however is a bit more complicated. For this, one must not only look at legislation passed and proposed but also to the agencies. There are many moving parts in regulation of animal cruelty laws, and what certainly plays a part is the flow of money into the state from special interest groups. These groups can range from People for the Ethical Treatment of Animals (PETA) and the American Society for the Prevention of Cruelty to Animals (ASPCA) to the Livestock and Dairy Industries.

Through donating money these groups could potentially capture agencies and legislators and push laws and regulation favorable to themselves. These groups donate money to hopefully lobby for laws that benefit each individual group including PETA and ASPCA.

Framework

Federal

Federal regulation encompasses all states and provides the base layer of animal welfare policies. The federal government is important in this aspect as it provides that all animals in all states receive at least a certain minimum amount of protection. Federal protection, however, still varies on the use of the animal, the type of animal, and whether it's being sold or not. As such, research facilities will differ from farms, and animal dealers will differ from animal owners. The federal government regulates animal welfare through the United States Department of Agriculture and specifically under the Animal Welfare Act. (Agriculture, 2013)

The federal government started producing animal welfare regulations during the 1800s. Some states enacted laws in the early nineteenth century making it a misdemeanor to harm animals. These laws may not have been very effective, however, they were the start. Henry Bergh, the founder of the American Society for the Prevention of Cruelty to Animals (A.S.P.C.A), wrote the first effective legislation against animal cruelty on a state level in New York. He then started to mold the early anti-cruelty statutes on the federal level. The first law enacted by the federal government was adopted to address the issue of the abandonment of animals, this was enforcement by local law enforcement because the federal government doesn't had much for law enforcement. City police officers, sheriffs departments, or other law enforcement agencies could not efficiently arrest or charge persons of animal cruelty in the

nineteenth century. Since the first legislation passed on the federal level in the early nineteenth century, it was still a slow start. No legislation was passed until the Federal Humane Slaughter Act was passed in 1958, followed by the Animal Welfare Act of 1966. . (Vivien, 1993)

Recently Congress has made progress on animal cruelty laws. However, they have left the specifics to be enacted by the states. This type of federalism insures states rights but also allows for laws to vary state to state and still protects the animals. The ability for states to implement regulation that is more stringent than the federal regulation, allows for groups in the interest of the meat industry to be more involved. The involvement by these organizations occurs on the federal level to reduce the national regulation and on the state level to maintain the low regulation in some states. This split level of regulation creates a larger window for these groups to play a more prominent role in determining legislation for or against animal cruelty in specific states with already low regulation, which still protects animals to a certain degree. (Gluck, 2014)

State Policies

In 1821, Maine was one of the first states to enact any form of a law to protect against animal cruelty. Following the creation of this law, in 1829 a handful of states and territories, including Minnesota, enacted an anti-cruelty statute. These statutes were improved in 1867 through Henry Bergh and the A.S.P.A's work to improve the lives of animals. However, the different states court interpretations' of these early statues are difficult to see because there are few documented cases that made it to the appellate court. The main function of these early court cases related to animal welfare, and was to define the word 'cruelty' and to determine which animals fell under these protection laws. In the early years of animal welfare law, the main

difference was not because of agriculture organizations or animal welfare groups, but because of court rulings made by the state courts at that time. (Kruse, 2002)

In many states, animal cruelty laws have been in place since the 19th century. While early versions of the laws dealt exclusively with cattle and livestock, today most states cruelty laws protect a variety of animals from inhumane treatment. Together civil and criminal laws have been ratified to govern the treatment of animals, and together these laws; outline which actions are cruel, clarify what punishment or penalties can be imposed against those who cruelly treat animals, and designate minimum care requirements for impounded and wild animals. Generally, state criminal cruelty laws are broad and written in such a way as to protect every living creature or every living vertebrate, except humans. (Ravencroft, 2002) In a handful of states, the laws are classically circular and exclude certain types of animals from the applicability of cruelty laws. These laws, however, are not common. For the most part, these state laws do not differentiate between wild or domesticated animals, and the protection presented by these laws would cover both types of animals. Unlike the criminal requirements, the civil statutes do not differentiate between domestic and wild animals, nor do they utilize any type of custody test. As a result, people could theoretically engage in actions that are not prosecutable under a state's criminal laws, but they would be held liable for their actions under that state's civil laws. This separation of law allows for more holes to slip through. (Ravenscroft, 2002)

In the modern era, many states have very similar animal cruelty and animal welfare laws, to each other.. Some states might lag in adopting some of the more stringent laws such as making animal cruelty a felony. But since 2014, when South Dakota became the last state to pass a law deeming animal cruelty a felony, all states in the union now classify animal cruelty as a felony. Probably the greatest similarity between the states is the lack of enforcement. Even when laws

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are passed, they may rarely be enforced. (SD Lawmakers Approve Making Animal Cruelty A Felony, 2014) This tends to be because police and county sheriffs' offices typically give low priority to animal cruelty cases, and seldom start prosecutions.(Kruse, 2002) Much of the enforcement of anti-cruelty laws thus falls to the local humane societies and similar organizations through civil courts. They implement these laws by suing a person, or group of persons, on behalf of the animal that was neglected or abused. Since most groups that defend animals are privately funded through donations, money is a continual problem. Even when investigations are begun, prosecutors often shy away from trying cruelty cases fearing they are a waste of time and money. (Kruse, 2002) (SD Lawmakers Approve Making Animal Cruelty A Felony, 2014)

Each state's animal cruelty laws reflect its general belief about the inhumane treatment of animals. This is why some states do not have strict felony animal cruelty laws and why other states reserve its harshest laws for specific animals, such as companion animals. Regardless of differences in every state, most animal cruelty laws generally serve two main purposes: to protect animals and to conserve public morals. The different states may even have very similar wordings and intentions as most were written around the same time, had similar revisions, and strive to accomplish the same thing. However the application of such laws can vary greatly state to state. (Iannacone, 2011)

The differences between the states can be seen from the Animal Legal Defense Fund's ranking of the states from best to worst animal cruelty laws. These rankings place states into three different tiers. The upper tier consists of the states that have the best laws for the protection of animal welfare, this tier includes states such as: Minnesota, California, Illinois, and Maine. The middle tier consists of states that have a lower quality and quantity of laws to protect animal

welfare, this tier includes states such as; Texas, Oklahoma, Wisconsin and Virginia. The bottom

tier consist of the states with the fewest and lowest quality of animal welfare laws, this tier

includes; New Mexico, Georgia Kentucky, both Dakotas and New York. The list is ever

changing as states enhance and upgrade their laws. States that stay static fall in this ranking

system as New York did from 2008 to this recent 2014 ranking. (Fund, 2016)

Capture Theory

Capture Theory is a form of political corruption that occurs when a regulatory agency

created to act in the public interest, instead advances the commercial or political concerns of

special interest groups that dominate the industry or sector the agency is charged with

regulating. Regulatory capture is a form of government failure; it creates an opening for firms or

political groups to behave in ways injurious to the public. (Stigler, 1971) Most commonly

captured agencies are thought to be captured by organizations in industry and on the economic

side of government. Large organizations and interest groups on the side of the pork industry,

beef industry, and chicken industry, are the groups and organizations trying to potentially capture

agencies and limit animal cruelty regulation on each industry respectively. (Stigler, 1971)

Two main alternative views of the regulation of industry are widely held. The first is that

regulation is instituted primarily for the protection and benefits of the public at large or some

large subclass of the public. In this view, the regulations, which injure the public, are costs of

some social goal or occasionally, previsions of the regulatory philosophy. The second view is

essentially that the political process defies rational explanation: "politics" is an imponderable, a

constantly and unpredictably shifting mixture of forces of the most diverse nature. Each of which

could be influenced by money. (Stigler, 1971)

In his argument against Stigler's Capture Theory, Peltzman talks mostly about how groups could benefit from their agendas being pushed through and how it wouldn't only help them economically. In his argument if a group in the interest of beef prevented regulation of animal cruelty laws in a certain state, it would benefit both the pork industry and poultry industry. However, Peltzman does not take into consideration which industry is dominant in each state. Take a state that has a strong pork industry, the prevention of legislation to protect farm animals would help the beef industry and poultry as well as pork. However, since those other groups are fringed in that state they wouldn't receive the economic benefits that the pork industry would. Another example would be a state dominated by the poultry industry allowing more regulation of hooved animals, but not allowing regulation of winged livestock. This would benefit the poultry industry significantly since the other groups would be under more scrutiny. (Peltzman, 1976)

There are two clear patterns regarding interest group participation in agency rule making. The first pertains to interagency comparisons. Most regulatory agencies have extremely limited participation by public interest or citizen advocacy groups and fall into this category and could be influenced by money without revealing its source. However, the second pattern includes public works agencies. In this second pattern commenters are abundant and able to make donations that affect how such agencies work, as part of the norm. (Golden, 1998)

Data Analysis

In this I am looking at the milk industry, poultry industry, and beef livestock in a variety of assessments. I have complied data relating to each industry which includes money that the industry has brought into the state, what they have contriubted to law makers, and how large the

industry is in each state. I have also complied from the states is their ranking on the strength of their current animal cruelty laws as well as if the states have passed an ag-gag law. I analyzed this data to determine if states with larger agricultural industries have less animal cruelty laws than those with smaller industries.

Methods and Analysis

In doing my data analysis I have chosen to use a few different independent variables and correlate them with a dependent variable. In this analysis the independent variables I have chosen to use are; dairy and poultry contributions to states legislators, and amount of livestock in heads of cattle, as well as the dependent variable used in this analysis of whether or not an ag-gag law had been passed in the states. Another dependent used in my research is the amount spent by each state on regulations, inspections, and construction of structures and practices pertinent to agriculture.

My hypothesis is that states will have lower restrictions on animal cruelty laws and animal rights will receive more money from the dairy industry. Thus a state is captured by the regulatory capture theory. The dairy and poultry contributions variable are from Followyourmoney.org, which tracks different amounts of money for different variables that you can chose from.

These independent variables I used in my data analysis are important for my hypothesis because it shows how money was giving to states from the dairy industry. My other independent variable was from information from cattlenetwork.com. This is an important variable because it indicates how many head of cattle are in a particular state. My dependent variable, Ag-Gag laws, is from aspc.org, it is a map of the United States and it lists whether a state has passed, failed, or has not yet attempted to pass an Ag-Gag Law. My final variable, the amount spent on regulation,

inspection, and construction, I gathered from Census of Government Using this I analyzed how much each states spends on these actions and how it compares to both poultry contributions and cattle headcount. For this analysis I mostly used the binning feature and crosstabs to create readable tables that correlate with each other in most creating evidence to my hypothesis.

The first crosstabulation I created to compare Ag-Gag Law and contributions from the dairy industries. I suspected that the states that received more money from the dairy industries would be more likely to pass an Ag-Gag law, or at least attempt to do so.

(Figure A about here)

The results that I acquired from this table is that when dairy industries contribute low amounts of money, there are fewer attempts at creating ag-gag laws. When there is a higher amount of money contributed the more likely to not attempt to pass a bill. The more money contributed the more likely the state is to TRY to pass a bill.

For the second table the figure uses the same dependent variable but a different independent variable, which was head of cattle per state. For this table I suspected that the states that had larger number of cattle would be more likely to pass an ag-gag law, which would favor the livestock industry, or these states would at least attempt to do so.

The results that I acquired from this table of data are similar to table A. With larger amounts of cattle per state leading to more attempts to pass an ag-gag and a higher percentage of passing at each level.

(Table B about here)

The scatter plot compares the amount of money spent in each state per person on regulation, inspection, and construction and compared it to the head of cattle per state.

(Figure 1 about here)

The results were that is a state had zero cattle the state would then spend ninety-five dollars and three cents per person. However per one hundred thousand cattle, the state spend one dollar and one cent less. The graph shows decline in money spent when the industry is larger in a particular state.

For my second scatter plot I compared the amount of money spent in each state per person on regulation, inspection, and construction and compared it to poultry contributions.

(Figure 2 about here)

The results from this scatter plot shows that when the poultry industry contributes zero dollars to a state, that state then spends eighty-one dollars and thirty-one cents per person on regulation, inspections, and construction. However per ten thousand people, the states contribute four dollars and twenty-seven cents less. This graph shows a downward slope as poultry contributions goes up, what the states spend on regulation, inspections, and construction goes down.

Conclusion

The differences between states on animal cruelty can be linked to the presence of captured agencies as capture theory suggests. These agencies get pushed and lobbied into opposing legislation for more regulation on animal welfare and proposing legislation for deregulation. The states differ from each other, as it is easier to capture smaller more locally run agencies than an agency as large as one of the federal agencies. Once a certain state's agency is captured the organization(s) can push any regulation they would like into law.

Table A-

Crosstabulation of Ag-Gag Per Dairy Industry Contributions

	< $1,500	$1,500-$11,750	> $11,750	Total
PASS	0	2	3	5
	0.0%	15.4%	23.1%	12.5%
FAILED	4	6	7	17
	28.6%	46.2%	53.8%	42.5%
NO ATTEMPT	10	5	3	18
	71.4%	38.5%	23.1%	45.0%
	14	13	13	40
	100.0%	100.0%	100.0%	100.0%

Table B-

Crosstabulation of Ag-Gag Per Cattle Head Count

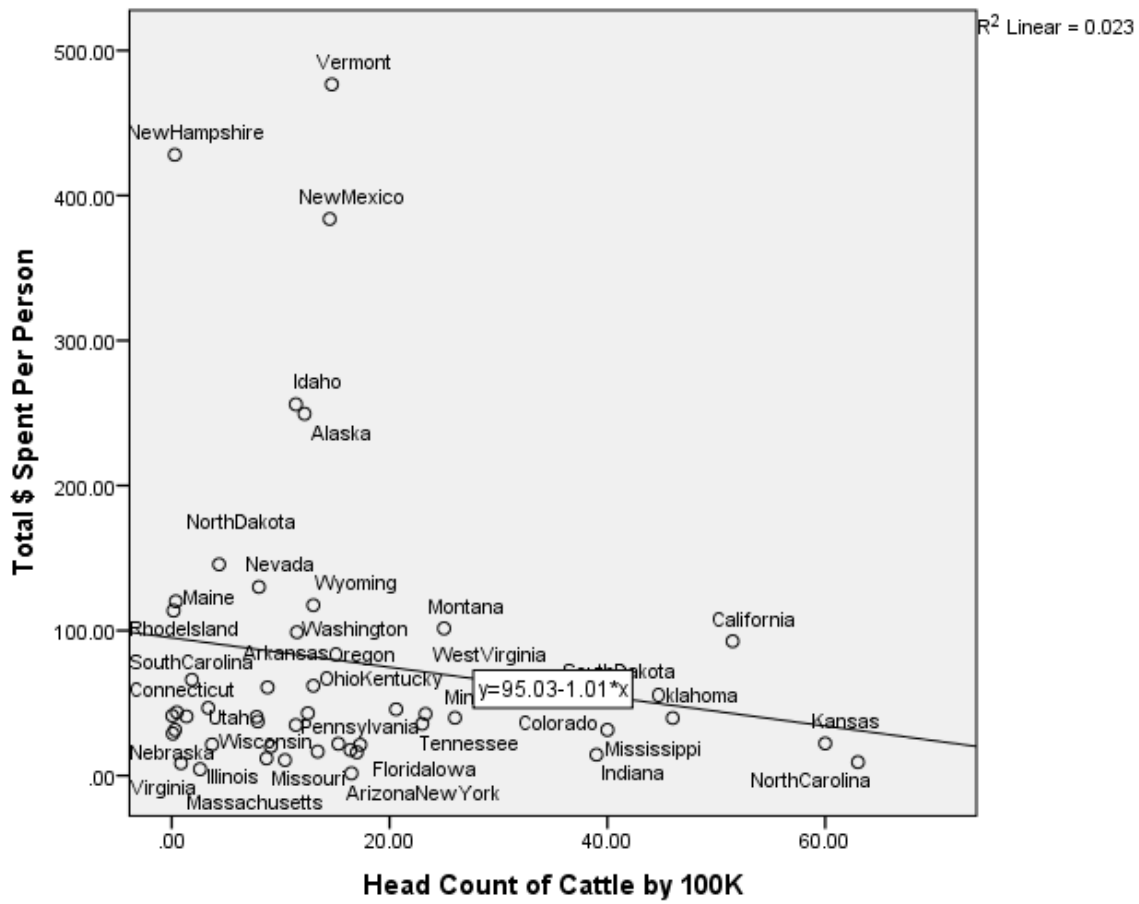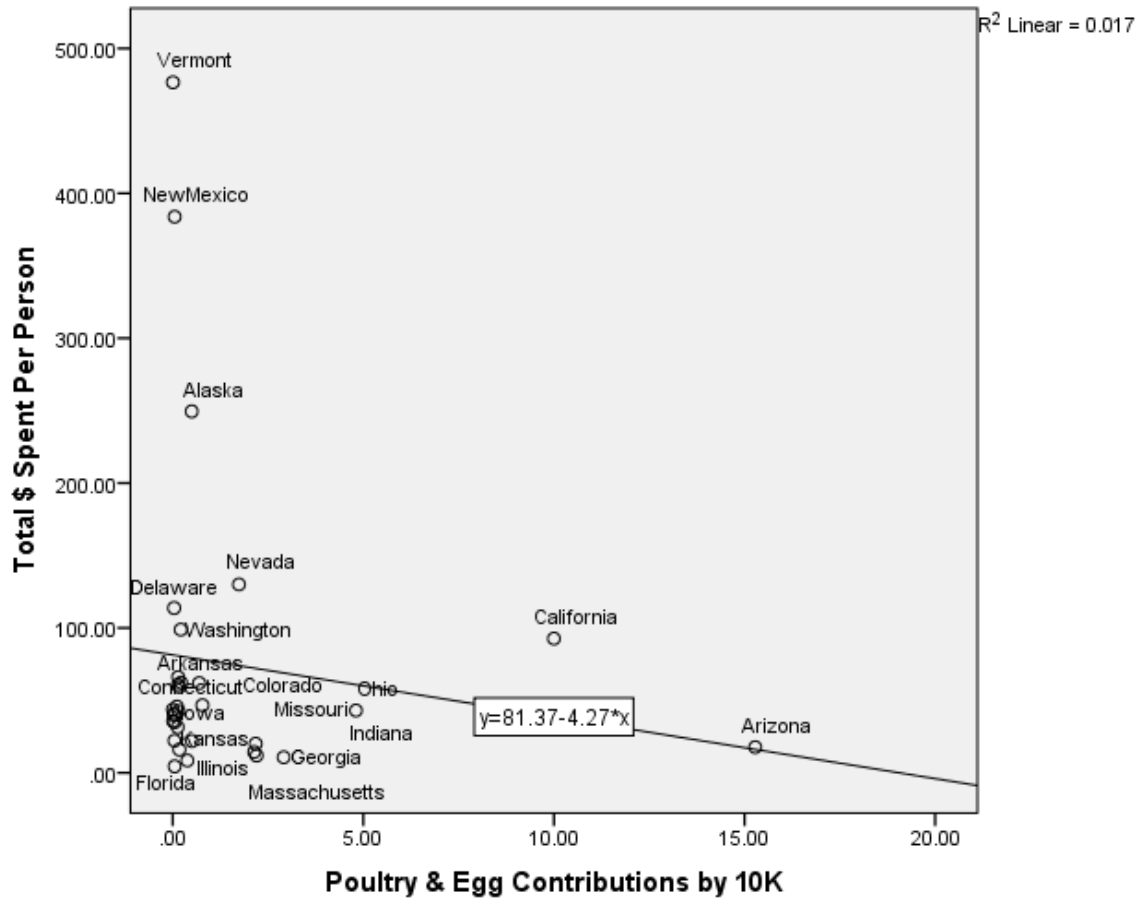|	<800,000	800,000-1,650,000	1,650,000	Total
PASS	2	4	2	8
	11.8%	23.5%	12.5%	16.0%
FAILED	1	6	10	17
	5.9%	35.3%	62.5%	34.0%
NO ATTEMPT	14	7	4	25
	82.4%	41.2%	25.0%	50.0%
	17	17	16	50
	100.0%	100.0%	100.0%	100.0%

Figure 1-

Figure 2-

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