

Having Your Day in Court: Judicial Opportunity and Tactical Choice in Anti-GMO Campaigns in France and the United Kingdom

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Abstract

Investigating the recent direct action campaigns against genetically-modified crops in France and the UK, we set out to understand how contrasting judicial systems and cultures affect the way that activists choose to commit ostensibly illegal actions, and how they negotiate the trade-offs between effectiveness and public accountability. We find evidence that prosecution outcomes across different judicial systems are consistent and relatively predictable, and consequently argue that the concept of a 'judicial opportunity structure' is useful for developing our understanding of social movement trajectories. We also find that these differential judicial opportunities cannot adequately account for the tactical choices made by activists with respect to the staging of covert or overt direct action; rather, explanations of tactical choice are better accounted for by movement ideas, cultures, and traditions.

Keywords: Social movements; prosecution; judicial systems; tactical choice; GMOs.

This article examines an empirical puzzle that arises from differences between campaigns of sabotage against genetically-modified organisms (henceforth: GMOs) in the United Kingdom and France, since 1997. In France, most activists committed open, public, mass ‘civic disobedience’ against GM crops, in broad daylight, as part of a nationally coordinated citizens’ campaign. But in the UK, activists were split between accountable, public, and symbolic actions, and covert, anonymous, usually nocturnal, destruction. Most ‘crop-trashing’ in the UK was covert, and most activists preferred to avoid arrest and trial; most crop-trashing in France has been overt, with most activists accepting arrest and trial as a necessary cost of their action. How can we account for these tactical divergences? Given the similar strategic aims of crop-trashing, we aim to do so by looking at one highly relevant area of systemic difference between France and the UK: the structure and operation of the criminal justice system. We thus investigate how an external structure (the judicial system) interacts with internal ideological debates to explain differences in the tactical choices made by movements.

Why accord such importance to the criminal justice system? Clearly, it will be of relatively minor (though, clearly also, not nil) significance for collective actors not engaged in direct action. However, for policy-oriented campaigns of deliberate law breaking, the criminal justice system provides a crucial site of intermediation between state and movement; it is logical to assume that where actors are (i) involved in illegal activity with the goal of achieving policy change and (ii) seeking to minimise the costs and maximise the advantages of their action, the operative judicial system will be a key factor in (a) the decisions made by movement actors to undertake illegal action, (b) the design of the action, and (c) the consequent positions adopted by movement actors with respect to judicial proceedings. We might thus expect that given the nature of the campaigns against GM crops, activists who

have chosen a strategy based on direct action (and thus which is likely to lead to arrest) will choose tactics likely to maximise their success chances in relation to the judicial system. But we expect also that collective identity – ‘the shared definition of a group that derives from its members’ common interests and solidarity’ (Taylor, 1989, p.771) – is likely to be crucial to the way that movements negotiate their choices within these structural contexts (Polletta & Jasper, 2001; Armstrong & Bernstein, 2008; Taylor, 2010). Movements, after all, often differ internally over both strategy and tactics, and these differences suggest that ideas play a role in determining what actors see as appropriate forms of action (Smithey, 2009). As Johnston argues,

most scholars would probably agree that a complete analysis of social movement mobilization requires some mix of elements focusing on perception/interpretation [...] as well as those elements that capture the compelling and constraining qualities of ‘hard’ institutional arrangements – meaning opportunities that compel action straightforwardly and threats that constrain automatically – both requiring little interpretative creativity. The question is how to sort out the appropriate mix. (2011, p.49)

In practice, efforts to do this are very rare, probably because it is very difficult to do with any clarity: a mix of institutional determination and contingent interpretation militates against clear causal analysis. We seek to overcome this difficulty through a close comparison of crop-trashing in the UK and France, testing two rival hypotheses: that (i) external (judicial) institutions and (ii) movement ideas are the decisive factors in explaining the tactical choices of activists. We proceed therefore by the method of paired comparison. As a comparative method, this has some advantages over both single case studies and large n comparisons

(Tarrow, 2010, pp.243-6); first, because it allows for more intimate analysis based on deeper background knowledge than is available in the latter method; second, because it enables the assessment of the impact of a single variable or mechanism (in this case, judicial institutions) across systems, which the single national case study is unable to achieve. Our comparison is therefore based on a ‘most different cases’ research design.

In section I, therefore, we briefly discuss the importance of criminal justice systems to the institutional contexts of social movements, before setting out the key differences between the organization and operation of the judicial systems in the UK and France. The British and French judicial regimes are each the mother lode of a distinct legal tradition: civil law in France, and common law in England (and Wales). Balas *et al* (2009) underline that substantive and procedural legal rules and regulations differ systematically between countries that have adopted these traditions; systemic differences include approaches to collecting evidence, the importance of trial, the selection and function of judges, the degree of procedural formalisation, the importance of case law, and the role of juries (see also David & Jauffret-Spinosi, 2002, pp.10-11). Moreover, comparing British and French anti-GMO activism in English and French judicial settings provides us with a third, ‘control’ case, because Scotland’s judicial system is a ‘mixed jurisdiction’, combining elements of both legal traditions. We set out our hypotheses at the end of section I.

In section II, we test these hypotheses, drawing the contours of the anti-GM crop campaigns in France and the UK, discussing the staging of direct action, and subsequent prosecutions. In section III we discuss movement debates about attitudes towards arrest and trial, paying particular attention to debates over public accountability in each movement. Our data is drawn from over ten years of study of environmental protest in the UK and France, including

interviews with movement activists, observations of activist meetings and criminal trials, supplemented by reports drawn from the activist and mass media (for our previous work on these and related movements, see Doherty, 1999; 2003; 2007; Hayes, 2002; 2006; 2007; Doherty & Hayes, 2011). Data for the UK draws on material from a research project on UK environmental direct action, which involved a close reading of activist newsletters, and interviews with fifteen activists; data for France is derived from similar sources and processes, including eleven interviews with key informants.¹ Following the completion of the research we carried out follow-up interviews, and an extensive survey of newspaper reports in the British and French press. All the written sources we cite are publicly available, but interviewees' names have been anonymized, except for publicly recognised figures.

I Structuring Difference: Criminal Justice Systems, Legal and Judicial Opportunity

The literature on political opportunity structures counts the independence of the judicial system as a key variable in its determination of state capacity (Tarrow, 1998; Meyer & Minkoff, 2004); states which have an independent judiciary and where there is extensive legal codification offer greater checks and balances on executive power. Consequently – and bearing in mind that this is but one variable within a complex series – challenging groups may enjoy greater opportunities for effective opposition to governmental policies, projects, or programmes, and may further be reasonably expected to adopt more moderate forms of protest. However, where states do not have a fully independent judiciary or extensive legal codification, opposition movements have fewer systemic means for opposition or redress. Where effective opportunities are lacking, social movements can be expected to adopt more conflictual forms of protest and develop dissent on specific issues into more general critiques of the political system (Kriesi *et al*, 1992; Duyvendak, 1995).

The judiciary is thus typically associated in political opportunity analyses with the strength or effectiveness of policy implementation (Kitschelt, 1986, pp.63-5). Discussion of potential systemic openness and exclusion focuses on the legal instruments available to either the state (such as injunctions) or to protesters (such as the codification of rights, or the development of, say, environmental law; see, for example, Dryzek *et al*, 2003, pp.30-4, pp.50-4). Legal and judicial systems are thus important to our conception of movement mobilization, although they have received relatively little sustained attention in this context.

Where analysis has examined the relationships between social movements and the law, the predominant focus has been on 'legal mobilization', where 'law provides both normative principles and strategic resources for the conduct of social struggle [and] is mobilized when a desire or want is translated into an assertion of right or lawful claim' (McCann, 2004, p.508). A series of collections brought together by Sarat and Scheingold (1998, 2005a, 2006) has examined the role of cause lawyers in such mobilizations, stressing not only their advocacy but also their ideological contribution, helping movements 'define the realm of the possible' (Sarat & Scheingold, 2005b, p.10). Stressing a bottom-up, 'support-structure explanation' for the 'rights revolution' of increased judicial attention to and support for individual rights that has taken place in the USA over the past fifty years, Epp (1998) also underlines the key role played by rights-advocacy lawyers in bringing this about, in conjunction with the development of movement organizations articulating rights claims.

Within this tradition of legal mobilization, a number of commentators have recently argued that the concept of legal opportunity structure should be seen as distinct from political opportunity structure, and can provide a more thorough understanding of the role of legal

strategies in protest (Hilson, 2002; 2009). For Andersen, legal and political opportunity are differentiated by framing operations: movements engaged in litigation are constrained in their interpretive schema, such that they ‘must articulate their claims so that they fall within the categories previously established by an amalgam of constitutional, statutory, administrative, common, and case law’ which in turn ‘shape the progress and outcome of movement claims in important ways’ (2006, p.12).

The contributions of the legal mobilization literature to our understanding of the interplay between social movements and the law are important ones. However, the predominant focus here is on *litigation* as an *offensive* tactic. Analyses typically focus on the furtherance of rights-based claims making, particularly in the context of judicial review and constitutional courts (e.g. Smith, 2005; Andersen, 2006; Wilson & Cordero, 2006; Barclay *et al*, 2009; Vanhala, 2009a; Vanhala, 2009b); there is a focus on North America. Explicitly cross-national comparative analysis is rare (Epp 1998 being an exception). Explanations of activist tactics within contrasting judicial traditions and systems has been curiously overlooked, with systemic differences typically situated at the macro-level, such as between liberal and authoritarian regimes (e.g. Sarat & Scheingold, 1998).

Our paper proposes two developments of this literature, therefore: we compare movement activism in the specific context of contrasting judicial systems; and we focus on cases where social movement actors come before the courts not for reasons of *litigation*, but rather for those of *prosecution*, for their involvement in direct action. This question seems to us to be all the more important because, as Barkan points out (2006, p.183), the prosecutions and trials of political activists are ‘normal events in the life cycle of many protest movements’. Yet – Barkan aside – prosecutions for collective action have rarely been investigated within

the social movement literature, whilst the tactical, discursive and ethical problems and possibilities posed by defences against prosecution entail a different set of opportunities from those of ‘legal opportunity’, for two reasons.

First, this is because prosecution and litigation bring movement actors into different cultural and legal arenas. Second, this is because it is important to separate judicial from legal opportunities in *movement* terms. Vanhala includes acts of civil disobedience in her discussion of litigation strategies (‘reactive litigation’), but also recognises the division of labour within social movement campaigns, with some groups adopting direct action and others lobbying or litigation strategies (2009a, p.741, p.752). As the argument we develop here will suggest, it is important not to reduce direct action *a priori* to a form of civil disobedience, a concern with rights, or a desire to force a change in the law. It is also important to underline that direct action and litigation imply different skillsets, mobilising frameworks, resources, and institutional relationships. Indeed, as Ollitrault (2008) underlines with respect to the French environmental movement, the development of legal strategies by social movement actors implies both their progressive institutionalisation and the existence of a membership with specialized resources. In contrast, actions which result in prosecution in the courts require (at least *a priori*) few specialised resources, and are open to mass collective participation. To borrow Zirakzadeh’s phrase (2006, p.5), participants involved in disruptive action walk on a different side of the legal fence from those involved in litigation.

Comparing France and the UK is thus intriguing given the very different judicial systems and cultures which prevail in these two countries. Of course, there are some similarities between the English and French systems which are particularly relevant to direct action: in both countries, activists arrested for the same offence are tried collectively, and have the option of

mounting a 'lawful excuse' defence (under the 1971 Criminal Damage Act in England and Wales, or by invoking an *état de nécessité* under article 122-7 of the penal code in France). Activists can therefore argue (as crop-trashers have in both countries) that a given act of law breaking was committed in order to stop a greater one; they may also call witnesses to contextualise and substantiate their defence. Beyond these important commonalities, however, there are significant structural differences between the two systems.

The first relates to the operation of juries. The common law tradition asserts individual freedoms over state prerogatives: the principle of jury trial delegates control over adjudication to the 'lay judges' of juries (La Porta *et al*, 2002, p.8). In England, this option is open to activists brought before Crown Courts, though not for minor criminal offences, which are heard without a jury in Magistrates' Courts (where criminal damage is involved, the figure of £5000 acts as a threshold; jury trials are only possible only where damage is estimated to be above this figure). In France, juries only operate in the assize courts (*cours d'assises*), which deal with major criminal cases ('crimes', defined by prospective sentences of at least ten years in prison). Less serious offences ('délits') are held in *tribunaux correctionnels* before a magistrate, normally accompanied by two assessors. For anti-GMO activists prosecuted in France, therefore, there is effectively no option of a jury trial; verdicts are handed down by magistrates. A second important distinction concerns the importance of precedent. Case law, or the body of law as derived from the decisions and practices of the courts, is the cornerstone of the English common law system (Simpson, 1973, p.94; Wesley-Smith, 1994, p.8), which thus grants considerable discretion and independence to judges (though in routine criminal cases, English courts are bound by precedent from higher courts). In contrast, the civil law tradition conceives law as a system of rules, the imposition of statute (La Porta *et al*, 2002, p.9). As a result, jurisprudential reasoning plays a minor role only in

French civil law; formally, French judges enjoy neither significant levels of freedom from political interference nor flexibility and power to shape the law through their decisions. Judicial independence in France remains frequently compromised by explicit government intervention in the terms of prosecution and the application of sentences (there is, indeed, substantial evidence of direct ministerial intervention in both policing and judicial decisions on anti-GMO activists, for example).

Scotland provides an intermediate case. It has a mixed legal system: its post-Renaissance foundations are based, like the French civil law tradition, on Roman law; but, in contrast to the Napoleonic codification of civil law at the heart of the French tradition, Scottish law remains uncodified and, following the 1707 Act of Union with England and the Napoleonic wars a century later, its subsequent development has been highly influenced by the English legal tradition (Tetley, 1999; Walker, 2001). For our purposes, the mixed nature of the Scottish system provides a control for our investigation of the influence of criminal justice systems and activist ideas on tactical choice. Whilst anti-GMO activists in Scotland belonged to the same networks as those in England and Wales and are thus part of the same national anti-GMO movement, the court procedure in criminal cases differs in Scotland from that in England and Wales, and in key respects is structurally similar to the French procedure: jury trials are only available in Scotland for serious crimes ('solemn procedure'), whilst less serious crimes (those for which the maximum penalties are twelve months in prison and a £10,000 fine) such as crop-trashing are judged either by a magistrate or justice of the peace sitting alone, or by three justices of the peace sitting together ('summary procedure'). Comparison with the tactical choices of Scottish activists should therefore enable us to control our findings from the English and French cases.

What then can we expect the effect of these structural and operational differences to be on the conduct of illegal direct action against GMOs in Scotland, France, and England? We suggest that it produces a first set of two hypotheses concerning what we might term a *judicial opportunity structure*:

P1. the structural differences between criminal justice systems will have a significant impact on the prosecution outcomes of activists tried for non-violent direct action;

P2. In seeking to undertake an effective direct action campaign, activists will make tactical choices which reflect these differential success chances.

II Comparing Anti-GMO Movements

Crop-trashing has taken place in several European countries, but to date by far the most sustained campaigns have been in the UK and France. Since 1997 in both countries, activists have carried out numerous actions against open field trials of GM crops, authorised on a pluri-annual basis by the respective bio-scientific regulatory authorities of each state, and managed by public research institutes and/or bio-technology multi-nationals (such as Aventis (later Bayer), Monsanto, Pioneer, BASF, Limagrain, Syngenta). In France, activists have also targeted plantations of Monsanto MON810 corn, as commercial cultivation – previously negligible – increased dramatically between 2005-7. Since the end of the main crop trials in the UK in 2003 and an effective moratorium on GM crops in France since 2008, there has only been sporadic action, as the cultivation of GM crops has been in abeyance in both

countries (though there is considerable direct action in France against some sunflower strains considered by activists to be ‘second-generation’ GMOs).

Direct action against GM crops in the UK and France was only one part of a broader campaign in which NGOs, independent scientists, and consumer groups lobbied government, biotech corporations, and food producers, and engaged in public information campaigns. This broad anti-GMO movement developed apace within the EU once GM soy beans began to arrive in European ports in 1996 (Ansell *et al*, 2006; Schurman & Munro, 2009). Greenpeace was a leading and early actor in the anti-GMO campaigns across Europe, organising blockades at ports including Liverpool and Saint Nazaire in 1996, and co-ordinating transnational action at EU level (Purdue, 2000; Ansell *et al*, 2006). Greenpeace UK carried out a high-profile crop-trash at Lyng in Norfolk in 1999, which along with the subsequent acquittal of the 28 participants by juries in two trials, gained more coverage than any other single crop-trash in the UK. But this was a one-off, media-oriented action, and although Greenpeace remained a vital part of national and European lobby-based campaigns, in the UK and France other groups emerged which acted independently of it, using sabotage (including crop-trashing) as a principal tactic. It is these groups that are the subject of this study.

In France, the leading role has been played by the leftist peasant farmers’ union *La Confédération paysanne* (CP) which has undertaken direct action against GM crops since 1997, and whose leading activists have become the public face of the campaign (particularly José Bové, now a *Europe-Ecologie* MEP). In 2003, faced with the end of a five-year EU moratorium on GM crops, the CP helped launch the *Faucheurs volontaires* (FV) ‘civic disobedience’ campaign of overt, public crop-trashing, alongside a series of citizens’,

agricultural, and environmental organizations – including Greenpeace France, France Nature Environnement, organic farmers' union the Fédération nationale d'agriculture biologique, alter-globalisation organization ATTAC, and Les Amis de la Terre (Friends of the Earth); some 7000 individual activists have formally registered as *Faucheurs*, signing a written undertaking (discussed in more detail in section III). Organizationally, although mindful of local autonomy and eschewing an overtly pyramidal structure, the FV campaign provides recognised national leaders, a coordinated national structure and disciplined modus operandum for activism, effective legal support for arrested activists, and mediation (with activists, organizations, police, court officials, print and broadcast media, political parties, state bureaucracy, government) (Hayes, 2007). The FV campaign was, in Bové's words, explicitly devised so that 'it wasn't just peasant farmers who undertook actions', following the initial period where the CP 'essentially acted as a syndicalized organization'.² It was also explicitly devised as a public *campaign* rather than an organization, in order to protect its member organizations financially; it is not registered, for example, as an association under French law. Prior to the FV campaign, organizations initiating actions were legally liable for compensation claims; the CP in particular was vulnerable to bankruptcy. In the FV campaign, however, activists could now only be individually liable, given the FV's lack of legal status.

In the UK, the organization of direct action against GM crops was much less co-ordinated than in France, with no national membership organization and no publicly identifiable leaders. Crop-trashing was principally carried out by informal locally-based groups of radical environmental activists who had developed direct action techniques in campaigns against the Conservative government's roads and airport expansion programmes in the mid-1990s (Wall, 2000; Thomas, 2001). By the time that GM crops became a significant issue around 1998, they already had substantial experience of occupying sites, damaging property, and

committing illegal action (Seel *et al*, 2000; Plows *et al*, 2004; Doherty, 2007). The relative success of these actions reinforced their belief that illegal and disruptive protest action could be effective and win significant public support. These activists were linked through a loose network of local groups known as Earth First! (EF!). EF! had no formal membership, no bureaucratic structure or office-holders, held only occasional national strategy gatherings and, in contrast to the FV, had no charter defining legitimate actions. Nominally distinct groups such as Reclaim the Streets, Corporate Watch, and genetiX snowball (gXs) overlapped with EF! (Wall, 2000) as part of the same ‘movement community’ (Meyer & Staggenborg, 2007); activists from all of these groups took part in the same protests and meetings, acting as individuals rather than as representatives of separate groups. They carried out both public and covert crop-trashing and other actions against bio-tech corporations and the food industry, including office occupations, and disruptive protests inside supermarkets and against their distribution networks. In public actions they would often be acting alongside a broader range of actors, including activists from more mainstream green NGOs, local residents, and farmers campaigning against a particular GM crop trial site.

There are a number of differences therefore in the organizations and movement traditions underpinning each campaign. Most significantly for our study, there were also fundamental differences in how the courts dealt with those arrested and charged for crop-trashing. The much publicised Greenpeace UK acquittals were part of a broader pattern in England where over the previous ten years, ‘prosecutions of protesters against new roads and nuclear, chemical and arms trade companies collapsed after defendants argued that they had lawful excuse, had acted according to their consciences and that they were trying to prevent a greater crime’.³ In 2000-01 the Crown Prosecution Service lost three major trials against crop-trashers, and this trend has carried on since the scaling-down of anti-GMO activism:

juries have acquitted Greenpeace climate change activists at Maidstone crown court in 2008 (for trespass at E.On's Kingsnorth coal power station), peace campaigners at Bristol crown court in 2007 (for damaging B-52 bombers at Fairford airbase prior to the Iraq war) and at Brighton crown court in 2010 (for breaking into and damaging the premises of EDO, a defence equipment manufacturer that had supplied the Israeli army).

Only one jury trial of crop-trashers produced a conviction (in 2003, for an action in 2001); the two activists found guilty received fines. This contrasts both with the Greenpeace case discussed above, and the acquittal of two activists at Worcester in November 2001 as the jury accepted their lawful excuse defence.⁴ But even where defendants were found guilty, they received lenient sentences. In December 2000, five activists were found guilty of pulling up GM oilseed rape at a research farm in County Durham, in a non-jury trial; the judge pronounced a conditional discharge, and the activists were not ordered to pay compensation to either the biotech company (Aventis CropScience) or the farmer. In a written judgment, Judge Firth praised their motives, saying that any reasonable person would have pulled up more trial sites, and sooner.⁵ In June 2001, charges of aggravated trespass were dropped against seven activists who had destroyed GM crops near Sherborne in Dorset; the same month, on procedural grounds, a district judge acquitted 11 activists of criminal damage for the destruction of an Aventis farm-scale trial near Wivenhoe in Essex.⁶ In addition, gXs activists successfully appealed against conviction for a crop-trash in Cambridge, with the judge deciding that it had been wrong to charge them with aggravated trespass (a public order offence tried before magistrates), which would have meant that they had no right to make a public interest defence.⁷ In several further cases, charges were dropped, even when the evidence of crop trashing was clear (Thomas, 2001, pp.342-3). As an activist newsletter reported, 'The Crown became somewhat reluctant to press for damages of over £5000

because this gives activists the right to ask for a trial by jury rather than a magistrate'.⁸

Prosecutors would claim that there had been hardly any damage; campaigners would claim that they had in fact caused plenty, in order to try to get a jury trial.

In France, the story is somewhat different. Between the first trial at Agen in February 1998 and the most recent, at Colmar in September 2011, courts in a further 21 different towns have heard a further 26 prosecutions for crop destruction, with twelve verdicts taken to appeal. Activists have consistently pleaded a 'necessity' defence, arguing that their action was designed to stop a greater harm, and (since September 2005 in particular) calling expert witnesses, such as molecular biologists Jacques Testart and Christian Vélot, to challenge the government-industry position on the safety of GM crops. 'Since we cannot have a public debate, we'll transform the courts into a debating chamber on GMOs', argued Bové.⁹ In trials at Orléans in December 2005 and Versailles in January 2006, where the presiding magistrates were (according to molecular biologist Claude Seureau, who acted as an expert witness for the defence in these and two other trials) particularly interested in encouraging scientific debate within the courtroom, magistrates acquitted activists on similar grounds to those put forward in English jury verdicts, agreeing that the actions of the defendants were 'urgent and necessary', citing the risk of cross-contamination.¹⁰ For the Faucheurs' campaign, these verdicts constituted 'a right to destroy for each citizen, and an obligation to prohibit for the State'.¹¹ In June 2008, at Chartres, 58 activists were acquitted, the court again agreeing with the defendants that they had acted legitimately out of necessity.

Yet these have proven to be exceptional cases. All three of these verdicts were overturned on appeal: 48 of the 49 defendants acquitted at Orléans subsequently received suspended prison sentences of two months, with the 49th sentenced to two months in gaol; the nine activists

acquitted at Versailles, all members of the CP, were sentenced to three months, suspended; all 58 acquitted at Chartres received three month suspended sentences plus fines of €1000, with the fine increased for the five who were recidivists. More fundamentally, acquittals were the exception rather than the rule: activists have otherwise consistently received short suspended prison sentences and relatively small fines, and sometimes been ordered to pay substantial damages (such as the €100,000 imposed by the Toulouse criminal court in November 2005 on eight movement leaders). The range of sentences imposed on 41 activists at Toulouse in September 2008 is perhaps typical: heavy fines for five recidivist activists (including Bové), and suspended sentences of one or two months for the remaining activists.

A clear pattern therefore emerges from the trial records. Activists have repeatedly been convicted in France, and repeatedly been acquitted, or had charges dropped, in England. In France, compensation claims from biotechnology companies have sometimes resulted in the award of substantial damages, to be paid by activists; on no occasion has this been the case in England, where judges have conspicuously rejected such claims on several occasions. In France, even if sentences have frequently been more lenient than demanded by state prosecutors, they have also been consistently heavier than on the rare occasions where activists have been found guilty in England.

What about the Scottish cases? The activists prosecuted in Scotland belonged to the same groups as in England, and carried out their actions in much the same ways – a mix of covert action by EF! and related groups, while other groups of local campaigners (typically working with experienced green activists) took public actions that often led to arrest. As noted, the criminal justice system in Scotland does not allow activists the same opportunities for jury trial as in England; in Scotland, magistrates have thus always tried crop-trashers. Between

July 2002 and March 2003, separate groups of Scottish activists were convicted of anti-GMO crop-trashing on six occasions.¹² Though fines have been small in Scotland, the evidence here seems to bear out the hypothesis that there are structural differences in outcomes between criminal justice systems. Indeed, one married couple experienced these differences first-hand when they undertook separate actions in Scotland and England: though her husband had been acquitted for his avowed participation in the Greenpeace action in Norfolk, Helena Beveridge was convicted by Aberdeen Sheriff's court in May 2002 for causing an estimated £4000 worth of damage to a GMO crop-trial one year before. As she commented: 'I think it is bizarre that my husband, Alastair, can do the exact same thing with Greenpeace activists in Norwich and be acquitted, yet I am guilty'.¹³ An activist website made the point: 'yes, but Alistair had a jury!'.¹⁴

What then of our hypotheses about a judicial opportunity structure? The evidence from our comparison of direct action prosecutions in the UK and France tends to confirm the first of our hypotheses, P1: the structural differences between criminal justice systems have a significant impact on the prosecution outcomes of activists tried for non-violent direct action. Yet what of the second hypothesis P2 – that activists will make tactical choices which reflect these differential success chances? Here, the evidence is intriguing. We might expect to see three related dynamics: first, that we would find similar tactics in France and Scotland; second, that these would be markedly different from those we would find in England; third, that – given the likelihood of conviction in France and Scotland, and acquittal in England – activists in England would adopt more open and public tactics, and activists in Scotland and France more covert tactics. However, when we compare the tactical choices of the British and French direct action campaigns against GMOs, hypothesis P2 is *not* supported. In fact,

we discover something far more interesting than a purely structural reading based on comparing judicial systems would provide:

- (i) in France, anti-GMO activists enacted crop-trashing as a form of public civic disobedience, accepting arrest and the right of the state to try them, *despite the fact that they were very likely to be convicted* and receive financial penalties and suspended prison sentences (thus raising the costs of future participation in direct action);
- (ii) in England, most activists chose to pursue crop-trashing covertly, *despite the fact that they were very likely to be acquitted*, and have the charges minimised, or dropped, when arrested for public actions;
- (iii) there was no discernible difference between the tactics adopted by activists in Scotland and England, *despite the fact that the criminal justice systems in these countries produced consistently and predictably different* prosecution outcomes.

Crucially, then, the difference in judicial systems in different parts of the UK *has not produced difference in tactical choice*, whilst the broad similarity of these institutional arrangements in France and Scotland *has not produced similarity of tactical choice*. The systemic properties of the judicial system do not seem to influence the likelihood that activists will undertake covert action: whether in favourable or unfavourable systems, British activists behave in the same way; unfavourable systems (France, Scotland) produce divergent (and counter-intuitive) activist tactical choices. How might we explain this? For an explanation, we turn to the ideas of activists, as reflected in and through their internal debates.

III Constructing Accountability

In each movement, arguments over effectiveness and accountability are fundamental and revealing. As we shall see, not all those involved in the direct action networks in either country agreed on the tactics adopted. In Britain, there was a heated argument between those who favoured covert nocturnal sabotage with the aim of destroying as much of the crop as possible, and those committed to what they called ‘accountable actions’ involving symbolic amounts of destruction. This latter tactic was associated with *genetiX* snowball, formed in 1998; some of its founders had been active in campaigns against nuclear weapons and the arms trade since the 1980s, and later became involved in *Earth First!* campaigns in the 1990s (Wall, 2000). One prominent activist, Angie Zelter, was also one of the four women who had stood trial for ‘disarming’ a Hawk jet aircraft with hammers at BAe’s Warton factory in January 1996; at Liverpool crown court, they explained their action as necessary because this type of aircraft had been sold to the Indonesian Air Force and used to kill civilians in East Timor. The jury, accepting that this constituted ‘reasonable grounds’, acquitted them by majority verdict.

There was significant overlap between 1990s environmental direct action networks and peace and anti-militarist activists, for whom the highpoint of ‘non-violent direct action’ had been the peace camps and protests against the deployment of Cruise missiles across western Europe in 1983. Like most western European countries (but unlike France), there was a mass peace movement in Britain which regularly mobilized hundreds of thousands of activists between 1980-87. *gXs* revived a peace movement repertoire of the mid-1980s, where hundreds of activists were arrested in a ‘snowball’ of protests that grew progressively larger; *gXs* aimed to encourage enough people to commit to taking action against GM crop trials to

make the government institute a five-year moratorium on all testing and cultivation. The methods chosen were non-confrontational and public: protesters informed the farmers and police in advance that they would be taking action (although not necessarily when), were limited to damaging 100 plants each, acted only in daylight, and were prepared to be arrested (genetiX snowball 1999 5.6). One of the gXs founders, Rowan Tilly, described this form of action as ‘accountable’:

Accountability is about pro-actively and deliberately telling people about yourself, what action you have taken and why you have done it. Being accountable means taking action and then explaining what has already happened and your part in it.
(Tilly, 1998)

Accountability was thus defined as the moral accountability of an *individual* to their conscience. It therefore did not entail an acceptance of the legitimacy of the state or legal system, or of the right of the police and courts to arrest and punish them, as its founders made clear in debates with others from the Earth First! movement, who accused them of being reformist (Leeds Earth First!, 1998).

In France, the Faucheurs volontaires campaign is also premised on accountability. However, this is a very different, *collective*, Republican construction of accountability, and explicitly accepts the right of the state to judge activists for their actions. The March 2004 *Charte des Faucheurs volontaires* emphasizes the ‘democratic’, ‘responsible’, and ‘collective’ nature of ‘citizen action’, actively discouraging individual and covert action, or the use of cutting tools; it is recommended that local collectives ‘present themselves publicly in order to affirm the citizen character of this legitimate resistance and to attract other volunteers and support’.

Activists should carry an identity card in case of arrest (Faucheurs Volontaires 2004). Actions are signalled in advance to the media, carried out in broad daylight, *à visage découvert* (unmasked and openly); faced with the choices of state prosecutors to prosecute only a handful of activists (often movement leaders), activists have frequently denounced themselves to the gendarmerie, provided lists of those involved, developed tactics under arrest to bring about collective prosecution and, when all else fails, declared themselves *comparants volontaires* (voluntary defendants). In July 2004, when nine activists were arrested for crop destruction at Menville, a further 222 formally declared themselves equally responsible, whilst after the arrest of six activists at Marsat the following month, 167 more turned themselves in. Though self-denunciation was formally rejected by the instruction of justice minister Dominique Perben (Hayes, 2006; 2007), the tactics have generally been successful: providing lists of participants has produced numerous mass trials, including (alongside the 58 activists tried in Chartres in June 2008, mentioned above) 86 activists in Marmande in October 2010 and 60 activists in Colmar in September 2011. It is notable that gXs, the British group that seems tactically closest to the FV, explicitly rejected the idea of self-denunciation because while they did not seek to evade arrest, neither was arrest the aim of the action.

For the FV, accountability before the law has an ethical dimension: submission to arrest is a demonstration of the campaign's commitment to the primacy of the public order. In order to join the campaign, activists must sign a document accepting formal responsibility for their actions. For Bové,

Even if we don't know each participant in our civil disobedience actions individually, those who are there have undertaken in writing to accept full responsibility for their

action. I place great belief in this written engagement, which we require of everyone. It is a sort of citizen's oath, a charter which creates a respect for the collective. It produces a great sense of responsibility.¹⁵

The illegality of crop destruction is contrasted with the government's alleged denial of democratic consultation and the insufficiency of the national and European regulatory frameworks. To accept formal accountability for illegal actions is thus an instrumental as well as ethical act, ensuring continued mediatization, public visibility, and political pressure, and opening an institutional space to challenge public policy. But it is also a symbolic mobilization of the national-cultural repertoire of contention: public action, arrest, trial, and sanction create a public space for the enactment of democratic entitlement, and demonstrate the Republican nature of the campaign's citizens' engagement. The invocation of Republican action is explicit: for example, former CP spokesman Jean-Émile Sanchez, on trial in Orléans in May 2006, justified his action in the following terms:

Faucheurs oppose the patenting of living beings by multinational companies, that's all. As far as concerns the supposed violence of the action, let's not forget that our Constitution is the result of collective violence committed at the Bastille on 14 July 1789.¹⁶

Specifically French, these discourses found no echo in Britain. In contrast, for both gXs and the wider crop-trashing networks, the question of the legitimacy of the court was left to the activist to decide, with no effort to establish a collective view. Sanction had a purely tactical value: gXs argued that by accepting arrest they could exploit the courts as a public arena to challenge injustice. This meant being prepared to engage in legal battles, which seemed a

distraction to others. For instance, following the first gXs crop-trash in July 1998, Monsanto took out an injunction against gXs to prevent it damaging further crop trials; an activist critical of gXs commented:

Anyway at the end of the day Snowball did some small actions, and more and more people got injuncted, and they weren't the kinds of people who need to get injuncted, get their houses taken off them - it's different for us. They got embroiled in these court cases, they only pulled up a very small number of crops, they scared off the people they were trying to get involved, and it took maybe 10 activists over a year of very focused work to pull up a couple of hundred crops whereas covertly doing it the same number of activists could have pulled up thousands of crops.¹⁷

gXs only undertook actions in 1998-99, disbanding in 2001, once its final court case was complete. Nevertheless, its activists continued crop-trashing as individuals, joining several local anti-GMO groups in 'accountable' actions broadly in line with the guidelines suggested in the gXs handbook (*genetiX snowball*, 1999). But both the 'accountable' tactics of gXs and the idea of an organization with rules were rejected by most of those who had been most active in environmental direct action against roads. The vast majority of crop-trashes reported in the newsletter *GenetiX Update* were from anonymous groups. Covert methods were favoured because the very low risk of arrest allowed those who could not risk charges to take part more easily, a point stressed in a field manual for covert crop-trashers (Anon n.d.). Insofar as the measures of success were preventing the crop from cross-pollinating and undermining the crop trials, it was argued that covert action was simply more effective because more plants could be destroyed (see the quotation above). These activists also argued that gXs was elitist, because only the able-bodied and those without mortgages and families

would be prepared to accept arrest and trial (Leeds Earth First!, 1998). Importantly, gXs was also challenged on ideological grounds:

Covert action questions the legitimacy of the legal system's handing out punishment — surely a necessary question to ask of an institution which has proved time and time again that its priorities are not to end injustice nor to stop ecological degradation. While the odds are stacked against us and the system does not share our interests, covert action has a part to play in an effective strategy.¹⁸

This critique was also voiced in activist debates over tactics, such as at the Earth First! Gathering in 1998,¹⁹ and in interviews:

if we're gonna do criminal damage to my mind there are times and places to be accountable
[...]
and I don't think being accountable to corporations is the right way to go about things
[...] I think you have to be very careful of working with the media and working assuming that the judicial system, if you're honest and doing the right thing, will back you up.²⁰

In France, too, the campaign's emphasis on 'civic disobedience' has not been without challenge from within activist networks. First, there are significant differences in the conceptualisation of direct action between the FV campaign and Greenpeace France, which (at an organizational level) rejects mass collective crop destruction in favour of professionalised and media-oriented actions. Second, the FV campaign itself was subsequent

to divergences between two of the initial leaders, Bové and René Riesel, who split bitterly in 1999 over the legitimacy of the state to take public policy decisions over biotechnology. Riesel, perhaps best described politically as an anarcho-situationist, remains highly critical of ‘citizen’ politics, arguing that organizations such as the CP are still wedded to a concept of an all-encompassing state that has little to say about the alienating effects of ‘the system’.²¹ He thus rejects the FV campaign’s acceptance of the use of GMOs in medical research in the laboratory, and of any strategy which sees the state as a potential regulatory ally. At local level, there were frequent covert actions at both the start of the decade, and in 2006-07 in particular, as some activists became frustrated with the openness of the campaign (as activists were regularly greeted at pre-announced crop-trashes by gendarmes and pro-GMO farmers). One group published a nocturnal crop-trash charter in summer 2007,²² extolling autonomy and anonymity and rejecting collective decision-making and submission to arrest, arguing that covert action by a ‘self-managing collective’ is more effective than (what it perceived to be) a ‘bureaucratic and hierarchical’ national organization.²³

In both countries, therefore, there were divisions over tactics and the ideological principles that justified them. Yet whilst in the UK, the argument essentially took place within an anarchistic network about what forms of protest were consistent with their shared critique of the state, in France the argument essentially took place amongst groups with contrasting critiques of the state. In the UK, although public symbolic actions by Greenpeace, gXs and others received considerable media coverage, the majority of actions were covert and unclaimed; in France, the movement crystallised around public acts of civil disobedience.

Conclusions

What then does our evidence tell us? First, it tells us that systemic structural differences are crucial to understanding the differential prosecution outcomes for social movement actors. Moreover, systemic differences are stable, predictable, and consistent; we believe, therefore, that the concept of a judicial opportunity structure can be a valid and useful one for understanding the trajectories and outcomes of direct action campaigns in particular, and is analytically distinct from the litigation-focused concept of 'legal opportunity structure'. Second, however, our evidence tells us that movement tactical choices cannot simply be read off from these systemic properties; in the case of the anti-GMO campaigns in the three countries studied, we see activist tactics which are themselves consistent, but are not consistent with the expectations derived from the criminal justice systems.

There are three reasons why this might be: (i) activists are unaware of the organization of the criminal justice system; (ii) they are aware of it, but misperceive how it operates; (iii) they perceive it correctly, but their crop-trashing tactics are not pre-determined by it. As should be evident from our discussion, we are reasonably confident that neither (i) nor (ii) are valid here; indeed, at the FV annual meeting in 2011,²⁴ there was sustained collective discussion of the fine detail of arrest and trial, including discussion of the precise form of words best used in custody to maximise the chances of producing a collective prosecution (thus recognising how the criminal justice system operates) coupled with continued debate over the effectiveness of prosecutions in achieving movement goals (thus relating outcomes to tactical choice).²⁵ The evidence from both our cases overwhelmingly supports (iii), and specifically that debates over ideas within movements are decisive in explaining tactical choice. As we have seen, most British activists spurned the openings potentially provided by acquittals and the reluctance of judges to impose more than token penalties, whereas French activists instrumentalized court cases as occasions to reinforce collective identity and maintain

political pressure. The reasons explaining tactical choice thus only become evident when examining the internal debates within each movement.

We referred at the outset to the difficulty of sorting out the appropriate mix in the determination of activist tactical choice (Johnston, 2011, p.49). No answer to that problem is likely to apply to all cases, but we suggest in this case that activist ideas are fundamental to their perception of whether the criminal justice system provides an opportunity or threat the realisation of their political goals. To be sure, this does not mean that structures are not important, or that ideas alone explain tactical choices. First, because the results of court cases are central to our understanding of group mobilization: as noted above, movement actors are cognisant of the likely outcomes of arrest and trial, and make tactical choices that are informed by these consequences, and this is true irrespective of the counter-intuitive nature of these choices. Second, because ideas are not negotiated outwith specific cultural contexts; social movement actors in each country acted in ways that were consistent with particular social movement traditions, which we can see as a useful 'bridging concept' between structure and culture (see Doherty & Hayes, 2011).

As Polletta argues, cultural traditions, arrangements, codes and so on may be considered structuring in that they are supra-individual; political structures and embedded ways of acting are themselves a product of culturally specific development (1999, pp.67-9). Clearly, in our cases, the political traditions of each state are different; a Republican narrative of active citizenship may be considered to be structuring for contentious action in France (see, for example, Hewlett, 1998, pp.11-35), and this is not available to activists in the UK. Moreover, these ideas are negotiated within specific movement-organisational contexts: there is no direct equivalent in the UK of the *Confédération paysanne*; there was no counterpart in

France of the 1980s British peace movement, for example. In France, the *Faucheurs Volontaires* campaign sought regulatory intervention from the state; in the UK, most anti-GMO activists and their precursors saw themselves as radicals, essentially different from the rest of society, and viewed the state as an instrument of global capital and corporations. In this sense their tactics might be construed as an instance of ‘path dependency’ (Pierson, 2000). But as we have shown in our discussion on effectiveness and accountability, there is nothing inevitable about the positions adopted by either movement; in both cases, the dominant ideological position was contested, and movement tactics were produced by a process of challenge and negotiation.

It is possible that the example of the anti-GMO campaigns in the UK and France provides a unique case. We rather doubt it, however. It is true that the FV campaign is distinctive in its offensive use of the court as a venue for challenge, but there have been a number of other cases in recent years in the UK and France in which those arrested for protests (against the arms trade, on climate change, or in anti-advertising actions, for example) have sought to turn criminal defence into political attack, using prosecution to establish the legitimacy of their position and to mobilize wider support. In particular, the availability of jury trials appears to increase the chances of success in the courthouse, demonstrating the importance of judicial structures for the analysis of social movements, and the potential political outcomes of deliberate collective law breaking. However, how social movement actors choose to exploit these judicial opportunities is dependent not just on external structuring factors, but on the negotiation of ideas – about identity, about the nature of accountability, about effectiveness – within specific movement settings. We hope further work will address both how prosecution affects mobilization, and how, comparatively, different systems affect similar mobilizations.

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Notes

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² Bové, giving evidence in court, Poitiers, 14 June 2011.

³ Court victories for GM crop rebels put CPS on the spot. (2001, 28 June). *The Guardian*.

⁴ GM crop pullers in 'guilty' verdict shocker. *Genetix Update*, 23, Spring 2003.

⁵ Prosecution sorry. *Genetix Update*, 17, Spring 2001.

⁶ Court victories for GM crop rebels put CPS on the spot. (2001, 28 June). *The Guardian*.

⁷ GM protesters win legal challenge. (2001 16 October). *BBC News*.

⁸ It's lawful. *Genetix Update*, 20, Winter 2001.

⁹ José Bové: les tribunaux 'transformés en lieu de débat sur les OGM'. (2004, 2 November).

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¹⁰ Claude Seureau, interview, Paris, February 2011. The judgment published by the presiding magistrate in the Versailles case pays particular attention to the scientific evidence put forward by Seureau and Testart; *Extrait des minutes du Greffe du Tribunal, N° d'affaire 0320565062, Jugement du 12 janvier 2006, Tribunal de Grande Instance de Versailles, 6ème chambre correctionnelle*.

¹¹ Les OGM sont inconstitutionnels, (2006, 19 January). *Le Monde*.

¹² Victorious convicted activists of Scotland. *Genetix Update*, 26, Spring 2004.

¹³ Housewife destroyed GM crops. (2002, 21 May). *The Scotsman*.

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- ²⁰ 'Hannes', interview, Oxford, January 2001.
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- ²⁴ Attended by Hayes.
- ²⁵ AG des Faucheurs volontaires, Rablay-sur-Layon, 21-22 May 2011.