

Re-forming the ban: How to shape hunting legislation around the interests of wildlife

A-LAW Student Essay Competition winning entry by Daniel Clark

The United Kingdom was the first country to implement laws protecting animals. In 1822, it passed the Cruel Treatment of Cattle Act, which declared that 'if any person or persons shall wantonly and cruelly beat, abuse, or ill-treat any Horse, Mare, Gelding [...] or other Cattle, [they] shall forfeit and pay any Sum not exceeding Five Pounds, not less than Ten Shillings...' (my emphasis). More than two centuries and several animal protection acts later, the end of wanton and cruel animal abuse is still written on paper more than realised in practice.

Few animal protection laws so starkly highlight the dissonance between legal aspirations and actions as the Hunting Act 2004 (in England and Wales) and the Protection of Wild Mammals Act 2002 (in Scotland).¹ These acts banned, among other things, the use of hounds in the hunting of wild animals; yet, two decades later, the practice still takes place in all parts of the UK through a series of loopholes, exemptions and difficulties of enforcement. This essay will (briefly) consider two possible routes to achieving practical protection for UK wildlife: (1) reforming existing legislation to close loopholes and (2) re-forming (and re-formulating) legislation to enshrine rights for wildlife. While the first approach could reduce some suffering, this essay will argue that only the second can provide genuine and lasting protection.

Every wild life

Humanity's relationship with wild animals is complex. After taking over the planet and destroying vast swathes of natural landscapes, humans are belatedly starting to recognise

that biodiversity is critical to our own continued survival. Conservation is thus becoming a key global concern.² At its core, protecting wildlife means removing, as far as possible, the influence of humans. Indeed, the simplest definitions of 'wildlife' refer to wild animals who 'live independently of people, in natural conditions'³ An array of human activities have a harmful effect on wildlife, whether directly (hunting and poaching) or indirectly (land use change, road building and anthropogenic climate change).

Since 1970, some 41% of all UK species have declined,⁴ while 14% of land species globally will be at risk of extinction if the Earth warms by 1.5 degrees Celsius,⁵ a threshold which is on track to be breached by 2027.⁶ Yet, this focus on the collective (species, ecosystems, biomes) can come at the expense of individual beings. As Richard Ryder has explained in relation to his theory of 'painism', it makes little sense to consider the aggregated suffering of species since it is individuals who feel pain.⁷ As such, when discussing whether hunting legislation can protect UK wildlife, it is important to consider the impact on every "wild life" rather than the overall effect for species. Likewise, for the purposes of this essay, 'protection' will be used

2 Consider, for example, the deal agreed at the COP15 summit in Montreal in December 2022.

3 Cambridge Dictionary [online]. Available here: <https://dictionary.cambridge.org/dictionary/english/wildlife>.

4 NBN Trust, 'State of Nature', 2019 [available here: <https://nbn.org.uk/wp-content/uploads/2019/09/State-of-Nature-2019-UK-full-report.pdf>].

5 IPCC, 'Summary for Policymakers' in Climate Change 2023: Synthesis Report A Report of the Intergovernmental Panel on Climate Change, Core Writing Team, H. Lee and J. Romero (eds.), Geneva: IPCC, 2023.

6 World Meteorological Organisation, 'Global Annual to Decadal Climate Update (Target years: 2023-2027)', 2023.

7 See Richard Ryder, *Painism: A modern morality* (London: Centaur Press, 2001).

1 Attempts to ban hunting with dogs in Northern Ireland have been voted down in the Northern Ireland Assembly, most recently in 2021.



in its simplest sense to mean 'safety from injury, damage and destruction'.⁸ It is individual animals who desire (and require) the safety that effective hunting legislation could provide.

Hunting and the law

Hunting an animal is not compatible with protecting that animal. Fox hunting, the most popular and controversial type of hunting in the UK, is a cruel "sport" and one of the most wanton examples of abuse against UK wildlife. The Hunting Act 2004 became law after more than a century of campaigning. In its first article, the act states that,

A person commits an offence if he hunts a wild mammal with a dog, unless his hunting is exempt.

Hence, from the outset, the act falls short of practical protection: it outlaws only specific

⁸ Cambridge Dictionary [online]. Available here: <https://dictionary.cambridge.org/dictionary/english/protection>.

methods of hunting. Moreover, the exemptions fill four pages and include 'preventing or reducing serious damage which the wild mammal would otherwise cause... to livestock... game birds... food for livestock... [or] other property'; 'obtaining meat to be used for human or animal consumption', and 'the observation or study of the wild mammal'. Amid these technicalities and grey areas, there is ample opportunity for huntsmen to avoid legal scrutiny. Trail hunting, whereby huntsmen claim to be following an artificial trail rather than a live animal, is a well-publicised deception used by hunts: when the hounds invariably rip a fox to shreds, the huntsmen can claim that this death was not intentional, which is difficult to disprove in court.

The UK public has a net positive opinion of foxes.⁹ Although no living being should have to justify their existence by winning a popular-

⁹ Sandra Baker, Paul Johnson, David Macdonald and Stephanie Maw, 'Not in My Backyard: Public Perceptions of Wildlife and 'Pest Control' in and around UK Homes, and Local Authority 'Pest Control'', *Animals*, 10: 222 (2020).

ity contest, public support for protecting foxes highlights how a vocal minority of pro-hunt lobbyists have an outsized influence on the debate. Since the Hunting Act came into force, hunt supporters have tried to spread confusion with false and exaggerated claims about pest control and by playing up “culture war” arguments. In 2017, Theresa May included a free vote on repealing the Hunting Act in the Conservatives’ manifesto, even though polls showed that only one in 10 voters supported such a repeal.¹⁰

For fox’s sake: reform or re-form?

Legislation relating to animal protection does not exist to protect animals. From the Slaughter of Beasts Act 1488, which was motivated by a desire to avoid bad smells in cities, to the Welfare of Animals at the Time of Killing (England) Regulations 2015, which set acceptable slaughter standards, protection laws have repeatedly failed to keep animals safe. In the absence of consideration of animals’ own interests, their place within (human) legal structures is muddled by a tangled web of conflicting (human) interests.

How then could legislation be redrawn to achieve practical protection? There are two main options: reform current legislation or re-form how we consider wildlife protection more broadly. These opposing approaches correspond roughly to Welfarist and Abolitionist positions, respectively. The Abolitionist stance has been criticised for staking everything on an imagined (and hard-to-achieve) utopia at the expense of present-day incremental gains, while Welfarists are accused of diluting their animal rights message by pushing for small (or counter-productive) concessions that fall short of full protections. Let’s look first at the argument for reform.

a. Blunt the knife?

Where protections exist in theory, these are not always observed in practice. Currently, the Hunting Act 2004 is far too easily bypassed

since a defendant need only prove that ‘he reasonably believed that the hunting was exempt’. There is massive scope for reforms that could close loopholes, remove unnecessary exemptions and enforce the law more stringently.

In Scotland, a new Hunting with Dogs Bill came into effect in January 2023 to replace the Protection of Wild Mammals Act 2002. Henceforth, it is now illegal to use more than two dogs to flush out animals unless a licence has been granted. Although it strengthens some shortcomings and goes further than previous legislation to outlaw hunting for sport, the new bill still falls short of a full ban. The extent to which it will provide any practical protection for wild animals will depend on how many licences are granted and how strictly these are enforced.

b. Remove the knife?

Hunting legislation that does not actually ban hunting can never ensure genuine protection for its victims. Instead of tweaking and amending a law that allows hunting to continue, the other option is to dismantle the Hunting Act, take its essential parts and rework these into a new piece of legislation. To do so would require a new way of thinking about wildlife. Putting in place practical protection for wild animals does not necessarily mean incorporating these animals intricately into the human legal system; it need only mean enshrining in law their right to life and freedom from abuse by humans.

Rather than focusing on the Hunting Act, it is the Wild Mammals (Protection) Act 1996 that could provide a better framework for protection. This act states that if ‘any person mutilates, kicks, beats [...] any wild mammal with intent to inflict unnecessary suffering, he shall be guilty of an offence’. Evidently, the bar for what constitutes ‘unnecessary suffering’ needs to be lowered considerably: marginal human benefit cannot be allowed to prevail over the life of a non-human animal. But, if animals’ own interests were taken into account, this new protection act would shut down any excuse for hunting.

Hunting, like any “sport” that depends on causing suffering to sentient beings, is an anachronism in a modern society. However, it is far

¹⁰ The Independent, 27 May 2017, [available here: <https://www.independent.co.uk/news/uk/politics/conservative-manifesto-bring-back-fox-hunting-only-one-in-10-voters-support-a7757891.html>].

from the only risk faced by wild animals. It is estimated, for example, that the most common way for foxes to die in the UK is on roads.¹¹ Similarly, habitat loss caused by human activities is a leading reason for declining populations of wildlife. To achieve practical protection for wild animals, the legal status of wildlife needs to be re-formed.

Conclusion: Beyond the barbarity

Reform to hunting legislation could improve the lives of some wild animals by sparing cruel and painful deaths. Existing legislation, however, is necessarily limited by its focus on human interests and cannot ensure the safety of wildlife unless accompanied by a broader legislative shift. It is time to re-think our relationship with (wild) animals, re-formulate debates to include animals' own interests and, consequently, reform legislation to provide real practical protection.

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¹¹ P Baker, S Harris, P White, 'After the hunt: the future for foxes in Britain' in International Fund for Animal Welfare (2005).