

The Hunt for Mercy

By Jay Surdukowski*

INTRODUCTION

There's none in the world like to merry hunting.

—Peter Beckford, *Thoughts on Hunting*, 1781¹

The unspeakable in full pursuit of the uneatable.

—Oscar Wilde²

A classic work on foxhunting describes the stations of the hunt in the prose equivalent of Handel's Messiah. The first notes of exultant expectation are found in the barking chorus of the hounds: "How musical their tongues! and as they get nearer to him, how the chorus fills! Hark, he is found!"³ The early hour has brightened now that the dogs are on the scent. Peter Beckford, the writer of this book asks, "Now, where are all your sorrows, and your cares, ye gloomy souls!"⁴ The passing traveler, the shepherd, and the farmer all stop in their tracks and put down their labor to meditate on the sweetness of the sound of hounds taking chase.⁵ The dogs ascend hills and traverse hedges, they are a "parcel of brave fellows" keeping on the scent with the guidance of a lead dog.⁶ Different dogs take up the command, their names alone are triumphantly baroque: Galloper, Victor, Brusher, Lightning, Frantic, Trueman.⁷ The hounds and hunters come to a check, the scent is lost and must be found. The hounds need time to figure out the fox again. Then "Hark! they halloo! Aye, there he goes!"⁸ The chase is at its breakneck climax punctuated with brief moments of silence as the fox wheels and turns and runs, desperately trying to evade its four-legged hunters.

How quick they all give their tongues! Little *Dreadnought*, how he works him! The terriers, too, they now are squeaking at him. How close *Vengeance* pursues! How terribly

* Jay Surdukowski. J.D., *cum laude*, University of Michigan Law School. B.A., *summa cum laude*, Bates College. Law clerk to Senior Associate Justice Linda Stewart Dalianis, New Hampshire Supreme Court. Thanks to the Edens for their hospitality and help in London – Andrew, Liann, Julia, Beckie, Ellie, and Oliver—Baron Henley—who made time for this curious American at the House of Lords. This article is inspired by the example and grace of Professor Joseph Vining, who teaches that law can be merciful.

¹ PETER BECKFORD, *THOUGHTS ON HUNTING* (1899). The book was first published in 1781 when Beckford was 41 years of age. The 1899 editor speaks to the book's classic status in the hunting canon.

² OSCAR WILDE, *A WOMAN OF NO IMPORTANCE* (1893).

³ BECKFORD, *supra* note 1.

⁴ *Id.* at 109.

⁵ *Id.* at 110.

⁶ *Id.*

⁷ *Id.* at 110-12. Matthew Scully in his book *DOMINION* refers to such names as "snooty," MATTHEW SCULLY, *DOMINION: DOMINION: THE POWER OF MAN, THE SUFFERING OF ANIMALS, AND THE CALL TO MERCY* 114 (2002).

⁸ BECKFORD, *supra* note 1, at 113.

she presses! It is just up with him! Gods! what a crash they make! the whole wood
resounds! That turn was very short! There! now—aye, now they have him! Who-hoop!⁹

To close his book, Beckford reproduces an actual song. Comparison to Handel may thus not be too far off. This verse is especially graphic about what is only left to the imagination in the earlier passage quoted above:

The hounds how eager to enjoy their reward
The huntsman as eager checks them with a word
He beheads old Reynard and takes off his brush
And to the hounds gives his karcass a toss
...¹⁰

In the next verse the huntsmen neatly buckles the hacked-off head to his saddle and ties the brush to his hat with a delicate ribbon.¹¹

Beckford's impassioned account is not alone in describing the thrills of the hunt in near poetic terms. Indeed, the most famous modern book on foxhunting was written by a poet. Renowned World War One poet Siegfried Sasson penned the highly popular *Memoirs of a Fox-Hunting Man*, part of a three-volume fictional autobiography.¹² Indeed, before Sasson traipsed off to join the Great War, he had dedicated his young life to fox-hunting and other squirely activities. Anthony Trollope's *Hunting Sketches*¹³ and R.S. Surtees' *Jorrocks' Jaunts and Jollities*¹⁴ round out a trinity of the most beloved fictional studies of the pastime. These works are to a degree comic, but do well to lend literary approbation to the ways and means of foxhunting in England. These texts are at the apex of an artistic and literary canon that is plentiful in its glorification of the sport. Hundreds of prints, paintings, books, drawings, and articles also exist.¹⁵ David C. Itzkowitz notes that "as the almost obligatory hunting prints on the oak or pseudo-oak paneled walls of countless restaurants, clubs, and hotels testify, the power of the sport to evoke images of a particular way of life is very strong."¹⁶

Despite its rich history and its synonymy with all things English, aristocratic, and of the country, the United Kingdom Parliament passed a highly controversial bill in 2004 banning foxhunting. The debate and subsequent votes in both houses of Parliament was

⁹*Id.* at 114.

¹⁰*Id.* at 218.

¹¹*Id.*

¹² SIEGFRIED SASSON, *MEMOIRS OF A FOX-HUNTING MAN* (1945) (first published in 1928).

¹³ ANTHONY TROLLOPE, *HUNTING SKETCHES* (1952) (first published in the *Pall Mall* in 1865).

¹⁴ R.S. SURTEES, *JORROCKS' JAUNTS AND JOLLITIES* (1932) (first published in 1838).

¹⁵ An especially rich collection of images and lore is brought together in ROGER LONGRIGG, *THE HISTORY OF FOXHUNTING* (1975).

¹⁶ DAVID C. ITZKOWITZ, *PECULIAR PRIVILEGE: A SOCIAL HISTORY OF ENGLISH FOXHUNTING 1753-1885* 1 (1977).

electric and provoked widespread protests and demonstrations, making it perhaps the most public and concentrated animal rights debate of all time. The climax was a massive demonstration through the streets of central London that drew upwards of 400,000 protestors to rally against the proposed foxhunting ban and to raise awareness of rural issues in general. Organized by the pro-hunting Countryside Alliance, this protest was not only monumental in a debate over animal rights, it was the largest protest of any issue in the millennia-long history of the British Isles.¹⁷ In fact, one of the three marches tied for second-biggest in English history was the first Countryside Alliance march on London which drew 200,000 people four years earlier in 1998.¹⁸ The 400,000 person strong protest in late September of 2002 was widely covered throughout the United Kingdom¹⁹ and Scotland,²⁰ and made headlines across the Atlantic in the United States as well.²¹ The

¹⁷ *The Long March of History*, TIMES, Sept. 23, 2002, at 5.

¹⁸ *Id.*

¹⁹ C.f. Valerie Elliott, *400,000 March in London: Hardliners Warn Blair of Civil Unrest*, TIMES, Sept. 23, 2002, at 1; Ben Macintyre, *It's Livestock and Two Smoking Barrels as Country Goes to Town*, TIMES, Sept. 23, 2002, at 1; Kirsty Buchanan, *Country Takes Protest to City with Peace*, TORQUAY HERALD EXPRESS, Sept. 23, 2002, at 3; R.K. Forster, *Country Takes its Case to the Capital*, SENTINEL, Sept. 23, 2002, at 5; *Here to be Heard; the Day Countryside Came to London*, THE SUN, Sept. 23, 2002, at 4; *The Long March of History; the March*, TIMES, Sept. 23, 2002, at 5; *Protestors Return from Capital March*, BATH CHRONICLE, Sept. 23, 2002, at 2; *Matter of Life and Death*, BATH CHRONICLE, Sept. 23, 2002, at 1; *Liberty and Livelihood: Alliance Warns of Simmering Anger of the Rural Peaceful*, BIRMINGHAM POST, Sept. 23, 2002, at 3; *Invasion Force: Countryside Campaigners in London*, BIRMINGHAM POST, Sept. 23, 2002, at 1; *March for the Countryside: 'Biggest Demonstration of Modern Times' Demands Safeguards for Country Traditions*, DAILY POST, Sept. 23, 2002, at 45; Jonathan Corke, *Country Army Gives it Welly: 400,000 in Pro-Hunt Protest*, DAILY STAR, Sept. 23, 2002, at 10; Charles Moore, *Were You Listening, Tony Blair? We Were Talking to You*, DAILY TELEGRAPH, Sept. 23, 2002, at 22; Stephen Robinson, *407,791 Voices Cry Freedom*, DAILY TELEGRAPH, Sept. 23, 2002, at 1; *400,000 March for an End to 'Meddling'*, DERBY EVENING TELEGRAPH, Sept. 23, 2002, at 2; *400,000 Make the Point but Minister Says He's Puzzled*, EE, Sept. 23, 2002, at 2; *400,000 in Rural Demo: Biggest 'Invasion' of Capital*, EVENING MAIL, Sept. 23, 2002, at 6; Marianne Brun-Rovet & John Mason, *Countryside Protesters Enjoy Field Day in City: There was Plenty of Passion but the Marchers Remained Good-Natured*, FINANCIAL TIMES, Sept. 23, 2002, at 3; *Rural Invaders Claim a Record Turnout at Demo*, GLOUCESTER CITIZEN, Sept. 23, 2002, at 2; *Protest Vents Fury but 'Message is Muddled'*, GRIMSBY EVENING TELEGRAPH, Sept. 23, 2002, at 4; Tania Branigan, *Countryside March: 400,000 Bring Rural Protest to London*, GUARDIAN, Sept. 23, 2002, at 4; *Rallying Cry for Country*, HULL DAULY MAIL, Sept. 23, 2002, at 1; Paul Peachey, *Country Invades Town in a Show of Force*, INDEPENDENT, Sept. 23, 2002, at 1; *Can You Hear Us Tony Blair?*, LINCOLNSHIRE ECHO, Sept. 23, 2002, at 1; James Whitaker & Oonagh Blackman, *Think Again: Aides Urged Charles Not to Send Pro-Hunt Noted to No. 10*, MIRROR, Sept. 23, 2002, at 9; Brian Reade, *Vermin, Cunning Vermin (AND NO I'M NOT TALKING ABOUT THE POOR FOXES) Brian Reade on How the Fox Hunters Hijacked the Countryside Protest*, MIRROR, Sept. 23, 2002, at 67; *United to Support the Countryside*, NOTTINGHAM EVENING POST, Sept. 23, 2002, at 12; *Thousands in Protest*, SCUNTHORPE TELEGRAPH, Sept. 23, 2002, at 7; *Campaigners Deliver Their Wish List to Downing St.*, WESTERN DAILY PRESS, Sept. 23, 2002, at 3; *Hunting is not the Only Rural Issue at Stake*, WESTERN DAILY PRESS, Sept. 23, 2002, at 8; Son Groves, *West's 'Magnificent' Show of Strength*, WESTERN MORNING NEWS, Sept. 23, 2002, at 2.

²⁰ C.f. Andrew Denholm & Alison Hardie, *Charles Row as London Turns Rural*, SCOTSMAN, Sept. 23, 2002, at 1; Helen Puttick, *400,000 on March as Countryside Fights Back; Organisers Claim Demo is Biggest Ever*, HERALD, Sept. 23, 2002, at 1; *Countryside Alliance Takes Fight to PM*, EVENING NEWS, Sept. 23, 2002, at 2; Jill Stark, *Down with the Townies: Countryside Takes to the Streets in 'Fight for Survival'*, DAILY RECORD, Sept. 23, 2002, at 4.

²¹ C.f. Reuters, *400,000 Protestors Take to London Streets*, NEW YORK TIMES, Sept. 23, 2002, at A4; AP, *Protestors Hound Blair: Rally for Fox Hunting and Preservation of Rural Life*, NEWSDAY, Sept. 23, 2002, at A6; Jane Wardell, *400,000 March in London Over Hunting, Rural Issues*, CHICAGO SUN TIMES, Sept. 23,

clash of pro- and anti-hunting forces in Parliament and in the streets was not restricted to the democratic mobs. Prince Charles himself, regarded as “the country’s most eminent foxhunter”²² was quite public about his defense of the activity. He continued hunting until the ban’s dawn, as did his then partner Camilla Parker Bowles. This, despite the Queen’s admonitions to the contrary.²³ He was said to have uttered to a cabinet minister: “If the Labour government ever gets round to banning foxhunting, I might as well leave the country and spend the rest of my life skiing.”²⁴

This article explores the discourse surrounding the foxhunting Bill to determine whether the law was an expression of mercy—an altruistic law focused on the “individual” that is the single fox pursued and violently killed by people and hounds—or whether the law was more human-centered in spirit. Prominent thinkers through the ages have cautioned against animal cruelty for what it does to people. Some animal laws have been written in just such a self-referential manner, banning violence primarily because of the anti-social ramifications on humans—in these laws, concerns for the individual animal seems to play second fiddle, at least in the discourse surrounding the enactment and enforcement of such laws. Certainly both kinds of concern are well-intentioned and are seeking to lessen suffering at the end of the day. But it is an intriguing question which is a part of the greater debate and progress in the matter of whether an animal can be an individual and have both moral and legal standing and attendant rights. Why is this important? Steven Wise notes that there are many obstacles to animal rights. Among these is the legal obstacle. He notes simply that law generally divides the physical world into people or things: “Legally, persons count; things don’t. Until, and unless, a nonhuman animal attains legal personhood, she will not count.”²⁵ The Hunting Bill is extraordinarily useful for study because it is a watershed moment in animal law. The contours of the discourse are highly instructive in moving towards answering a central question of the principle motivations at work in legislating animal law today. Is the law more about the animals as individuals or is it more about humans and their well-being? Where have we moved as humanity in relation to animals through this recent debate?

Part I of this article sets aside the high-flown romanticism of the introduction and gives an unembellished primer of what a hunt consists of in its most basic form. Part II briefly sets out the major features of the law as passed in 2004 and set into action on February 18, 2005. Part III of this essay sketches out more clearly what I mean by the discourse labels of “mercy” and “human-centeredness,” with a defense of the schema as well as examples of the two kinds of discourse. I also describe the basic content analysis I employ in studying the debates in order to come to more precise reflections of the language that was used in Parliament. Part IV of this essay delves into the debates themselves and contains the results of the content analysis as well as illustrative and

2002, at 27; AP, *Proposed Ban on Fox Hunting Draws Big Protest in London*, MIAMI HERALD, Sept. 23, 2002, at 6A; Mercury News Wire Service, *Rural Britons Accuse Government of Neglect*, SAN JOSE MERCURY NEWS, Sept. 23, 2002, at 7A; *Thousands March to Support Hunting*, AKRON BEACON JOURNAL, Sept. 23, 2002, at A4.

²² Stephen Bates, *Prince Charles Still Enjoys the Thrill of the Chase Despite his Mother’s Advice*, THE GUARDIAN, Sept. 23, 2002, at 3.

²³ *Id.*

²⁴ *Id.*

²⁵ Steven M. Wise, *Animal Rights, One Step at a Time* in ANIMAL RIGHTS: CURRENT DEBATES AND NEW DIRECTIONS 25 (Cass R. Sunstein and Martha C. Nussbaum eds., 2004).

compelling examples of each kind of discourse. This Part will reveal an astonishingly high level of concern for the individual animal; a predominance of a discourse of mercy. In the Conclusion I summarize the overall results of the content analysis and comment briefly on the implications of this finding of an overwhelming discourse of mercy. I will also suggest a few future threads of study that would be useful.

I. THE PRACTICE OF FOXHUNTING

Setting the romantic aside, for the uninitiated, what follows is a pared down, sober version of what a hunt consists of since about 1820, drawn from Professor David Itzkowitz's good history of the tradition.²⁶ A fox is hunted by people on horses, on foot, or in a vehicle. The people follow closely behind a pack of hounds, numbering at least forty or fifty. The hounds do all the work of sniffing out, chasing, and dispatching the fox. A given foxhunt will be run by a Master of Foxhounds, a position of "great social prestige."²⁷ The master has a manager of sorts under him who is the nuts and bolts person in terms of taking care of, and preparing, the hounds. This is the "huntsman." The huntsman in turn has one or several "whippers-in" under him who keep the dogs together during the frenzy of the hunt. Beyond these key figures, a given hunt may employ other servants to tend to kennels and the like.²⁸

Before the hunt foxholes are blocked up in a given area, to insure that some foxes will be above ground and ready for the hunting. Blocking the holes also keeps other foxes underground, so that the dogs are not distracted by a new scent. The hunt begins with the huntsman and the whippers-in working with the hounds in a covert known to contain a fox. The goal is for the hounds to scare the fox out of his hiding in the brush of the covert. The sportsmen who will participate in the hunt wait off to the side. They are collectively known as "the field." Once the fox breaks it is incumbent on someone present to make a loud noise, a "Tally-Ho" or an unintelligible shout of some kind. This is the signal for the huntsman and the whippers-in to bring the hounds to where the fox was spotted and then to storm after them once the pack sets-off on the trail. The chase goes on like this with the field in full pursuit of the dogs until the fox is caught or a new trail is started after a break in the scent. At this juncture the huntsman will "cast" the gathered hounds over the grounds, seeking the scent afresh.²⁹

When and if the hounds catch the fox, they kill it quickly. The huntsman then fishes the still mostly intact carcass from the hounds and cuts the tail (the "brush") and paws off as trophies for a favored member of the hunt. The carcass is then tossed back, and with death knell cries of "whoo-whoop!" what remains of the fox is torn asunder.³⁰

If children are participating on their first hunt, sometimes they will be "blooded," that is to say, smeared with the warm blood of the fox, a kind of primal anointment. Itzkowitz observes that this practice fell from favor in Victorian England, but that it still persists in some hunts to the present.³¹

²⁶ ITZKOWITZ, *supra* note 16.

²⁷ *Id.* at 2.

²⁸ *Id.* at 2-3.

²⁹ *Id.* at 3-4.

³⁰ *Id.* at 4.

³¹ *Id.*

II. THE 2004 HUNTING ACT

The Hunting Act 2004 prohibits all hunting of mammals with dogs in England and Wales with the exception of certain exemptions.³² The ban came into effect on February 18, 2005. The practice of hare coursing was also outlawed. It is also an offense for a person to knowingly allow land or dogs under his or her control to be used in an illegal hunt.³³ The penalty for a conviction under the Act is a maximum fine of £5,000.³⁴ A magistrate court may also order the forfeiture of any hunting paraphernalia, vehicle, or dog.³⁵

The Act has multiple exemptions which are set out in its first schedule. These include provision for the continued allowance for hunting of rats³⁶ and rabbits,³⁷ the retrieval of hares,³⁸ and the flushing out of mammals for birds of prey to dispatch the quarry.³⁹ There are also exemptions for stalking and flushing out,⁴⁰ a so-called “gamekeepers exemption” to contribute to the preservation of birds to be shot,⁴¹ and the use of a pair of dogs for the rescue of a wild mammal,⁴² the recapture of a wild animal,⁴³ or for research and observation⁴⁴ (for a complete summary list of all exemptions and their nuances, see Appendix A where a portion of the Department of Environment, Food, and Rural Affairs official Summary is reproduced).

III. MERCY OR HUMAN-CENTEREDNESS?

My methodology is to analyze the final debates on the hunting bill in Parliament with attention to the kinds of language used in the discourse surrounding the bill’s enactment. I set-out to uncover whether Members of Parliament (MPs) are speaking and acting out of concern for the individual fox or whether they speak of the ills that the perpetuation of foxhunting causes to humans.

I label concern for individual foxes a discourse of “mercy” and concern for the harm to humans “human-centeredness.” The label “mercy” is inspired by Matthew Scully’s groundbreaking and moving book *Dominion: The Power of Man, the Suffering of Animals, and the call to Mercy*.⁴⁵

³² Hunting Act, 2004, c. 37, § 1 (Eng.).(hereinafter Hunting Act).

³³ Hunting Act, 2004, c. 37, § 3 (Eng.).

³⁴ Approximately \$9,745 in American currency, as of January 9, 2007. This monetary fine corresponds with level 5 of the standard scale. Hunting Act 2004 – Chapter 37; Department of Environment, Food, and Rural Affairs Summary of the Hunting Act 2004, at <http://www.defra.gov.uk/rural/hunting/summary.htm>.

³⁵ Hunting Act, 2004, c.37, § 9 (Eng.).

³⁶ Hunting Act, 2004, c. 37., 3, Sch. 1 (Eng.).

³⁷ Hunting Act, 2004, c. 37, 4, sched. 1 (Eng.).

³⁸ Hunting Act, 2004, c. 37, 5, sched. 1 (Eng.).

³⁹ Hunting Act, 2004, c. 37, 6, sched. 1 (Eng.).

⁴⁰ Hunting Act, 2004, c. 37, 1, sched. 1 (Eng.).

⁴¹ Hunting Act, 2004, c. 37, 2, sched. 1 (Eng.).

⁴² Hunting Act, 2004, c. 37, 8, sched. 1 (Eng.).

⁴³ Hunting Act, 2004, c. 37, 7, sched. 1 (Eng.).

⁴⁴ Hunting Act, 2004, c. 37, 9, sched. 1 (Eng.).

⁴⁵ SCULLY, *supra* note 7.

I arrive at these distinctions from a reading of seminal texts studied in animal law/animal rights debates. Throughout this canon, one of the fault lines that emerges involves to what degree animal laws are purely altruistic and cognizant of animals as a kind of individual in the political order—or—as manifestations of a concern for the deleterious effects on human psychology and society. The most famous iteration of the human-centeredness view comes from British historian Thomas Macaulay, who wrote in the second chapter of his history of England: “the Puritan objected to bear-baiting, not because it gave pain to the bear, but because it gave pleasure to the spectator.”⁴⁶ Catholic Church Father St. Thomas Aquinas held a similar view, noting that cruelty to animals is shunned in scripture for its capacity to provoke the same in us; an “injury of an animal leads to the temporal hurt of man.”⁴⁷ Cardinal John Henry Newman was explicit in the offense against mankind that cruelty to animals represented. The animals do not have rights in this schema, their welfare is “incidental in the virtuous life, important more as a reflection of human goodness than of the creatures’ own goodness,” as Matthew Scully writes in summarizing this school of thought.⁴⁸ One need not just look to theologians for expressions of this human-centered view about animal cruelty. Immanuel Kant wrote with great clarity: “[H]e who is cruel to animals becomes hard also in his dealings with men.”⁴⁹ Kant gives an example of the wrong inherent in killing a faithful dog. It is not the dog’s death that is the evil, it is the fact that the human involved may be less inclined to treat other loyal and faithful human companions with decency.⁵⁰ Professor Peter Carruthers also falls into this line of thought. Matthew Scully quotes him on the idea of animals having no rights but “indirect moral significance nonetheless, in virtue of the qualities of moral character they may invoke in us. Actions involving animals that are expressive of a bad moral character are thereby wrong.”⁵¹

Some may argue that the two categories I have set up are an artificial dichotomy. This may be true, since clearly both are often present as motivations. However, in addition to the fact that this tension is represented in the reality of the animal law/animal rights literature, such a dichotomy is also a useful approximation in learning about what is going on in the discourse. A way to think about this set-up is that mercy and human-centeredness are goalposts of sorts. There are some motivations and rhetoric that will be along a continuum somewhere between the two. But many other comments will clearly fall under one side or the other. My analysis seeks to shed light on approximately how much of the recent debate in the United Kingdom over hunting was about “us” and how much of it was about animals. These posts help accomplish that goal.

A. Mercy

⁴⁶ *Id.* at 338.

⁴⁷ *Id.* at 339.

⁴⁸ *Id.* at 338.

⁴⁹ Immanuel Kant cited in Gary L. Francione, *Animals—Property or Persons*, in *ANIMAL RIGHTS: CURRENT DEBATES AND NEW DIRECTIONS* 111 (Cass R. Sunstein and Martha C. Nussbaum eds., 2004).

⁵⁰ *Id.*

⁵¹ SCULLY, *supra* note 7, at 339.

What characterizes the language of mercy? Mercy in this debate is represented by comments that are altruistic and focused compellingly on the fate of the individual animal: the fox being hunted by a large pack of hounds.⁵² Such language references cruelty and sometimes graphically depicts what happens to an individual fox, i.e., a MP relates how a fox is pursued, overtaken, and torn limb by limb by hounds or a fox cub is dug up and dismembered. The discourse of mercy gives voice to an individual animal that has no voice itself.⁵³

B. Human-Centeredness

The discourse of human-centeredness focuses primarily on the harm to humans and society that foxhunting represents. This discourse focuses on the violence done to humans by its example and spectacle. For example, an MP who speaks to the barbarity of the practice is speaking to the violence it does to society—the moral evil’s harmful effects to a civilized order.

An important note to this methodology: both kinds of discourse can be brought up by proponents and opponents of the bill in a given debate. Concern for animals is not always the province of just the supporters of the ban. What matters to my project is that an animal as an individual is being discussed as such or is being discussed via its relation to people. For example, an opponent of the measure can be quite passionate about increased harms that may actually result to foxes as a result of the bill. An illustration is MP Andrew Robathan’s comments on foxes shot by marksmen:

The measure will deliver hunting death by a thousand cuts—the lingering death of a fox shot by those alleged marksmen. As somebody who has shot more rifle bullets than most people in this place, I can tell Members that many foxes shot by people who pretend to be marksmen will die a lingering death.⁵⁴

IV. THE DEBATES

The Hunting Act was debated for many hundreds of hours in committee and on the floor of the two chambers of the United Kingdom Parliament over the course of seven years. In this section, I analyze the discourse of five of these debates, the five most recent on the Act before the House of Commons and the House of Lords. Whereas it may be more instructive to survey the entirety of thousands of pages of public record for every amendment and iteration of the bill, I focus on the final five debates for expediency as well as operating under the assumption that only the most time-tested and salient points will have survived to the climax of this legislative odyssey.

The first debate I discuss occurred on September 15, 2004.⁵⁵ The House of Commons was considering the robust version of the bill that included a ban on hunting

⁵² Or as will be seen below, other animals whose well-being is wrapped up in the Hunting Bill such as the horses and hounds used in hunting.

⁵³ At least no voice in the human sense. Animals subjected to cruelty certainly vocalize pain.

⁵⁴ Remarks of Andrew Robathan, 425 PARL. DEB., H.C. (6TH ser.) (2004) 1398.

⁵⁵ *Id.*

which had been before the Lords the previous fall, but which was not enacted because the Lords ran out of time.⁵⁶ On October 12,th after lengthy debate, the Lords allowed the bill to move forward for the sake of amendment.⁵⁷ The third debate I examine occurred on October 26, 2004. The Lords rebuffed the Commons and adopted their own “compromise” version. The fourth debate I study occurred on November 16, 2004 in the House of Commons. The Commons rejected both the Lords new language as well as some compromise language advanced by the Prime Minister.⁵⁸ The fifth and final debate I analyze was the “last stand” of the House of Lords where they once again voted down the legislation as well as for a measure blocking any change to the status quo before December of 2007.⁵⁹

A. *September 15, 2004 - The Commons Affirms its Intent*

This debate began at 12:39 PM with a preliminary procedural debate. The crux of this procedural debate was that the House of Commons resolve to guarantee passage of the bill by invoking the rarely used Parliament Acts. The Parliament Acts of 1913 and 1949 are akin to a “nuclear option” in that they are a means of compelling the Upper House to accept the will of the people through their elected representatives. At points in this portion of the day’s proceedings, this use of the Parliament Act was analogized to the employing of a legislative steamroller and a guillotine, underscoring the rarity and extremity of its use in the eyes of some members. This dynamic and the attendant debates over representation, majoritarianism, and countermajoritarianism colored much of the debate, call this a constitutionalism angle. Questions of politics also were very present—be they allegations of class warfare, “red meat” for back bench labor MPs disappointed over Blair’s Iraq policy, revenge for the Thatcher government’s treatment of miners, urban vs. rural, tolerance vs. moralistic legislation, personal freedom and government intrusion, criminalization of decent people, unemployment, and other such divisions simmering in British politics.

The bill passed into a second reading on a vote of 356-166.⁶⁰ The debate then moved to one on allowing for an eighteen month delay in the enactment of the law. This, too passed by a large margin. The final bill was sent over to the Lords on a vote of 339-155.⁶¹

A brief word on atmosphere: the debate was a momentous one, with strained emotions and the added backdrop of some violence outside when protesters clashed with each other and police. At approximately 4:22 PM five of eight protestors who had forged an invitation to gain access to the Commons stormed the chamber itself. The “invasion” was so shocking that one member declared “such a breach was probably unknown

⁵⁶ GUARDIAN, Timeline, available at <http://politics.guardian.co.uk/homeaffairs/page/0,,650062,00.html> (last visited 3/30/07).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.* The *Guardian* writers refer to the vote as the Lords’ “last stand.”

⁶⁰ *Supra* note 55, at 1353.

⁶¹ *Id.* at 1419.

throughout the 20th century.”⁶² Another decried: “Is it not a fact that not since Charles I came to this House has there been such an invasion.”⁶³

Approximately 352 lines of the debate directly addressed the effect of the legislation on animals—primarily the lines concerned foxes, but there were a number on hounds, and some on horses, and even deer.

1. Mercy

A hefty 295 of the animal-related lines or 83.8% could be considered as indicative of a discourse of mercy.⁶⁴ One such comment was made by Jean Corston who noted “my opposition was reinforced before Christmas last year when I saw a fox being torn apart by hounds of the Beaufort hunt just off the public highway.”⁶⁵ She related this narrative of personal witness twice in her remarks. Michael Foster made another remark which was intriguing for his discussion of being present for a hunt. He makes his point strongly, noting that at one point, he and the hunters came into physical contact with the pursued fox: “On one occasion, the fox brushed past my leg—and those of the people accompanying me on the hunt. To show me how humane the hunt was, the fox went past my leg.”⁶⁶ He concluded forcefully: “Hunt supporters pretend that hunting as an activity is purely natural. I believe that that is a lie.”⁶⁷

2. Human-Centeredness

57 of the animal related lines, or 16.2% can be categorized as dealing with human-centered concerns.⁶⁸ Despite the low tally for this kind of discourse, when it was invoked, the points were interesting and suggestive. Andrew George couched the matter in terms of the “liberties of those who are displeased by hunting in their parish.”⁶⁹ He noted that people are “offended” and “derive displeasure” from hunting.⁷⁰ The concern is for the humans and their sensibilities in these remarks. The Department for Environment, Food, and Rural Affairs Minister Alun Michael specifically cited the “evils” associated with hare coursing that the bill addresses, and notes that this is an “important consideration.”⁷¹ These evils include “violence and intimidation” associated with the hunting activity.⁷² This is an effect of the cruelty on people and is another example of human-centeredness in this debate. Other comments condemned the presence of

⁶² Remarks of David Winnick, *id.* at 1337.

⁶³ Remarks of Sir Stuart Bell, *id.* at 1337.

⁶⁴ See chart in the appendix.

⁶⁵ *Supra* note 55, at 1374. The Beaufort is one of the largest hunts.

⁶⁶ Remarks of Michael Foster, *id.* at 1388.

⁶⁷ *Id.*

⁶⁸ See chart in the appendix.

⁶⁹ Remarks of Andrew George, *supra* note 55, at 1347-48.

⁷⁰ *Id.*

⁷¹ Remarks of Alun Michael, *id.* at 1360.

⁷² *Id.*

foxhunting in a “civilized society,”⁷³ the “cruel spectacle,”⁷⁴ and the “barbaric practice.”⁷⁵ Such comments illustrate a violence done to human society itself.

B. October 12, 2004 – The Lords Debate the Bill Thoroughly

The House of Lords took the bill up again for a second reading on October 12, 2004. Unlike the House of Commons debate, a lopsided number of the over fifty speakers spoke against the ban. Their comments were not always without concern for animal welfare, however, as a significant number of lines was still devoted to that topic—be it the welfare of the fox, the hounds, or horses. Roughly 311 lines of debate centered on animal cruelty.

1. Mercy

A discourse of mercy accounted for 82% of the debate, or 255 of the animal-related lines, when animal cruelty was discussed.⁷⁶ One telling comment from Lord Harrison centered on the individual fox’s worth through a comparison with human pleasure. He asked, “How can we justify even one ounce of animal pain being suffered for a hundredweight of human pleasure?”⁷⁷ Baroness Gale gave a speech which showed an unusual amount of commitment to individual animals when she revealed that not only did she not support hunting, but that she had also given up eating meat because of the cruelty to animals in factory farming and battery chicken operations. A prior speaker⁷⁸ had tried to point out a hypocrisy among red meat eating hunting opponents. Baroness Gale responded that she could “truly say that no animal has been reared in cruelty for me to eat.”⁷⁹

One of the more explicit speeches given entailed quotation from letters of hunting opponents. Lord Graham of Edmonton read-out letters such as this one which graphically conveyed a picture of cruelty to an individual fox:

Several years ago, the Wynstay were out cub hunting. They un-earthed a four month old fox cub using terriers, held it down while they broke its lower jaw, and then threw it to hounds some ten yards away. They disemboweled it, and the hunt staff then cut off its testicles and threw them to the hounds, then cut off its brush as a memento. Most of this was seen and heard and backed up by photographic evidence, X-rays and a veterinary report.⁸⁰

As noted previously, not all comments focused on animal welfare are from people in support of the bill. There are those that speculate on the possible slaughter of hounds and horses upon the bill’s passage. A major theme in this debate was the detriment to the

⁷³ Remarks of Jean Corston, *id.* at 1375.

⁷⁴ Remarks of Michael Foster, *id.* at 1389.

⁷⁵ Remarks of David Winnick, *id.* at 1415.

⁷⁶ See Appendix.

⁷⁷ Remarks of Lord Harrison, 665 PARL. DEB., H.L. (5TH ser.) (2004) 207.

⁷⁸ Lord Phillips.

⁷⁹ Remarks of Baroness Gale, *supra* note 77 at 185.

⁸⁰ Remarks of Lord Graham of Edmonton, *id.* at 239.

welfare of foxes who would have to be shot, snared, and gassed upon the bill's passage. Some of the most graphic language of all the debates studied actually dealt with the issue of foxes that had been seriously maimed in unsuccessful attempts at killing. There are also stray comments about the welfare of other animals, such as fish, lambs, and deer. A particularly long passage in this debate was explicitly focused on the evidence and measurements possible or not possible with regard to determining suffering in foxes and other quarry. Lord Burns who had chaired the critical study on hunting soberly discussed the problems that inhere in any divining of what the foxes are feeling.⁸¹

2. Human-Centeredness

Language of human-centeredness appeared in 56 of the animal-related lines of the debate, or 18%.⁸² The most dramatic human-centered speech of any debate examined in this essay was delivered by Lord Roberts of Llandudno. Lord Roberts opened his speech with a meditation on recent senseless acts of violence in world events in the days leading up to the debate including the deaths of 300 school children in Moscow, deaths of innocents on the Israeli/Egyptian border, a 14 year-old's murder in Nottingham, and the beheadings and other barbaric activities in Iraq.⁸³ "Violence is accepted," he noted simply.⁸⁴ He then made the connection with the "accepting and condoning" of this violence with the chance to add to its remediation with the passage of the bill:

...we must take a step away from accepting and condoning violence. The culture of killing is becoming acceptable, and that shows our civilization and society in a very bad and threatening light...the tide of horror is becoming acceptable and society is becoming insensitive. I suggest that today we can at least take one step with this Bill.⁸⁵

Lord Roberts then moved to a criticism of the barbaric nature of the entertainment and pleasure to be found in this activity at the center of a "culture of killing."⁸⁶ He noted that bear baiting, cockfighting, and bull fighting "were acceptable forms of entertainment, but they belonged to a medieval age."⁸⁷ He then suggested that hunting belongs with these other savage activities.⁸⁸

Lord Harrison spoke in terms of social cost as well. He noted that foxhunting "impoverishes the human spirit, serves as a poor example to children and encourages the hunt havoc that prevents thousands of our citizens enjoying the peace, tranquility and privacy of their own home."⁸⁹ Other Peers spoke to additional human-centered concerns, the Lord Bishop of Chelmsford called it a "moral issue."⁹⁰ Baroness Gibson of Market

⁸¹ Remarks of Lord Burns, *id.* at 144-45.

⁸² See Appendix.

⁸³ Remarks of Lord Roberts of Llandudno, *supra* note 77, at 203.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.* at 204.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ Remarks of Lord Harrison, *id.* at 206.

⁹⁰ Remarks of the Lord Bishop of Chelmsford, *id.* at 136

Rasen cited the “anger [that] came from the sight and sound of the hunt” and how ever since she was a girl it made the hair stand on the back of her neck.⁹¹

C. October 26, 2004 – The Lords Try to Compromise

Having allowed the bill to advance for the purposes of Amendment on October 12th, this was the session in which the Lords put forth their compromise: a bill that would allow hunting to continue with a degree of regulation, namely a licensing system.

The debate was short and was mostly concerned with amendments which could bolster a compromise. Animal cruelty was only mentioned in 42 lines, and all 42 fall under mercy.⁹² The most poignant and express iteration came from Lord Brooke of Sutton Mandeville: “the issue of animal welfare will determine my own vote when we go into the Lobbies and...animal welfare should remain our guiding star.”⁹³

D. November 16, 2004 – The Commons Stands Firm

This debate and the next in the Lords may mostly be read as a kind of ping-pong between the two chambers. Very little new substantive commentary was made at this late stage in the game. On November 16, 2004, the Commons soundly rejected the compromise proffered by the Lords, as well as bolted from a compromise offered by the Government.

Accordingly, only about 25 lines of the debate were devoted to the issue of animal cruelty. 23, or 92% were indicative of a discourse of mercy.⁹⁴ 8% or just two lines were human-centered in nature.⁹⁵ Nothing significantly new in terms of rhetoric emerged in these lines.

E. November 17, 2004 – The Lords’ Last Stand

For what the press called a last stand, there was not much fireworks in the way of substantive discussion, only 18 lines mentioned animal cruelty, 100% were in language of mercy.⁹⁶

As with the debate in the Commons the day before, the Lords last word on the matter was anticlimactic and more procedural than anything. They voted 188-79⁹⁷ against a ban and 176-85 to have no change occur in the law until December 2007.⁹⁸ Ultimately they stuck to their guns in defiance of the Commons, and the steamroller of the Parliament Act rolled over them.

CONCLUSION

⁹¹ Remarks of Baroness Gibson of Market Rasen, *id.* at 137.

⁹² See Appendix.

⁹³ Remarks of Lord Brooke of Sutton Mandeville, 665 PARL. DEB., H.L. (5TH ser.) (2004) 1202.

⁹⁴ See Appendix.

⁹⁵ See Appendix.

⁹⁶ See Appendix.

⁹⁷ 666 PARL. DEB., H.L. (5TH ser.) (2004) 1564.

⁹⁸ *Id.* at 1588.

In the hunt for mercy, the United Kingdom's Parliament has ostensibly done just that—traded the hunt for a regime of mercy for the individual fox. An overwhelming majority of the 748 lines in the five debates relative to animal cruelty were indicative of a discourse of mercy. 633 lines, an impressive 84.63% were concerned with animals as individuals. 115 lines, or 15.37% were human-centered.

This is a clear indicator that the United Kingdom Parliament was showing concern for foxes as individual creatures. This is significant because the foxhunting debate can be considered the most protracted and contentious animal law debate of recent memory.

Despite the dramatic nature of this finding, we are left with a few factors that negate the best intentions of the legislators who enacted the ban. One is that unlike the premiere exemplar Germany,⁹⁹ the United Kingdom is still far from according any manner of dignity to animals in its constitutional order. The discourse of mercy is a step in the right direction, certainly, but there are other regimes who have gone much further.

A second key issue is the paltry enforcement of the act to-date. As of January 9, 2007 there has been only one private prosecution under the new law.¹⁰⁰ The law has caused much confusion with various loopholes. Police are being blocked access to private lands and have also requested more support to have any shot at enforcing the ban effectively.¹⁰¹ A Wales hunt follower observes that police are not getting tangled up in enforcement for a variety of reasons: “[I]t is an almost impossible law to prosecute, they haven’t got the manpower to police it, they don’t want to antagonize people who are usually very law-abiding, and in some areas their own officers are members of the hunts.”¹⁰² The hunts also seem to be going on stronger than ever, if not enjoying more support. The *Sunday Times* reported in February of 2006 that “dozens of illegal foxhunts are taking place each week.”¹⁰³ Hunters are not shy about their continued activity, some have even appeared in a recent BBC documentary program and relayed their unabashed law-breaking. One former huntsman of the Vale of White Horse hunt said “we hunted foxes all day and I don’t care who knows about it. We were very lucky. We got away with a proper day’s hunting.”¹⁰⁴ Another hunter interviewed by the *Sunday Times* using an assumed name stated: “Nobody is obeying the law. Trying to keep within the law is a waste of time.”¹⁰⁵ League Against Cruel Sports chief executive Douglas Batchelor estimates that more than 40% of hunts were breaking the law “at least some of the time,” according to evidence they have gathered.¹⁰⁶ The *Guardian* noted that 2,000 turned out on Boxing Day in December of 2006¹⁰⁷ to support the Beaufort Hunt, one of the largest in England and a hunt that Prince Charles and both his sons have been a part of in the

⁹⁹ German Constitution, Article 20(a).

¹⁰⁰ Guy Adams, *Half of Britons Think Ban on Foxhunting Will be Overturned*, THE INDEPENDENT, December 26, 2006, at 8.

¹⁰¹ Owen Bowcott, *Thousands Turn Out to Defy Hunting Ban*, THE GUARDIAN, December 27, 2005, at 3.

¹⁰² Daniel Foggo, *Hunts Admit they are Flouting Ban*, SUNDAY TIMES, Feb. 12, 2006.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ Matthew Taylor, *We’re Still Here and We’ll Carry On: Hunts Put on Boxing Day Show of Strength*, THE GUARDIAN, December 27, 2006, at 3.

past.¹⁰⁸ The *Guardian* reported that more than 250 hunts participated on the first Boxing Day since the ban went into effect in February of 2005. The second hunt had 314 on December 26, 2006.¹⁰⁹ This is especially significant because the ban became law only at the tail end of the foxhunting season in 2005. The popularity of hunting has not been dampened by the ban, and has only led to two years of increased turnout.¹¹⁰ The principality of Wales is cited as being especially unmindful of the new law. According to the *Sunday Times*, Wales is home to more than 100 different hunts and a large number are breaking the law “every time they meet.”¹¹¹ The *Times* notes this can be several times a week.¹¹² So it seems that between the intention and the act, the shadow has fallen. Time will tell if more robust enforcement comes.

Some directions for future study would be useful to confirm and extend these findings. One such direction would be a content analysis of earlier debates. The issue had been considered for seven years in its most recent appearance on the political landscape. It would be instructive to study the language used when the issues were first being thrashed out in a major way. Perhaps there would be far less airtime to matters of procedural wrangling, for one.

Another text that would be worth probing would be the 196 page Burns Report which set the stage for the debate over the new law. Other salient texts would be the statements of Tony Blair and various Government ministers who were active on the issue, as well as the reports from committee meetings and the public testimony at the consultations the Government held.

In the meantime, this essay has made a preliminary showing of a strong concern for individual animals in the most salient animal law debate, perhaps ever. These findings will modestly add some empirical meat to the bones of philosophical debates over whether the passage of such laws is primarily out of concern for animals as fellow individuals, or mere mirrors for mankind’s humanity or lack thereof.

¹⁰⁸ Bowcott, *supra* note 101.

¹⁰⁹ Press Association, *Lobby Group to Target Illegal Fox Hunting*, THE GUARDIAN, December 26, 2006, available at <http://www.guardian.co.uk/hunt/Story/0,,1978673,00.html> (last visited 3/15/07).

¹¹⁰ *Id.*

¹¹¹ Foggo, *supra* note 102.

¹¹² *Id.*

APPENDIX A

Select Provisions of the Official Summary of the Act

Rats, rabbits, retrieval of hares and falconry

Dogs may be used to hunt rats or rabbits, to retrieve a hare which has been shot, or to flush a wild mammal from cover to enable a bird of prey to hunt it.

Stalking and flushing out

Up to 2 dogs may be used to stalk or flush out a wild mammal if the stalking or flushing out is carried out for one of the following purposes: preventing or reducing serious damage which the wild mammal would otherwise cause to livestock; to birds or other property; or to the biological diversity of an area; participation in a field trial in which dogs are assessed for their likely usefulness in connection with shooting; the stalking or flushing out does not involve the use of a dog below ground (unless the requirements of the ‘gamekeepers’ exemption’ are complied with); and reasonable steps must be taken to ensure that as soon as possible after being found or flushed out the wild mammal is shot dead by a competent person.

The ‘gamekeepers’ exemption’

A single dog may be used below ground to stalk or flush out a wild mammal if:

the stalking or flushing out is undertaken for the purpose of preventing or reducing serious damage to game birds or wild birds which are being kept or preserved for shooting;

the person doing the stalking or flushing out carries written evidence of land ownership or the permission of the owner or occupier. This evidence must be shown to a police constable immediately on request;

the following conditions are complied with:

reasonable steps are taken to ensure that as soon as possible after being flushed out from below ground the wild mammal is shot dead by a competent person;

the dog used is brought under sufficiently close control to ensure that it does not prevent or obstruct the shooting of the wild mammal;

reasonable steps are taken to prevent injury to the dog; and

the dog is used in compliance with any code of practice which is issued or approved by the Secretary of State for the purpose of this exemption (being prepared by the British Association for Shooting and Conservation).

Recapture of a wild mammal

Dogs may be used to recapture a wild mammal which has escaped or been released from captivity or confinement if:

reasonable steps are taken to ensure that as soon as possible after being found the wild mammal is recaptured or shot dead by a competent person;
the wild mammal was not released or permitted to escape for the purpose of being hunted.

Rescue of a wild mammal

Up to 2 dogs may be used to rescue a wild mammal if:

the hunter reasonably believes that the wild mammal is or may be injured;
the hunting is undertaken for the purpose of relieving the wild mammal's suffering;
the hunting does not involve the use of a dog below ground;
reasonable steps are taken to ensure that as soon as possible after being found appropriate action is taken to relieve the wild mammal's suffering;
the wild mammal was not harmed so that it could be hunted under this exemption.

Research and observation

Up to 2 dogs may be used to track a wild mammal if:

the hunting is undertaken for the purpose of or in connection with the observation or study of the wild mammal;
the hunting does not involve the use of a dog below ground; and
each dog is kept under sufficiently close control to ensure that it does not injure the wild mammal