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Introductory Note by Francis Bennion

The article below is a further addition to my writings on hunting. Others are included within the Topic 'Hunting Act 2004'. The Topic can be found on this website at *www.francisbennion.com/topic/huntingact2004.htm*.

Objections to the Hunting Act 2004

Hunting: necessary action, and high time to take it

Francis Bennion, former Parliamentary Counsel, assesses the High Court's rejection of the Human Rights claim over hunting. He states that, in his opinion, the immemorial rights of British people are being taken away without just cause, and calls for those who are affected to communicate, vividly, the high moral outrage which they feel.

We have a Human Rights Act, not an Animal Rights Act. But a recent ruling by the High Court has held that our Human Rights Act does not protect the humans who want to keep the right to hunt, and has found in favour of the animals. The decision affects various types of hunting, but this article is confined to fox hunting. It describes the High Court decision, and explores the possibility that it might be reversed by a Higher Court. An appeal against it is to be brought.

I begin by taking up something Francis Fulford said in the last issue ('Hunting's medicine, now doled out to shooting', p. 57). It was that opponents are determined to besmirch the good name of shooting 'as they did with hunting'. This suggests that hunting had a good name to besmirch, which is certainly true. Until recently its reputation was very high; and to be a M.F.H. was a great distinction. Here are some reminders.

Nearly a thousand years ago one of our kings gave orders that a large tract of land in Hampshire should be set aside so that he could go hunting in it. He enjoyed hunting with a great passion, and was not alone in that. He did not need to hunt animals for food, but regarded it purely as sport. His name was William the Conqueror. The large tract of land is still called the New Forest.

We are told that one of the greatest delights of Norman William's Saxon predecessor the sainted Edward the Confessor was 'to follow a pack of swift hounds in pursuit of game, and to cheer them with his voice'. According to Alfred's biographer Asser, before an earlier Saxon King Alfred the Great was twelve years old he was 'a most expert and active hunter, and excelled in all the branches of that noble art, to which he applied himself with incessant labour and amazing success'. So it was regarded in the past as a noble art. Not so today.

We can go back even further. King Herod was, we are told by the Jewish historian Flavius Josephus, a keen hunter recorded to have killed forty head of game (deer, boar and wild ass) in one day. Ancient Rome gave us the word *venery*, meaning hunting. The fifteenth-century poet Yonge wrote of those who 'delight in honest play and it behold, as beasts to chase in venery'.

I could cite many other instances of the high opinion enjoyed by hunting, but it is time to get on. I will mention though the many references in English literature, from Ben Jonson's Diana 'Queen and huntress, chaste and fair' to Surtees to the Irish R.M. Who does not fondly recall Flurry Knox's foxhounds or Mr Jorrocks M.F.H. with his 'Tell me a man's a fox-hunter and I loves him at once', and his

> ‘’Unting is all that’s worth living for – all time is lost wot is not spent in ‘unting – it is like the hair we breathe – if we have it not we die – it’s the sport of kings, the image of war without its guilt and only five-and-twenty per cent. of its danger.’

And consider those lines children used to learn at their mother’s knee-

> Do ye ken John Peel with his coat so gay?
> Do ye ken John Peel at the break of day?
> Do ye ken John Peel when he’s far, far away,
> With his hounds and his horn in the morning?
>
> ‘Twas the sound of his horn brought me from my bed,
> And the cry of his hounds has me oftimes led,
> For Peel's view holloa would awaken the dead;
> Or a fox from his lair in the morning.

The trouble is that our masters no longer ken John Peel. And they don’t recall that Alfred Watson, editor of the *Badminton Library* in days of yore, said that the practice of the chase indicates a high degree of civilisation, pursued as it is on fixed rules and principles.

There is much ancient lore in fox-hunting. Watson recalls that the eighteenth Lord Willoughby de Broke M.F.H. (1844-1902) was a great authority, and laid it down that the man who hunts the hounds (called the huntsman) should always feed them. Under ‘Work’ in his *Who’s Who* entry His Lordship simply had: ‘Owns about 18,200 acres’. Another great authority, the eighth Duke of Beaufort, thought little of the whipper-in, saying that in his experience on nine days out of ten that the whipper-in goes out hunting, he does more harm than good!

But those great days are past. The majority of British people now think that fox hunting is cruel, and that it is immoral to engage in a sport which is cruel. That is the crux of the matter. It is the reason why the High Court reached the decision it did. Really, it is a question of that troublesome thing the zeitgeist or spirit of the age.

By now I have lived my own life in no less than nine decades. The dear old zeitgeist has changed greatly over this span. In the thirties, when I went to school, we were taught to respect the cadet corps and Empire Day. For me, as for my contemporaries, those were the formative years. So I was formed to respect, among many other things, the institution of fox-hunting. It was a British institution.

Having thus been formed in one mould, can one, at the behest of this beguiling zeitgeist, really crumple that into oblivion and fit oneself into another mould altogether? Can one keep doing that sort of thing, decade after decade? It is what seems to be expected, but for myself I have found it difficult. So have many other people, but it seems we are forced to adjust.

There are other matters on which we have been forced to adjust. When I was taught law at Balliol in the 1940s we were reared on A. V. Dicey and his great work *The Law of the Constitution*. Here is a key passage from it-

> ‘The power and jurisdiction of Parliament is so transcendent and absolute, that it cannot be confined, either for causes or persons, within any bounds . . . It has sovereign and uncontrollable authority in the making, confirming, enlarging, restraining, abrogating, repealing, reviving, and expounding of laws, concerning matters of all possible denominations, ecclesiastical or temporal, civil, military, maritime, or criminal: this being the place where that absolute despotic power, which must in all governments reside somewhere, is entrusted by the constitution of these kingdoms.’

It is not so any more. We now have the bureaucrats and judges of the European Union encroaching on the powers of our Parliament. Likewise with the bureaucrats and judges of the Council of Europe and its interesting creation the European Convention on Human Rights

('the Convention'), which Mr Blair has triumphantly 'brought home' in the shape of the Human Rights Act 1998.

There are mixed feelings about all that. It was after all Parliament that enacted the Hunting Act which banned fox hunting and the Convention to which we looked to save us in the High Court. On the pure principles Dicey describes in the passage quoted above we would not have a leg to stand on, except of course that the Parliament Dicey knew would not have dreamt of banning hunting. Except too that it was not the Parliament of our day that passed the Hunting Act, but only the House of Commons on its own. We still await the outcome of the challenge that has been brought to that piece of procedure (some might say chicanery).

Another way the zeitgeist has changed in Britain concerns observance of the Christian religion. I was brought up on the Holy Bible. The traditional Judeo-Christian belief, expressed in Genesis 1.26, is that we humans are the lords of creation. God gave mankind dominion over the fish of the sea, and over the fowl of the air, and over the cattle, and over all the earth, and over every creeping thing that creepeth upon the earth. It's a nice idea, and was graciously accepted by mankind (which of course included womankind) for over two thousand years. It is not known, cannot be known, whether the creeping things agreed.

That's the point really. In modern times many humans have taken it upon themselves to speak for the animals and express violent *dis*agreement. Hunt supporters hold the opposite view. In its judgment the High Court expressed the difference as follows-

> '. . . the legislative aim of the Hunting Act is a composite one of preventing or reducing unnecessary suffering to wild mammals, overlaid by a moral viewpoint that causing suffering to animals for sport is unethical and should, so far as is practical *and proportionate*, be stopped . . . In the end there were two irreconcilable opposing views, each capable of being reasonably and rationally held, about hunting with dogs. The House of Commons duly decided to legislate to achieve the one which the majority of its members regarded as necessary.'

What chance is there for the appeal? I italicised two words in the quoted passage from the High Court judgment because I believe they hold the key to this question. The case was a complex one. There were three different claimants, one of which was the Countryside Alliance. There were two different defendants, the Attorney General and the Secretary of State for Environment, Food and Rural Affairs. The RSPCA was allowed to intervene.

The claim was for judicial review to challenge the lawfulness and integrity of the Hunting Act. The court said that broadly speaking, the claimants did so on the ground that the Act is a disproportionate, unnecessary and illegitimate interference with their rights to choose how they conduct their lives, and with market freedoms protected by European Union law; and also an unjust interference with economic rights – also protected by that law.

The claimants alleged that the Act is oppressive legislation, enacted irrationally by a majority of the members of the House of Commons, who rejected a rational compromise promoted by the Government; legislation which, so far from achieving its avowed aim of preventing cruelty to animals, will in fact promote such cruelty. The other side of the controversy, espoused by the House of Commons majority, and supported in the High Court by the RSPCA, is, said the judgment, that hunting wild animals with dogs for sport is not only cruel, but unethical, and should be stopped.

The court held that the Act is proportionate legislation to achieve that legitimate aim which withstands human rights and European law objections. They said-

> 'We have concluded that it was within the rational, proportionate and democratic competence of Parliament to make this enactment and that the court should not intervene. Our route to that conclusion has to pick its way through a mass of dense undergrowth cultivated by human rights and European legislation and jurisprudence. It is often hard to see the overgrown wood for the trees. We acknowledge that some of

> our intermediate judgments are more finely balanced than others, but that does not, in our view, apply to the main conclusion.'

When the appeal is brought against this decision its only chance of success, in my judgment, lies in this question of proportionality. That is why I have stressed in the earlier part of this article the very high reputation enjoyed by hunting right down to the present day. Personally I feel indignant that this is now being flouted by an ignorant majority who are no longer taught the history of our nation. I know that sense of righteous indignation is shared by many people. It must be communicated vividly to the Court of Appeal.

We must cease to be on the defensive, or all will be lost. On the contrary we must adopt a tone of outrage that our immemorial rights are being taken away without just cause. We must convince the Court of Appeal that the Hunting Act is not a measure which is a proportionate response to the plight of the hunted fox. On the contrary it is *dis*proportionate. That is the language of the 21st century human rights lobby, so that is the language we must use. High indignation, genuinely held and fearlessly communicated, is I believe the winning line.

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