

## Hunting and the Right to Landscape: Comparing the Portuguese and Danish Traditions and Current Challenges

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### Introduction

Hunting<sup>1</sup> is important for many European rural landscapes, ecologically, socially and economically. However, hunting is also contested ground for social actors with different views of nature and rural life (Woods 1997; Milbourne 2003; Prott 2007). This chapter addresses the right to landscape by dealing specifically with the impact that State regulations have in favouring, or rather hindering, the construction of inclusive landscapes as shared resources.

In the 1990s, a case was brought to the European Court of Human Rights by a number of French farmers, which illustrates not only the significant and contested nature of hunting rights as an aspect of landscape practice, but also the role played by law in constructing specific forms of landscape practice. The farmers had been forced by the French authorities to transfer their individual hunting right, linked to their landed property, to a local association set up by the authorities with reference to a law from 1964 ('the Loi Verdeille'). The association was devised by the French public authorities as a means to avoid unregulated hunting and to promote rational management of the game stock, since the farmers were all owners of relative small farms (most of these being less than 20 ha). With reference to the French law, the farmers were automatically enrolled as members. In the view of the French authorities, the fact that each of the members had the right to hunt on all the land covered by the association was a sufficient compensation for losing the exclusive hunting right on their own property. However, the farmers in question, who were all against hunting for ethical reasons, found that their property right had been violated and that their (new) right to hunt on all the land managed by the association was not a relevant compensation for them, since they were not hunters. The court

found that the French State was entitled to set up a hunting association, insofar as its purpose was in the general interest, but considered, on the other hand that, since the farmers in question were against hunting, it was a violation of the European Convention on Human Rights to allow others the right to hunt on the applicants' land. For the same reason, the benefit of being entitled to hunt on someone else's land (the land managed by the association) could not be considered a compensation (Carss-Frisk, 2001: 38).

This case illustrates well the nature of disputes regarding the regulation of hunting rights in the current European context. An increasing emphasis on the sustainable management of hunting areas, leading in this case to encouraging or imposing scale and collective management practices, conflicts with the exclusivity of use and decision-making capacities that are inherent to the private (Western, Modern) ownership of the land. What are the implications of this kind of conflict to constructing landscapes as shared resources?

By the right to landscape we mean a concern with the inclusions and exclusions operated by landscape-related practices. Different authors argue that hegemonic landscapes create exclusion, insofar as they embody forms of relation to the land by those in power, thereby undermining or obscuring other ways of relation between humans and their physical environments (Williams, 1973; Bender, 1993; Mitchell, 2002). Inclusion, on the other hand, is more recently being promoted as an explicit objective in public policy, as illustrated by the European Landscape Convention (Council of Europe, 2000). The Convention sets out to look for and to incorporate into decision-making processes inputs by all those involved with a particular landscape (Jones, 2007).

An inclusive approach to landscape goes, however, beyond the right to express an opinion about landscapes constructed by experts as fact (Olwig, 2007). As a neutral physical reality, landscape operates as a non-challenged framing, by reference to which viewpoints are constructed and expressed (Miller, 2007). Hunting landscapes, insofar as they are predicated on the evanescent encounters with game (Finch, 2007; Marvin, 2007), provide a good example of why it may be problematic to see hunting as an activity taking place (together with other activities) within a 'passive' landscape. As put by Finch, hunting experiences create 'a social geography of the rural landscape that overlies, transgresses and textures other more familiar spatial geographies' (2007: 363). As with evanescent experience, also the material configuration of hunting landscapes may be overlooked in the way physical elements are brought into view (through classification) by other spatial geographies (see Finch, 2007: 373). Hand in hand with looking to people's expressed views on given landscapes, it is important to consider the specific social and historical contexts that shape hunting landscapes and hunting rights, physically as well as perceptually.

In the following sections we will present and analyse two case studies from European countries with different political and legal histories concerning hunting: Denmark and Portugal. Whilst in Denmark the hunting right is



an attribute of private landownership (*res propria*), Portugal has historically embraced the *res-nullius* principle, that is, the conception that game is owned by no one, until capture by any hunter. Through a comparative analysis of regulations and the actual management of hunting rights we may learn something important about the construction of hunting landscapes and how inclusive they are. As Olwig puts it, 'as time passes, the physical appearance of the land is increasingly shaped in the image of the laws of the land as formalized by [the political body]' (2005: 23). We ask what landscapes are shaped by the regulation and management of hunting rights in today's changing rural world. Finally, it should also be emphasized that the biophysical landscape functions as the habitat – or more often – a system of habitats for game. Most European game species are not living on single plots of land but rather in mosaics of different types of land uses. Consequently, game populations most often exist at a spatial level above the property level and game management is therefore most effectively practiced at the landscape level.

As we will see below, State regulations and the practices they generate inevitably interact with their more encompassing contexts. In the case studies presented below, agricultural restructuring and urbanisation of various forms are the two main driving forces affecting landscapes (Bürge et al., 2004; Primdahl et al., 2004; Pinto-Correia and Breman, 2009; Primdahl and Swaffield, 2010). Hunting relates to them in dynamic ways. As a source of livelihood and part of farming life in the past, hunting is now, with the general 'urbanisation' of the countryside, becoming an increasingly commoditised activity (Emanuelsson, 2009). These aspects raise issues of social justice in the shaping and enjoyment of hunting landscapes.

Our analysis builds on research undertaken separately in Hvorslev, Denmark and Mértola, Portugal. The Danish data originates from two large surveys done in the same area, Hvorslev in Eastern Jutland in 1996 with a follow-up in 2008 involving personal interviews of several hundreds of farmers and analysing broadly changes in farming and landscape practices including hunting (Primdahl, 1999; Primdahl and Christensen, 2002; Primdahl et al. 2003; Primdahl et al., 2012). The Portuguese data are based on ethnographic research undertaken in 2002–2004 (Carolino, 2006; Carolino, 2010) and additional documentary research carried on between 2004 and 2008. A survey on perceptions of landscape change, by different groups of landscape users in the three case study areas in the municipality of Mértola, undertaken between 2002 and 2005 (Oliveira et al., 2007), also brought relevant knowledge to the issues discussed here.

This chapter starts by looking briefly at the legal frameworks that regulate hunting in Denmark and in Portugal and to their outcomes at the local scale of Hvorslev, Eastern Jutland and Mértola, Alentejo. After which a discussion is made on the role played by regulations in building two different sorts of hunting landscapes, and their implications in terms of the relative inclusions and exclusions thereby created.