English and American Wildlife Law: Lessons from the Past

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Abstract: English wildlife law has been well documented for over 1,500 years. Since the Middle Ages the English have tried implementing, at one time or another, almost every law that could be imagined for the taking and harvesting of wildlife. The penalty for violations of these laws have ranged from a fine, prison, mutilation, transportation, to even death. Despite all these laws and draconian punishments, poaching still persisted. Before we propose or try to change any of our current laws, we should review the past and see if this new law or change has failed or worked earlier. Let us ask the question each time we propose a change, "Are we trying to reinvent the wheel?"

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As professional wildlife managers and law enforcement officers, we often take pride in the changes we are able to make in laws and rules and regulations which affect the resource we are charged to protect. Most if not all these changes affect the hunting and fishing public we serve. More times than not these changes are designed to make our jobs easier, subsequently complicating the lives of the hunter and fisherman. Most wildlife officers who have been working ≥20 years can remember when all the wildlife laws were in booklet form, would fit in your hip pocket, and were committed to memory. Today's wildlife laws, in any given state, will fill several books, and it is doubtful that any one person would have all the wildlife laws memorized. Maybe we should look back to the mother country and our own early history to see what wildlife laws were in effect then and if they worked or failed. He who fails to study history is doomed to repeat the same mistakes. Maybe we should reflect each time we propose to change a law or add a new law on the idea, "Are we trying to reinvent the wheel?"

The contempt of early Americans for the aristocratic hunting traditions and regulations in Europe during the feudal times are still often seen today. Today, as professional wildlife officers, we still encounter and have to put up with the "Robin Hood" syndrome. However, the Europeans were faced then with some of the same wildlife management problems we face today. Foremost among these is

an essentially finite wildlife and land resource base versus a high human population density, whereby only a small fraction of the population is actively involved in the consumptive use of fish and game.

Game preservation and poaching, the reverse sides of the same medal, have an ancient history. History shows that man has always been a hunter. As Europe became an agrarian culture the necessity of hunting for subsistence changed to one of hunting for sport. History shows that the Greeks and Romans hunted. Julius Caesar allowed every free male to enjoy unrestricted hunting freedom. This same principal applied when the Germanic tribes invaded Europe.

The first definitive evidence of any annually recurring temporal restrictions on hunting (i.e., closed seasons) are in the Germanic Codes, written under the Frankish kings, starting in the 6th century. The primary motivation for these restrictions was not the protection of game animals per se, but rather to preclude hunting damages to ripening crops. The laws contained punitive specifications, and in 515 A.D. the Frankish Duke Guntram had his Chamberlain Chundo seized and buried alive under a mound of rocks for poaching a red deer.

Following the conquest of England in 1066 by William the Conqueror, all the royal domains and hunting grounds of the Saxon kings came under William's control. Insisting that wild beast had no owner but the King, he tightened up Saxon game laws and introduced mutilation as a punishment for poaching. His sons, William Rufus and Henry II, followed his example with Henry II declaring that the clergy be tried in royal courts for two offenses only—treason and poaching (Trench 1965).

Public unrest and ecclesiastical pressure against such harsh punishment reached an all time high in 1184, and Henry II removed mutilation as a punishment. In 1225 the Forest Charter of Henry III stated no one was to lose life or limb for killing the King's deer. However, he would suffer a "grevious" fine if he had any money, and if he had none he was to go to prison for a year and a day (Sigler 1980).

In the 13th century each royal forest had a chief forester (variously known as [game] warden, steward, keeper, or bailiff), some "riding foresters" or bowbearers, and a large number of foresters to carry on the day-to-day work. Chief foresters sometimes received their post through inheritance, were generally appointed by the Crown, and often commanded some royal castle as well as being in charge of the forest. Foresters were always appointed. They had authority to arrest anyone found in the forest with bow, snare, or hounds; they patrolled, took special care of the deer in breeding season, and provided browse and tree-clippings in winter. They were themselves forbidden to hunt or even to carry a bow, save under warrant of the chief forester or when training young hounds, but they were well paid and had valuable privileges (Trench 1965).

It is wrong to suppose that poaching was an offense peculiar to the lower orders since all classes poached the King's deer. There are innumerable cases of bishops, abbots, earls, barons, and knights entering royal forests to poach. William de Ferrers, Earl of Derby in the mid-thirteenth century, although warden of High Peak Forest, was convicted of killing, with his friends, no less than 2,000 deer in

7 years. The clergy were especially addicted to poaching. A fourteenth century manuscript has a picture of the devil, complete with horns and tail, showing a young monk how to set nets for deer (Trench 1965). In the fifteenth century, a bishop of Wurzburg had a hare trapper's net burned on his back. In 1537 Michael von Klenburg, Archbishop of Salzburg, disregarded the objections of the Court and had a peasant, who had stolen a stag wounded by his huntsmen, sewed into the animal's skin and torn to pieces by dogs.

Armed poachers often resisted arrest. An affray between foresters and poachers in Rockingham Forest in 1229 is, perhaps, one of the earliest recorded instances of the use of the longbow, whereby a forester was wounded by two Welsh arrows. The longbow as a weapon of war was incomparable; however, what the hunter needed was a weapon from which a single missile of great striking force could be delivered with accuracy even by a man on a galloping horse—the crossbow. The crossbow, moreover, could be used effectively without years of training and specially developed muscles. So, the poacher's weapon par excellence was banned by special legislation for anyone who did not own land worth 200 marks (Trench 1965).

In 1584 Elector August of Saxony announced, "That henceforth the punishment for poachers and sharpshooters, and for those who harbor same, or knowingly give them aid in anyway, shall in all our lands be the gallows." Some poachers were crowned with a notorious "poacher's cap," an iron ring topped with antlers. Thus marked he was sent to a forced labor camp.

The Game Act of 1671 established the qualifications a person must have before they could take game, although it did not in so many words impose any penalties upon unqualified persons taking game. An important facet of the Act was that it gave official status to the class of gamekeepers, who acted as a type of special police in the enforcement of the game laws. The Act now authorized every lord of a manor to appoint a gamekeeper who should have the power to confiscate all paraphernalia of sport such as guns, dogs, or nets found in the possession of unqualified persons. For this purpose he was to search the houses of suspected persons and thus, he acted somewhat as a government official (Kirby 1933).

It was the gamekeeper who acted as the agent of the privileged class. Subsequent acts extended his competence, empowering him to seize poachers at night and to use all necessary force for the purpose, and giving him the right, with the authorization of the lord of the manor, to kill game. This last provision resulted in the appointment of many aristocrats to the office who were not qualified under the Act of 1671 to take game (Kirby 1933).

The common gamekeeper was ideally a sober, honest, industrious man, with a knack for killing vermin, and a boldness and shrewdness which would not fail him in encounters with poachers. In practice he was usually some bold pugnacious laborer, often a former poacher chosen on the maxim "set a thief to catch a thief," famed for his accurate shooting, but hardly trained in the finer duties of his trade. Often he could not resist the temptation to sell game on the sly. Indeed, the keepers were accused of being the greatest poachers in the country. And the combination of ignorance and authority all too often made him into a brutal and

arrogant man, despised and hated by all the surrounding countryside (Kirby 1933).

In practice the gamekeeper served largely as a police officer, following suspicious characters about the manor in order to discover them poaching, watching snares in order to take the poacher who came for his booty, patrolling the fields at night. To him the poacher was in the same class as vermin, to be given no quarter beyond what the law required (Kirby 1933).

Nothing illustrates this attitude more clearly than the use of traps and spring guns to catch the poacher and his dog. Typical of numerous advertisements in provincial newspapers of the later eighteenth century is this notice published in the Norfolk Chronicle on 7 January 1786:

GAME

A Caution

Whereas the plantations and covers of William Colhoun, Esq., at Wretham, have lately been infested by the poachers, and the game in them very much destroyed; and one of the poachers, a notorious offender, being taken on Monday, Dec. 19, by his keepers and their assistants, this is to give notice, that in the future there will be MEN TRAPS and SPRING GUNS in the plantations, carrs, and covers set every night, there being no road or foot path whatever through them (Kirby 1933).

Although the solitary poachers gave the keeper most of his trouble, gang poachers attracted more notice. In the early part of the eighteenth century they devoted their attention chiefly to the deer preserves in the parks and chases because of the large quantities of game present. A gang of desperate characters known as the Waltham Blacks so terrorized the region of Windsor and Berkshire that they stung the government into the enactment in 1723 of the harshest game law to date. The Black Act, as it was called for more than one reason, made it a felony with the death penalty for anyone, while disguised with blackened faces or with weapons to kill deer illegally, and even by an ex post facto clause, threatened the same penalty on guilty persons who did not surrender and confess. Under this "Black Act," at a special assize in Reading, 4 poachers were hanged and 36 transported (Kirby 1933, Trench 1965).

Such severity proved no more successful in this than in other criminal laws. A month after the passage of the Black Act the old offenses were being committed as freely as ever. The ruling classes replied to this menace with more and severer laws. In 1737, King George II implemented and enforced an Act "for the more effectual punishing wicked and evil disposed persons going armed to hunt waterfowl or fallow deer." Violators were dealt with unmercifully, given the choice: "Seven years beyond the seas at hard labor on His Majesty's plantations in America or death." Anyone who dared to return to England during the seven years sentence, "Shall suffer death . . . without the benefit of clergy."

Gang poaching and the violence which accompanied it became every year more common. Severer penalties encouraged resistance to arrest and as a result, of several brawls between poachers and keepers, the Ellenborough Act of 1803 was passed and laid down that anyone offering armed resistance to lawful arrest should

be hanged as a felon. In 1817 another act decreed that any night poaching, even unarmed, was made punishable by seven years' transportation, from which no one ever returned (Trench 1965).

The privileged classes of the Georgian era of eighteenth century England clearly represented the character of field sports. They regarded their game as "more sacred than any other class of property." Hunting to them was a kingly sport, "to be followed only by a superior order of men." To the confirmed fox hunter, sport was an orgy in which he rode his horse often to the point of fatal exhaustion and roused himself to such a roaring humor that only coarse jokes and quantities of drink, into which the fox's pad had been dipped for added zest, could satisfy him. It is small wonder that he discovered the secret of English liberty in the sports of the field (Kirby 1933).

The English poacher was an ordinary figure, an accepted and normal part of rural life. Many communities refused to treat poachers as criminals. Poaching was so common that poaching offenses absorbed a major share of the magistrate's time. In 1843, one in four convictions in Suffolk were against the Game Laws, while in Norfolk 2,156 poachers were fined or imprisoned in the years 1863–71 and 610 of these had previous convictions (Jones 1979).

The English lawmakers often acted to preserve the stock when a desirable species of game was threatened by unusual conditions. Damming was recognized as an industrial peril to anadromous fish as early as 1393, and weirs were required in dams to facilitate spawning-runs ascending the streams. The legislators also restricted particular methods of taking against which a species was thought defenseless. As a result, legislation was passed in 1503 which prohibited taking herons, vulnerable targets indeed, by use of firearms, and in 1522 it was made illegal to track hare in the snow.

Some weapons were too effective and were outlawed because they spoiled good sport, and some hunting practices were abhorrent to persons of sensitivity. Rudimentary firearms, for example, were not elegant. They were loud and smelly and were "thought a mode of killing game not fit to be pursued by a gentleman." Their use was restricted in 1541. Considerations of taste also helped to prohibit a practice, now described as "jacklighting" but described during the sixteenth century as hunting by "lowbels." Groups would venture forth after dark ringing bells and flashing lights, gathering up stupefied partridges and pheasants. The distastefulness of this spectacle coupled with its lethal efficiency led to its prohibition in 1581 (Lund 1980).

Wealth was a test for the use of hunting gear. One statute, with limited exceptions, denied the use of handguns to those with an estate worth less than 100 pounds in 1541. In order to understand the exchange rate between different historical periods, Sir William Blackstone put the qualification statutes in perspective when he stated, "Fifty times the property [is required] to enable a man to kill a partridge, as to vote for a knight of the shire" (Lund 1975).

Some statutes did not rely on a monetary test but instead invoked terms of art. In 1694 one such statute limited the use of hailshot (an early form of shotgun) to those of "the degree of a Lord of the Parliament" (Lund 1980).

Class discrimination extended to the sale of wild game since it was a delicacy without which no feast would be complete. At first, in 1540 the law restricted the purchase of game only if it were then held for resale; one might patronize a poacher if one intended to eat the meat oneself (Lund 1980).

English law prohibited hunting on those days when the legislators commended church attendance (hunting was prohibited on Sunday because it was "a day appointed for the rest both of man and beasts") and prevented many hunters from simply shifting their take to another time. Virtually all holidays had some religious significance therefore only those without ordinary work (the rich and the poor) would have the leisure to hunt at other times (Lund 1980).

Deer fawning season was the occasion for "fence-month" within the Forest Jurisdiction. Other laws also gave particular attention to breeding animals: gathering the eggs of birds was prohibited in 1533 and in 1710, salmon were protected during their spawning runs, so that they might "become very plentiful and common . . . as they were formerly" (Lund 1980).

Physical changes in animals' defensive abilities were also the occasion for English regulations. In 1533 birds were protected when "the said old fowl be moulted, and not replenished with feathers to fly, nor the young fowl fully feathered perfectly to fly. The value of the animal was considered as a basis in limiting the take because the flesh of moulting birds had been found "unsavory and unwholesome, to the prejudice of those that buy them." In 1710 deer hunting was restricted out of season "because deer are not able to run, and are worth nothing when caught." Harvesting animals at juvenile stages was considered wasteful, and a 1699 law set a minimum size for lobsters (Lund 1980).

A 1581 law limiting hunting in fields, while grain was in ear, typifies the last purpose of restrictive hunting periods—minimizing interference by hunters with other productive activities (Lund 1980).

Controlling the hunting device was embodied in the prohibition of various hunting methods found to be wasteful, excessively successful, or "unsporting." Minimum net sizes protected fish fry in 1558, jacklighting was restricted in 1581, and hunters of herons were limited to hawking or the long bow in 1503 (Lund 1980).

Restrictions limited the possession of animals that posed dangers to forest wildlife. Watchdogs were potentially damaging to wildlife. Draconian measures were used to control these animals. In the vicinity of the forests all dogs large enough for hunting (their size tested by forcing them through an iron ring or a strap eighteen inches and a barley-corn long) had to be "lawed," that is to say, three toes and claws of their forefeet had to be chopped off (Lund 1980).

Leaving England, either by choice or being transported, early settlers in America found a wealth of wildlife never envisioned any of these animals becoming extinct. The paintings and writings during this period reflected this wealth of wildlife, and generated more settlement and financial backing for colonial enterprises. Where but in the New World could civil servants receive payment in furs and skins. In 1788, the legislature of the short-lived State of Franklin, now part of Tennessee, established that the governor of the territory would receive 1,000 deer

skins annually; the chief justice and the attorney general, 500 each; the secretary to the governor would receive 500 raccoon skins; the treasurer 450 otter; the county clerks, 300 beaver; the clerk of the House of Commons, 200 raccoon; members of the assembly, 3 raccoons per day; the fee to a justice for signing a warrant, 1 muskrat; and to a constable for serving a warrant, 1 mink (Tober 1981).

In early America hunting game was no sporting matter but a source of food, clothing, and income. The Plymouth Colony in 1623 enacted legislation that all members could hunt and fish when they passed a provision stating, "that hunting and fishing were free to all members of the colony." The "liberty to fowl and hunt upon the lands they hold, and all other lands therein not enclosed; and to fish, in all waters in the said lands," was offered by William Penn's charter of 1683 to the inhabitants of Pennsylvania (Tober 1981). Although game was plentiful in America, its numbers began to drop as the eastern cities grew and "market" hunting emerged as a means of supplying meat and skins to the cities.

Colonial governments exercised their control over wildlife with great regularity. Massachusetts Bay Colony (1630) and Connecticut (1647) enacted their first wolf bounty. On 14 February 1646 Portsmouth, Rhode Island, ordered a closed season on deer (Trefethen 1975). In 1698 Connecticut set an annually recurring deer season which provided the possession of fresh meat or skins during the closed season was accepted as proof of a violation (Tober 1981). In 1776 the first federal game law declared a closed season on deer in all the colonies except Georgia (Belanger 1988).

Professional enforcement of games laws, however, was difficult to secure. Towns balked at appointing police, and citizen wardens refused to serve. Those who did serve were expected to look in the opposite direction. The real watchdogs for the system were designed to be private citizens acting as informers. Some aristocrats in the absence of civil servant enforcers dealt with poachers individually. George Washington repeatedly warned his neighbor across the Potomac to avoid his Mt. Vernon duck marsh. Responding to unauthorized shooting one day, Washington mounted his horse and galloped in the direction from where the shots came. The poaching neighbor upon seeing him, fled in a skiff. Washington rode his mount into the water and seized the boat. Fearing for his life, the desperado leveled his gun at Washington's chest, swearing that he intended to shoot. Paying no attention to the threat, Washington dragged the marauder ashore by his hair, disarmed him, and administered a humiliating cowhiding. The punishment was effective, his neighbor thereafter poached ducks elsewhere.

In conclusion, after reviewing English and early American wildlife law, we should be able to understand some of the attitudes which still exist today, over 350 years after our founding fathers arrived in America. The English implemented laws to improve wildlife management practices; however, social and political attitudes were reflected in the wildlife laws. The English instituted some of the most stringent wildlife laws and draconian punishments ever known with the ultimate penalty—death. Although facing the death penalty, 7 to 14 years transportation or 1 to 2 years in prison, poaching still persisted and the number of violations in-

creased. Why should we think a fine or a few days in jail will stop someone from poaching today? Perhaps the greatest deterrent we have today is the loss of hunting and fishing privileges for a period of not less than one year.

Most wildlife problems start out as biological problems but become people problems, and the wildlife officer is left to solve the problem. Complicated laws which the wildlife officer does not understand, let alone the average hunter and fisherman, only results in poor enforcement and public resentment to the agency. We should review all of our wildlife laws and see if they are necessary today; look at the past and see if they have worked or failed, both in your own state and others. There is no need to try to reinvent the wheel if it failed before.

Literature Cited

Belanger, D. O. 1988. Managing American wildlife. Univ. Mass. Press. 225pp.

Kirby, C. 1933. The English game law system. Am. Hist. Review 38:240–262.

Jones, D. J. V. 1979. The poacher: a study in Victorian crime and protest. The Hist. J. 22(4):825–860.

Lund, T. A. 1975. British wildlife law before the American Revolution: lessons from the past. Mich. Law Review 74(1):49–74.

———. 1980. American wildlife law. Univ. Calif. Press. 179pp.

Munsche, P. B. 1981. Gentlemen and poachers: the English game laws 1671–1831. Cambridge Univ. Press, England. 255pp.

Sigler, W. F. 1980. Wildlife law enforcement, 3rd ed. William C. Brown Company, Iowa. 403pp.

Tober, J. A. 1981. Who owns the wildlife? Greenwood Press, Conn. 331pp.

Trefethen, J. B. 1975. An American crusade for wildlife. Winchester Press and the Boone and Crockett Club, New York. 409pp.

Trench, C. C. 1965. Game preserves and poachers. Hist. Today 15:259–268.