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

Júlia Carolino, Jørgen Primdahl, Teresa Pinto-Correia, and Mikkel Bojesen

Introduction

Hunting 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; Prutt 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 Verderelle’). 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, 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 emphasised 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 (Bürgi 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 Estern 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). The Portuguese data are based on ethnographic research undertaken in 2002–2004 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.
Comparing the Danish and the Portuguese Case Studies

*Hunting in Hvorslev, Denmark*

Unlike other countries where the Crown and the nobility have since long held the right to hunting, such as England, France, Germany or Sweden (Weisman 1931; Hoff 1997), in Denmark the hunting right has not always been subjected to such restrictions. Indeed, according to the first written laws in the Danish state – the so-called *Landscape Laws* from the twelfth century – it was permitted for everybody to hunt in the Danish forests (Hof 1997). Over time, however, hunting rights were increasingly restricted and limited to a highly organised activity for the Crown and the nobility.

At the end of the eighteenth century, due to major land reforms and concerns with the good condition of forests, organised hunting became more widespread. By 1840, hunting rights were tied exclusively to the individual ownership of the land and this right cannot be separated from the land ownership for longer periods than 30 years. From then on, hunting became an important feature of ordinary rural life, an activity of farmers and small landowners, who in most cases hunted on their own land but also a practice which left some opportunities for non-land owners to hunt within the framework of local hunting associations (Laursen 1996).

In Denmark today a landowner manages his hunting right individually, either by hunting himself, by lending the right out (gratuitously or through a lease) or by not permitting hunting on his property. Hunting is allowed on areas larger than 1 ha, but in order to lease out areas, they must be larger than 5 ha.

Hunting periods are set forth for all game species by the ministry of environment. These hunting periods are based upon national population inventory schemes which, as something quite unique, relies on hunters self reporting bag information, bag size and geographical distribution. An important part of Danish hunting is shooting, especially of pheasants, ducks and partridges. A new set of rules requiring approved habitat plans has been introduced as a prerequisite for putting out bird species. This new rule set has been set forth in order to ensure healthy and viable populations as well as a sustainable management of the bird species in question.

In addition to the hunting law (solicited act no. 1045 of 20/10/2008) an appendix with a set of ethical rules has been adopted by the National Wildlife Council and the Danish Hunters Association. These rules prescribe practices concerning minimum local game population sizes, safety during hunting, also with respect to other user groups as well as the use of the precautionary principal in order to secure sustainability in hunting and wildlife management. Although the ethical rules have no legal status they are in practice obeyed by the vast majority of the hunters.

In order to hunt, one must have a hunting license which requires a passed exam and cost about €70 year (2008/09). These funds are used to support
hunting in a number of ways including maintaining an advisory service, research of relevance to hunting and incentive schemes for planting of threes and creating wet habitats. A part of the hunting fee also covers public hunting liability insurance.

The Danish case-study area, Hvorslev (about 120 km²) is located in Eastern Jutland on mainly fertile soils with patches of poor soils. The main part of the area is characterised by mosaic landscapes with the cultivated field as the matrix and grasslands, Christmas tree plantations, forests, small wood lots, lakes and ponds as common patches (in addition to cultivated fields); hedgerows and other permanent field boundaries as common corridor elements – besides a major river running through the area. Huge forests and woodlands are found in the Western part of area.

The area has populations of game, including the red deer, roe deer, pheasant, common partridge, wood pigeon, various duck species and hare, of which the deer populations have been expanding over the recent decades whereas the partridge and hare populations have declined. In the Hvorslev landscape, the main threat to wildlife habitats is intensive farming, but a current trend towards relative diversification has to some degree improved...
Table 8.1  The farm owner’s management of the hunting right in relation to farm and land characteristics in the Hvorslev area, 2008 with some comparative figures from 1996

<table>
<thead>
<tr>
<th>Farm and land characteristics</th>
<th>Owner’s management of hunting right</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No hunting</td>
</tr>
<tr>
<td>Share of farms (%)</td>
<td></td>
</tr>
<tr>
<td>1996</td>
<td>41</td>
</tr>
<tr>
<td>2008</td>
<td>45</td>
</tr>
<tr>
<td>Share of farm property area (%)</td>
<td></td>
</tr>
<tr>
<td>1996</td>
<td>23</td>
</tr>
<tr>
<td>2008</td>
<td>18</td>
</tr>
<tr>
<td>Woodland, average % of farm property</td>
<td>7.4</td>
</tr>
<tr>
<td>New uncultivated elements (1996-2008), index²</td>
<td>10.32</td>
</tr>
</tbody>
</table>

Personal interviews with farm owners. *During the period 1996–2008 many farms have been amalgamated or been purchased by existing farmers and remained as separate properties – this is the main reason why the number of farms have declined. Both in 1996 and in 2008 more than 90 percent of the farmers have been interviewed; **An index expressing the extent to which the farmer has established new uncultivated elements per hectare such as hedgerows, woodlots, grasslands etc. on the farm during the period 1996–2008. The higher the index the more uncultivated elements (relative to property area) have been established.

conditions. This is due partially to new crops and new uncultivated elements and partially to increased awareness and self-regulation by hunters. The study in Hvorslev has moreover established that not only farmers who hunt themselves are significantly more active in establishing new elements compared to the average farmers, but also, somewhat surprisingly, farmers who do not allow hunting are clearly the most active in creating new non-cultivated elements that foster wildlife habitats.

Most of the hunting activity takes place by individual hunters or in small groups, though examples of small associations also exist and collective events such as battues do also occur.

In spite of this variation, the predominant hunting landscape is thus associated to individual landholdings and individual hunters or in small groups. As mentioned above, the hunting right belongs exclusively to the property owner, who may manage this right in different ways. As shown in Table 8.1, in a fairly large proportion of farms the owner is the hunter. This share has increased significantly between 1996 and 2008, indicating that hunting may increasingly be a main motivation for the purchasing of farms, especially in the forest area, where (differently from farmland) it is
possible for city dwellers to buy land exclusively for recreational purposes (i.e. no farming).

Instead, farms where the farmer transfers the right to hunting have decreased in relative figures, especially where hunters are ‘friends and family’ of the farmer. Farms where the hunting right is leased out, which tend to be large (still 31 per cent of the total area), have also decreased, though in few percentages.

Finally, Table 8.1 likewise shows that a high proportion of landowners opted for no hunting on their land, either because their farm is too little to lease out the hunt (<5 ha) or for ethical and other reasons.

**Hunting in Mértola, Portugal**

In Portugal game is owned by no one (*res nullius*), and liable to private appropriation through capture. This potential open access to game has however been limited by the creation of hunting preserves.

In the past, establishing hunting preserves was a prerogative of the Crown. After these Feudal privileges were abolished by the Liberal legislation of 1821, hunting was regulated solely according to a general public regime that favoured the *res nullius* principle. The *res nullius* principle was taken to its perhaps most radical expression with the establishment of *terreno livre* (open access) after 1974. Trespassing private property for hunting became common practice (Almeida 1994; Carmo 2000).

In addition to the disagreement then expressed by landowners, current assessments of that period emphasise the depletion of game (Carmo 2000). This problem led to the launching of new legislation from 1986 onwards, which established the framework currently at play. Presently, all hunting grounds must be licensed by the state and managed by one organisation, according to annual exploitation and management plans approved by the governmental hunting agency each year (DL 201/2005; Arroyo and Beja 2002: 15, 16). The entity managing the hunting area likewise controls access of hunters, according to different modalities. Four sorts of hunting areas were devised, as presented in the Table 8.2:

The current legislation distinguishes between public interest areas (NHA and MHA) and private areas, licensed by the State to profit-making companies (THA) and non profit-making hunting clubs (AHA). Landowners may also request the non-hunting status for their land.

The Portuguese case-study area is located in the district of Mértola (Alentejo, in south-eastern Portugal), where soils are poor and agricultural activity is extensive (stock breeding). An agro-silvo-pastoral system predominates, involving the rotation of winter crops, pastures and fallow land, in open spaces or under cover of the trees (holm-oak and cork-oak, in separated groups or mixed). Large estates are predominant, although variation occurs. This area is valued for its hunting potential, with the red-legged partridge and the wild-boar the main hunting species of this region.
Table 8.2 Types of hunting areas devised by the current Portuguese hunting legislation

<table>
<thead>
<tr>
<th>Public Interest Areas</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>National Hunting Areas</strong></td>
<td></td>
</tr>
<tr>
<td>Purpose</td>
<td>Preserving areas of public interest from the point of view of their hunting potential or for security reasons</td>
</tr>
<tr>
<td>Management</td>
<td>By government agency. The State may also transfer the management to another public entity or a NGO</td>
</tr>
<tr>
<td>Access</td>
<td>By all hunters. Priority of access is given to residents in the districts where the hunting areas are located, especially those who are not members of a hunters’ association</td>
</tr>
<tr>
<td><strong>Municipal Hunting Areas</strong></td>
<td></td>
</tr>
<tr>
<td>Purpose</td>
<td>Enabling universal access to regulated hunting practice</td>
</tr>
<tr>
<td>Management</td>
<td>By range of public and private non-profit organizations at the district scale</td>
</tr>
<tr>
<td>Access</td>
<td>By all hunters. Priority of access is given to residents in the districts where the hunting areas are located, especially those who are not members of a hunters’ association</td>
</tr>
<tr>
<td><strong>Private Interest Areas</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Associative Hunting Areas</strong></td>
<td></td>
</tr>
<tr>
<td>Purpose</td>
<td>Enabling hunters to manage hunting resources; encourage self-organization (the area may not exceed 50ha/hunter)</td>
</tr>
<tr>
<td>Management</td>
<td>By non-profit making hunter organizations</td>
</tr>
<tr>
<td>Access</td>
<td>By members of the hunter association and their guests (payment of access fees is not allowed)</td>
</tr>
<tr>
<td><strong>Tourist Hunting Areas</strong></td>
<td></td>
</tr>
<tr>
<td>Purpose</td>
<td>Exploiting hunting as an economic resource (a minimum of 400 ha land is required)</td>
</tr>
<tr>
<td>Management</td>
<td>By profit-making organizations</td>
</tr>
<tr>
<td>Access</td>
<td>Clients</td>
</tr>
</tbody>
</table>

Lei de Bases Gerais da Caça, nº 173/99 and Decreto-Lei nº 201/2005

In Mértola, most of its territory (98.5 per cent) is nowadays included in hunting preserves, of which 89 are private (THA and AHA) and six of public interest (MHA). Unlike the Danish case, no hunting land is rare (www.afn.min-agricultura.pt, October 2008).

Municipal hunting areas are set up with the specific purpose of ensuring access by resident hunters who are not part of a hunting club (see Table 8.2). They are, however, not more than six, corresponding to 9 per cent of the total area. Tourist and associative hunting areas (respectively 44 and 45 units) control most of the hunting ground (52 and 39 per cent of the total area).
8.2 A hunting spot in the district of Mértola, in an area now entirely devoted to recreational hunting

Differences between these two sorts of private hunting grounds should be noted. Hunting clubs may be formed either by local hunters willing to preserve access to previous terreno livre, or by hunters with no links to the rural communities (i.e. merely renting land locally). Following the new legislation, these hunting organisations have been actively changing the way in which non-wealthy hunters used no hunt, as they are replacing an activity formerly taken individually or in small groups, and accessible to anyone in possession of a hunter’s licence, by predominantly large and formal collective events. A further aspect is that hunting clubs pool together land leased to several landowners and farmers, in order to establish large hunting grounds. In the present, they therefore practice hunting on land that remains used predominantly for farming.

In tourist hunting areas, instead, the owners sell the hunting right to hunters who may afford it, though in some cases a further restriction is made to the personal networks of landowners. Though some THA also pool together several leased fields, in order to achieve the required dimension, an increasing number is now established on large estates devoted exclusively to recreational hunting (i.e. where farming activities have ceased). The high rate of occupation with THA in the district, and this active investment on
the management of hunting habitats, illustrates the value expected nowadays from hunting in the Mértola district, where it is welcomed as new source of rural income.

**Discussion: The Shaping of Hunting Landscapes**

The legal right to hunt and the actual management of this right reflect a specific power, which shapes particular hunting landscapes. Berkes (1986) notes that whilst uncontrolled access to hunting resources leads to maximising initial yields (favouring depletion), control of access fosters an interest in sustainability amongst the beneficiaries. The social regulation of hunting generates gate-keeping and, with it, both custody over a territory by those included and the exclusion of those not involved. A hunting landscape is, here, the territory shaped in such a way.

The analysis made so far shows that differences in hunting rights and their management play a role in the shape of hunting landscapes. The French case illustrates a dynamic situation, involving tensions between plural and often conflicting interests. In this case, the action promoted by the State towards the rational management of hunting resources, was opposed and effectively limited by the action of individual farmers. A contrast is portrayed between the individual management of hunting as a dimension of the private property of the land, on the one hand, and the promotion by the State of collective management practices. What implications does this contrast hold for an inclusive landscape as a shared resource, to which all human beings are entitled? The comparative analysis of hunting regulations in the two different traditions of Denmark (Hvorslev) and Portugal (Mértola), was used for the further exploration of this question.

In the Danish case here analysed (Hvorslev), land-ownership-based management of the hunting right favours individualised practices and, with it, a functionally fragmented hunting landscape. Single landowners, who in many cases are hunters themselves, are the central gatekeepers. In the Danish case, hunting is closely linked to the property and game management takes place almost always at the property level. Hunting has been linked to farm life for almost 200 years, in connection to reforms that distributed landholdings amongst a wider number of rural inhabitants. This aspect played an important role in how hunting became a dimension of everyday rural life, with access by other community members being enabled through rural social networks. This is the case also insofar as the Danish Agricultural Holdings Act stipulates that remote ownership of farms is not possible. However, this situation is increasingly challenged by current transformations, with a trend towards land concentration in fewer and larger holdings (meaning that less people hold hunting rights) and many smaller landowners opting nowadays for no-hunting. This trend is further accentuated by the acquisition of forest land by urban visitors, for recreational purposes. For all these reasons, community life
plays a decreasing role in hunting, and an increasing proportion of hunters access this activity through the market.

In the Portuguese case (Mértola), a previous situation of unmediated access to the land by hunters, regardless of land-ownership, gave place to new regulations in which the custody of hunting grounds is public but almost entirely transferred by the State to private entities. The new synthesis operated between the private ownership of the land and the res nullius principle has generated new custodians for the land. Most are private but collective organisations, displaying capacity for the rational management of common resources. Cooperation between farmers and landowners concerning hunting and collective game management is widespread and developing. Given the characteristics (indicated earlier on) of the new entities involved in management, the emerging hunting landscapes have good potential for promoting or reinforcing collective identities; either place-related or class-based. Low-income or landless hunters, on the other hand, unable to sustain financially the custody and enjoyment of hunting, tend to be excluded, in contrast to the former open access situation.

The commoditisation of hunting works as an excluding factor in both cases here analysed. In combination with increasing market prices, this may mean that hunting becomes affordable only by the wealthy, and again a practice restricted to elites. In Denmark the issue of exclusion has been discussed with regard to young and low-income hunters, and mainly within the Danish Hunters Association. In Portugal, the new legislation has been vehemently contested by landless and low income hunters, who lost access to previously available hunting ground.

In conclusion, developments in the right to hunt and in hunting practices reflect different pathways concerning the right to landscape. The examples described illustrate the complexity of factors in place, including aspects not revealed by current models for understanding transition processes in rural Europe, which are diverse and co-exist at different spatial, temporal and structural scales in Europe (Marsden 2003; Marsden and van der Ploeg 2008; Wilson 2007). Namely, which relations to landscapes are being generated or hindered by hunting regulations and practices, the diversity of social actors in place (the State, hunters, landowners, farmers), the need to ensure the sustainable management of hunting resources and also the increasing commoditisation of the activity. The diversity revealed by a comparison of one case in Southern Europe and another in Northern Europe calls for more research on a more encompassing scale, in order to assess more fully what the future role of hunting as a form of landscape practice might be in a diversified rural Europe.

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Note

1 Hunting means here simply the hunt for game of all kinds, including ‘shooting’.

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