

### Pierson v. Post, The Hunt for the Fox

The 1805 New York foxhunting case *Pierson v. Post* has long been used in American property law classrooms to introduce law students to the concept of first possession by asking how one establishes possession of a wild animal. In this book, Professor Angela Fernandez retells the history of the famous fox case, from its origins as a squabble between two wealthy young men on the South Fork of Long Island through its appeal to the New York Supreme Court and entry into legal treatises, law school casebooks, and law journal articles, where it still occupies a central place. Professor Fernandez argues that the dissent is best understood as an example of legal solemn foolery. Yet it has been treated by legal professionals, the lawyers of its day, and subsequent legal academics in such a serious way, demonstrating how the solemn and the silly can occupy two sides of the same coin in American legal culture and history.

Angela Fernandez is a legal historian at the Faculty of Law, University of Toronto, and a member of that University's Department of History.

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*Law and Professionalization in American Legal  
Culture*

ANGELA FERNANDEZ

*University of Toronto*



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*To poor Reynard*

## “The Foxe to the Huntedman”

If dogs had tong at will to talke in their defence,  
 If brutish beast might be so bold, to plead at barre for pence,  
 If poore Tom troth might speake, of all that is amysse,  
 Then might would beare no right a down: then me would pardon this,  
 Which I must here declare. Then quickly would be known,  
 That he which deales with strangers faults, should first amend his owne.  
 Thus much my selfe may say, thus much my selfe can proue,  
 Yet whiles I preache beware the Geese, for so it shall behoue.  
 I sigh (yet smyle) to see, that man (yea master man)  
 Can play his part in pollicie, as well as Raynard can.  
 And yet forsoth the Foxe is he that beares the blame,  
 But two leggd Foxes eate the ducks, when foure legs beare the name.  
 A wonder is to see, how people shoute and crye,  
 With hallowes, whoupes, and spitefull words, when I poore Fox go by.  
 Lay on him cryes the wife, downe with him sayes the childe,  
 Some strike, som chide, some throw a stone, som fal & be defilde [...]  
 These faults with many moe, can wicked men commit,  
 And yet they say that Foxes passe, for subtletie and wit.  
 But shall I say my minde? I neuer yet saw day,  
 But euery town had two or three, which Rainards parts could play.  
 So that men vaunt in vaine, which say they hunt the Foxe,  
 To kepe their neighbors poultry free, & to defende their flockes,  
 When they them selues can spoyle, more profit in an houre,  
 Than Raynard rifles in a yere, when he doth most deuoure.  
 No, no, the minds of men, which still be vainely bent,  
 Must haue their change of Uenerie, as first the Hare in Lent,  
 The Hart in Sommers heate, and me poore Foxe in cold:  
 But wherto serue these sundry sports, these chases manyfold?  
 Forsoth to feede their thoughts, with drags of vaine delight,  
 Whereon most men do muse by day, wheron they dream by night.



They must haue costly clothes, they must haue deintie fare,  
They must haue couches stuff with doune, they must haue all in square.  
They must haue newfound games, to make the laugh their fill,  
They must haue foules, they must haue beasts, to bayt, to hunt, to kyll.  
And all (when all is done) is nothing else but vayne,  
So Salomon the wiseman sayd, and so sayes Raynerd playne.

George Gascoigne, *The Noble Arte of Venerie* (1575)

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All errors are of course my own.

The picture on the cover is by British animal painter Cecil Aldin, one of the illustrations Aldin did for Neils Heiberg's charming yet alarming *White-Ear and Peter: The Story of a Fox and a Fox-Terrier* (London: Macmillan and Co., 1912, reprinted by London: Forgotten Books, 2015), 149. Aldin gave his dogs so much personality and his foxes so little, as he was a foxhunting enthusiast and Master of the Hounds and had likely habituated himself to seeing the fox as a prize, an object to pursue rather than a proper subject. I chose "Eagle carries Half Dead/Dying Fox" (forgiving it is British and it is from the twentieth century) more for the eagle than for the fox. You are meant to imagine that the eagle is American.

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