

**POVERTY, PROTEST AND SPORT: POACHING IN  
THE EAST MIDLANDS c.1820-c.1900**

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## **Abstract**

In the East Midlands counties of Derbyshire, Leicestershire and Nottinghamshire levels of poaching equalled or exceeded those in many counties which are thought of as prime poaching areas. Using principally *Criminal Registers*, *Game Laws Returns* to Parliament, and local newspapers of the period, this study shows that people poached from three motives: because they were poor; because poaching was a sport; and as a protest. Day and night poachers, including night poaching gangs frequently involved in affrays, pursued their activities undeterred by the efforts at prevention of the landowners, police and courts. Poaching here was predominantly for ground game and declined in the last quarter of the century, but continued to be a source of anger and frustration for game preservers and the authorities to the end of the period. The poaching war in these counties, waged in an area with large aristocratic estates but where extreme game preservation was viewed critically, was not perceived as impacting on law and order in general. This was unlike Lancashire, where the activities of poachers were regarded as being a threat to the fabric of society. The causes of these differences between the East Midlands and Lancashire were rooted in police practice, attitudes to game preservation, and differences in gentry sport and hunting.

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## **Abbreviations**

TNA	The National Archives
PP	House of Commons Parliamentary Papers
DRO	Derbyshire Record Office
ROL	Record Office of Leicestershire, Leicester and Rutland
NA	Nottinghamshire Archives
NG	<i>Nottinghamshire Guardian</i>
LC	<i>Leicester Chronicle</i>
DM	<i>Derby Mercury</i>

For the purposes of this study, the 'East Midlands' refers to the three counties of Derbyshire, Leicestershire and Nottinghamshire.

## Chapter 1 Introduction

From the late eighteenth century through most of the nineteenth, rural England was riven by conflicts which were at times so fierce that they have been referred to as wars. The 'Poaching Wars', also dubbed 'The Long Affray',<sup>1</sup> had long been a feature of the countryside but escalated from about 1750,<sup>2</sup> and remained a significant issue in some parts until the 1880s or 1890s.<sup>3</sup> At the root of this conflict was a piece of legislation, enacted in 1671 and unchanged until 1831, which gave the right to hunt game solely to the landed gentry. Tenant farmers no matter how substantial, even owner occupiers whose land was worth less than £100 a year, or £150 if it was leasehold or copyhold, could see their crops ravaged by game but were prohibited from taking action.<sup>4</sup> The rural poor, frequently short of the necessities of life and at best living with extreme frugality, were forbidden to take any game. However, poaching was endemic and the poacher an ordinary figure of country life.<sup>5</sup> In 1831, with the Game Laws Amendment Act, the law was radically changed by making it legal for anyone who could buy a game certificate to hunt. In practice this made little difference to working class poachers, from urban as well as rural areas, who continued their activities unabated.<sup>6</sup>

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<sup>1</sup> John E. Archer, '“A Reckless Spirit of Enterprise”: Game-Preserving and Poaching in Nineteenth-Century Lancashire', in David W. Howell and Kenneth O. Morgan (eds.), *Crime, Protest and Police in Modern British Society* (Cardiff, 1999), p.155.

<sup>2</sup> P.B. Munsche, *Gentlemen and Poachers: The English Game Laws 1671-1831* (Cambridge 1981), pp.65-6.

<sup>3</sup> John E. Archer, 'By a Flash and a Scare': *Arson, Animal Maiming and Poaching in East Anglia 1815-1870*, first pub. 1990 (London, 2010), p.147, 'Reckless Spirit', p. 170; John Fisher, 'Property Rights in Pheasants: Landlords, Farmers and the Game Laws 1860-80', *Rural History*, vol. 11, 2 (2000), p. 167.

<sup>4</sup> Munsche, *Gentlemen and Poachers*, pp. 9, 163; J. J. Tobias, *Crime and Police in England 1700-1900* (Dublin, 1979), p. 24; Frank McLynn, *Crime and Punishment in Eighteenth Century England* (London, 1989), p. 203.

<sup>5</sup> David Jones, *Crime, Protest, Community and Police in Nineteenth Century Britain* (London, 1982), p. 62; Archer, *Flash and Scare*, pp. 152-3.

<sup>6</sup> Game Laws Amendment Act, 1831, 1 & 2 Will. 4, c. 32, hereafter referred to as the Game Reform Act, 1831.

This thesis looks at poaching in Derbyshire, Leicestershire and Nottinghamshire, c.1820-c.1900, to discover the patterns and impacts of poaching in this area, to consider the similarities and contrasts with other areas of England, and to shed some light on the causes and consequences of poaching. For the purposes of this study the East Midlands is defined as the counties of Derbyshire, Leicestershire and Nottinghamshire.

This introductory chapter provides the background necessary to place the research in context, giving an overview of the game laws, preservation and poaching. An account of the historiography of poaching and a summary of the current historiography follows. This leads on to the main themes of the study and the questions which it seeks to answer, and an outline of the structure of the thesis with an indication of what is covered in each chapter.

### **The Game Laws, Country Gentlemen, Sport and Poaching**

After the Norman conquest, large areas of England were designated as 'forests' - royal hunting preserves where special forest law was administered by royal officials in forest courts. Gradually, over succeeding centuries, the effectiveness of forest law declined and by the end of the sixteenth century it was barely being enforced.<sup>7</sup> Game and wild animals were also protected by rights of park, chase and free warren which were granted by monarchs from the middle ages; these were franchises to hunt deer and game within certain areas.<sup>8</sup> So forests and chases were essentially the same type of area, just belonging originally to different

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<sup>7</sup> Munsche, *Gentlemen and Poachers*, p. 9.

<sup>8</sup> Munsche, *Gentlemen and Poachers*, pp. 9-10; Joshua Getzler, 'Judges and Hunters: Law and Economic Conflict in the English Countryside, 1800-1860', in Christopher Brooks and Michael Lobban (eds.), *Communities and Courts in Britain 1150-1900* (London, 1997), p.203.

owners, and neither was entirely wooded; they comprised areas of wood, moorland and other open space.

However, people always poached, and in 1389 parliament passed the first qualification act. People with land worth less than 40 shillings a year were forbidden to hunt or to possess hunting dogs, ferrets, nets, hare-pipes or any other 'engines' (this means equipment or devices) to take deer, rabbits, hares or any other game. From 1610, these qualifications were raised and sub-divided into different qualifications for different types of creatures. From 1603, the sale (but not the purchase) of pheasants, partridges and hares was prohibited.<sup>9</sup>

During the Civil Wars and the Commonwealth poaching became less impeded.<sup>10</sup> After the restoration, from the Game Act of 1671 into the nineteenth century, the laws regarding hunting were complicated, wide ranging and subject to additions, often without repeal of previous statutes.<sup>11</sup> It is not necessary to relate the detail of all these changing laws from the seventeenth century, but the main laws relevant to poaching in the nineteenth century need to be appreciated. A summary of the main changes from 1671 up to the end of the eighteenth century will be given, and the laws which were in force in the nineteenth century will be explained in more detail.

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<sup>9</sup> Harry Hopkins, *The Long Affray: The Poaching Laws in Britain*, first pub. 1985 (London, 1986), p.305; Munsche, *Gentleman and Poachers*, p.11.

<sup>10</sup> Hopkins, *Long Affray*, p. 305; Munsche, *Gentlemen and Poachers*, p.15; Charles Chenevix Trench, *The Poacher and the Squire: A History of Poaching and Game Preservation in England* (London, 1967), p.107.

<sup>11</sup> Act of 1671, a & b, 22 & 23 Car. 2, c. 9 & c. 25, hereafter referred to as the Game Act, 1671.

From the act of 1671 until the 1831 Game Reform Act, the privilege of hunting game was restricted to a tiny minority. To be qualified to hunt game you had to own land worth at least £100 a year if freehold, or £150 a year if lease or copyhold; or be the son and heir of an esquire or person of higher degree; or hold a franchise of park, chase or free warren.<sup>12</sup> Game was defined as hares, partridges, pheasants and moor fowl. Deer were removed from the list of 'game' in 1671, and rabbits later in 1692; they were regarded as property and protected by separate laws. Lords of the manor were required to preserve the game within their manors and to appoint gamekeepers who were empowered to seize guns, dogs and engines (like nets and snares) belonging to the unqualified. The right of qualified gentlemen to hunt game wherever they pleased was impeded only by the laws of trespass, which landlords could invoke. There were separate laws governing the hunting of many edible creatures which were not game: deer which were increasingly in parks; rabbits, valued for their meat and skins; and wild ducks, which were increasingly lured to special preserves created for them in coastal areas, called duck decoys.<sup>13</sup> Many animals were protected by seasons outside which no-one was permitted to take them; partridges, pheasants, black game, grouse, bustards and wild ducks had notified seasons. The hunting of anything at night, by anyone, was illegal, as was hunting on Christmas Day and on Sundays.<sup>14</sup>

Table 1.1 shows the main game laws and penalties which applied to poachers in the period being studied.

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<sup>12</sup> Munsche, *Gentlemen and Poachers*, pp. 12-13.

<sup>13</sup> P. B. Munsche, 'The Game Laws in Wiltshire 1750-1800', in J. S. Cockburn (ed.), *Crime in England 1550-1800* (London, 1977), pp. 211-12, *Gentleman and Poachers*, pp. 3-5.

<sup>14</sup> Munsche, *Gentlemen and Poachers*, p. 174-5, 182; Hopkins, *Long Affray*, p.305.

Table 1.1. The main game laws affecting poachers in the nineteenth century.<sup>15</sup> Where a fine and a period of gaol is given, the gaol sentence is in default of the fine; ground game means rabbits and hares.

	1800 onwards, until...	1828 onwards, until...	1831 onwards
<b>Daytime</b>	<p><u>Rabbits</u>, on all land, fine of treble damages and 3 months gaol plus sureties. From 1827: £5 fine or up to 2 months gaol.</p> <p><u>Hares or rabbits</u> for setting prohibited equipment fine up to 10 shillings or gaol up to 1 month.</p> <p><u>Game</u>, £20 fine or 3 months gaol. From 1812: £20 fine plus cost of game certificate or gaol for up to 6 months.</p>	<p><u>Rabbits</u>, fine of £5 or up to 2 months in gaol.</p> <p><u>Hares or rabbits</u>, for setting prohibited equipment (snares, nets and traps) fine up to 10 shillings or gaol up to 1 month.</p> <p><u>Game</u> £20 fine plus cost of game certificate or gaol for up to 6 months.</p>	<p><u>Rabbits and game</u>, trespass in pursuit of, fine of up to £2 plus costs; in group of 5 or more, £5 plus costs or 2 months in gaol.</p> <p><u>Game</u>, hunting on any land without a game certificate, fine of up to £5 plus costs or 2 months in gaol.</p> <p><u>Hares</u>, from 1848 tenant farmers may shoot hares on their land. <u>Ground game</u>, from 1880 tenants can shoot ground game on their land.</p>
<b>Night time</b>	<p><u>Rabbits and hares</u>, on any land, 7 years transportation or lesser penalty including fine, gaol or whipping. From 1827: transportation for 7-14 years, or fine, gaol and whipping.</p> <p><u>Game</u>, 1<sup>st</sup> offence fine of £10-£20; 2<sup>nd</sup> offence £20-£30; default for both 3 months gaol. 3<sup>rd</sup> or further offences, £50 plus whipping or 6-12 months gaol. From 1816: for game or rabbits, 7 years transportation or lesser penalty.</p> <p><u>Game at night, armed</u>, in a group of 2 or more, 1<sup>st</sup> offence up to 6 months gaol; further offences up to 2 years gaol plus whipping or conscription in army or navy.</p>	<p><u>Game and rabbits</u>, in any land, 1<sup>st</sup> offence 3 months gaol; 2<sup>nd</sup> offence, 6 months gaol, both with sureties to find. Further offences, up to 7 years transportation or 2 years gaol.</p> <p><u>Game and rabbits, in a group, armed</u>, in any land. If in a group of 3 or more, any one of them armed, 7-14 years transportation or up to 3 years gaol. (After the end of transportation this was increased to up to 7 years gaol).</p>	<p>Same as previous Column for all Night poaching.</p> <p><u>Poaching Prevention Act</u>, from 1862 police able to search suspected poachers on the road or any public place, and if found with any game or equipment for taking game, liable to a fine of £5, or 2 months in gaol, and forfeiture of all game and equipment (game now defined to include rabbits).</p>

<sup>15</sup> Munsche, *Gentleman and Poachers*, pp. 172-86; Game Reform Act, 1831; Poaching Prevention Act, 1862; Hares Act, 1848; Ground Game Act, 1880.

The Black Act of 1723 was not provoked by ordinary poaching, but by aggressive deer stealing at night, in disguise, in areas of Berkshire and Hampshire. It gave capital punishment not only for 'blacks' (people who had blacked their faces as a disguise) who were poaching, but for many other offences.<sup>16</sup> The Black Act was not repealed until 1827, though by later in the eighteenth century it was seldom used, due to the reluctance of juries to convict on capital offences.<sup>17</sup>

Concern about night poaching generally, and especially the activities of night poaching gangs, was rising in the eighteenth century. Between 1760 and 1800, laws were passed increasing the penalties for night poaching of game and of rabbits. Severe fines with imprisonment in default of payment, direct imprisonment and transportation, were made available by various acts. By 1816, transportation was available for any night hunting of game and, by 1827, up to 14 years' transportation for taking rabbits or hares at night. Additionally, in 1800, a statute was passed aimed at those assisting poachers, which made persons out at night with net, bludgeon or other weapon, liable to be classified as 'rogues and vagabonds', with gaol or impressment into the army or navy as the penalty. In 1816, this act was repealed and the punishment increased to a maximum of 7 years' transportation. By this stage the battery of penalties available in the attempt to deter night and gang poaching indicated that the gentry felt they were losing the war against poaching. Game associations came into existence from the mid-eighteenth century, with preserving landowners clubbing together to share the costs of prosecution; by the mid-nineteenth

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<sup>16</sup> Black Act, 1723, 9 Geo. 1, c.22, hereafter referred to as the Black Act, 1723; E. P. Thompson, *Whigs and Hunters: The Origins of the Black Act* (London, 1975).

<sup>17</sup> Munsche, *Gentlemen and Poachers*, pp. 175, 177.

century they had become less successful and had largely ceased to exist.<sup>18</sup>

Until the second quarter of the eighteenth century, most poaching cases were tried at Quarter Sessions. Thereafter jurisdiction was transferred to Justices of the Peace 'out of sessions', which meant at summary trials referred to as Petty Sessions.<sup>19</sup> From 1773, third or subsequent offences of night poaching had to come before Quarter Sessions. From 1816 all night poaching cases had to come to Quarter Sessions.<sup>20</sup> In 1828 the Night Poaching Act was passed, which became the act under which the vast majority of night poachers were prosecuted for the rest of the century. The majority of prosecutions under this act took place summarily before at least two magistrates.<sup>21</sup>

The 1828 Night Poaching Act covered game and rabbits, and stipulated that, for first and second offences, night poachers would go before two magistrates at petty sessions and could be punished with three months for the first offence, six months for the second, of hard labour, with sureties to commit to at the end of the sentence against offending again for a year. Third offences constituted a misdemeanour and were to be tried at Quarter Sessions before a jury, and could result in up to two years hard labour or seven years transportation. If night poachers assaulted keepers or threatened violence, they were treated as for the third offence. If night poachers were in a group of three or more, any one of whom was armed,

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<sup>18</sup> Munsche, *Gentlemen and Poachers*, pp. 56-9, 90-1; Douglas Hay, 'Poaching and the Game Laws on Cannock Chase', in Douglas Hay, Peter Linebaugh, John G. Rule, E. P. Thompson, Cal Winslow (eds.), *Albion's Fatal Tree: Crime and Society in Eighteenth Century England*, first pub. 1975 (Harmondsworth, 1977), p. 191; Hopkins, *Long Affray*, p. 304; McLynn, *Crime and Punishment*, p. 211; Fisher, 'Property Rights', p. 168.

<sup>19</sup> Hopkins, *Long Affray*, pp. 305-6; Munsche, *Gentlemen and Poachers*, pp. 84-5.

<sup>20</sup> Munsche, *Gentlemen and Poachers*, p. 186.

<sup>21</sup> Act of 1828, 9 Geo. 4, c. 69, An Act for the more effectual Prevention of Persons going armed by Night for the Destruction of Game, hereafter referred to as the Night Poaching Act, 1828.

they were guilty of a misdemeanour, even if it was a first offence, and went before the jury court at Quarter Sessions, with up to three years hard labour or 14 years transportation if found guilty.<sup>22</sup>

The 1831 Game Reform Act applied to day poaching only, and removed qualification of any sort. It opened the hunting of game to anyone who purchased a Game Certificate, which cost £3 13s 6d annually. A crucial factor was that the hunter had to be permitted by the landowner to enter the land to hunt, since the 1831 act confirmed the right of the landowner to sue trespassers.<sup>23</sup> Justices of the Peace could license people to deal in game, and dealers could buy game from people who had a Game Certificate. Penalties for stealing eggs of wild fowl or game birds were simplified to 5 shillings per egg plus costs.<sup>24</sup> The most commonly used section of the act gave a fine of up to £2 plus costs to anyone trespassing in pursuit of game or rabbits, or if doing so in a group of five or more, £5 plus costs. A fine of £5 plus costs could also be given for searching for, or taking, game without having a certificate. If poachers were unable to pay the fines, they were imprisoned - usually for periods of up to two months. All prosecutions under this act were at summary courts before Justices of the Peace.<sup>25</sup>

There was a Night Poaching Act of 1844, passed to extend the 1828 act to allow prosecution of people found poaching on roads, paths, openings and outlets in and around land, but it appears to have been seldom used.<sup>26</sup> The 1848 Hares Act allowed the occupier of land to kill the hares on it without

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<sup>22</sup> Night Poaching Act, 1828, sections 1, 2, 9.

<sup>23</sup> Game Reform Act, 1831, sections 5, 6.

<sup>24</sup> Game Reform Act, 1831, section 24.

<sup>25</sup> Game Reform Act, 1831, sections 30, 23.

<sup>26</sup> Act to Extend the Night Poaching Act, 1844, 7&8 Victoria, c. 29.

having to purchase a game license, but landowners often inserted a clause to prevent their tenants killing hares on the land they were farming.<sup>27</sup>

The 1862 Poaching Prevention Act redefined game to include rabbits.<sup>28</sup>

However, in common parlance they were often included in what was called game before 1862. This act brought the police fully into poaching conflicts by giving them the power to stop and search people and carts on the roads, footpaths and public places, if they suspected them of having come from game preserves or of carrying game. If found with game or poaching equipment, the fine was £5 or two months imprisonment, and confiscation of all the game, and equipment - such as guns, nets and snares.

Prosecutions under this act were brought by the police, not the landowner, before two or more magistrates at Petty Sessions or Police Courts.<sup>29</sup>

The last act of the period was the Ground Game Act of 1880 which gave tenant farmers the right to shoot the hares and rabbits on the land which they farmed. However, some landowners still managed to prevent their tenants doing this, either by writing prohibitions into the tenancy agreement, or by finding other ways of prosecuting them.<sup>30</sup> The three most significant game acts of the nineteenth century were the 1828 Night poaching Act, the 1831 Game Reform Act, and the 1862 Poaching Prevention Act, and practically all poaching prosecutions were brought under one of these acts.

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<sup>27</sup> Hares Act, 1848, 11 & 12 Vict. c. 29; Hopkins, *Long Affray*, p. 232.

<sup>28</sup> An Act for the Prevention of Poaching, 1862, 25&26 Vict. c. 114, section 1, hereafter referred to as the Poaching Prevention Act, 1862.

<sup>29</sup> Poaching Prevention Act, 1862, section 2.

<sup>30</sup> Ground Game Act, 1880, 43 & 44 Vict. c. 47; Hopkins, *Long Affray*, p. 306; Harvey Osborne and Michael Winstanley, 'Rural and Urban Poaching in Victorian England', *Rural History*, 17 (2006), p. 188; Getzler, 'Judges and Hunters', p. 209.

Country gentlemen, before 1831, were reluctant to relinquish their prerogative to hunt. They used the gift of permission to hunt on their estates to lubricate alliances, and gifts of game to patronise and favour those whose support they needed. After the 1831 Act, anyone who had a game license could hunt, but a landowner who wished to keep the hunting for himself could post notices on his land, in coffee houses and in newspapers, stating that his estate was not to be entered. However, doing this risked alienating gentlemen on whose support he might later depend.<sup>31</sup>

Whilst the term 'poaching' might seem clear to a twenty-first century reader, meaning illegal hunting, the word had different connotations for some sectors of eighteenth and nineteenth century society. In the mind of country gentlemen, being a poacher was firmly associated with one's position in society. Before 1831, the unqualified frequently hunted by day with the permission of the landowner if they were persons of reasonable quality – perhaps substantial farmers – whom the greater man wished to keep beholden to him.<sup>32</sup> After 1831, the landowner still had the gift of allowing hunting on his land, and he could tell his keepers to order off his land anyone he did not want – which could include the lower orders of society. The term 'poach', and its derivatives, is used by historians and was used by contemporaries, even though the word was not a legal term until 1862 when it was used in the Poaching Prevention Act. But well before then it was part of the vernacular. Being slightly higher up in the social scale could save one from being called a poacher. Munsche cited a nineteenth-century policeman saying that the 'little tradesmen and unqualified persons'

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<sup>31</sup> Munsche, *Gentlemen and Poachers*, p. 29; Hay, 'Cannock Chase', p. 247; McLynn, *Crime and Punishment*, p.204.

<sup>32</sup> Munsche, *Gentlemen and Poachers*, pp. 29-31, 46-54; Hay, 'Cannock Chase', p. 247.

who go out by day are not people whom he would really regard as poachers.<sup>33</sup>

For the purposes of this study, poachers are those who illegally took game, rabbits, other prohibited birds, or the eggs of prohibited birds. Game is considered to include rabbits. In taking these definitions the study is following the approach taken by most historians of poaching.<sup>34</sup> Munsche was stricter and did not include rabbits.<sup>35</sup> Taking fish illegally was sometimes referred to as poaching, but this study does not cover this activity, which was governed by separate fishery laws.

The word 'crime', with regard to prosecutable offences in the eighteenth century, was not a concept or a word recognised by contemporaries in its modern sense until about 1780. Before that, a 'crime' would generally refer to a personal depravity rather than an offence against the law. This had changed by the first half of the nineteenth century, when concern about crime and the criminal classes began to emerge.<sup>36</sup>

Until the mid-eighteenth century, most bird game was caught by netting, hawking, or shooting with a dog. Sportsmen hunted ground game by netting and coursing (of hares) on horseback with dogs.<sup>37</sup> But improvements in the design of guns during the eighteenth century, enabled birds to be shot flying and also made the gun much less dangerous for the

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<sup>33</sup> Munsche, *Gentlemen and Poachers*, p.53.

<sup>34</sup> Archer, *Flash and Scare* and 'Reckless Spirit'; Hay, 'Cannock Chase'; Hopkins, *Long Affray*; Jones, *Crime Protest*; Clive Emsley, *Crime and Society in England, 1750-1900*, first pub. 1987 (Harlow, 2005), p.81.

<sup>35</sup> Munsche, *Gentlemen and Poachers*, p.3.

<sup>36</sup> V. A. C. Gatrell, 'Crime, Authority and the Policeman-State', in F. M. L. Thompson (ed.), *Cambridge Social History of Britain 1750-1950*, vol. 3, (Cambridge, 1990), p. 248.

<sup>37</sup> Munsche, *Gentlemen and Poachers*, pp. 32-3; Charles Chenevix Trench, 'Game Preservers and Poachers', *History Today*, 15:4 (1965), p. 268.

user.<sup>38</sup> The battue, imported from the continent, became increasingly popular from the early nineteenth century: birds were either trapped between a wall of nets and a line of shooters coming towards them, or driven out of their coverts towards the shooters by beaters. Thousands of birds were killed per day in the biggest battues.<sup>39</sup> Game preservation became more intensive and the numbers of birds reared increased enormously.<sup>40</sup>

With the growth of middle class wealth, the demand for game increased. Before 1831, it could only be satisfied by gift or illegal trade; after 1831 it continued to be satisfied by the same means, but also by legal sale and purchase.<sup>41</sup> Although the Game Reform Act of 1831 removed the property qualification for hunting, it made little difference on the ground and the poaching war continued with greater intensity in the 1830s and 1840s. Rural working people considered the game laws unfair and unnatural and did not think that poaching was wrong; it was justified by the Bible, which said the animals were made for man, and that meant all men, not just the rich.<sup>42</sup>

There were many different types of poacher, and the boundaries between them are blurred. They ranged from the labourer presented with an opportunity he could not resist, to the organised poaching gangs.<sup>43</sup> Many

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<sup>38</sup> Munsche, *Gentlemen and Poachers*, pp. 35-6; Trench, 'Game Preservers', p. 268.

<sup>39</sup> Munsche, *Gentlemen and Poachers*, p.36-7; Hopkins, *Long Affray*, pp. 213-15, 247-8; Jones, *Crime, Protest*, p. 68; Fisher, 'Property Rights', p. 177.

<sup>40</sup> Munsche, *Gentlemen and Poachers*, pp. 23, 44-5; Jones, *Crime, Protest*, p. 68; Hopkins, *Long Affray*, pp.71,73.

<sup>41</sup> Jones, *Crime, Protest*, pp. 65-67; McLynn, *Crime and Punishment*, p. 211.

<sup>42</sup> Munsche, *Gentlemen and Poachers*, pp. 53-4, 63-4, 67-8; Archer, *Flash and Scare*, pp. 147-8, 160; Jones, *Crime, Protest*, pp. 65-7; Timothy Shakesheff, *Rural Conflict, Crime and Protest: Herefordshire 1800-1860* (Woodbridge, 2003), pp.154-5; *Bible*, Genesis 1, 26.

<sup>43</sup> Jones, *Crime, Protest*, p. 72; J. E. Archer, 'Poaching Gangs and Violence: The Rural-Urban Divide in Nineteenth Century Lancashire', *British Journal of Criminology*, 39 (1999), p. 29, *Flash and Scare*, pp. 153-5; McLynn, *Crime and Punishment*, p. 203.

men poached only occasionally, when the opportunity presented itself in the daytime or when necessity was dire. These people are sometimes referred to as poaching 'for the pot', though in fact they might choose to sell their catch rather than cook it, because bread was the labourer's staple food, not meat.<sup>44</sup>

Some poached all their lives, but alongside an occupation.<sup>45</sup> Yet others poached full time and had no other occupation, making a fair living from it.<sup>46</sup> Such full-timers were likely to go out at night (though part-time poachers also often went out at night as well) when game was quiescent and easier to catch.<sup>47</sup> Some poachers used unusual methods for catching prey, such as intoxicating pheasants by sprinkling raisins soaked in alcohol around,<sup>48</sup> or fumigating them by lighting rags with sulphur sprinkled on them under their roosts.<sup>49</sup>

In bad times the occasional poacher might become closer to being a full-timer, until his situation improved.<sup>50</sup> Full-timers poached all the year round, though all poachers were affected by considerations of nature; game birds only became large enough to bother with in late summer and when corn had been harvested they were also more accessible. Such considerations affected the ebb and flow of poaching. Rabbits and hares were taken all the

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<sup>44</sup> Archer, 'Reckless Spirit', p. 171, *Flash and Scare*, pp. 154, 171; Munsche, *Gentlemen and Poachers*, p. 63; John Burnett, *Plenty and Want: A Social History of Food in England from 1815 to the Present Day*, first pub. 1966 (London, 1989), p. 9.

<sup>45</sup> George Baldry, *The Rabbit Skin Cap*, first pub. 1939 (Woodbridge, 1984), pp. 128-35.

<sup>46</sup> Archer, *Flash and Scare*, pp. 157-8, 'Poaching Gangs', p. 29; Jones, *Crime, Protest*, p. 73.

<sup>47</sup> Baldry, *Rabbit Skin*, pp.128-135; Garth Christian (ed.), *A Victorian Poacher: James Hawker's Journal*, first pub. 1961 (Oxford, 1978), pp. 13, 49; Munsche, *Gentlemen and Poachers*, p.53; Shakesheff, *Rural Conflict*, p. 162.

<sup>48</sup> Christian, *James Hawker*, p. 96.

<sup>49</sup> Baldry, *Rabbit Skin*, p. 131.

<sup>50</sup> Archer, *Flash and Scare*, p. 155.

year round.<sup>51</sup> Live birds for breeding, and eggs, were supplied to game preservers, having been stolen from other preservers.<sup>52</sup> Women were important in carrying and selling game, identifying where nests were and collecting eggs; a few women did actually poach.<sup>53</sup>

Poaching was a skilled country art using nets, snares, hare pipes (whistles to attract hares) traps, guns, trained dogs and ferrets, as well as more unusual equipment. The craft was picked up slowly and involved rural and local knowledge about the habits of gamekeepers, watchers and, later on, the police.<sup>54</sup> Gangs, of anything from six to forty men, came out, often from urban areas, and descended upon preserves in the night. If they were going for ground game with nets they relied upon stealth, but if detected, upon strength of numbers to defy police and gamekeepers, and were armed with sticks, stones, dogs and guns. Those going out at night to shoot birds – a less skilled approach - were more likely to be heard. Gangs were more inclined to violence than poachers who were alone or in twos or threes.<sup>55</sup> Poachers, keepers, and watchers who were hired by the night to assist keepers, were frequently injured and sometimes killed in poaching affrays. Such gangs sometimes had funds available, or could access funds from within the trade, to buy legal representation for members who were prosecuted, or to pay fines.<sup>56</sup>

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<sup>51</sup> Harvey Osborne, 'The Seasonality of Nineteenth Century Poaching', *Agricultural History Review*, 48 (2000), pp. 27, 34, 37.

<sup>52</sup> Archer, *Flash and Scare*, pp.154, 158.

<sup>53</sup> Archer, *Flash and Scare*, pp. 154-5; Timothy Shakesheff, 'Wood and Crop Theft in Rural Herefordshire 1800-1860', *Rural History*, 13, 1 (2000), p. 7.

<sup>54</sup> Archer, *Flash and Scare*, p. 154, 159-160; Fisher, 'Property Rights', p.171; J.H. Porter, 'Poaching and Social Conflict in Late Victorian Devon', in Andrew Charlesworth (ed.), *Rural Social Change and Conflicts Since 1500* (Humberside, 1982), p. 96; Michael J. Carter, *Peasants and Poachers: A Study in Rural Disorder in Norfolk* (Woodbridge, 1980), p.22.

<sup>55</sup> Archer, *Flash and Scare*, pp. 155-6.

<sup>56</sup> Munsche, *Gentlemen and Poachers*, pp. 69-70, 99; Shakesheff, *Rural Conflict*, pp. 158, 164; Hopkins, *Long Affray*, pp. 164, 229, 235, 276.

The black market in game operated from the early seventeenth century when the sale of partridges, pheasants and hares was made illegal, and it grew as the demand for game increased. Connivance in, and turning a blind eye to, the black-market activities of the higglers, coachmen, innkeepers and poulterers involved, meant that networks existed for supplying London, other cities and large provincial towns. Although after 1831 the sale and purchase of game was legal, it was only so when conducted by licensed dealers, and the operation of the black market remained vigorous.<sup>57</sup> Poaching continued after 1900 and continues today. However, over time the situation changed, and by the end of the nineteenth century poaching had ceased to be the subject of such contention and vitriol.<sup>58</sup>

### **Historiography and Literary Review**

In 1911, J.L. and Barbara Hammond, as part of their portrait of the village labourer's life, put forward their view of the game laws and poaching. This interpretation remained influential for most of the twentieth century.<sup>59</sup> The Hammonds saw poaching as part of a spectrum of crime to which agricultural labourers were driven in order to survive: 'Poaching, smuggling, and ultimately thieving were called in to rehabilitate the labourer's economic position. He was driven to the wages of crime'. They referred to the blood of men and boys being spilt for the pleasures of the rich.<sup>60</sup> For much of the next fifty years the Hammonds' interpretation was

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<sup>57</sup> Jones, *Crime, Protest*, pp. 63, 67, 77; Munsche, *Gentlemen and Poachers*, pp. 23, 55; Archer, *Flash and Scare*, p. 157-8, 'Poaching Gangs', p.31.

<sup>58</sup> Jones, *Crime, Protest*, p.68. Trench, *Poacher and Squire*, pp. 196-226.

<sup>59</sup> J. L. Hammond and Barbara Hammond, *The Village Labourer*, first pub. 1911 (London, 1978), pp.131-140.

<sup>60</sup> Hammonds, *Village Labourer*, p.131.

accepted and a broad consensus reigned on the nature of the game laws and poaching.<sup>61</sup> Historians did not challenge their verdict.<sup>62</sup>

Charles Chenevix Trench, one of the few historians writing about the game laws in the 1960s, did not challenge the Hammonds' verdict, but he disregarded it.<sup>63</sup> Although he made comments on the law, qualification, and poaching from need, his work has similarities to the genre of historical writing which presents the English past as heritage to be celebrated. Much as Esme Wingfield-Stratford, for example, wrote *The Squire and His Relations* in 1956 in order to set down the true story of the squirearchy, as opposed to that promoted by 'new-fangled Marxists',<sup>64</sup> Trench showed little concern as to why people poached. He considered the qualification laws pre-1831 to have been monstrous, but monstrous from the point of view of the lesser gentry who could not participate. His main concern was to describe what went on, which he has done with fascinating detail and anecdote about poachers and their methods and folklore, with poaching seen as an integral part of a rich country life. The only comment he has made which verges on further analysis is that, 'poaching the squire's pheasants was a crime committed by the lower classes against the upper classes largely for the middle classes' tables'.<sup>65</sup>

John E. Archer, looking back on the general consensus after he had completed his research into poaching in Lancashire in 1999, argued that historians have concentrated on the largely rural and arable counties of the southern half of the country, and thus have concluded that:

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<sup>61</sup> Hammonds, *Village Labourer*, pp.129-145.

<sup>62</sup> Munsche, *Gentlemen and Poachers*, p.1.

<sup>63</sup> Trench, *Poacher and Squire*, 'Game Preservers'.

<sup>64</sup> Esme Wingfield- Stratford, *The Squire and His Relations* (London, 1956), p. 2.

<sup>65</sup> Trench, 'Game Preservers', p.268; *Poacher and Squire*, pp. 133, 143, 148.

Poaching is the epitome of both rural and social crime. It was generally committed by impoverished farm labourers who sought to feed their families...This is how historians, including myself, have viewed this relatively uncomplicated crime.<sup>66</sup>

Beginning in the 1960s, the work of the Centre for the Study of Social History at the University of Warwick, under the leadership of E.P. Thompson, made a profound difference to the way social history was approached. A concern with law and crime in the eighteenth century led to a particular interest in the area of what has been called 'social crime', though the historians involved acknowledged the danger of coming to regard some criminals (those committing social crime) as 'good' ones and others as 'criminals without qualification'.<sup>67</sup>

The phrase 'history from below' was coined by an editor, and Thompson had reservations about it due to his concern that it suggested an approach which neglected the structures of power in society.<sup>68</sup> Harvey J. Kaye considered 'history from the bottom up' to be a defining characteristic of British Marxist historians, and the phrase 'history from below' a variant phrase for the same approach.<sup>69</sup>

Thompson also warned against over-emphasis on economic history, and 'spasmodic' history, in which the common people only 'intrude occasionally and spasmodically upon the historical canvass', and their actions are

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<sup>66</sup> Archer, 'Reckless Spirit', p.149.

<sup>67</sup> Douglas Hay, Peter Linebaugh, John G. Rule, E. P. Thompson, Cal Winslow (eds.), *Albion's Fatal Tree*, first pub. 1975 (Harmondsworth, 1977), pp.13-14 (preface).

<sup>68</sup> Dorothy Thompson, *The Essential E. P. Thompson* (New York, 2001), p. X, preface.

<sup>69</sup> Harvey J. Kaye, *The British Marxist Historians*, first pub. 1984 (New York, 1995), pp. 85-6, 221.

considered to be a simple response to economic stimuli.<sup>70</sup> He argued, in 1971, that social history had lagged behind economic history and that much economic history was reductionist.<sup>71</sup> He saw human need as intensely complex, and an area in which the Marxist tradition as well as some other historical traditions have tended to concentrate on economic material needs, and have afforded insufficient priority to the need for respect, identity and status; 'The concept of cause is extraordinarily difficult, toward which we always attain to only approximate understanding'.<sup>72</sup>

Thompson's influence on the field of the history of crime and protest has been enormous and continues to be so.<sup>73</sup> Poaching is frequently treated under the heading of social crime, and also protest; certainly, some poaching was both of these. Apart from work which concentrates on poaching alone, useful comment on poaching and poachers can be found in work looking at crime and rural affairs, such as studies of common rights, wood and crop theft, gleaning and wild food gathering.<sup>74</sup>

From the Warwick School came two seminal books with relevance to poaching: *Whigs and Hunters*, from Thompson himself, and *Albion's Fatal Tree* from a group of historians all associated with the movement.<sup>75</sup>

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<sup>70</sup> E. P. Thompson, *Customs in Common* (London, 1991), p.185.

<sup>71</sup> Thompson, *Customs*, pp. 187, 259 where Thompson states that he first wrote this in 1971.

<sup>72</sup> Thompson, 'Agenda for Radical History', first given as a lecture on 20<sup>th</sup> October 1985, printed in *Persons and Polemics: Historical Essays*, (London, 1994), p.364.

<sup>73</sup> John E. Archer, *Social Unrest and Popular Protest in England 1780-1840* (Cambridge, 2000), pp. 94, 96.

<sup>74</sup> Shakesheff, *Rural Conflict*; Emsley, *Crime and Policing*; J. A. Sharpe, *Crime in Early Modern England 1550-1750* (Harlow, 1999); J. Neeson, *Commoners, Common Rights Enclosure and Social Change in England 1700- 1820* (Cambridge, 1993); Peter King, *Crime, Justice and Discretion in England 1740-1820* (Oxford, 2000); Getzler, 'Judges and Hunters'; Douglas Hay, 'Prosecution and Power: Malicious Prosecution in the English Courts 1750-1850', in Douglas Hay and Francis Snyder (eds.), *Policing and Prosecution in Britain 1750- 1850* (New York, 1989).

<sup>75</sup> E. P. Thompson, *Whigs and Hunters: The Origins of the Black Act* (London, 1975); Hay et al., *Albion's Fatal Tree*.

*Albion's Fatal Tree* includes 'Poaching and the Game Laws on Cannock Chase', Douglas Hay's study of poaching in Staffordshire. From this basis, social historians extended their enquiries from the eighteenth century into the nineteenth century, and looked at a wide spectrum of behaviour: rural customs and rights, past-times and sports, crime, protest and social crime.<sup>76</sup>

### **The Current Consensus**

With the exception of P. B. Munsche, and Harvey Osborne and Michael Winstanley whose hypothesis (in the article cited) was quantitative,<sup>77</sup> most recent historians of poaching have shared a 'history from below' approach. They have seen a clearly class-structured society and have concentrated on the struggles of the lowest sector of that society. The new consensus about poaching and the game laws is to question the old one put forward by the Hammonds, and to be aware of geographical and temporal variations. In the questioning of the old consensus, it has been partially rehabilitated, with the factors which it highlights being acknowledged but not assumed to be the whole story. The existence of the commercial poacher is now accepted, and it is considered that his motive for poaching was not necessarily based upon poverty, but on the exploitation of the growing wealth of the middle classes and the subsequent increased demand for game.<sup>78</sup>

The new consensus can be broadly summarized thus. Poaching was common all over England, and as game preserving increased and the

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<sup>76</sup> See the works of Shakesheff, Neeson, King, Jones, Archer, Howkins, cited in this chapter as well as in later chapters.

<sup>77</sup> Munsche, *Gentlemen and Poachers*; Osborne and Winstanley, 'Rural and Urban Poaching'.

<sup>78</sup> Munsche, *Gentlemen and Poachers*, pp. 54-5, 62, 64; Archer, 'Reckless Spirit', p. 163.

market for game expanded from the middle of the eighteenth century, it became even more pervasive.<sup>79</sup> In intensive game preserving areas poaching was greatest where preserves were near densely populated urban areas.<sup>80</sup> There were many types of poachers and all these types were to be found everywhere, though more of some types in some places than in others.<sup>81</sup> Some poached from a degree of necessity for food or for the money with which to buy food.<sup>82</sup> Some full time professionals made a living from it, selling into the black market and supplying live birds for breeding and eggs as well as game.<sup>83</sup> Some poachers were involved in covert protest and a few became folk heroes.<sup>84</sup> Aggressive night poaching gangs were more involved in violent fights with keepers than were other types of poachers.<sup>85</sup> Not all poachers were helpless or cowed before the forces of the law, and some had resources with which to defend themselves.<sup>86</sup> Some poachers, probably particularly those who worked in gangs, were involved in other types of crime as well.<sup>87</sup> The extent to which summary justice was biased is still a subject of debate, as is the extent to which poaching was a social crime and a protest crime. With all of these factors it appears that the situation varied with geographical location and over different periods of the century. It may be the case that poaching in the Midlands and North had a different character from that in the South and the East in some

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<sup>79</sup> Munsche, *Gentlemen and Poachers*, pp. 64, 106; Jones, *Crime, Protest*, p. 68.

<sup>80</sup> Archer, 'Reckless Spirit', p. 170; 'Poaching Gangs', p.27; Jones, *Crime, Protest*, p. 66.

<sup>81</sup> Jones, *Crime, Protest*, p. 68; Peter King, *Crime, Justice*, pp.99, 213; Alun Howkins, 'Economic Crime and Class War: Poaching and the Game Laws 1840-1880', in S. E. Burman and B. H. Bond (eds.), *The Imposition of Law* (New York, 1979), pp. 282-3.

<sup>82</sup> Jones, *Crime, Protest*, p. 82; Hopkins, *Long Affray*, p. 25; Archer, *Flash and Scare*, pp. 9, 154-5.

<sup>83</sup> Archer, *Flash and Scare*, pp. 157-58; Jones, *Crime, Protest*, p. 73.

<sup>84</sup> Archer, *Flash and Scare*, pp. 161-65; Jones, *Crime, Protest*, pp. 63, 82; Shakesheff, *Rural Conflict*, p. 169.

<sup>85</sup> Archer, *Flash and Scare*, pp. 155-56, 'Poaching Gangs', p.29; Jones, *Crime, Protest*, pp.76-77; Munsche, *Gentlemen and Poachers*, pp. 25, 75.

<sup>86</sup> Archer, *Flash and Scare*, pp. 147-48; Jones, *Crime, Protest*, pp. 65, 82; Munsche, *Gentlemen and Poachers*, p.99; Hay, 'Cannock Chase', p. 198.

<sup>87</sup> Archer, 'Reckless Spirit', pp. 163-4, 'Poaching Gangs', pp. 30,36; Jones, *Crime, Protest*, pp. 73, 76.

respects.<sup>88</sup> Poaching declined nationally in the last two decades of the nineteenth century though not at an even rate over the country. A sharp decline in poaching in some midland and northern areas masked the fact that poaching was sustained at a higher rate for longer in the southern half of the country.<sup>89</sup>

### **Issues of Recent Debate and Research**

*Whigs and Hunters* and 'Poaching and the Game Laws on Cannock Chase' were influential works in the revival of interest in poaching amongst historians in the last third of the twentieth century.<sup>90</sup> Themes which are central to both of these studies recur throughout the work of the historians who followed: the clash of value systems, class conflict, protest – overt and covert - poverty, the development of the capitalist economy, the significance of enclosure and lost rights, and the ultimate but not absolute power of the ruling class and the way in which this power was exercised.<sup>91</sup>

In *Whigs and Hunters* Thompson analysed the activities of 'Blacks' in the royal deer forests of Berkshire and Hampshire in the 1720s, and also looked at more ordinary poaching and gathering activity in these areas, and the forest and chase areas of Enfield and Richmond. The Blacks were armed and often mounted and, as well as taking deer, game and fish, they intimidated keepers and gentry and inflicted deliberate damage. Such was the fear they engendered in the ruling elite that the Black Act was passed, creating over fifty new offences for which capital punishment was the

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<sup>88</sup> Archer, 'Reckless Spirit', pp. 149-150, 170; Osborne and Winstanley, 'Rural and Urban Poaching', pp. 187, 207.

<sup>89</sup> See pp. 86-8; Osborne and Winstanley, 'Rural and Urban Poaching', pp. 193, 195, 207.

<sup>90</sup> Thompson, *Whigs and Hunters*; Hay, 'Cannock Chase'.

<sup>91</sup> The work of Archer, Bushaway, Howkins, Jones, King, Munsche, Neeson, Shakesheff, Fisher, Porter, M. Reed, John Rule, Roger Wells, cited in this chapter and in later chapters.

sentence.<sup>92</sup> Behind the protest lay issues of enclosure and rights. Blacks were not usually the poorest of the inhabitants of the area; it was the middling orders of the forest which were the impetus behind blacking, with a few gentry sympathisers.<sup>93</sup>

Looking at Cannock Chase in the eighteenth century, Hay identified the threat of further enclosure and the removal of common rights as also being connected to disputes over game, rabbits and fish. The conflicts over rabbits were caused by the clash between the right of the lord of the chase to free warren and the right of commoners to grazing, in the same area. The poachers and rabbit activists were not exclusively from the poorest of the population, but included qualified gentlemen sportsmen who were denied the right to hunt on the chase, and farmers. In the effort to retain the right to use the warren areas for grazing, it was wealthy middling men and prosperous farmers who funded legal services and paid men to come and assist in digging out warrens.<sup>94</sup>

J. Neeson's study of opposition to enclosure in Northamptonshire found that there was more opposition than had been supposed, but evidence was fragmentary.<sup>95</sup> There was a clear link between enclosures and protest crime such as fence breaking and tree barking.<sup>96</sup> Getzler found that, as well as conflicts with the poor, enclosures also caused problems between the wealthy who hunted and new owners of enclosed land. Legal disputes over

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<sup>92</sup> Thompson, *Whigs and Hunters*, p.22.

<sup>93</sup> Thompson, *Whigs and Hunters*, pp. 63, 85, 94.

<sup>94</sup> Hay, 'Cannock Chase', pp. 220-21, 224, 227-8.

<sup>95</sup> J. Neeson, *Commoners, Common Rights, Enclosure and Social Change in England 1700-1820* (Cambridge, 1993), pp. 260-78.

<sup>96</sup> Neeson, *Commoners*, p. 280.

hunting rights reached a peak in the 1820s, when the hunting obsessions of the gentry 'waxed to intolerable extremes'.<sup>97</sup>

Many historians consider that there was an element of protest in at least some poaching.<sup>98</sup> George Rudé has defined protest as: 'a social act (generally a collective act) that seeks to rectify an injustice, to ventilate a grievance of public concern, or to offer a more fundamental challenge to society or its established norms'. However, his definition of protest crime involves the primacy of the protest motive.<sup>99</sup> Machine breakers, food rioters, demolishers of turnpikes, are examples of easily recognised protest crime, because they are within the context of a popular movement and involve a primary motive of challenge. But poaching, for Rudé, belonged to a 'shadowy realm' between crime and protest, along with other illegal activities like smuggling and rural incendiarism. It was a type of marginal protest and each instance had to be judged on its merits.<sup>100</sup>

For Archer, though an element of protest may have been present in the mind of the poacher, for most it was not a primary motive. But because the game laws caused much tension and gave rise to crime which was protest crime – destroying gates and fences, poisoning birds and eggs, attacking gamekeepers' houses – poaching was inextricably interwoven with protest and many poachers were also known as radicals.<sup>101</sup>

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<sup>97</sup> Getzler, 'Judges and Hunters', p. 210.

<sup>98</sup> Archer, *Flash and Scare*, p.147, 161-5; Munsche, *Gentlemen and Poachers*, pp. 63-4; Hay, 'Cannock Chase', p. 91; Shakesheff, *Rural Conflict*, p. 157, 169; Jones, *Crime, Protest*, p. 82.

<sup>99</sup> George Rudé, 'Ideology and Popular Protest', in Harvey J. Kaye (ed.), *The Face of the Crowd: Studies in Revolution, Ideology and Popular Protest: Selected Essays of George Rudé*, (London, 1988), p. 197; George Rudé, *Criminal and Victim: Crime and Society in Early Nineteenth-Century England* (Oxford, 1985), p. 86.

<sup>100</sup> George Rudé, *Protest and Punishment*, (Oxford, 1978), pp. 2-4.

<sup>101</sup> Archer, *Flash and Scare*, p. 161.

Jones considered that most poachers were neither ordinary nor deferential criminals, and that some 'waged social war in every way they could'.<sup>102</sup> In his study of sheep stealing, Rule commented that, 'Crimes could have been committed by rural labourers not so much as a direct result of their poverty but rather as an expression of resentment at that condition'.<sup>103</sup> Sharpe has said, and there is consensus on this, even from Munsche, that the poacher 'Asserted a set of attitudes ... at variance with that of his social superiors'.<sup>104</sup> Munsche also suggests the possibility of a connection, 'in more northern industrial areas', between class antagonism and resistance to the game laws.<sup>105</sup> Porter, in his study of late Victorian Devon, found that the role of poaching in protesting against the game laws and the weakening of customary rights continued even in this period.<sup>106</sup> In Herefordshire, Shakesheff has argued that instances of colliers cross dressing to poach deer were a continuance of the tradition of protest in the area. However, he judged that most poachers in this county were just trying to feed their families.<sup>107</sup>

Need is accepted as a frequent cause of poaching by all recent historians of poaching,<sup>108</sup> except Munsche, who has only acknowledged any significant degree of connection with poverty as having been in the aftermath of the Napoleonic Wars, when a depression hit the countryside. But generally:

There is little evidence to support the image of starving

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<sup>102</sup> Jones, *Crime, Protest*, pp.15, 82.

<sup>103</sup> John Rule, 'The Manifold Causes of Rural Crime: Sheep Stealing in England c.1740-1840', in John Rule and Roger Wells (eds.), *Crime, Protest and Popular Politics in Southern England 1740-1850* (London, 1997), p.105.

<sup>104</sup> Sharpe, *Crime*, p.181. Munsche, *Gentlemen and Poachers*, pp.63-4.

<sup>105</sup> Munsche, *Gentlemen and Poachers*, p.150.

<sup>106</sup> Porter, 'Poaching and Social Conflict', pp. 96-108.

<sup>107</sup> Shakesheff, *Rural Conflict*, pp. 169, 203.

<sup>108</sup> Hopkins, *Long Affray*, p. 25; Archer, *Flash and Scare*, pp. 154-5; Jones, *Crime, Protest*, pp. 69, 82; Shakesheff, *Rural Conflict*, p. 201.

peasants snaring game in order to keep body and soul together....Hunger...does not seem to have been a primary motive for poaching.<sup>109</sup>

On the contrary, according to Munsche, the overwhelming motive for poaching was commerce; the lucrative black market for which virtually all game was destined.<sup>110</sup>

Jones has said that the link between poaching and poverty was strong.<sup>111</sup> Alun Howkins has classed poaching as 'economic crime', which he has defined as theft committed by poor people who did not generally commit crime and were not considered to be criminals; for example, stealing food from fields and gathering wood.<sup>112</sup> Archer found that many of the poachers in East Anglia were motivated by hunger or economic necessity, but that this did not apply to the poaching gangs of Lancashire.<sup>113</sup>

All historians, including Munsche, have accepted that enjoyment and sport were supplementary motives for many poachers.<sup>114</sup> The attack on traditional sports and pastimes, which began in the late eighteenth century, has been viewed by some as having had relevance to motivations for poaching.<sup>115</sup>

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<sup>109</sup> Munsche, *Gentleman and Poachers*, pp.54-5.

<sup>110</sup> Munsche, *Gentlemen and Poachers*, pp. 54-5.

<sup>111</sup> Jones, *Crime, Protest*, p. 69.

<sup>112</sup> Howkins, 'Economic Crime', p.283.

<sup>113</sup> Archer, *Flash and Scare*, pp. 154-5, 'Reckless', pp. 160-1.

<sup>114</sup> Munsche, *Gentlemen and Poachers*, p. 63; Archer, *Flash and Scare*, p. 151; Hay, 'Cannock Chase', p. 201; Osborne and Winstanley, 'Rural and Urban Poaching', p.202; Tobias, *Crime and Police*, p.24.

<sup>115</sup> Jones, *Crime, Protest*, p. 69; Emma Griffin, *England's Revelry: A History of Popular Sports and Pastimes 1660-1830* (Oxford, 2005), pp. 251-2; Robert D. Storch, *Popular Culture and Custom in Nineteenth Century England* (Kent, 1982), pp. 1, 3, 10, 102.

The existence of an extensive black market in game is agreed by all, but it was clearly more dominant in some areas than in others.<sup>116</sup> Archer has said that, in East Anglia, vast amounts of game fed this market, and in Lancashire poaching was dominated by commercial gangs.<sup>117</sup> But there were considerable regional variations. Peter King found that, in Essex, poaching was largely a casual occupation, occasional or part time, with very few gaining a substantial part of their livelihood from it.<sup>118</sup> In Oxfordshire, Howkins found that poaching was mainly a local affair with little evidence of gangs of poachers feeding into the networks which supplied the black market.<sup>119</sup>

Statistics and quantification with regard to poaching, as with all crime, are difficult. Historians who have discussed statistics relating to poaching have agreed that they are unreliable due to lack of reporting of summary convictions, variation of practice in reporting, and the huge 'dark' figure of undetected poaching.<sup>120</sup> Central to the problem is the question of how closely statistics of convictions indicate actual poaching; as numbers of convictions rise or fall, to what extent does this indicate changes in the commission of the offence? Gatrell has pointed out that movements in recorded crime may be a result of changes in legislation or 'judicial moral enterprise'. However, he has contended, in respect of some offences it is possible to be reasonably sure that changes in rates are meaningful, when these other influences have been ruled out. He has also stated that falls in

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<sup>116</sup> Jones, *Crime, Protest*, p. 67; Howkins, 'Economic Crime', pp. 282-3; King, *Crime Justice*, p. 213; Munsche, *Gentlemen and Poachers*, p. 23; Archer, 'Poaching Gangs', p.31; Thompson, *Whigs and Hunters*, pp. 189, 223; Hay, 'Cannock Chase', p. 203.

<sup>117</sup> Archer, *Flash and Scare*, p. 152; 'Reckless Spirit', p. 163; 'Poaching Gangs', pp.25, 31-7.

<sup>118</sup> Peter King, *Crime, Justice And Discretion in England 1740-1820* (Oxford, 2000), p. 213.

<sup>119</sup> Howkins, 'Economic Crime' p.281.

<sup>120</sup> Archer, *Flash and Scare*, p. 148; V. A. C. Gatrell, 'The Decline of Theft and Violence in Victorian and Edwardian England', in V. A. C. Gatrell and Bruce Lenman (eds.), *Crime and the Law: The Social History of Crime in Western Europe Since 1500* (London, 1980), p. 247.

crime rates usually indicate what really happened, while rises are not likely to.<sup>121</sup> Other historians have agreed that, used carefully, some statistics can be reliable indicators. Having heeded these caveats, there seems little doubt that there was a massive increase in poaching during the early nineteenth century, and a decrease in the last 20 years of the century.<sup>122</sup>

The use of data on poaching convictions is central to the work of Harvey Osborne and Michael Winstanley on the differences between poaching in the South and East, and the Midlands and North. They have contended that although some historians have questioned the use of such data because of the 'dark' figures of unknown crime, there is no suggestion that the proportion of crime that was undetected varied across the country in ways which would undermine regional comparisons.<sup>123</sup>

Much has been made of the fact that poachers were often brought before magistrates who were themselves preservers and hunters. At one extreme, the Hammonds said that magistrates were biased and poachers stood no chance of a fair trial.<sup>124</sup> Against this, Munsche and Peter King have argued that, while there were cases of prejudice, the fact that many magistrates were devoted to hunting does not mean that they enforced the game laws vindictively.<sup>125</sup> Both Munsche and King have cited cases of Justices being challenged on their verdicts, in higher courts, by poachers who had access to money for further legal action; this made magistrates wary.<sup>126</sup> Moreover, men accused of poaching were not infrequently found not guilty or had

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<sup>121</sup> Gatrell, 'Decline of Theft', pp. 247-8, 'Crime, Authority', p.291; Archer, *Flash and Scare*, p. 148; Fisher, 'Property Rights', p.167.

<sup>122</sup> Munsche, *Gentlemen and Poachers*, p. 102; Jones, *Crime, Protest*, p. 66.

<sup>123</sup> Osborne and Winstanley, 'Rural and Urban Poaching', p.3.

<sup>124</sup> Hammonds, *Village Labourer*, p.134.

<sup>125</sup> King, *Crime, Justice*, pp. 107-108; Munsche, *Gentlemen and Poachers*, pp. 93-5, 161-2.

<sup>126</sup> Munsche, *Gentlemen and Poachers*, pp. 94-5; King, *Crime, Justice*, p. 108.

their cases dismissed.<sup>127</sup> Some magistrates were wary of being seen as too harsh; they were keen to preserve good feeling in the locality, where they depended on the local tradesmen. Moreover, handing out frequent severe sentences resulted in further pressure on the parish or union workhouse because families were left unsupported.<sup>128</sup> Munsche has also said that many of the gentry, as magistrates or prosecutors, followed a deliberate policy of frightening the offender and then choosing either to prosecute under a lesser statute or reduce fines; by intimidation they hoped to deter the poacher from further destruction of game; by exercising humanity they hoped to obtain the accused's assistance in identifying other offenders.<sup>129</sup>

This is the same tactic as that identified by Hay in his other essay in *Albion's Fatal Tree*, 'Property, Authority and the Criminal Law', where, in the prosecuting behaviour of the ruling class, he saw instances of the use of fear allied with the prerogative of mercy to create and consolidate deference;<sup>130</sup> a tactic which he also found in the behaviour of the lords of Cannock Chase.<sup>131</sup> Hay considered that bias in magistrates over poaching cases is impossible to corroborate, but that it is possible to see how 'the strong class loyalties of Staffordshire gentry could take precedence over the impartiality required'.<sup>132</sup> Overall, King has concluded, 'At one extreme there were corrupt and oppressive magistrates, and at the other scrupulous and genuinely benevolent ones; most were neither dedicated nor oppressive'.<sup>133</sup>

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<sup>127</sup> Munsche, *Gentlemen and Poachers*, p. 94; King, *Crime, Justice*, p.19.

<sup>128</sup> Munsche, *Gentlemen and Poachers*, p. 96; King, *Crime, Protest*, pp. 109-10; Shakesheff, *Rural Conflict*, pp. 173-5, 202-3.

<sup>129</sup> Munsche, *Gentlemen and Poachers*, pp. 96-7.

<sup>130</sup> Douglas Hay, 'Property, Authority and the Criminal Law', in *Albion's Fatal Tree*, pp. 17-64.

<sup>131</sup> Hay, 'Cannock Chase', pp. 232, 235, 249-51.

<sup>132</sup> Hay, 'Cannock Chase', p. 241.

<sup>133</sup> King, *Crime, Justice*, p. 110.

Archer and Jones found that, in court, some poachers were confident and knowledgeable, and not at all overawed.<sup>134</sup> Shakesheff and Hopkins have both noted examples of juries being reluctant to convict poachers, particularly in circumstances where the offenders might have been sentenced to transportation. Because of this, prosecutors often went for a lesser charge. The Black Act remained on the statute books until 1827, meaning that night poachers who were disguised or armed could, in theory, be hanged; but juries were unwilling to see poachers hang and the act was seldom used.<sup>135</sup> Hopkins has said that, in industrial areas, Magistrates were reluctant to try poaching cases because of the 'odium' brought upon them, and that Assize juries were unwilling to find accused poachers guilty.<sup>136</sup>

More balanced views of the game laws and their operation, allowing for leniency on the part of the Magistrates and for poachers having some defences, seem to be increasingly accepted by historians. However, Gatrell has struck a warning note with regard to this: he sees a growing orthodoxy which says that an adversarial view of relations between law and populace is crude; which accepts bias in the law and popular resistance but downgrades it in importance. A depiction of reality is being sought which is said to be more 'complex' and 'pluralistic'; which emphasises free access to law and its use by all classes apart from the very poorest.<sup>137</sup> Gatrell has argued that this more pluralistic perspective serves the dominant myth well, by displacing the concern that the law mediates the inequalities of power.<sup>138</sup>

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<sup>134</sup> Archer, *Flash and Scare*, pp.147-8; David J. V. Jones, 'The Poacher: A Study in Victorian Crime and Protest', *Historical Journal*, 22 (1979), p. 845.

<sup>135</sup> Shakesheff, *Rural Conflict*, p. 173.

<sup>136</sup> Hopkins, *Long Affray*, p.206.

<sup>137</sup> Gatrell, *Crime, Authority*, p. 282.

<sup>138</sup> Gatrell, *Crime, Authority*, pp.282-4.

Opinions differ on the subject of the involvement of poachers in other criminal activity, though it could be more a matter of the situation varying in different areas of the country. Jones felt there was some evidence that poaching could be the first step on the criminal ladder.<sup>139</sup> Howkins has noted the difference between attitudes towards day poachers and night gang poachers, who were considered more criminal: 'The night poacher was, to the nineteenth-century preservers and policemen, a member of the criminal classes whose deviance was certain and poaching only one of his forms of crime.'<sup>140</sup> According to Shakesheff a few did 'diversify', stealing turkeys for example, but in Herefordshire most were just poaching.<sup>141</sup> In Lancashire in the nineteenth century, Archer found evidence that some members of the gangs which dominated poaching were criminal in other respects, and were different in this way from the gangs of East Anglia.<sup>142</sup>

The concept of social crime has been widely accepted by historians of poaching but with variation in exactly which crimes can be regarded as such, and reservations as to whether or not all poaching was social crime. J. A. Sharpe has said social crime is best defined as behaviour which was against the law but which the people doing it, and many others, did not regard as criminal.<sup>143</sup> This is the common thread running through all the ideas about social crime, that it was crime which the perpetrators and some others from the same social group, class or community, possibly from outside it as well, did not consider to be morally wrong or to be real crime. Archer has said that most historians agree that social crime reflects a fundamental clash of values over the law; in the case of poaching,

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<sup>139</sup> Jones, *Crime, Protest*, p.75.

<sup>140</sup> Howkins, 'Economic Crime', p.276.

<sup>141</sup> Shakesheff, *Rural Conflict*, pp.154-5, 201-2.

<sup>142</sup> Archer, 'Reckless Spirit', pp.161-4, 168; 'Poaching Gangs', p.29-36.

<sup>143</sup> Sharpe, *Crime*, p. 181.

poachers and their peers did not regard poaching as wrong, and at the root of this was the belief that game should be there for everyone because it said so in the *Bible*.<sup>144</sup>

Fisher has said, of poaching in the late nineteenth century, 'Outside the privileged few, virtually the entire community were willing to take game illegally or connive at its taking....Poaching was thus ubiquitous and not regarded as a normal crime'.<sup>145</sup> Even Munsche has accepted that most contemporary observers said that there was a consensus among the lower classes that game was the property of anyone who could take it.<sup>146</sup> John Rule and Roger Wells accepted that social crime was crime which perpetrators and their communities did not regard as wrong; they have included poaching as social crime.<sup>147</sup>

However, there is agreement that not all types of poaching can be regarded as social crime. Sharpe has voiced reservations about a simplistic equation of poaching and social crime, because organised gangs of poachers do not seem to fit the model.<sup>148</sup> Similarly, Clive Emsley found poaching to be a crime which it was impossible to categorize as a whole as social crime, because of organised gangs and the black market.<sup>149</sup> Although Archer considered many poachers were social criminals, he found that in Lancashire, though there were poachers who could be regarded as such, the organised gangs from urban areas could not be included under this

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<sup>144</sup> Archer, *Flash and Scare*, p. 3.

<sup>145</sup> Fisher, 'Property Rights', pp. 166-7.

<sup>146</sup> Munsche, *Gentlemen and Poachers*, p. 64.

<sup>147</sup> Rule, John and Roger Wells, 'Crime, Protest and Radicalism' in John Rule and Roger Wells (eds.), *Crime, Protest and Popular Politics in Southern England 1740-1850* (London, 1997), p.8.

<sup>148</sup> Sharpe, *Crime*, pp. 18, 184-6.

<sup>149</sup> Clive Emsley, *Crime and Society in England 1750-1900*, 3<sup>rd</sup> ed. (Harlow, 2005), pp.3-4.

label; on the contrary, they contributed to the public belief in a dangerous criminal class.<sup>150</sup>

There were differences in poaching behaviour and patterns over the country and also changes over the century. By the end of the nineteenth century poaching was not generally as violent or as controversial as it was earlier. It has been considered by some historians that it is unlikely that repressive legislation contributed to this change; it was probably changing moral values and improved material conditions.<sup>151</sup>

In Lancashire, Archer found that the county was significantly different from more southern arable counties because of the proximity of towns and cities to game preserves. He argued that this might be linked to a more violent and gang dominated scenario, and questioned whether a similar picture might be found in 'other northern industrializing areas'. He has called for research into the situation in Derbyshire, Cheshire and Yorkshire.<sup>152</sup>

Hopkins has also argued that poaching in industrial areas was different and that the proximity of preserves to fast growing industrial areas was significant, as well as northern industrial workers being less deferential and more willing to challenge hierarchy.<sup>153</sup> Munsche has said it is possible that, with more northerly and industrial poachers, there may have been a connection between class antagonism and poaching.<sup>154</sup>

In their work on rural and urban poaching, Osborne and Winstanley found that, during the period of decline in poaching over the later years of the

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<sup>150</sup> Archer, 'Reckless Spirit', pp. 10, 170-1.

<sup>151</sup> Archer, *Flash and Scare*, p. 170. Osborne and Winstanley, 'Rural and Urban', pp. 197-204; Jones, *Crime, Protest*, p. 84.

<sup>152</sup> Archer, 'Reckless Spirit', p. 149-50, 170, 'Poaching Gangs', p.27.

<sup>153</sup> Hopkins, *Long Affray*, pp. 202-3.

<sup>154</sup> Munsche, *Gentlemen and Poachers*, pp. 149-50.

century, the large numbers of poaching convictions from the North and the Midlands had a skewing effect on the national figures.<sup>155</sup> National figures show day poaching peaked in England in the late 1870s, but this apparent national trend was caused by the weight of the figures from midland and northern counties where the industrial economy was experiencing a severe depression.<sup>156</sup> In the agricultural South and East, in the same period, the figures were consistently lower than they had been a decade before. The night poaching situation was similar, but with the national peak occurring slightly earlier, in the early 1860s, due to the exceptional numbers of prosecutions in Lancashire and Cheshire during the cotton famine of 1861-65. Both night and day poaching peaked and then declined earlier in the North and Midlands than in the South and East; this gave the appearance of a uniform national decline, when in fact levels of poaching convictions remained high in the South and the East for longer than in the North and Midlands.<sup>157</sup> This is a significant finding, which draws a conclusion about the counties of the North and Midlands as opposed to those of the South.

When considering the East Midlands it must be remembered that there were differences in industrial development between counties like Derbyshire, Leicestershire and Nottinghamshire and some other midland and northern counties, especially in the first two thirds of the nineteenth century.

In the South of England and East Anglia, by 1800, a capitalist agrarian economy was well established and textile industries, previously significant

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<sup>155</sup> Osborne and Winstanley, 'Rural and Urban'.

<sup>156</sup> Osborne and Winstanley, 'Rural and Urban', pp. 4, 11.

<sup>157</sup> Osborne and Winstanley, 'Rural and Urban', pp. 193-6.

sources of employment, were dwindling if not gone.<sup>158</sup> Agricultural labourers comprised the majority of the working population, relying in difficult times upon activities which were either illegal or increasingly discouraged, such as food and wood gathering, gleaning and poaching.<sup>159</sup> The area which may be called 'the Midlands and the North' was clearly different from the South and the East, but it was not a homogenous area. Over the Midlands and the North, the rate of industrial development was varied. By 1800 the industrial revolution was effecting enormous changes in some places, whilst not yet in others.<sup>160</sup>

In the early nineteenth century, in the East Midlands, the predominant industries of extraction of coal, lead and iron, and the manufacture of hosiery, had not moved over to factory or large-scale production, and were largely carrying on in small production units and unpowered cottage or small workshop manufacture.<sup>161</sup> It was not until the second half of the nineteenth century, after the introduction of an effective railway network, that full industrial development began. Powered manufacture in hosiery and lace, fully mechanised exploitation of the hidden coal reserves and increased iron production were then accompanied by development in industries such as engineering, footwear, bicycle, and elastic web manufacture. Full industrialisation in the East Midlands only began from about 1860, and continued over the next 20 years.<sup>162</sup>

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<sup>158</sup> Archer, *Flash and Scare*, pp. 30,168; 'Reckless Spirit', p.148; Martin Daunton, *Progress and Poverty: An Economic and Social History of Britain 1700-1850* (Oxford, 1995), pp.141-2.

<sup>159</sup> David Jones, 'Rural Crime and Protest', in G. E. Mingay (ed.), *The Victorian Countryside*, Vol. 2 (London, 1981), pp.569-70; Neeson, *Commoners*, pp.283-4.

<sup>160</sup> Martin Daunton, *Progress and Poverty: An Economic and Social History of Britain 1700-1850* (Oxford, 1995), p.141-42, for the shift of industrialisation from the South West and East to the West Midlands, West Riding, Lancashire, South Wales and the North East.

<sup>161</sup> J. V. Beckett, *The East Midlands from AD 1000* (Harlow, 1988), pp.274-5.

<sup>162</sup> Beckett, *East Midlands*, p. 275; J. V. Beckett and J. E. Heath, 'When Was the Industrial Revolution in the East Midlands?', *Midland History*, 13 (1988), p.90.

## Themes, Questions and Structure

The thesis aims to study the whole range of the patterns and impacts of poaching in the East Midlands. Chapter 2 introduces the sources and explains how they have been used. Broadly, the themes fall into three main areas: the *extent* of poaching in the three counties; the *type* of poaching that was going on and the people who were doing it; and the *causes* of poaching. Within these three main themes, these are the aims of the research and the questions which it seeks to answer.

The extent of poaching in the area is assessed by quantifying, in a meaningful way, how much poaching was going on in the area as compared to other parts of the country, and comparing the three counties of Derbyshire, Leicestershire and Nottinghamshire to each other. Where were the main poaching areas, and what were the changes over the period, both within the East Midlands and in comparison to other areas?

Regarding types of poaching and poachers, the study looks at the ways in which people poached, their equipment, prey, methods, groups, the occupations and ages of the poachers, and their economic situation. Night and day poaching are considered, to some extent, separately. How violent were the poachers, and were they criminal in other respects? What impact did their activities have on others and the area at large?

In considering the causes of poaching, the thesis looks at the various factors which have been suggested as being causative, and re-evaluates them in the light of the evidence which has been gathered. Need, enjoyment, protest and commerce are commonly cited reasons for poaching; was this the case in the East Midlands, and if so to what extent

was each a factor, and were there possibly any other significant causes?

What was the effect of poaching and how did the authorities try to combat it?

Whilst the East Midlands has been treated as a whole, where there are differences between the counties this is discussed, as well as changes over period of time which has been selected, c.1820-c.1900.

Following this introductory chapter, the thesis is structured as follows.

Chapter 2 introduces the primary sources which have been used and explains the methodology. Chapter 3 quantifies and locates poaching and compares this with other counties; describes how the poaching was done, explains why night poaching was of such concern, and considers the effects of seasonality on poaching. Chapter 4 looks at poaching and its connection with poverty, considers the varying degrees of poverty that existed, and discusses poaching as a social crime in the light of the evidence. Chapter 5 looks at the poaching war on the land in the three counties; examines poaching affrays, the degree of violence involved and what led to the violence. It locates the main areas where affrays occurred, and compares East Midlands affrays with those of Lancashire. The ages and occupations of poachers are compared with those in Lancashire and East Anglia, as well as the way in which keepers and police behaved in attempting to prevent and punish poaching. Chapter 6 looks at how the poaching war was continued in the courts, as poachers were brought before summary and jury courts. The ways in which poachers attempted to avoid convictions, the sentences imposed, and the recidivism of most poachers is discussed. The behaviour of poachers in the face of the authorities is examined for evidence of protest. Chapter 7 looks at preservation and sport in the area, compares the appeal of legitimate hunting to that of poaching to show the sporting

and recreational element of poaching, and suggests that sporting differences between the East Midlands and Lancashire may lie at the root of the difference in the impact of poaching on each area. Chapter 8 concludes by drawing together the significant findings of the study and presenting the final arguments about the causes of poaching.

## Chapter 2 Methodology

The questions which this thesis addresses are related to patterns of poaching in the three counties of Derbyshire, Leicestershire and Nottinghamshire. It was necessary to gain information about people who poached, both on a quantitative and an individual scale; their ages, occupations, where they lived, their economic circumstances, their prey, their methods, their poaching grounds. It was also necessary to be aware of the attitudes of the public to game offences and the game laws; to be informed about judicial attitudes and practice in all the three levels of court to which game offenders answered; to be knowledgeable about gentry sporting and preserving practices.

### The Primary Sources

There have been three main primary sources for this research: the *Criminal Registers* for the counties;<sup>1</sup> local newspapers from the area;<sup>2</sup> and the *Game Laws Returns* and *Judicial Statistics in Parliamentary Papers*.<sup>3</sup> Additional sources have been the published writings of some nineteenth-century poachers and country dwellers, and records held at county record offices and archives.<sup>4</sup> Statistics from the decennial censuses have been accessed at *Histpop*;<sup>5</sup> but where details about individual people from the street returns are referred to, access has been via *Ancestry*, which allows

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<sup>1</sup> NA, *Criminal Registers, HO 27*. Membership of the family history organisation *Ancestry* enables access to the *Criminal Registers* online where they can be viewed page by page in facsimile and keyword searched using a name, [www.ancestry.co.uk](http://www.ancestry.co.uk) (last accessed 15 July 2016).

<sup>2</sup> *British Library Newspapers*, <http://www.find.gailgroup.com> (last accessed 15 July 2016). Using this website it is possible to search the newspapers by key word.

<sup>3</sup> PP, *Returns to the House of Commons for Offences against the Game Laws, from 1817 to 1872*, hereafter referred to as *Game Laws Returns*, and *Judicial Statistics*, [www.parlipapers.chadwyck.co.uk](http://www.parlipapers.chadwyck.co.uk) (last accessed 15 July 2016).

<sup>4</sup> See bibliography for archival sources.

<sup>5</sup> *Histpop*: [www.histpop.org](http://www.histpop.org) (most recent access 26 August 2016).

searches to be made of census returns by surname and forename and brings up the relevant street return in facsimile.

The *Criminal Registers* are the records of all the people who appeared before Quarter Sessions courts and Assize courts, for all the counties of England and Wales from 1805 to 1892. Those appearing accused of offences against the game laws can be identified, together with the verdict and sentence. The *Criminal Registers* of Derbyshire, Leicestershire and Nottinghamshire provide the names of hundreds of poachers. In the nineteenth century, information from criminal courts was sent to the Home Office by the Clerk of the Peace of the county for Quarter Session courts, and by the Clerk of Assize for Assize courts. The reliability of the *Criminal Registers* as a record of court appearances and the outcomes of prosecutions is thus as high as is possible. All the more serious poaching offences, such as night poaching armed or with violence, or any poaching incident where there was severe injury to a gamekeeper or assistant, went to Quarter Sessions or Assize courts and so would be recorded here, sometimes with information as to the accused person's age and degree of literacy. Information as to any other criminal convictions obtained by poachers (at Sessions or Assizes) can also be found here, and the database can be searched by surname and forename.

However, the vast majority of those accused of offences under the game laws, including those prosecuted for night poaching, appeared at summary courts, which later in the century included Police Courts as well as Petty Sessions. At these courts, the accused appeared before one or more magistrates with no jury. These convictions were not recorded in the *Criminal Registers*. There are three places where some record of them can

be found: court records of Petty Sessions, either kept and filed as such, or returned to the next Quarter Sessions and written into their records; some of the *Game Laws Returns in Parliamentary Papers*; and newspaper reports from Petty Sessions and Police Courts.

The first of these, Petty Sessions and Police Court records, have not survived consistently in any quantity. All summary convictions in the nineteenth century were meant to be reported to the next Quarter Sessions. Sometimes they were, but the practice was very variable and, overall, only a small proportion of such convictions were recorded, though this did improve later in the century. Surviving Petty Sessions records are thus few and patchy. Derbyshire is good in this respect, and has records of summary convictions for most of the century, both in the *Quarter Sessions Books* and separately.<sup>6</sup> Leicestershire has good records of some summary convictions towards the end of the century.<sup>7</sup> Nottinghamshire has some records in the *Quarter Sessions Books* from the late 1840s onwards.<sup>8</sup> But a significant limitation of practically all of these records of summary conviction, is that they tell very little that is useful - often just a name, a generalised 'offence against the game laws', and a sentence. Occasionally they may tell more; age, degree of literacy, occupation, whether married or single, with children or not, employed or not, whether any previous convictions; but most commonly none of these details are given.

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<sup>6</sup> DRO, *Quarter Sessions Order Books 1795-1891*, Q/SO/1/1-41; *Registers of Courts of Summary Jurisdiction 1829-1972: August 1829-May 1903* -, D 199/1/1-6. Some data which has been used in this study was originally gathered from these sources in 2003-4 as part of research for a dissertation: Rosemary Muge, 'Industrial Poachers?: Poaching in Nottinghamshire and Derbyshire 1835-1850', (MA Dissertation, The Open University, 2009).

<sup>7</sup> ROL, *Convictions Under the Game Laws and Fishing, 1863-1893*, QS 85/2/8.

<sup>8</sup> NA, *Quarter Sessions Minute Books, 1814-1890*, QSM 37-55.

The sources which give the most useful information on summarily convicted poachers are the local newspapers. They were not impartial in their attitudes and they were selective about areas on which they reported. However, as is still the case with present day newspapers, they were aware of the public interest in all crime, including poaching. Any poaching fights – invariably called affrays – were accorded often lengthy descriptions in repeated editions as information was gained about events. They also regularly reported those who had appeared before magistrates in summary courts for offences against the game laws, sometimes including details such as where they lived and their occupations as well as information about the crime. This might be extremely brief in the case of mundane day poaching, but when something a bit more unusual had happened, a local newspaper would often give many details and devote much space to the case. This applies more in the case of notorious events, persons and trials, of course. But surprisingly often, quite violent night poaching offences were only taken to Petty Sessions, and in these instances the newspaper report is the only source of information. Reports of court proceedings, including comments made in court by offenders, lawyers, Magistrates and Judges, and letters from farmers, gentlemen preservers and others with an opinion to offer, provide information on attitudes to the game laws, preservation and poaching.

*British Library Newspapers* is an online resource which offered, for the area and period in question at the time of beginning this research, the *Derby Mercury*, the *Nottinghamshire Guardian* and the *Leicester Chronicle*. All of these newspapers reported local news of which poaching matters - affrays, incidents and court reports from Petty Sessions, Quarter Sessions and Assizes – were a significant part. The newspapers also printed letters

reflecting opinion relating to preservation, the game laws and infringement of these laws.

The *Derby Mercury* was, by the nineteenth century, a long established local weekly newspaper having first appeared in March 1732. It advocated the interests of agriculture, commerce, manufactures, literature and the Church of England. It claimed a wide circulation in the county as well as in Derby itself.

The *Leicester Chronicle* had the variant titles of the *Leicester Chronicle and the Leicestershire Mercury* and the *Leicester Chronicle: Or, Commercial and Agricultural Advertiser*. It had appeared briefly in 1792, but restarted in 1810. The paper was regarded as Liberal and as advocating constitutional and progressive reforms. The early years from 1827 contain little in the way of reporting of poaching affrays as they happened, only reporting their occurrence if and when matters reached court. However, this improved in the 1840s and from around this time news reports began to appear of poaching incidents soon after they had happened and before any court appearances.

The *Nottinghamshire Guardian* was also known as the *Nottinghamshire Guardian, and Midland and Counties Advertiser*. It was published from May 1846 until 1969. In its early years it printed under its banner a long quotation from Lord George Bentinck, a leading opponent in the 1840s of the free trade policy of Sir Robert Peel:

Our object is – "... to cherish, to PROTECT, and to stimulate British Industry ... to lighten as much as may be possible the burthens of taxation which oppress and beat down the Industry ... raising Taxation as far as may be

practicable from the industry of Foreigners to the sparing of our own." Lord George Bentinck.<sup>9</sup>

In allying itself with the defence of agricultural, commercial and colonial interests the paper proclaimed its Conservative orientation.

The reporting on the poaching affray at Thieves Wood near Mansfield, in August 1858, is an example of the attention given to controversial poaching events and the type of information which can be obtained from newspaper reports. The *Nottinghamshire Guardian*, in three consecutive editions on 19 August, 26 August and 2 September 1858, reported on the event, giving the names of those apprehended and descriptions of the affray. Then, on 28 October 1858, there was a report on the trial at the Quarter Sessions, with further details of the affray from witness statements and with the additional information that, after the trial, 200 or more people were waiting at Sutton-in-Ashfield railway station in the evening for news of the sentences.<sup>10</sup> This was a particularly controversial case because it appears that several of those convicted were genuinely innocent. Over two years later, in March 1861, the paper reported on a civil case heard at the 1861 Lent Assizes where a clergyman, who had spoken out saying that several of those convicted were innocent, was being sued for slander by the gamekeeper who had identified them. After the clergyman had been found not guilty of slander, the Assize Judge stated that the keeper had falsely identified men 'who he could not honestly have known were there.'<sup>11</sup>

As an example of opinion offered by the publication of letters in newspapers, in 1865 the *Leicester Chronicle* published a letter from 'a

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<sup>9</sup> *NG*, 31 Jan 1850.

<sup>10</sup> *NG*, 28 Oct 1858; see pp. 145, 159 for this event.

<sup>11</sup> *NG*, 7 March 1861.

ratepayer' who was virulently against the game laws and particularly angered by the police acting in the role of gamekeepers. This sentiment had been engendered largely by the Poaching Prevention Act, which gave the police powers to search suspects on highways and in public places for game and equipment.<sup>12</sup> The writer did not object to this at all, but did object to it being exceeded and to the police taking upon themselves 'the duties of gamekeepers'. The writer regarded the game laws as 'a remnant of feudal barbarism' and 'a disgrace to our penal code.' He wrote, 'When I find that that recently two policemen passed a considerable part of the night searching for poachers, and at last captured one of them – not on the highway but in a field – when I find that the Magistrates in Quarter Sessions ... passed a resolution to increase the police force...I say it behoves the Ratepayers to keep their eyes open.'<sup>13</sup>

As an example of other extra information that can be obtained from newspaper reports, in 1886 the *Derby Mercury* reported from the November Assizes on a case of armed night poaching at Idridgehay. Of the four accused, three were represented by a defence lawyer, Mr Weightman. The article reported on Weightman's questioning of a prosecution witness who had been a watcher for the prosecuting landowner on the night in question. Landowners who preserved game employed a gamekeeper and sometimes a deputy gamekeeper, but much of the work of watching out for poachers was done by men casually employed for the night who were referred to as watchers, assistants or tenters.<sup>14</sup> Weightman asked the witness if he was an old poacher: 'The witness said he had been convicted

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<sup>12</sup> Poaching Prevention Act, 1862.

<sup>13</sup> *LC*, 4 Feb 1865.

<sup>14</sup> John E. Archer, *'By a Flash and a Scare': Arson, Animal Maiming and Poaching in East Anglia 1815-1879* (Oxford, 1990), p.158; P. B. Munsche, *Gentlemen and Poachers: The English Game Laws 1671-1831* (Cambridge, 1981), p.72.

for poaching but had not kept count of the number of times. He did not mind how many it was or how many it might be again.' The newspaper noted that there was amusement in court that one of the watchers was a poacher; this witness also displayed a lack of respect for the seriousness of the court by answering in an amusing fashion. After all the evidence had been heard the judge directed that one of the accused, Redfern, was to be found not guilty because evidence of identification was unsatisfactory.<sup>15</sup>

Newspaper reports cannot be considered to be as reliable as the *Criminal Registers* or the *Game Laws Returns*. The types of newspaper article from which information has been taken are, firstly, the news report of a poaching event which has been heard to have taken place; secondly a report from a court – a summary court, a Sessions court or an Assize court; thirdly, letters and other opinion pieces, sometimes editorials and sometimes reprinted by the paper from other publications, giving opinions on issues related to the game laws and poaching. In this last category, the opinions are clearly those of the writer.

A check was made on the reliability of newspapers in reporting names and sentences from Quarter Sessions and Assize Courts by comparing them to the records in the *Criminal Registers*; it was found that the accuracy was good, with only occasional mistakes in spelling of names or getting the length of sentences wrong. Since the court reports from the Quarter Sessions and Assizes were found to be generally accurate, the assumption has been made that information on names and sentences reported from Petty Sessions and Police Courts will be generally reliable. Any occasional inaccuracies that there may have been in reporting names, verdicts and

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<sup>15</sup> *DM*, 17 Nov 1886.

sentences of summary offenders, will not have significantly affected the research or invalidated any conclusions.

Returns of offences under the game laws were published in *Parliamentary Papers* from forty years before parliament began publishing annual criminal statistics. The Home Office made frequent demands to local authorities and prisons for information about poaching convictions. These *Game Laws Returns*, which were made at irregular intervals from 1817 to 1872, provide information and statistics that vary from return to return. Because of their limitations and inconsistency, they have been little used by historians.<sup>16</sup> But as well as statistics, they yield other data about poaching, sometimes in surprising detail. They give information on topics as diverse as the names of poachers, their sentences, those convicted at summary courts, what exactly the game offence was, whether they paid the fine or not and how large that fine was, how many magistrates convicted them, which parish the offence was committed in, and who was the landowner. Such data is not always given consistently across all counties, but it still provides insight into poaching, and particularly into summary court activity which is otherwise difficult to find. For the counties of Derbyshire, Leicestershire and Nottinghamshire these returns have given useful information. The *Judicial Statistics* which followed them and were published annually from 1857, whilst consistent across all counties and year on year, provide only the numbers of prosecutions. Some use has also been made of the *Judicial Statistics* from the database of *Parliamentary Papers*, as with the *Game Laws Returns*.

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<sup>16</sup> Jones, 'The Poacher: A Study in Victorian Crime and Protest', *Historical Journal*, 22 (1979), p.65; Archer, *Flash and Scare*, p. 148. Archer has voiced reservations about the data available, but he has used some statistics from the *Game Laws Returns* in *Flash and Scare*, p. 150.

The *Game Laws Returns* are official parliamentary papers, and as such great credence may be attached to the information within them. However, some allowance has to be made for the limitations of the time. Bearing in mind the minutiae required by some of the requests and the state of the infrastructure of the authorities trying to respond to these demands, it is clear that what is published within these documents is sometimes lacking, especially in the early years. A review of the *Game Laws Returns* is made later in this chapter, where examples of inconsistency and missing data are given. However, used with awareness of their deficiencies, the *Returns* enable statistical data to be extracted and comparisons made, between the East Midlands and other counties, of numbers of poachers convicted and imprisoned in the period before the *Judicial Statistics* gave consistent information.

James Hawker's journal is a particularly relevant source for this research because, although born in Daventry, he lived in Oadby, Leicestershire, for the greater part of his life and poached over the East Midlands and beyond.<sup>17</sup> In his study of nineteenth-century working class autobiography, David Vincent included Hawker's journal among the 142 autobiographies which he found to be genuine autobiographies by working class people. Vincent has referred to Hawker as 'characteristically forthright', quoted from his journal four times and referred to him a further three times.<sup>18</sup> R. L. Greenhall wrote that Hawker was probably stimulated to write his journal by a book, published in 1904, called *The Hungry Forties*, which had an introduction by Richard Cobden's daughter and was subtitled '*Life under the bread tax. Descriptive letters and other testimonies from Contemporary*

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<sup>17</sup> Garth Christian (ed.), *James Hawker's Journal: A Victorian Poacher* (Oxford, 1978).

<sup>18</sup> David Vincent, *Bread, Knowledge and Freedom: A Study of Nineteenth-Century Working Class Autobiography*, first pub. 1981 (London, 1982), pp. 21, 49, 81, 171, 175, 183, 197.

*Witnesses.*' This book was part of a Liberal attack on Conservative proposals to bring back protectionism, to aid farming and other industries which were being undercut by cheap foreign imports. It included a letter from Hawker about the hungry forties and against farmers and protectionism. Greenhall's suggestion is that Hawker was encouraged, by seeing his words in print, to write his memoirs - which he did in 1905 when he was in his late sixties.<sup>19</sup> The journal is highly political, but also contains information about poaching habits and reasons for poaching. Hawker resided for most of his life in Leicestershire, and makes it clear his primary motive for poaching was protest. He admired Joseph Arch, who formed the first agricultural labourers' union, and the radical Charles Bradlaugh.<sup>20</sup>

The anonymous author of *I Walked by Night*, named by Emma Griffin as Frederick Rolfe, offers a wealth of observation and opinion relevant to poaching everywhere in the country.<sup>21</sup> The book was edited by Lilius Rider Haggard who knew the author as an old man.<sup>22</sup> Vincent has not included it among his main autobiographies, because it falls outside his time limits in that it contains no recollections from before 1850. From the text, it appears the author was born around 1850 and the earliest datable recollection is his imprisonment in Norwich Castle as a lad in 1865.<sup>23</sup> However, it is listed in Vincent's bibliography under 'Other Autobiographical Works', indicating that Vincent regarded it as a genuine autobiography, not as a biography or a fictional autobiography.<sup>24</sup> Although not set in the East Midlands, this

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<sup>19</sup> R. L. Greenhall, 'What Made James Hawker Write His Memoirs?' *Leicestershire Historian*, 34 (1998), pp. 4-5.

<sup>20</sup> Christian, *James Hawker*, pp. 25, 71, 75.

<sup>21</sup> Emma Griffin, *Blood Sport: Hunting in Britain since 1066* (London, 2008), p. 161.

<sup>22</sup> Lilius Rider Haggard, ed., *I Walked by Night: Being the Life and History of the King of the Norfolk Poachers*, first pub. 1935, (Ipswich, 1976).

<sup>23</sup> Haggard, *I Walked*, p. 32.

<sup>24</sup> Vincent, *Bread, Knowledge*, p. 209.

autobiography offers insight into issues not easily investigated; the author writes about his motivations and feelings more than most nineteenth-century working class writers.<sup>25</sup> Vincent has suggested that the reason so few of these working-class writers talked about their feelings was largely because they lacked the language to reflect upon personal issues.<sup>26</sup> The author of *I Walked by Night*, was, like Hawker, a radical as well as an inveterate poacher.

George Baldry, though not a regular poacher, worked with others who were regular poachers, and he participated in their expeditions in his youth. His book, *The Rabbit Skin Cap*, is autobiographical reminiscences by a Suffolk shoemaker, with only one chapter about poaching.<sup>27</sup> However this chapter is informative about several issues which transcend geographical location. Baldry was born in about 1865 so his youthful poaching exploits were in the late 1870s or early 1880s. The book has a preface by Lilius Rider Haggard, who again knew the author. It is listed in the bibliography of Archer's book on East Anglia.<sup>28</sup>

Richard Jefferies was a Victorian journalist of country life. His observations about game and poaching are of a different and more reliable nature than the genre of rather sentimental writing about poaching, which began in the later nineteenth-century and continued in the twentieth.<sup>29</sup> He was a farmer's son born in 1848; he was not political, being expert only on country ways and activities. His *The Gamekeeper at Home* is published in one volume with *The Amateur Poacher*, and together they give details

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<sup>25</sup> Haggard, *I Walked*, pp. 40-2, 58-60, 69, 82.

<sup>26</sup> Vincent, *Bread, Knowledge*, pp. 39, 42-3, 45, 54.

<sup>27</sup> George Baldry, *The Rabbit Skin Cap* (Woodbridge: Boydell Press, 1984).

<sup>28</sup> Archer, *Flash and Scare*, p. 179.

<sup>29</sup> Richard Jefferies, *The Gamekeeper at Home and The Amateur Poacher*, combined volume of both, first pub. 1878, reprinted (Oxford, 1978).

about poachers' guns, egg collecting, snare construction, relations between local gentry and labourers and much else. It is listed in Archer's bibliography,<sup>30</sup> and Peter King has quoted Jefferies in offering evidence on attacks on poor people's customary rights.<sup>31</sup>

Sir Ralph Payne-Gallwey was a country gentleman, a baronet, game preserver and sportsman, whose attitudes and opinions are redolent of the class for which and to which he speaks - the 'young shooters'. *Letters to Young Shooters* gives the late nineteenth-century game preserver's view of gentlemen's sport and what is involved in preserving.<sup>32</sup> His writing is informative in providing a view from the side of the preserver on several issues and practicalities. Sir Ralph was a rich man with a large estate at Thirkleby Hall in north Yorkshire where he indulged in game preservation and hunting. The book provides detailed breakdowns of the expenditure involved on several different types of game preserving estates, including the costs of employing keepers and assistant watchers, and tips on how to avoid attracting poachers.<sup>33</sup>

### **Working with these Sources**

The *Criminal Registers* exist from 1805, but it was 1818 before any game offenders appeared in Nottinghamshire, and 1820 in Leicestershire and Derbyshire. The records are handwritten and in columns with the name of the accused, the offence and the sentence. Other details are occasionally squeezed in, such as 'before convicted of felony', 'released on sureties to

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<sup>30</sup> Archer, *Flash and Scare*, p.178.

<sup>31</sup> Peter King, *Crime and Law in England 1750-1840: Remaking Justice from the Margins* (Cambridge, 2006), pp. 336-7.

<sup>32</sup> R. Payne-Gallwey, *Letters to Young Shooters: On the Production, Preservation and Killing of Game* (London, 1892).

<sup>33</sup> Payne-Gallwey, *Letters*, pp. 150-53.

appear', 'admitted evidence'. From 1834 to 1848, for all counties, the age of each person is given together with an indication of their degree of literacy. The age is useful in identifying them, as practically always there was more than one person of any given name in an area at any time. Because the *Criminal Registers* were being accessed through the *Ancestry* website, it was also possible to search the censuses using a name as a key word. Knowing a poacher's year of birth, it was then straightforward to collate this information with the decennial census returns which could enable further information to be found out about them, such as occupation and family.

Picking out the poachers from the overwhelming numbers of larcenists who appeared before the courts, had to be accomplished by looking through all the registers for the counties involved. The clerks had different forms of words for framing the offence, the most common being 'Offence Against the Game Laws', often just abbreviated to 'OAGL'; 'Night poaching', 'Poaching by night', 'Entering enclosed land at night armed to take game', and several other variants were also common. In every case there was no difficulty in realising that poaching was what had been going on. However, as work progressed and information was being gathered from newspaper sources as well, it became evident that some poachers were not being identified from the *Criminal Registers*. This was because when a serious affray had occurred during a poaching event, and a gamekeeper or one of his assistants had been injured or even killed, the person or persons accused of doing this were sometimes indicted for 'actual bodily harm', 'assault with intent to injure', 'murder' or 'manslaughter', rather than an offence against the game laws.

Because of this, it was decided that those who had been indicted for more serious offences, but whom it was known had been poaching, would be included in the lists of poachers appearing at Assizes and Quarter Sessions, but with a note to say that they had not been indicted for offences against the game laws. Later on, when comparisons were made between counties of the number of poaching offences at Assizes and Quarter Sessions, these people were *not* included in the numbers. The justification for this is that only some of those falling into this category were known; to be sure of comparing like with like it was better to only compare numbers of those indicted for game laws offences. For reasons which are explained later, newspaper reports were only examined every five years whereas the *Criminal Registers* data was taken for every year. So, it is only for the years for which the newspapers had been examined that it is possible to know that some of the people indicted for non-poaching offences had actually been poaching.

It was known, from earlier research conducted by the writer, that the local newspapers of the period were an invaluable source of information on poaching, both the actual activity, opinions about it, and court conduct.<sup>34</sup> The *Derby Mercury* was available (when current research began) from 1800 to 1900; the *Nottinghamshire Guardian* from 1849 to 1900; the *Leicester Chronicle* from 1827 to 1900.<sup>35</sup> All three newspapers showed, throughout the period, a keen interest in poaching matters and the game laws, particularly in poaching affrays. There is no doubt that any known poaching affray would have been reported; indeed, such was the

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<sup>34</sup> Rosemary Muge, 'Industrial Poachers?: Poaching in Nottinghamshire and Derbyshire 1835-1850', MA Dissertation (Open University, 2009).

<sup>35</sup> *British Library Newspapers*.

enthusiasm for this sort of news that poaching affrays from all over the country were reported, especially if they resulted in serious injury or death.

Reading through up to 70 years of three newspapers, which were issued weekly, was not possible, and so the method of key word searching was adopted. From the previous research in 2007-8, it was known that this method, though productive, could miss important items on poaching events. However, it became clear as research for this study progressed, that the search engines involved had been substantially improved since then and, in conducting research for this PhD from 2012 onwards, the writer is confident that key word searching has identified all the articles featuring the chosen key words.

It was necessary to decide which key words would be the most productive. Beginning with the *Nottinghamshire Guardian*, trials were carried out in 1840s and 1850s issues, using as the key word the following: poacher, poachers, affray, game laws, game, preserves, preserving, conies, warrens, keeper, keepers, gamekeeper, pheasants, partridges, rabbits, partridges, and hares. Some of these terms pulled up far too much that was irrelevant, and some pulled up very little at all. For example, 'affray' pulled up every type of fight, some from the far reaches of the empire; 'preserves' resulted in plentiful culinary advice and advertisements; 'warrens' resulted in nothing of use, and 'pheasants' and 'partridges' very little.

Overall, 'poachers' proved to be the most productive term to use. It pulled up virtually all the useful items retrieved by the other terms, and many more not retrieved by them. However, when searching for further information on a particular known event or issue, other terms were

sometimes used as well, to ensure that all possible information was found; also, whole issues of newspapers were occasionally browsed for the same reason.

Such a large amount of material was obtained by this method that a selective approach had to be adopted. It was decided to sample newspapers every five years, using the years 1841, 1846, 1851, 1856, etc., forward to 1896 and back as far as possible, depending on the availability of the newspaper. This had the advantage of including census years, which meant that when poachers named in newspapers were being researched, there would be (for half of the issues) a census return for that year which would include them living where they were at the time of prosecution. Newspaper reports quite often included the village or town of residence of poachers, making them more identifiable. In each year accessed, the search was actually taken as far as March of the following year, because poachers who offended in the autumn of any year frequently did not appear in court until the January Quarter Sessions or the March Assizes of the following year.

The data taken from newspaper reports was recorded, separated into two types of information. Firstly, that about poaching affrays, which included those involved (poachers, keepers and police), animals poached, equipment used, the location and landowner, the description of the affray (weapons, injuries), the court report if prosecution ensued.<sup>36</sup> Secondly, all other pertinent information, including poachers not involved in an affray but of some interest, information about the black market and methods of

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<sup>36</sup> For ease of reference in describing affrays, all those on the same side as the gamekeeper will be referred to as 'keepers'. Hence, if an affray is described as having been between eight poachers and six keepers, the 'keepers' will have included people who were only casually hired watchers, sometimes also known as 'tenters'.

collecting and disposing of game, news reports or opinion which shed light on attitudes to poaching and game preservation, the presence or absence of defence lawyers in court for poachers, Judges' and Magistrates' remarks, news of police involvement and civil court cases related to poaching.

### **Survey of the *Game Laws Returns***

The *Game Laws Returns* published in *Parliamentary Papers* are a large resource. The data which was obtained from them fell into two groups: statistical, and what has been termed 'other'. Statistical data was purely numbers of poachers either convicted or imprisoned. The 'other' category includes subjects such as the level of fines and costs imposed on poachers, to what extent they were able to pay them, exactly which statutes were used in convictions, which landowners and which parishes seemed to be most frequently involved, how many magistrates generally presided at summary courts, what proportion of those in prison were night poachers.

Data was taken from the sections within the *Returns* which came from Derbyshire, Leicestershire and Nottinghamshire, and from some other counties which had either similarities, geographical closeness, or contrast to the East Midlands. For example, Lancashire was often included because it was a county with extensive and violent poaching; Suffolk, because it had extensive poaching and was an example of a non-industrialised agrarian county; some southern counties for the same reasons.

In some *Returns* numbers are already totalled, but with others it was necessary to count up names or lines in lists to obtain totals. The *Game Laws Returns* are a little used source, so it has been considered necessary to give further details about some of them, to show what they consist of

and the ways in which they have been used. The returns which have been selected below include many *Returns* which have been useful, but also some from which the data was not used because they appeared to be unreliable.

*Return 1826-27(235)* gives the numbers brought before Quarter Sessions and Assizes (nationally) over the period 1820-26, and found guilty, not guilty, or who were not actually tried after indictment. The cause for this last category was usually that the bill of indictment was deficient. It gives the information for all offences, not just game offences, and so the game data had to be extracted from tables of all crimes. It is an early return, but because it only gives Quarter Sessions and Assize data it should be reliable because good records were kept of these courts; the data has been cross checked with the *Criminal Registers* for a few years and this confirms its reliability.

*Return 1826-27(425)* is a return of convictions (it is not stated from which courts) under the game laws from 1820 to 1826, but the full title of the return includes the caveat, 'So far as the same can be made out from Returns furnished by the Clerks of the Peace and the Clerks of Assize'. In assessing the reliability of this return it was noted that the numbers given for the counties for some years were too high to be just Quarter Sessions and Assize convictions, but too low to include summary convictions. This return is for years within the period when only a small proportion of summary offences were recorded or reported.<sup>37</sup> So it seems likely that some clerks had included at least some summary convictions, whilst others

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<sup>37</sup> Clive Emsley, *Crime and Society in England 1750-1900*, 3<sup>rd</sup> edition (Harlow 2005), p. 22. Here Emsley has reported a magistrate saying to Robert Peel, in 1827, that it could be that as few as 5% of summary convictions were reported to Quarter Sessions.

had not, and thus this return was deemed unreliable and the statistics from it were not used.

*Return 1830(197)* gives the same information as *Return 1826-7(235)*, but for 1823 to 1829, with which it overlaps. It appears reliable for the same reasons.

*Return 1830-31(144)* is titled in full, 'A Return of the Number of CONVICTIONS under the Game Laws, from 1827 to 1830, both Years inclusive; distinguishing the Male and Female Offenders, and stating separately those Offenders under Fourteen Years of Age, and those under Twenty:- so far as the same can be made by the Clerks of the Peace and Clerks of Assize'. The Assize returns are presented first. Several Assize circuits fail to give the ages of all their convicts. There then follows the returns from the counties from the Clerks of the Peace, most of which must include many summary convictions because of the relatively large numbers: Derbyshire has 290 convictions over the four years, but fails to give any ages. Nottingham has 474 over the four years, and gives no ages. Leicestershire has 36 over the four years and gives no ages. It would have been useful if any of the east midlands counties had given the age ranges of poachers, as some other counties have. However, since they have not and since the numbers returned suggest that Leicestershire was not providing the true numbers of summary convictions, this return was considered unreliable and no statistics were used from it.

*Return 1831-32(65)* gives a snapshot of those in prison on one day in November 1831. Because it is of those in prison it does not include those who had been convicted and paid a fine; so it gives only some of those summarily convicted. It gives the length of each sentence, describes the

offence, and says whether convicted by summary court, Quarter Sessions or Assizes. The overwhelming majority are summarily convicted. For Derbyshire, the prisoners' names are given, for Nottinghamshire and Leicestershire the convicts are just represented by a number. Descriptions of the offences are informative. For example, from Leicestershire, prisoner 11 was given 84 days for 'Using a dog called a lurcher, and snares to destroy game'.<sup>38</sup> From Nottinghamshire, an unnamed prisoner was given 84 days for 'Having 100 partridges'.<sup>39</sup> These statements contribute towards a picture being built about poaching. Because the information comes from the prisons, rather than from the Clerks of the Peace, the figures can be regarded as reliable and used in inter-county comparisons. Fig. 2.1 is an extract from this return for Derbyshire, showing the degree of detail. Although the Derbyshire section is the only one of the three counties to give the full names of the prisoners, the returns for both Leicestershire and Nottinghamshire give equal details on offences and sentences for each numbered individual.<sup>40</sup>

*Return 1831-32(375)* gives the numbers, totalled for England and Wales, committed to Quarter Sessions and Assizes and subsequently convicted, acquitted or not even tried, for all offences; poaching offences can be extracted. It follows on from *Return 1830(197)* and *Return 1826-27(235)*. Put together, these three returns give an indication of the proportion of poachers who did not get convicted in jury trials.

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<sup>38</sup> *Return 1831-32(65)*, p.13.

<sup>39</sup> *Return 1831-32(65)*, p.15.

<sup>40</sup> See p. 59.

Fig. 2.1. Extract from *Return 1831-32(65)*.<sup>41</sup>

6					NUMBER OF PERSONS CONFINED FOR	
NUMBER of PRISONERS.	Time each Prisoner has been Confined.	Time that remains to complete the Period of the Sentence of each Prisoner.	Nature of the Offence.	By what Tribunal Tried and Sentenced.		
COUNTY OF DERBY:—HOUSE OF CORRECTION:						
William Parkinson	14 days	70 days	- Poaching in the day time with a snare.	} Upon summary conviction before magistrates.		
Luke Sharpe	41	43	- Ditto			
John Buxton	41	43	- Ditto			
Thomas Hayworth	26	58	- Ditto, with a gate net			
Peter Boden	24	60	- Ditto, with a dog and nets			
John Thompson	24	60	- Ditto, with a snare			
George Gregory	11	73	- Ditto			
John Needham	8	76	- Ditto			
Dellgrave Birds	5	51	- Ditto, by entering a warren for the breeding and keeping of conies, and killing one, and having in their possession.			
Anthony Birds	5	51	- Ditto			
George Lomas	41	50 days, and then find sureties, or be imprisoned six calendar months longer.	- Poaching in the night time with snares.			
William Williamson	38	53 days	- Ditto			
John Hall	38	53	- Ditto			
George Walton	38	53	- Ditto, with a dog and nets			
Charles Walker	38	53	- Ditto			
George Kirk	26	66	- Ditto, with a net			

*Return 1831-32(497)* is from prisons, for game laws offences, grouped by county, this time for the winter periods only of the years 1829 to 1832. The reason for selecting winter only (from 1 November to 1 February) was perhaps that this was the time when work available for agricultural labourers was at its lowest and it was considered that poaching was particularly rife. Because it is information from prisons, not involving reports which have been made from summary courts to Quarter Sessions, the data is reliable and inter-county comparisons have been made using this. Only totals of numbers of convicts are given, there is no information on sentences or offences. Fig. 2.2 is an extract from this return showing the brevity of the information. The Nottinghamshire and Derbyshire sections of the return are equally short.<sup>42</sup>

<sup>41</sup> *Game Laws Return 1831-32(65)*, p.6.

<sup>42</sup> P. 60.

Fig. 2.2. Extract from *Return 1831-32(497)* for Leicestershire.<sup>43</sup>

LEICESTER.						
County Gaol.						
From 1 November 1829	to	1 February	1830	-	-	1
—		—	1831	-	-	- none.
—		—	1832	-	-	- 4
						5
						5
C. Musson, Gaoler.						
House of Correction.						
From 1 November 1829	to	1 February	1830	-	-	18
—		—	1831	-	-	- 7
—		—	1832	-	-	- 10
						35
						35
John Allen, Keeper.						
15 May 1832.						

*Return 1834(72)* gives the numbers committed to prison for poaching in the year from November 1832 onward. It is difficult to work with because the data is in alphabetical order by the names of prisons. Hence the names of the prisons in each county have to be known, and those in the same county do not appear next to each other. This data was used for inter-county comparisons. Some gaols gave names and sentences, but not any of those in the East Midlands, so only the number of people imprisoned was used.

*Return 1836(179)*, which is titled, 'Game Laws. A return of the number of commitments, prosecutions and Sentences under the Game Laws, since 1<sup>st</sup>

<sup>43</sup> *Game Laws Return 1831-32(497)*, p. 12.

November 1833, in England and Wales', gives those in prison for poaching from 1833 to 1836. This document is comprised of returns from prisons, so it gives data on hundreds of summarily convicted poachers who had been convicted of day poaching but were unable or unwilling to pay the fine and so were imprisoned in default; also, a lesser number of night poachers. The return is consistent for the counties of the East Midlands, in giving the names of the prisoners and the length of the sentence which they are serving, over the period from November 1833 to March 1836. However, differing details have been added: Derbyshire has the number of indictments which have resulted in the sentence; Nottinghamshire has details of the offence – 'using a dog to destroy game', 'using a snare to destroy game', 'armed in the night to destroy game and assault on a gamekeeper'; and Leicestershire has neither of these but does have the aliases under which some of the prisoners operated. It can be seen in all three counties that within this three-year period some offenders have served two or even three short sentences. The section from the Leicester House of Correction states when the sentence is for non-payment of fines, the other two counties do not give this information. However, day poachers will have been imprisoned for failure to pay fines, so those not imprisoned for this reason must have been night poachers.

*Return 1843(200)* is titled, 'Return Showing in separate Lists the Names of all Person Killed or Wounded in Affrays with Poachers in the Years 1841 and 1842; the Counties in which such Affrays have taken place, and convictions arising thereout'. The information from Assizes comes first, by circuit, then the returns from the Clerks of the Peace from Quarter Sessions trials. There is no return from Nottinghamshire and no explanation for its absence. The information on serious poaching violence in other counties of England is useful for cross county comparisons.

*Return 1843(465)*, like three previous returns *1826-27(235)*, *1830(197)* and *1831(375)*, gives data on the numbers of people who have failed to be convicted at Quarter Sessions and Assizes. It is for all offences, but poaching can be extracted. However, care has to be taken in putting it alongside the earlier data because here, the total numbers shown are of those who were actually tried, whereas in the earlier returns the totals are of those who had been committed for trial. When this data has been used, this difference has been noted and taken account of.

*Return 1846(712)*, is titled in full, 'A Return of the Number of Persons Convicted of any Offences against the Game Laws, at any Petty Sessions, Quarter Sessions, or Assizes; specifying the Penalties or Punishments inflicted, and in which County and upon whose Property the Offences were Committed'. It gives data from the beginning of 1844 to May 1846. But although the Assize returns give the names of the landowners, the Quarter and Petty Sessions returns do not always do so. For Derbyshire, the landowner is given about 80% of the time; for Nottinghamshire, only about 50% of the time; only the Leicestershire return names the landowner in every case.<sup>44</sup> However, this return does, for the first time, give data on convictions for game laws offences from all courts including Petty Sessions. It also gives, in its first part, all the inquests held on bodies of gamekeepers – seven altogether, and none in the East Midlands.

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<sup>44</sup> *Game Laws Return 1846(712)*.

Fig. 2.3. Extract from *Return 1846(712)* for Nottinghamshire.<sup>45</sup>

NOTTINGHAM :			
Petty Sessions			
	W. M.	5 - -	3 months.
	J. W.	} each.	
	J. H.	5 - -	ditto -
	J. S.	} each.	
	W. D.	2 - -	2 months.
	J. C.	2 - -	ditto.
	J. C.	2 - -	- - -
	J. L.	- 10 -	1 month -
	J. B.	5 - -	3 months -
	E. V.	5 - -	ditto -
	J. W.	5 - -	ditto -
	E. B.	} each.	
	A. J.	5 - -	ditto -
	J. G.	2 - -	ditto -
	J. S.	5 - -	ditto.
	J. F.	5 - -	ditto -
	W. W.	2 - -	2 months -
	S. F.	5 - -	3 months -
	W. H.	5 - -	ditto -
	W. F.	5 - -	ditto -
	W. B.	5 - -	ditto -
	W. S.	5 - -	ditto -
	J. H.	5 - -	ditto -
	R. S.	5 - -	ditto.
	E. P.	- 12 -	1 month -
	W. C.	2 10 -	- - -
	F. S.	2 10 -	2 months -
	D. W.	1 - -	- - -
	F. P.	5 - -	3 months -
	H. H.	5 - -	- - -
	R. W.	2 10 -	2 months -
	S. R.	1 - -	- - -
	A. M.	2 - -	2 months -
	W. H.	} each.	
	C. B.	1 - -	1 month.
	J. S.		
	T. O.	1 - -	ditto -
	J. B.	} each.	
	A. T.		
	J. L.		

J. Musters, esq.  
Mr. Musters.  
Mr. Padley.  
Earl of Chesterfield.  
Mr. Moore.  
Lord Raneliffe.  
Earl Howe.  
Lord Raneliffe.  
Mr. Huckerby.  
Earl of Chesterfield.  
Mr. Moore.  
Earl of Chesterfield.  
Lord Middleton.  
Mr. Musters.  
Mr. Robinson.  
Sir A. Clifton.  
Fountain Wilson, esq.  
Sir Jukes Clifton.  
Earl Howe.  
R. Holden, esq.

712. 11

All of the *Returns* for the counties of the East Midlands give the initials of each convict, penalty and costs, punishment for non-payment, and the

<sup>45</sup> *Game Laws Return 1846(712)*, p.57.

owner of the land on which the offence took place. Where a fine is the only penalty imposed, it can be inferred that it was paid if the 'punishment for non-payment' column is empty. So this return is the first to indicate the frequency with which poachers in the East Midlands paid their fines. Fig. 2.3 is an extract from this return showing how this data has been recorded.<sup>46</sup> At the top of the whole page, on the original document, the second column is headed 'fine', the third column is headed 'punishment for non-payment', and the fourth column gives the landowner. The seventh prisoner down is J.C. and the eighth is a J.C. too. The first J.C. has a fine of £2 written against him, then 'ditto' in the third column indicating that, like the person above, he was given two months imprisonment for non-payment. The second J.C. has also a fine of £2, but there is no entry in the third column so it can be assumed that he paid the fine. Other offenders can be seen lower down who have also paid their fines and avoided imprisonment: W.C., D. W., H.H., and S.R.

*Return 1849 (440)* follows on from *Return 1846(712)*, showing the same information for the years 1846 to 1848. It makes the situation clearer because after the 'punishment for non-payment' column it has an extra column headed 'whether penalty paid or imprisonment suffered', in which is written either 'paid' or 'imprisoned'. Night poaching cases stand out due to having no payment option and having the words 'to find sureties' attached to the sentence.

*Return 1857-8(164)* gives convictions from all courts for the years 1857 to the end of May 1862. The returns give the convictions by each year under the heading of each Petty Session Division. Only initials are given for each

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<sup>46</sup> P. 63.

convict; but as well as giving the penalty and showing whether or not it was paid, for Leicestershire the total fine is given broken down into the penalty itself with the cost shown separately. For all counties, the statute under which each offender was convicted is given and sometimes the precise section of the act, which shows what form of poaching was going on. For example, when section 24 of the 1831 Game Reform Act is in the last column, the offenders were destroying or taking eggs of game; section 32 of the same act means that the offender was in a group of five or more day poachers.<sup>47</sup>

*Return 1862(201)*. This return is a 'Copy of a memorial addressed to the Secretary of State, in December 1861, by the Chief Constables of twenty-eight counties in England and Wales on the subject of the game laws....' The essence of the missive is that the Chief Constables are worried and angry about the continued violence against gamekeepers and their assistants. They feel that they are impotent against armed gangs of night poachers, and that because the populace knows this, it is leading to increased violence against policemen in other spheres of their duty. They claim poachers are looked upon as 'village heroes', and that it all has a demoralising tendency on hard working youth, especially as it is perceived that the authorities cannot prevent these infringements of the law. Each county attaches a record of poaching violence from its area over the past year. From the East Midlands, only the Chief Constable of Leicestershire signed this; so only data from Leicestershire is included, along with that from the other 27 counties. This memorial was sent in the period when there was controversy over whether or not to pass an act which would give the police more powers to search and apprehend poachers on the roads

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<sup>47</sup> Game Reform Act, 1831.

coming from their night poaching expeditions. Subsequently, the Poaching Prevention Act was passed.<sup>48</sup>

*Return 1864(9)*. This return is from the period when the annual *Judicial Statistics* were being published, giving national statistics on all crime, prosecution, conviction and sentencing. So one might expect this return to offer some information beyond that given by *Judicial Statistics*. It does so, giving convictions for game offences from all courts, including the parish in which the offence was committed and the statute used, from 1857 to 1862. A preface lists the 'Sessional Divisions and Places from which returns have not been made, notwithstanding repeated Applications addressed to the several Clerks.' Of all the English counties, 27 have got one or more divisions missing, but the returns from Derbyshire, Leicestershire and Nottinghamshire are complete. Because parishes are given, local areas with high amounts of poaching prosecutions can be identified. The fact that the statutes are given, and generally the precise section of the statute is also specified, means that again exactly what the poachers were doing can be identified, as well as the levels of the fines and the number of poachers who were able and willing to pay them.

*Return 1865 (205)*. Published three years after the introduction of the Poaching Prevention Act, this gives the numbers of prosecutions and convictions under that act for one year. It gives national figures only; it cannot be seen how counties differed from each other.

*Returns 1870 (131), 1871 (247), 1872 (103)* are all very similar. They give convictions by all courts, in counties, of the different types of game

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<sup>48</sup> Poaching Prevention Act, 1862.

offence. But there is no break down within the county into Petty Session Divisions, only county totals. Thus for Derbyshire in the year 1869 (published in 1870) it can be seen that there were 353 convictions altogether, of which 265 were day trespass in pursuit of game, 38 were night poaching, 3 were illegally buying or selling game, 39 were under the Poaching Prevention Act (which means they were caught by police outside preserves, on a public road, with equipment and/or game, and were tried summarily), and 8 'on indictment' tried at Quarter Sessions or Assizes for poaching and assaulting gamekeepers. The later returns published in 1871 and 1872 (for the years 1870 and 1871 respectively) give the same data with the addition of the numbers of people who were discharged (that is, not convicted) after having been brought before a summary court; this is the first time that any indication of this has been given.

This concludes the survey of the *Game Laws Returns*.

### **The Evidence Obtained**

From these various sources, it was possible to gather evidence on a wide variety of matters relevant to poaching, preserving and the game laws in the East Midlands. The statistics from the *Game Laws Returns* showed the amount of poaching going on in comparison to that in other counties, and comparatively between the three counties, as well as some evidence about changes over the time period. The *Returns* also gave information on the frequency with which prosecutions for poaching failed, the proportions of day and night poaching prosecutions, and the courts in which these offences were prosecuted as well as the exact parts of the statutes used in the prosecutions. Several of the returns gave data on the length of sentences – evidence of leniency or otherwise when compared to the

maximum punishments available, and similarly with fines imposed. How frequently fines of what level were paid is detailed in several returns, and how often imprisonment was served in default. There is also information about the exact location of some offences, by parish, and the landowners on whose land the offences were committed. The *Criminal Registers* offer further evidence of leniency, though not in the summary courts. What exactly poachers were doing – their equipment, organisation, methods – is evidenced by newspaper reports and some of the *Game Laws Returns*.

Newspaper reports were the main source of information on attitudes to poaching, preserving, and how poachers themselves were viewed. The database of poachers' names which was compiled, with information about the lives and circumstances of a sample of them, took information from the *Criminal Registers*, *Game Laws Returns*, newspaper reports and the decennial censuses.

Secondary sources supplied a substantial amount of the information about the major landowners and preservers of the time and area, with information on which of them suffered the most from poachers and were frequent prosecutors coming from the *Game Laws Returns* and newspapers. Newspapers were the main source of information about the frequent affrays, their locations and the degree of violence and injury involved.

This study has researched poaching from c.1820-c.1900. In 2011, at the beginning of the research using newspapers, which was done using *British Library Newspapers* on-line, The *Derby Mercury* was available from the beginning of the century, the *Leicester Chronicle* from 1827, and the

*Nottinghamshire Guardian* from 1849; no other Nottinghamshire newspaper was available that covered the period before 1849. However, extensive reports on Nottinghamshire poaching events in the period before 1849 were given in the *Derby Mercury*. Data is available from other sources giving information about Nottinghamshire from 1820-49. From just before 1820 the *Criminal Registers* and the *Game Laws Returns* offer evidence. *Game Law Return 1836(179)* covers the years 1833-36, giving the names of those imprisoned, exactly what they did and their sentence, and also enables repeat offenders to be identified. *Return 1846(712)* covers 1844-46 and gives initials of prisoners, sentence and landowner where the offence was committed; this is a useful indicator of the most popular poaching grounds and the gentry who were being the most annoyed by poachers. *Return 1849(440)* gives data from 1846-48, offenders initials, fine, if paid or not, sentence, and the parish where they were poaching, another indicator of the most popular areas for poaching, and of the ability of poachers to pay fines. By the end of the time in which research was conducted, more newspapers were available in *British Library Newspapers*. However, it was considered that, taking the above into account, evidence about activity in Nottinghamshire before 1849 was not lacking in any way that was detrimental to the overall picture or to any conclusions reached as a result of the research.

The statistics and the names from the *Criminal Registers* and the *Game Laws Returns* are of poachers who have been caught poaching and prosecuted. The matter of what is sometimes referred to as the 'dark figure' of poaching, meaning the real extent of it, is something which, by its very nature, cannot be determined.<sup>49</sup> However, some of the newspaper

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<sup>49</sup> Archer, *Flash and Scare*, p.148.

information relates to events in this dark figure, because there are reports of affrays and poaching expeditions where no-one was ever caught, and articles, letters and editorials which refer to the true extent of poaching.

In looking at how the authorities combatted poaching, some evidence was gathered regarding the conduct of Magistrates and Judges towards poachers. However, looking into this was not one of the main aims of the study, and it has not been possible to examine this subject thoroughly; it would be an interesting area for further research. The same applies to the use of dogs by poachers and gamekeepers; the association of beerhouses and drinking with poaching; links between poaching and areas where there had been loss of customary rights due to enclosure; and links between open and closed villages, especially with regard to protest involved in poaching. All of these topics are suitable for further research.

The primary sources used for this study provided a huge amount of data which gave clear indications with regard to the main topics of research, so further information from some other possible sources was not sought. Records of higher court appeals against guilty verdicts given to poachers have not been investigated. The bibliography contains some primary sources which give evidence about poaching and have been seen, but which are not cited in the thesis because data from them has not been used. Usually this is because the information to be found there was not directly relevant to any of the areas of enquiry.

For example, the *Quarter Sessions Minute Books* of the three counties might be expected to have offered useful information, but in fact only those of Derbyshire did so. There, all the summary convictions were reported, often with useful information like where the poaching offence was

committed and where the offender lived. This was not the case for either Nottinghamshire or Leicestershire.<sup>50</sup> The *Minute Book* of Derbyshire Magistrate J. P. Shuttleworth offers interesting details about his cases, including poaching cases, and shows how much notice he took of different witnesses; but it does not offer any information directly relevant to the questions asked in this study, though it could well be useful in other research.<sup>51</sup> The Leicestershire books of *Convictions under the Game Laws and Fishing*, give the names of hundreds of poachers from 1863-1893, alphabetically presented; but actually, just knowing a name, date, and offence, is not useful when no other details are given.<sup>52</sup>

Additional sources have been inspected. Some could be useful in other research, others offered only an overlap in information which had already been obtained, possibly in more detail, elsewhere. Amongst these are, from The National Archives: *Derbyshire and Nottinghamshire Crown and Gaol Books; Home Office and Prison Committee, Male Licenses; Calendars of Prisoners from Trials and Prisons, Derby, Leicester and Nottingham between 1836 and 1883*. From Derbyshire Record Office: *Derby Division Petty Sessions Magistrates' Minute Books*. From the Record Office of Leicestershire, Leicester and Rutland: *Registers for Idle and Disorderly 1842-1911; Registers for Stealing Vegetables 1842-1915; Registers for Assaults 1880-1901; Quarter Sessions Minute Books 1854-1871; Calendars of Prisoners for Assizes*. From the Nottinghamshire Archives: *Bingham Petty Sessions Minute Books, Sept 1887-Feb 1892; Newark Division Petty Sessions Court Registers; the Quarter Sessions Minute Books 1814-1890;*

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<sup>50</sup> DRO, Q/SO, 1/1-41; ROL, QS 5/1/15; NA, QSM 37-55.

<sup>51</sup> DRO, D562/1/1.

<sup>52</sup> ROL, QS, 85/2/8.

*Calendars of Prisoners for Nottingham Assizes; Nottingham County Gaol  
Prisoners Character Books.*

Full references for all of these documents can be found in the bibliography.

## **Chapter 3 Quantifying and Locating Poaching**

This chapter gives the essential information for understanding the arguments that are made in the rest of the thesis, and begins by showing that poaching was endemic in the three counties, at levels which equalled, or even sometimes exceeded, those in other counties thought of as great poaching areas. The use of criminal statistics is discussed first; this having been justified, extensive use is made of such data to compare the three counties with other areas and with each other. The locations of the poaching grounds are shown. The preponderance of day over night poaching, but the greater concern caused by the night poaching, is explained. Methods of poaching and prey are described in sufficient detail to show what was specific to this area. Evidence on the effect of seasonality on poaching in the three counties is discussed.

### **The Use of Criminal Statistics**

The two sources which provide evidence of the numbers of people convicted of poaching, vary as to what data they give. As explained in Chapter 2, the *Game Laws Returns* give the number of people either imprisoned or convicted at irregular intervals, and also give data over differing lengths of time. Because of this, later in this chapter some comparisons between the three counties of the East Midlands are made on the basis of the figures disaggregated to per year.

The other source used is *Judicial Statistics* from later in the century, which provide annual data on the numbers of prosecutions for game law offences. They cannot be compared with any of the *Game Laws Returns* because not all prosecutions were successful, and so the number of prosecutions will

always be greater than the number of convictions or imprisonments. So no attempt can be made to identify trends in poaching by comparing data from these two different sources. However, the *Judicial Statistics*, because they present the same data on prosecutions of game law offences year on year, have been used to draw conclusions about trends in poaching.

The question of the reliability and significance of criminal statistics has been widely debated. The issue for the historian is essentially the same as it is for modern criminologists, some of whom regard criminal statistics as so problematic that they consider criminal victimisation surveys to be better indicators of levels of crime.<sup>1</sup> However, there are no victim surveys available to the historian of the nineteenth century, who has to rely upon the criminal statistics, given that there is a consensus that these can be used for limited purposes.<sup>2</sup>

The basis of the problem, in the nineteenth century as today, is that the vast majority of crime goes unprosecuted. So, the crimes known of from criminal statistics are a small proportion of the true total figure of crime committed, which is sometimes referred to as the 'dark' figure of crime. Apparent changes in crime rates may be due to various factors apart from real changes in the amount of crime. What constitutes a crime may vary over time, with behaviour regarded as criminal coming to be acceptable at a later date, or vice versa. Actual changes in statute law can often be allowed for by the researcher. Other factors can be more difficult to allow for: there may be relaxation or hardening of public attitudes to certain

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<sup>1</sup> E. McLaughlin and J. Muncie (eds.), *Controlling Crime* (London, 2001), pp. 31, 317.

<sup>2</sup> Clive Emsley, *Crime and Society in England 1750-1900*, 3<sup>rd</sup> edition (Harlow, 2005), p.30; John E. Archer, 'A Reckless Spirit of Enterprise: Game Preserving and Poaching in Nineteenth Century Lancashire', in David W. Howell and Kenneth O. Morgan, (eds.), *Crime Protest and Police in Modern Britain* (Cardiff, 1999), p. 154; Peter King, *Crime and Law in England: Remaking Justice from the Margins* (Cambridge, 2006), pp.199-200.

crimes, resulting in changes in police and judicial attitudes; or the appointment of more or less effective police leaders, causing changes in the numbers of prosecutions whilst the actual level of offending is unchanged.<sup>3</sup> Jones found that, after a new Chief Constable was appointed in Staffordshire in 1866, there was an immediate increase in the arrests of night poachers, but without any suggestion that the level of the crime had increased, simply that greater and more effective effort was put into catching and prosecuting night poachers.<sup>4</sup>

The 1862 Poaching Prevention Act is an example of the type of legislative change which could affect poaching statistics. As a result of this act the police gained new powers to stop and search suspects on roads and in public places. This made a difference to the number of poachers who were prosecuted and convicted. However, it is a difference which can be allowed for, because in *Judicial Statistics* the figures for those prosecuted under this act are shown separately.

Due to these caveats, considerable care is needed when making inter-county comparisons. Historians of poaching have debated the possibility of there being significant differences in prosecuting efficiency in different counties, and whether or not such differences could undermine comparisons. There are differing views on the extent to which the ratio between actual poaching and poaching prosecutions might vary. Jones said that rates did vary, and cited the Welsh Land Commission report of 1896, which commented that in some notorious poaching localities there were depressingly few convictions; in the same period the Chief Constables of

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<sup>3</sup> V. A. C. Gatrell, 'The Decline of Theft and Violence in Victorian and Edwardian England', in V. A. C. Gatrell and Bruce Lenman, (eds.), *Crime and the Law: The Social History of Crime in Western Europe Since 1500* (London, 1980), pp. 247-8.

<sup>4</sup> David Jones, *Crime, Protest, Community and Police in Nineteenth Century Britain* (London, 1982), pp.65-6.

Norfolk and mid-Wales admitted much poaching was undiscovered and unprosecuted.<sup>5</sup> However, Osborne and Winstanley have argued that whilst the ratio between actual poaching and poaching prosecutions might well change over time, there is no reason to suggest that it differed substantially across the country in ways that would undermine regional comparisons at a given date.<sup>6</sup>

Since comparisons are going to be made between counties in this chapter, it must be argued here that there is some relationship between the numbers of poaching convictions and the actual amount of poaching that was going on; that when it is found that there were far more convictions in one area than in another, this means that there was more poaching going on in that area than in the other. At the two extremes the connection is clear: in areas where there was no poaching there could not be any prosecutions, and in areas where there was extensive poaching there would be prosecutions. In between, the ratio between prosecutions and actual poaching may have varied from area to area as argued by Jones. However, it is reasonable to assume that the greater the poaching losses suffered by a landowner, the greater would be the desire to prevent and prosecute poachers. A non-preserving gentleman with a small amount of game, not greatly persecuted by poachers, might seldom prosecute. At the other extreme, preservers such as the 6<sup>th</sup> Duke of Newcastle, in Nottinghamshire, suffered such depredations from poachers taking pheasants from his Clumber estate, that not only did he prosecute frequently, but he also went to the lengths of employing an undercover detective to roam the area around his estates.<sup>7</sup> Overall, it can be argued

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<sup>5</sup> Jones, *Crime, Protest*, pp. 65-6, 78.

<sup>6</sup> Harvey Osborne and Michael Winstanley, 'Rural and Urban Poaching in Victorian England,' *Rural History* 17 (2006), p.189.

<sup>7</sup> *Game Laws Return 1846(712)*; *NG*, 23 Nov 1866; see also pp. 115.

that there will have been a correlation between the amount of game lost to poachers and the numbers of prosecutions. However, the ratio between poaching and prosecution might vary over place and time, and for this reason claims that are made in this chapter about relative levels of poaching have been made modestly.

Gatrell has put forward the argument that violent crime and theft declined after the 1840s.<sup>8</sup> However, there is no suggestion that there was a decline in poaching at the same time. Such was the level of activity and of violence found by Archer in nineteenth-century poaching in Lancashire, that he has questioned whether Gatrell's conclusion gives an accurate overall picture. Archer has suggested that there may have been a disproportionately large decrease in urban-located violence, skewing the overall figures to indicate a national decline, whilst in rural areas levels of violence remained high due to poaching.<sup>9</sup>

### **Quantifying Poaching**

Statistics have been used from the parliamentary *Game Laws Returns* from return 1831-32(65) onwards.<sup>10</sup> Table 3.1 presents the data from twelve returns over the second and third quarters of the century. Other counties have been included for comparison. But before drawing any conclusions from this data, it is necessary to remember that some of these counties are larger and more populous than others. Table 3.2 presents the data per 100,000 of the population of each county.<sup>11</sup>

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<sup>8</sup> Gatrell, 'Decline of Theft', pp. 247-8; Emsley, *Crime and Society*, p.31.

<sup>9</sup> Archer, 'Reckless Spirit', p. 155.

<sup>10</sup> See pp. 58-67 for the reliability of the *Game Laws Returns*.

<sup>11</sup> Pp. 78-9.

Table 3.1. Convictions and Imprisonments for Game Offences by County

<b>County</b>	<b>31-32(65)</b>	<b>31-32(497)</b>	<b>34(72)</b>	<b>36(179)</b>	<b>46(712)</b>	<b>49(440)</b>	<b>57-58(164)</b>	<b>60(12)</b>	<b>64(9)</b>	<b>70(131)</b>	<b>71(247)</b>	<b>72(103)</b>
Derbyshire	18	101	114	158	200	268	56	79	826	363	372	319
Leicestershire	12	40	73	195	327	373	43	55	687	226	317	199
Nottinghamshire	32	99	105	283	337	372	159	72	1226	218	233	193
Essex	11	109	114	421	505	486	92	111	109	310	318	294
Hampshire	46	201	197	423	526	471	63	78	2022	322	336	334
Herefordshire	10	14	23	50	124	72	22	17	521	167	140	142
Lancashire	32	145	124	271	450	383	91	77	1166	547	541	388
Northamptonshire	13	97	61	284	278	199	72	70	942	222	212	135
Staffordshire	29	90	45	132	417	349	92	81	1061	400	314	365
Suffolk	47	215	101	627	388	373	62	126	1093	319	285	237
Sussex	17	136	145	482	370	315	51	48	497	182	239	171
Wiltshire	39	209	167	657	543	377	72	65	661	216	199	146
East Riding					90	92			414			
North Riding					131	135			480			
West Riding					568	660			1581			
Yorkshire	34	252	158	386	789	887	188	211	2509	1066	1042	844
<b>Mean</b>	<b>26</b>	<b>131</b>	<b>103</b>	<b>336</b>	<b>404</b>	<b>379</b>	<b>82</b>	<b>78</b>	<b>1025</b>	<b>350</b>	<b>350</b>	<b>290</b>

Each return represents:

*1831-32(65)* The numbers in prison for game offences on one day in November 1831.

*1831-32(497)* The total number in prison for game offences for winter months of 3 years.

*1834(72)* Numbers imprisoned for game offences over the year ending Nov 1833.

*1836(179)* Numbers imprisoned for game offences from Nov 1833 to Feb 1836.

*1846(712)* Convictions by all courts from 1844 to May 1846.

*1849(440)* Convictions by all courts from May 1846 to August 1848.

*1857-58(164)* Numbers in prison during the year 1856.

*1860(12)* Numbers in prison during the year ending June 1859.

*1864(9)* Convictions by all courts from 1857 to 1862.

*1870(131), 1871(247), 1872(103)* are convictions by all courts during the previous year.

Table 3.2 Convictions and Imprisonments for Game Offences by County (per 100,000 head of population)

<b>County</b>	<b>31-32(65)</b>	<b>31-32(497)</b>	<b>34(72)</b>	<b>36(179)</b>	<b>46(712)</b>	<b>49(440)</b>	<b>57-58(164)</b>	<b>60(12)</b>	<b>64(9)</b>	<b>70(131)</b>	<b>71(247)</b>	<b>72(103)</b>
Derbyshire	8	43	48	62	70	94	18	23	244	96	98	84
Leicestershire	6	20	37	93	149	170	18	23	288	95	133	83
Nottinghamshire	14	44	47	119	130	143	56	25	417	70	74	62
Essex	3	34	36	127	142	136	24	27	27	67	68	63
Hampshire	15	63	63	126	138	124	14	16	420	63	65	65
Herefordshire	9	13	21	45	109	63	18	13	420	134	112	114
Lancashire	2	11	9	18	24	21	4	3	48	19	19	14
Northamptonshire	7	54	34	150	135	97	33	31	413	91	87	55
Staffordshire	7	21	11	26	68	57	14	11	142	47	33	38
Suffolk	16	73	34	202	104	114	18	37	324	94	82	68
Sussex	6	50	53	168	116	99	15	13	137	44	57	41
Wiltshire	16	88	70	266	215	149	29	26	266	84	77	57
East Riding					43	44			173			
North Riding					62	64			196			
West Riding					46	53			105			
Yorkshire	2	18	11	26	45	51	9	10	123	44	43	35
<b>Mean</b>	<b>8</b>	<b>41</b>	<b>37</b>	<b>110</b>	<b>111</b>	<b>101</b>	<b>21</b>	<b>20</b>	<b>251</b>	<b>73</b>	<b>73</b>	<b>60</b>

Each return represents:

*1831-32(65)* The numbers in prison for game offences on one day in November 1831.

*1831-32(497)* The total number in prison for game offences for winter months of 3 years.

*1834(72)* Numbers imprisoned for game offences over the year ending Nov 1833.

*1836(179)* Numbers imprisoned for game offences from Nov 1833 to Feb 1836.

*1846(712)* Convictions by all courts from 1844 to May 1846.

*1849(440)* Convictions by all courts from May 1846 to August 1848.

*1857-8(164)* Numbers in prison during the year 1856.

*1860(12)* Numbers in prison during the year ending June 1859.

*1864(9)* Convictions by all courts from 1857 to 1862.

*1870(131), 1871(247), 1872(103)* are convictions by all courts during the previous year.

In table 3.1, Lancashire and Yorkshire have a large number of poaching prosecutions compared to many other counties. In table 3.2, this is not the case: the Yorkshire figures, which were above the mean in every return for the raw data, are now below it in every return. The Lancashire figures, which were above the mean in all but two returns, are now also below the mean in all. These two counties had large numbers of poachers imprisoned or convicted simply because they were large counties with large populations. The data from the three counties of the East Midlands is shown more significantly in table 3.2, by taking into account their relatively modest populations; seen per 100,000 head of population, two thirds of the figures for the three counties are above the mean.

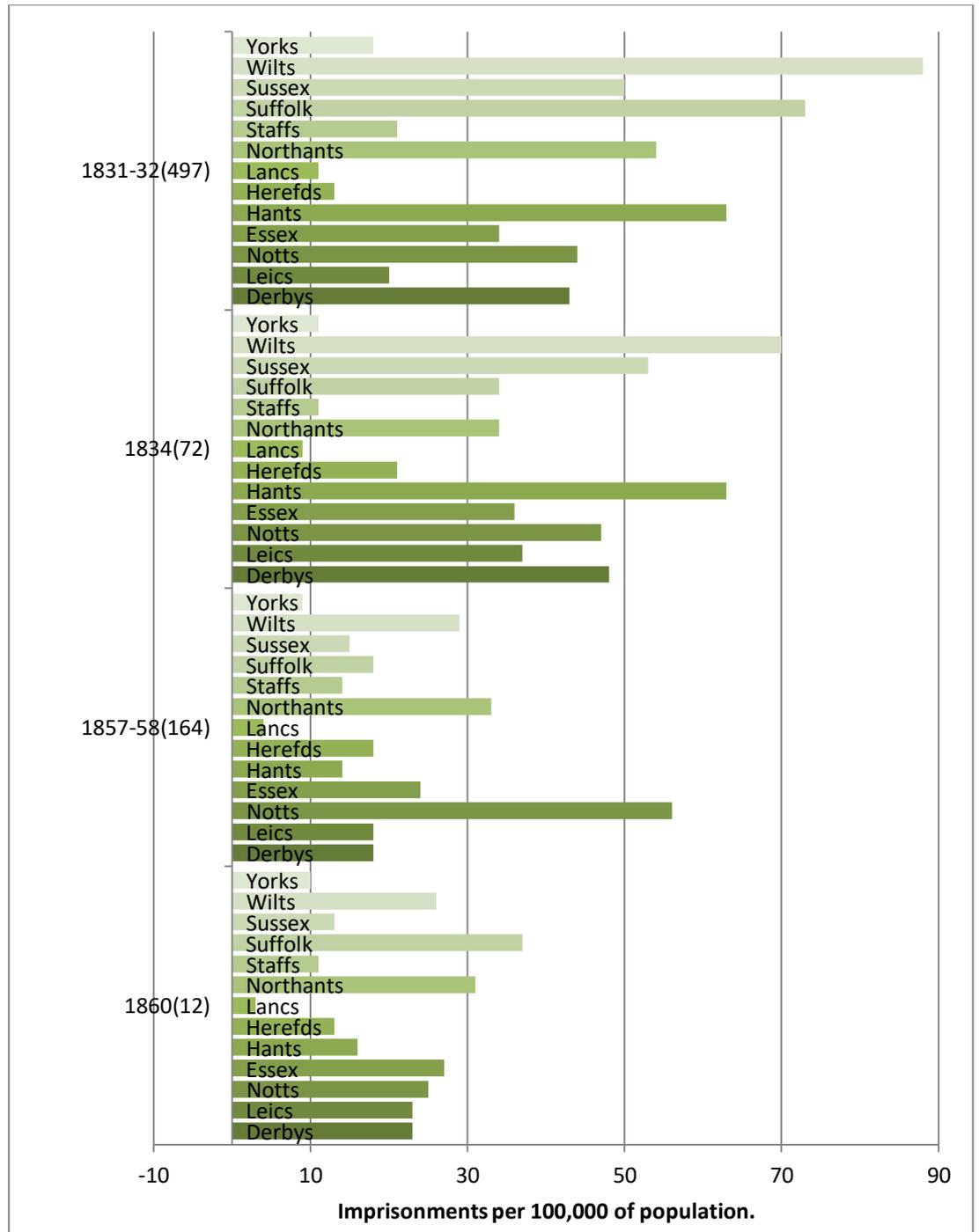
Data from table 3.2 (figures per 100,000 head of population) is illustrated in the two charts, figs. 3.1 and 3.2.<sup>12</sup> Each chart shows data from four separate returns, each for 13 counties. In each chart the three counties of Derbyshire, Leicestershire and Nottinghamshire are represented by the last three columns for each return, in the darkest shading. Looking at this data, which is per 100,000 head of population, it is clear that there were significant levels of poaching in Derbyshire, Leicestershire and Nottinghamshire. In four out of the 12 returns, all three counties have more convictions or imprisonments than Hampshire, which was a county epitomising the impoverished southern agricultural counties with large numbers of gentlemen's seats and preserves. Hampshire also included the New Forest area where one nineteenth-century commentator said that, in the 1840s, every labourer was either a poacher or a smuggler or both.<sup>13</sup>

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<sup>12</sup> Pp. 81-2.

<sup>13</sup> Harry Hopkins, *Long Affray: The Poaching wars in Britain* (London, 1986), p.93.

Fig. 3.1. Data from four returns which give imprisonments.



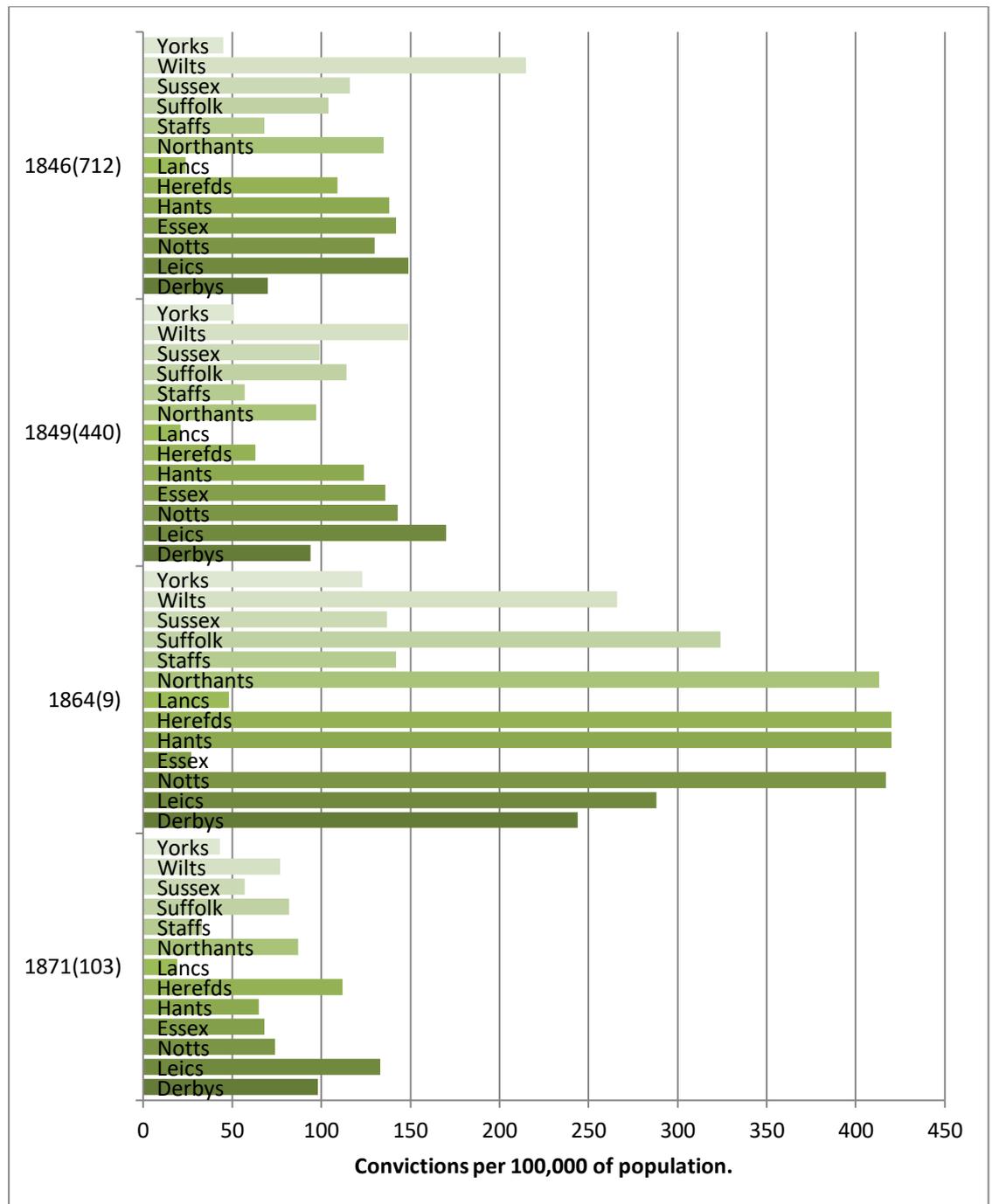
*Return 1831-32(497)* is imprisonments over the winter months of 1829/30, 1830/31 and 1831/32.

*Return 1834(72)* is imprisonments for the 12 months up to November 1833.

*Return 1857-58(164)* is imprisonments throughout the year 1856.

*Return 1860(12)* is numbers in prison over the year ending June 1859.

Fig. 3.2. Data from four returns which give convictions.



*Return 1846(712)* is convictions by all courts from 1844 to May 1846.

*Return 1849(440)* is convictions by all courts from May 1846 to August 1848.

*Return 1864(9)* is convictions by all courts from 1857 to 1862.

*Return 1871(103)* is convictions by all courts for the year 1870.

In five out of the eight returns, all of the three counties of the East Midlands have more convictions or imprisonments than Herefordshire – a county where poaching was endemic from 1800-1860.<sup>14</sup> Looking at the figures from the three counties in comparison to those of Wiltshire (which has the most consistently high numbers of convictions or imprisonments in the first half of the century), in six of the 12 returns one or more of the three counties has a higher figure than Wiltshire. This was a county known for the extent of its organised poaching, selling into the black market.<sup>15</sup>

Derbyshire, Leicestershire and Nottinghamshire have more convictions or imprisonments, per head of population, than Lancashire in all the returns; Lancashire was a county where poaching was regarded as a major problem.<sup>16</sup> Suffolk had widespread commercial activity by gangs, feeding into the black market and supplying London;<sup>17</sup> yet, in five of the returns, the Suffolk figures are not excessively higher than the three counties of the East Midlands and in several returns one of the three counties has a higher figure than Suffolk. Bearing in mind the caveats in the argument that was made earlier, for the connection between the number of prosecutions and the true amount of poaching and the way in which this ratio could vary in different jurisdictions, it is not reasonable to draw conclusions in too much detail from these figures. It is, however, clear that there was a substantial amount of poaching activity going on in the East Midlands in comparison to other areas where poaching was known to be extensive.

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<sup>14</sup> Timothy Shakesheff, *Rural Conflict, Crime and Protest: Herefordshire 1800-1860* (Woodbridge, 2003).

<sup>15</sup> P. B. Munsche, 'The Game Laws in Wiltshire 1750-1800', in J. S. Cockburn (ed.), *Crime in England 1550-1800* (London, 1997), pp. 148, 225, 228.

<sup>16</sup> Archer, 'Reckless Spirit', pp. 155, 161-4, 170.

<sup>17</sup> Archer, 'Flash and Scare', pp. 147-165.

Evidence on whether this situation continued after 1871 is provided by *Judicial Statistics*. From the 1870s the data they gave was consistent year on year, so a line graph has been used in illustration. The data has been taken for every five years from 1871 onwards. Fig. 3.3 shows the changes in the numbers of summary prosecutions per 100,000 population for the three counties, with the counties of Durham, West Riding and Suffolk for comparison.<sup>18</sup> It can be seen that the figures for Derbyshire, Leicestershire, Nottinghamshire, Durham and the West Riding peak in 1876, whereas Suffolk peaks later.

### **The Peak in Poaching**

As regards trends in poaching, organised poaching had become an increased source of annoyance to game preservers from the second half of the eighteenth century with the increase in night poaching gangs, and this continued into the nineteenth-century. Sharp increases in poaching have been suggested in the early 1830s, 1840s, with lesser peaks occurring after this until the peak in national figures in the 1870s.<sup>19</sup> As Munsche has observed, the governing classes had brought this upon themselves by passing laws which encouraged the unqualified to take game, by making them the sole suppliers of an expanding market – it being illegal for anyone to buy or sell game until the 1831 Game Reform Act.<sup>20</sup> The passing of the 1831 Act had little effect on these well established patterns of poaching and trading. From 1860 statistics show that the overall trend was for poaching prosecutions to rise until the peak in 1877.<sup>21</sup>

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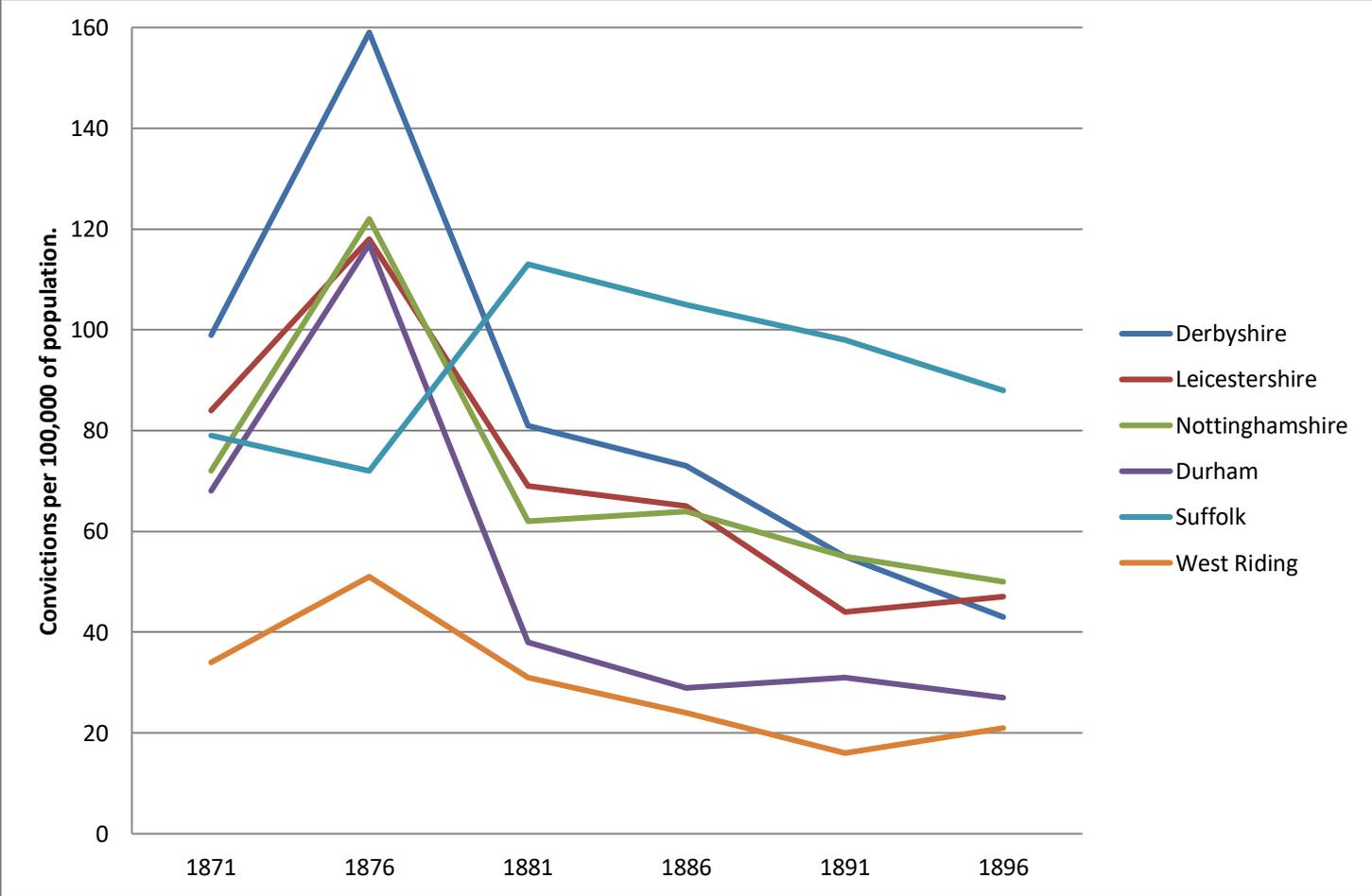
<sup>18</sup> P. 85. The graph becomes confusing if too many counties are included. Lancashire, which was previously used as a comparison, has not been included because there are absences of data for many divisions of Lancashire leading to suspicion that some divisions of the county had not reported their figures..

<sup>19</sup> Jones, *Crime, Protest*, p.66.

<sup>20</sup> Munsche, 'Game Laws', p.228.

<sup>21</sup> *Judicial Statistics*; Osborne and Winstanley, 'Rural and Urban Poaching', p. 189.

Fig. 3.3. Poaching prosecutions per 100,000 population in the last three decades of the century.



The years around the national peak in poaching have been examined by Osborne and Winstanley, who have looked at southern and east anglian counties separately from midland and northern counties. They found there was a significant amount of poaching in the Midlands and the North. Such was the weight of the numbers of these poaching convictions from the Midlands and the North, that the national statistics were skewed into showing trends that *appeared* to be national, but upon closer analysis were different for the South and East than for the Midlands and North.

Specifically, the Midlands and North peaked earlier for both night and day poaching, at a time when prosecutions were falling in the South and East. Numbers then later fell in the Midlands and North whilst they were rising in the South and East. This difference is shown in fig. 3.3, where the northern and midland counties peak earlier than Suffolk, which is consistent with Osborne and Winstanley's findings. At the end of the century numbers of poaching prosecutions fell throughout the country.<sup>22</sup>

Osborne and Winstanley have offered several explanations for this earlier peaking and falling away in the Midlands and North: in these more northern areas of greater industrialisation poaching rose to a peak in 1876, affected by the severe industrial depression from 1874; this was followed by rapid increases in money wages in these areas in the 1880s, causing poaching to decline in the Midlands and North. In the South, conversely, in the 1870s labourers' earnings remained relatively buoyant and prosecution levels did not peak; however, as the farming depression deepened in the 1880s and agricultural wages declined, prosecutions increased in the South

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<sup>22</sup> Osborne and Winstanley, 'Rural and Urban Poaching', p.187-212.

and East and peaked in the mid to late 1880s and thereafter did not decline as dramatically as had been the case in the North and Midlands.<sup>23</sup>

This study concurs with the contention that the large numbers from the more northerly counties had the effect of skewing the national statistics, and that changes in levels of poaching occurred as found by Osborne and Winstanley – that is, differently in the North from in the South. However, and this has no effect on their thesis, when looking at the county figures it is important to remember the significance of size of county and of population when considering relative levels of poaching. Osborne and Winstanley said:

In the late 1860s ... there were around two or three times as many prosecutions for day poaching in the West Riding of Yorkshire (3,698) ... and Lancashire (2,110) than in ... Suffolk (1,378) and Essex (1,386).<sup>24</sup>

Whilst this is true, it is also the case that in 1861 the area of the West Riding was almost double that of Suffolk and its population more than four times as great; it was more than 60% greater than the size of Essex, and its population almost four times as great. Even greater population factors apply in the case of Lancashire, which was larger in area than both Suffolk and Essex by about 20-30%, with a population six times the size of Essex in 1861, and almost eight times that of Suffolk.<sup>25</sup> Statements about relative levels of poaching in different counties have to be made with care. It *is* the case that there were far more poaching convictions in the West Riding and Lancashire than in Suffolk and Essex; however, this does not mean the West Riding and Lancashire were 'greater poaching areas', or 'areas where

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<sup>23</sup> Osborne and Winstanley, 'Rural and Urban Poaching', pp.194, 203, 205-206.

<sup>24</sup> Osborne and Winstanley, 'Rural and Urban Poaching', p.193.

<sup>25</sup> 1861 Census.

poaching was more prevalent', compared to Suffolk and Essex. On the contrary, poaching was more prevalent in Suffolk and Essex than in Yorkshire and Lancashire, per 100,000 population. It is also the case that, in Derbyshire, Leicestershire and Nottinghamshire, poaching was more common per head of population than in Lancashire and Yorkshire.<sup>26</sup>

### **Comparing the Three Counties**

If data is considered for the counties of Derbyshire, Leicestershire and Nottinghamshire only, then comparisons can more easily be made between them. The *Game Law Returns* differed in the lengths of time over which the data had been taken, so the figures have been given here per annum. For example, in *Return 1864(9)* the figures cover a period of six years, so the number given has been divided by six to give an average per year over the period, per 100,000 of population. Fig. 3.4 shows imprisonments, fig. 3.5 shows convictions, and fig. 3.6 shows prosecutions, so it would not be valid to make comparisons between the three charts.<sup>27</sup> It can be seen that, until after the 1860 return, Nottinghamshire had overall the highest figures of poaching imprisonments or convictions. After this it had noticeably fewer, though the figures rose relatively again from 1886 onwards. Jones said that there was a resurgence in poaching in the parishes around Nottingham in the 1860s, 'in the face of stricter legislation and new police appointments.'<sup>28</sup> If this was the case, the reduction in convictions compared to the other two counties that is shown by the *Judicial Statistics* from 1870 onwards, could be interpreted as the end of this resurgence and possibly the result of a crackdown which caused a reduction in poaching.

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<sup>26</sup> See p. 79.

<sup>27</sup> See p. 89.

<sup>28</sup> Jones, *Crime, Protest*, p. 66.

Fig. 3.4. Imprisonments per 100,000 population annualised.<sup>29</sup>

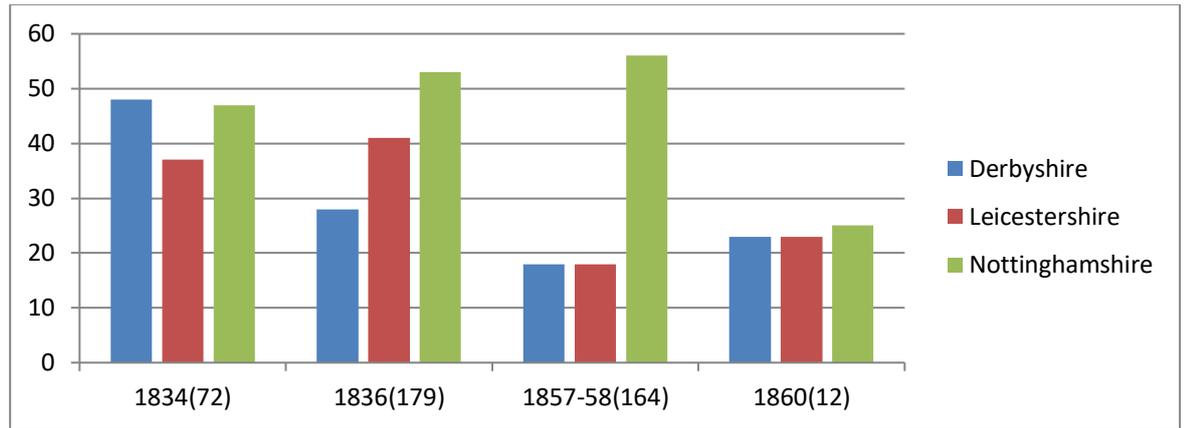


Fig. 3.5. Convictions per 100,000 population, annualised.<sup>30</sup>

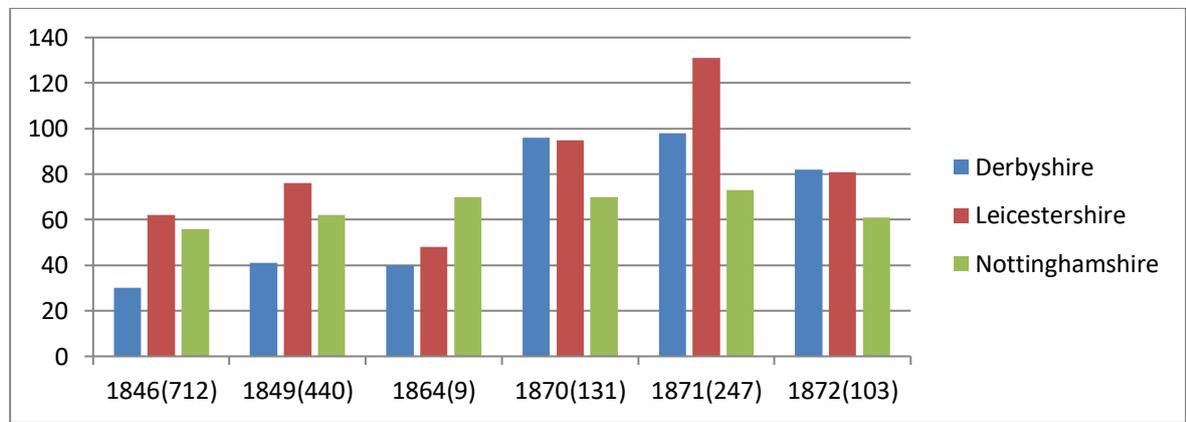
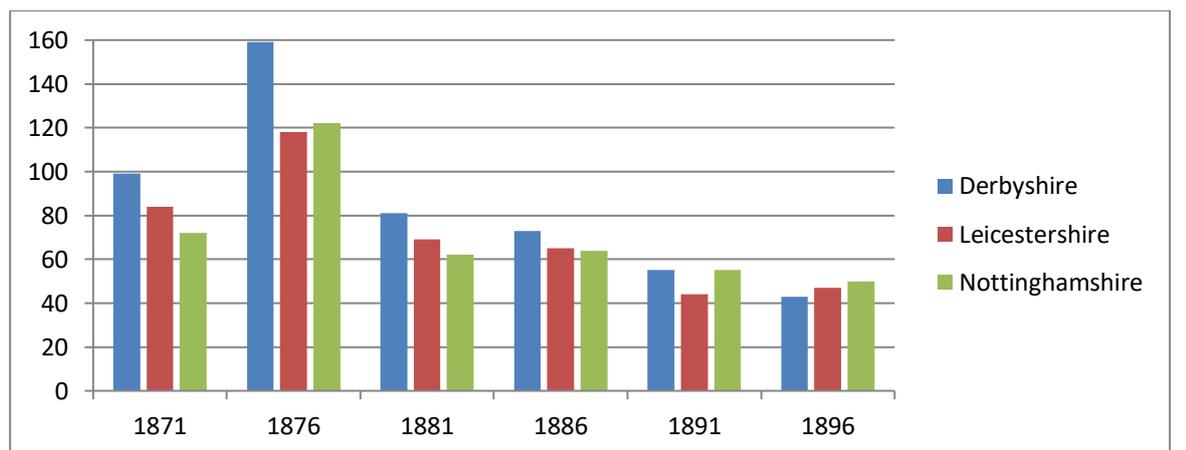


Fig.3.6. Annual prosecutions per 100,000 population.<sup>31</sup>



<sup>29</sup> Game Laws Returns 1834(72), 1836(179), 1860(12).

<sup>30</sup> Game Laws Returns 1846(712), 1849(440), 1864(9), 1870(131), 1871(247), 1872(103).

<sup>31</sup> Judicial Statistics 1872, 1877, 1882, 1887, 1891, 1896.

Derbyshire had the least, or equal least, poaching prosecutions or imprisonments for the returns from 1836 to 1864; but after this it became the county which most often had the highest number. Leicestershire, more often than the other two counties, was the one with the middle number of prosecutions, imprisonments or convictions, though there were three instances where it had the most.

Taking the average of the numbers for each county shows them to be too close for any conclusion to be drawn: Derbyshire has an average of 64 poaching imprisonments, convictions or prosecutions annualised; Leicestershire 65 and Nottinghamshire 63. It seems justifiable to say that Nottinghamshire had relatively more poaching imprisonments and convictions than the other two counties in the period from 1830 to some point in the 1860s, and Derbyshire more prosecutions in the period after 1870. Overall, Leicestershire appears to have remained at the same level relative to the other two counties throughout the period.

Poaching was still troublesome in the East Midlands towards the end of the century. In Derbyshire there were major affrays as a result of night poaching at Chatsworth in July of 1891, and at Kedleston Park later in the same month.<sup>32</sup> Also in summer 1891 there was another at Wingerworth Hall estate near Chesterfield.<sup>33</sup> In the trial at the Derby 1891 winter Assizes of the poachers from the Chatsworth affray, the newspaper reported the Judge commenting upon the seriousness of the current problems with night poaching gangs in mining districts.<sup>34</sup>

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<sup>32</sup> *DM*, 15 July 1891 and 5 Aug 1891.

<sup>33</sup> *DM*, 5 Aug 1891.

<sup>34</sup> *DM*, 16 Dec 1891.

In Nottinghamshire there were significant affrays at Strelley Park in August 1896, at Blidworth in September 1896, at Annesley in November 1896, and at Kelham Wood near Newark in the same month and year.<sup>35</sup> The last reported affray from Leicestershire is one at Shepshed in 1886, and this did not involve a large gang;<sup>36</sup> but in February 1896 poachers were stopped near Melton in Leicestershire with 34 rabbits, two nets, and 19 pegs (for staking up the long nets). In Nottinghamshire there were many other reports indicating group night poaching was still very common there; in Derbyshire less so, and in Leicestershire only the reports which have been quoted.

### **Locating the Poaching Grounds**

The counties of the East Midlands exhibit some differences in the pattern of landholding which has relevance to poaching patterns. In 1873 in Nottinghamshire, 55% of the land was held in estates of over 3,000 acres. The aristocratic estates known as the Dukeries can be seen on the map in fig. 3.11, in the north of the forest area.<sup>37</sup> These estates were heavily replanted with trees from the mid-eighteenth century as part of a movement for landscaping and the creation of the picturesque.<sup>38</sup> These new plantings, as well as looking attractive, provided ideal habitats for game birds and ground game.<sup>39</sup> The map of the three counties in fig.3.7, shows how the boundaries of each fitted together.<sup>40</sup>

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<sup>35</sup> *NG*, 22 Aug 1896, 5 Sept 1896, 14 Nov 1896, and 24 Nov 1896.

<sup>36</sup> *NG*, 5 Feb 1886.

<sup>37</sup> See p. 99.

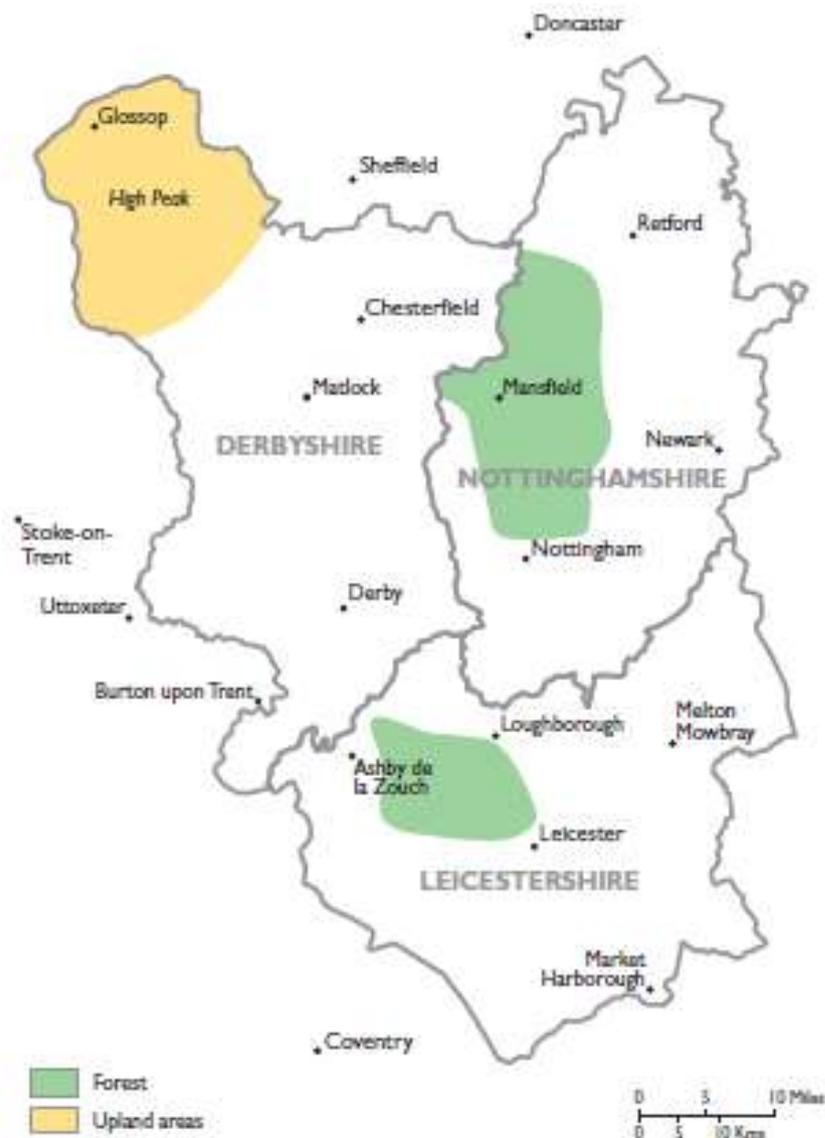
<sup>38</sup> Richard A. Gaunt, 'Patrician Landscapes and the Picturesque in Nottinghamshire c. 1750-1850', *Rural History*, 26, 2 (2015), pp. 169-70.

<sup>39</sup> Susanne Seymour, 'The "Spirit of Planting": Eighteenth Century Parkland "Improvement" on the Duke of Newcastle's North Nottinghamshire Estates', *East Midland Geographer*, 12, 1&2 (December 1989), pp. 8-11.

<sup>40</sup> P. 92.

In Derbyshire, estates of over 3,000 acres occupied 48% of the county, and in Leicestershire only 38%. Where smaller estates were concerned, 44% of Leicestershire was held in estates of under 3,000 acres, in Derbyshire 32% and in Nottinghamshire 29%. Regarding small estates of 100-300 acres, 16% of Leicestershire was held in estates of this size; in Derbyshire 10% and in Nottinghamshire 9%.<sup>41</sup>

Fig. 3.7. Derbyshire, Leicestershire and Nottinghamshire.



<sup>41</sup> J. V. Beckett (ed.), *The East Midlands from AD 1000* (London, 1988), p. 198 (percentages rounded to nearest whole number).

Small estates would have had game on them, but the largest and richest landowners were more likely to have had preserves on which they reared and protected game.

In Derbyshire, the night poaching convictions near Derby (as shown on the map in fig. 3.8) are unusual; nowhere else in the three counties has such a cluster of night poaching been recorded as that around Derby. These convictions for the years 1857-62 have been plotted because the return for this period gives the parish of each offence.<sup>42</sup>

Other clusters of convictions, predominantly day poaching but with some night poaching, are noticeable elsewhere. One is in the far south of Derbyshire, in the area of the north Leicestershire and south Derbyshire coalfield. Slightly around to the west from here, close to the county boundary with Staffordshire, was Sudbury Hall with a collection of day and night poaching convictions around it.<sup>43</sup> Close to these clusters were Burton upon Trent and Uttoxeter, both just over the border in Staffordshire and known for having many poachers resident.<sup>44</sup> Residences of the gentry and aristocracy were scattered all over the southern tip of Derbyshire: Drakelow Hall, Caldwell Hall, Bretby Park, Foremarke Hall and Calke Abbey, to name some of the most prominent. Relative concentrations of convictions are noticeable in several other Derbyshire locations, where there are not any known large estates. Small squires had sufficient land for game, certainly rabbits, to be present. Also, the biggest landholders held land over wide areas, not just close to their hall or park. The Duke of

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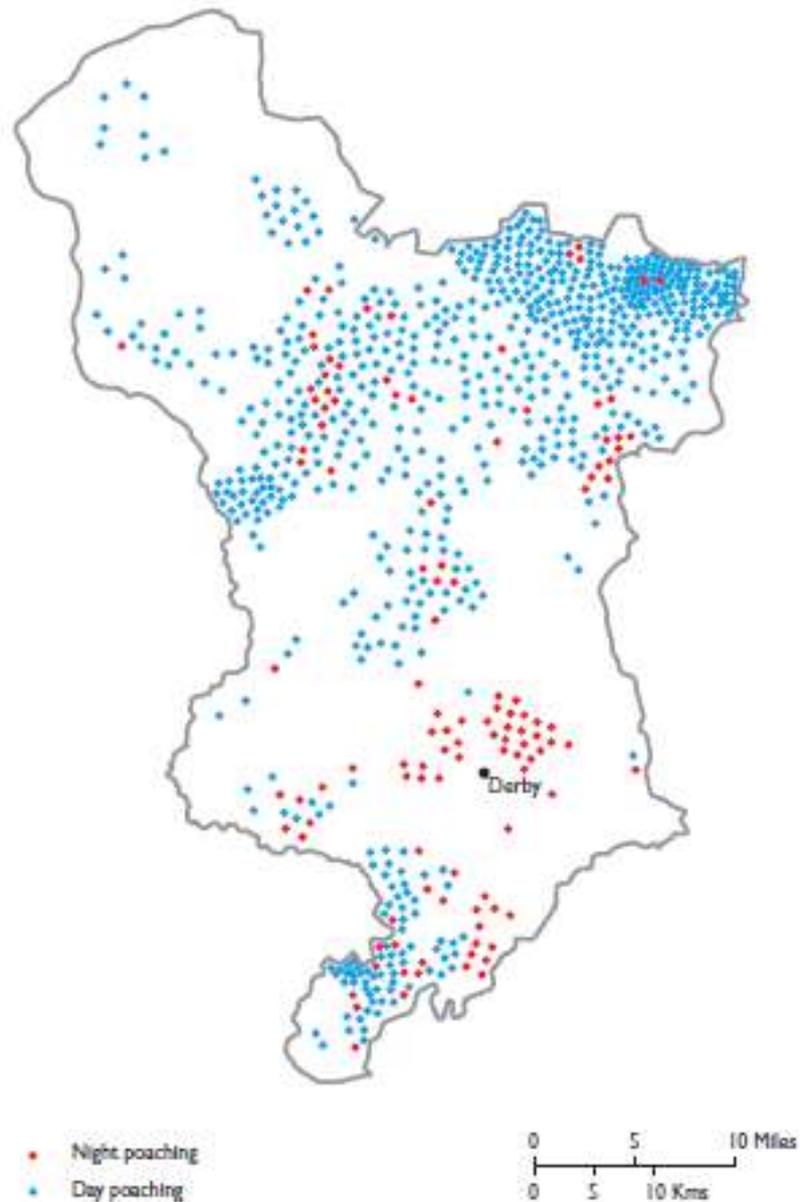
<sup>42</sup> P. 94. The maps of the counties in figs. 3.8, 3.10 and 3.12, have convictions marked in the parish in which the offence was committed. Some parishes covered a wide area, and the location within the parish is not known, so a dot could be up to three-four miles from where the offence was committed; the plotting is thus a not an exact guide to the location of the poaching. When a large number of offences occurred within a parish the dots may be so close together as to blend into shading.

<sup>43</sup> See p. 95.

<sup>44</sup> *DM*, 31 Dec 1851.

Devonshire, whose seat was Chatsworth House, owned a total of 14% of Derbyshire, spread over the county and including moorland.<sup>45</sup> The convictions in the central north of the county are close to Chatsworth House, the seat of the Dukes of Devonshire.<sup>46</sup>

Fig. 3.8. Poaching convictions in Derbyshire, 1857-62.<sup>47</sup>



<sup>45</sup> Beckett, *East Midlands*, p. 198.

<sup>46</sup> P. 95.

<sup>47</sup> *Game Laws Return 1864(9)*.

However, as well as prosecuting poachers on his land close to Chatsworth, the Duke owned land and prosecuted poachers in other areas of the county. For example, he was the prosecutor of two day poachers at Eckington and Hemsworth Petty Sessions in 1846, who had been poaching at Staveley in the north east corner of the county.<sup>48</sup>

Fig. 3.9. Areas and places of interest in Derbyshire.



<sup>48</sup> *Game Laws Return 1849(440)*.

In the High Peak there is a small cluster of convictions in the parish of Hope; the terrain here is suited to grouse and other moor game. There is another cluster of in the parish of Hartington on the central west edge of the county, where Ilam Hall and Park were just over the border in Staffordshire. In the north east the concentration of convictions is marked. This area was industrialised and more densely populated than the west of the county, but within it there were parks at Norton Hall, Renishaw Hall, Barlborough Hall, Wingerworth Hall, Pleasley Park, and Hardwick Hall. Near Hardwick Hall there is a cluster of night poaching convictions. The north eastern concentration of convictions, as well as being in an area with many residences of the gentry, adjoins the part of Nottingham, the Dukeries, famous for the landholdings of the aristocracy. The estates of Worksop Manor, Welbeck Abbey and Clumber Park were in Nottinghamshire but within six miles of the boundary between the two counties.

Moving on to Nottinghamshire, and the maps in figs. 3.10 and 3.11.<sup>49</sup> Of the three counties, Nottinghamshire had the greatest proportion of land held in large estates. The five largest landowners, the Dukes of Portland and Newcastle, Earl Manvers, Lord Middleton and A.W. Savile jointly owned 27% of the county, 137,000 acres, much of this in the Dukeries.<sup>50</sup>

The map in fig. 3.10, of Nottinghamshire, shows there was a greater concentration of convictions around Nottingham than in any other part of the county. This is interesting because the great game preserving estates of the Dukeries were a little further north, in the north central and western parts of the county; there were plenty of convictions in this area, but not

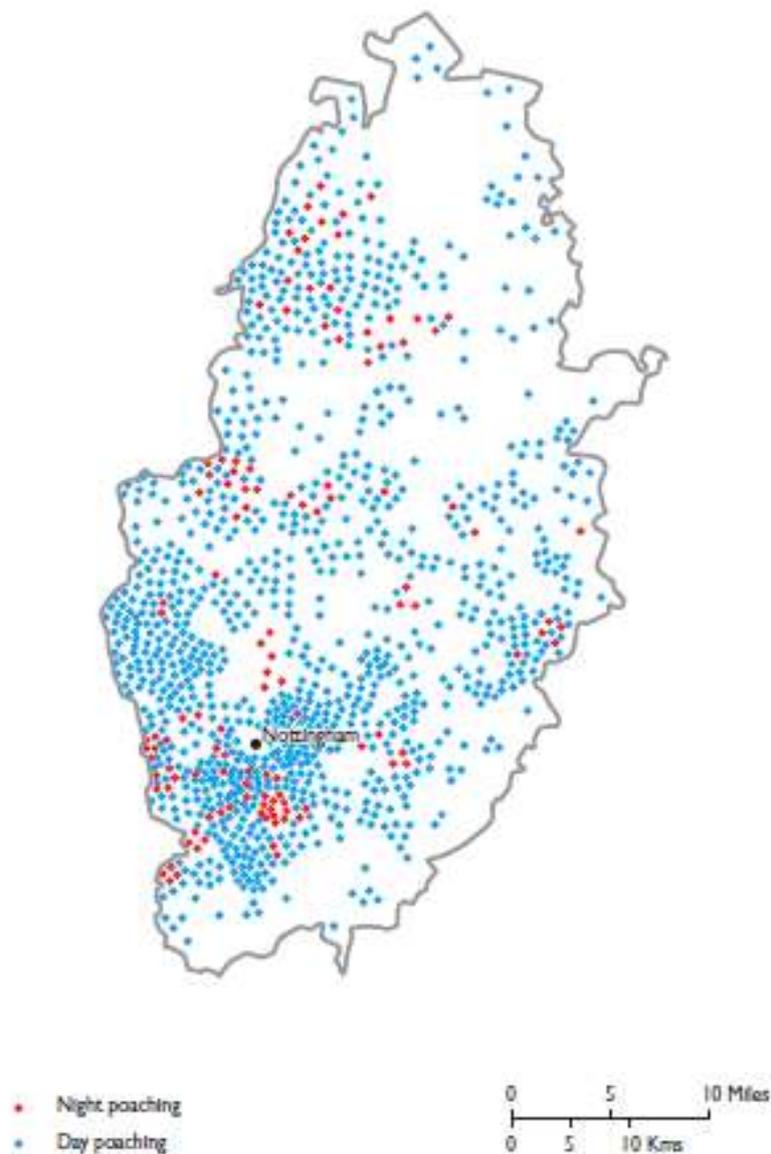
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<sup>49</sup> Pp. 97, 99.

<sup>50</sup> Beckett, *East Midlands*, p. 198.

in as great a density as those near Nottingham. Around Nottingham, particularly to the south west and round to the north east, the convictions are predominantly for day poaching, in contrast to Derby. Within easy access of Nottingham, in the directions in which these convictions particularly lie, were Wollaton Hall and Park, Colwick Park and Mapperley Hall Park.

Fig. 3.10. Poaching convictions in Nottinghamshire (1857- 62).<sup>51</sup>



<sup>51</sup> *Game Laws Return 1864(9)*.

To the south to south-east of Nottingham, the night poaching convictions lie mainly in the parish of Edwalton, with several in West Bridgford and Tollerton. The area to the south west, west and north west of Nottingham, bordering Derbyshire, has many convictions, yet the area of Derbyshire which it adjoins has very few. The Nottinghamshire border parishes of Kingston and Ratcliffe-on-Soar, Barton Fabis, Stapleford, Bramcote, Trowell, Cossall, Greasley, Eastwood, Selston and Kirkby-in-Ashfield are crowded with convictions, yet the Derbyshire parishes of Breaston, Sawley, Sandiacre, Stanton by Dale, Ilkeston, Heanor, Alfreton and Pinxton, which adjoin them, are not. Derbyshire poachers may have travelled into Nottinghamshire for better prospects, or less chance of prosecution from less active gamekeepers.

In this border area of Nottinghamshire there were few of the largest estates, but Thrumpton Hall and Park, Eastwood Hall and Park, Stapleford Hall, Trowell Park and Brinsley Hall and Park will have afforded some game. The *Nottinghamshire Guardian* reported in 1862 that there were 'hordes of poachers ... repairing week after week to the grounds of [Thrumpton Hall] ... stoning the police and carrying off their booty.'<sup>52</sup> In September 1848 a party of night poachers was discovered by keepers at Martin Wood, Trowell, on land belonging to Lord Middleton.<sup>53</sup>

The Dukeries estates in the forest area in the central west to north Nottinghamshire, are marked on the map by a steady scattering of convictions, and reports show that many of the organised night poaching gangs operated in this area. But the density of convictions in the Dukeries is not as great as that shown just over the border in the north east of

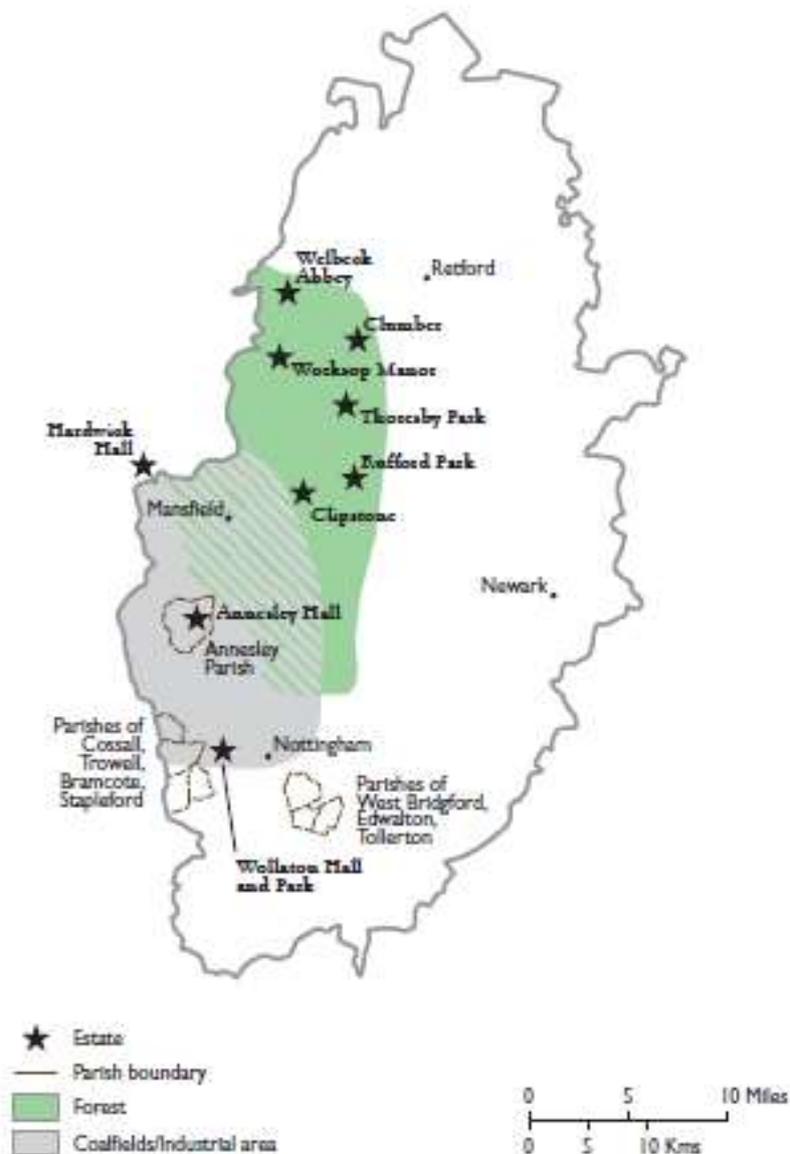
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<sup>52</sup> *NG*, 30 May 1862.

<sup>53</sup> *NG*, 22 March 1849.

Derbyshire. It appears that many Derbyshire poachers preferred to poach in areas closer to their homes in the industrialised north east of Derbyshire. In the northern forest area of Nottinghamshire, the parishes of Worksop, Carlton in Lindrick, Retford and Babworth show a slightly greater density of convictions than that to the immediate south of them. This is the area of the estates of Worksop Manor, Welbeck Abbey, Clumber and Thoresby.

Fig. 3.11. Places and areas of interest in Nottinghamshire.



It adjoins the area in Derbyshire where the convictions are so thick in one place that they have merged into continuous shading, in the Derbyshire

parishes of Whitwell, Barlborough, Clowne, and Elmton. The landholdings of these aristocrats are likely to have extended well around their main residences and into Derbyshire.

Poaching convictions are more scattered over the east of Nottinghamshire, though an area near Newark, especially just to the south of it and close to the Lincolnshire border, has more. These are predominantly in the parishes of Balderton, Hawton, Cotham, Elston and Sibthorpe. There was more poaching in the western industrial side of the county where there was forest with woodland and plantations, and also denser population. The eastern side of the county, with no forest and open fields with little woodland, had more enclosed agricultural land than the west and sparser population.

Poaching looks less extensive in Leicestershire, in fig. 3.12.<sup>54</sup> There is a large area of the county which has no, or very few, convictions marked. There does not appear to have been an area close to Leicester which was fertile ground for night poachers. The Leicestershire forest area of Charnwood did not immediately adjoin the county town, and there were no large estates as close to Leicester as there were to Derby, or even to Nottingham.<sup>55</sup> The night poaching locations closest to Leicester were about four miles from the centre of the town, and others were six to ten miles away.

The area to the north and north west of Leicester was Charnwood Forest, an area known to be rich in rabbits. Nineteenth-century Charnwood Forest had similarities with eighteenth-century Cannock Chase, in Staffordshire,

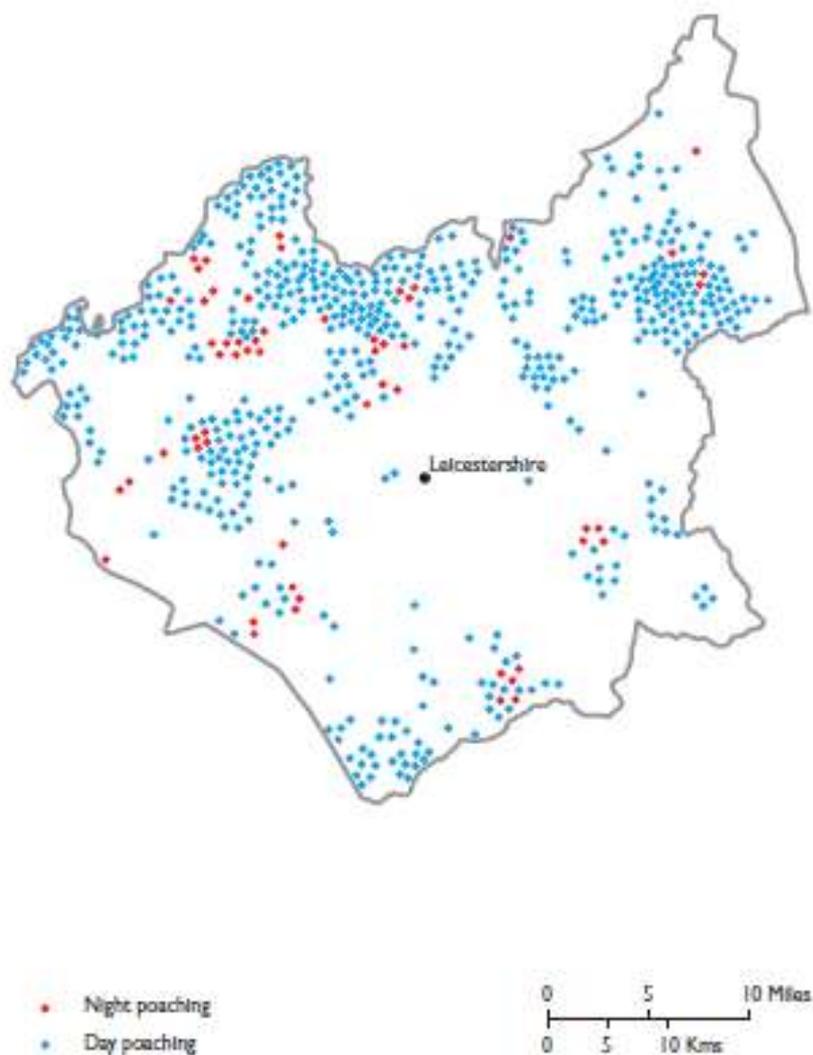
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<sup>54</sup> See p. 101.

<sup>55</sup> See p. 102.

as described by Hay.<sup>56</sup> In Charnwood, the many stone and slate quarries and coal mines were dotted around the area with the men who worked in these places living in interspersed villages and hamlets, or in nearby Loughborough – a growing industrial town. Ground game was abundant and was much poached.

Fig. 3.12. Poaching convictions in Leicestershire, 1857-62.<sup>57</sup>

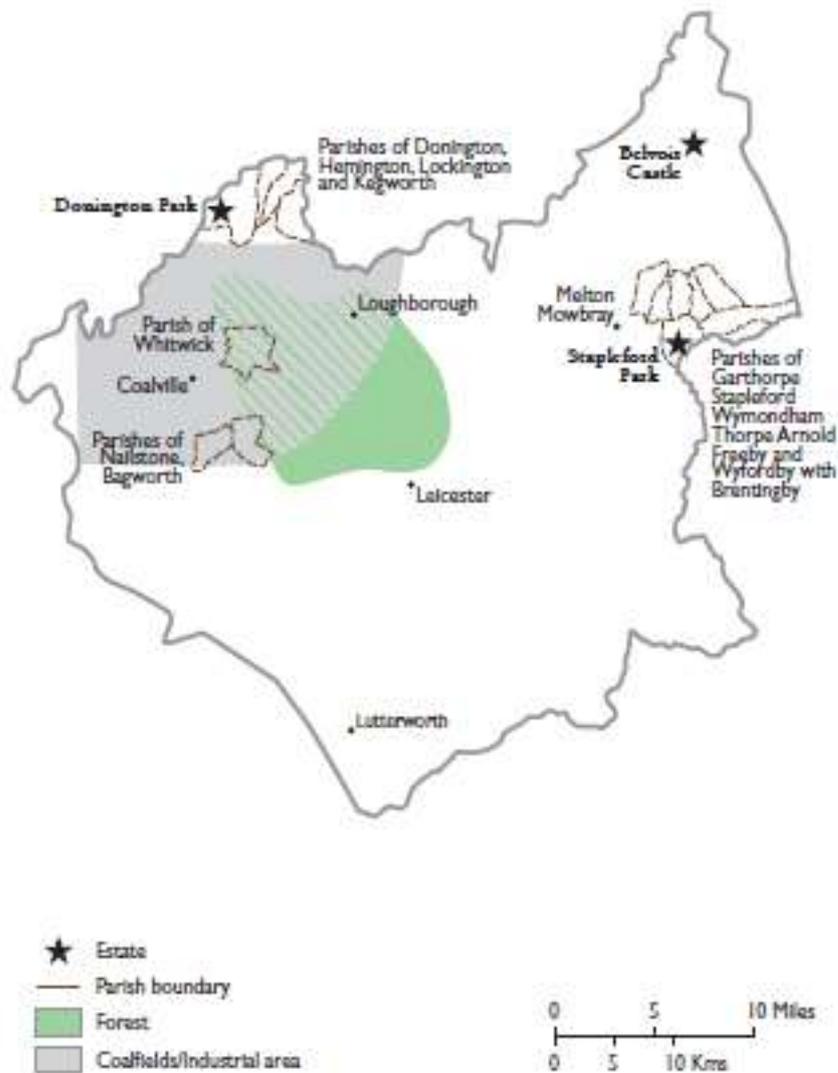


<sup>56</sup> Douglas Hay, 'Poaching and the Game Laws on Cannock Chase', in *Albion's Fatal Tree* (Harmondsworth, 1977).

<sup>57</sup> *Game Laws Return 1864(9)*.

In the years around 1748-9, there were long-running disputes in Charnwood Forest over the conflict between commoners' grazing rights and the lords' warrens, before the same issue arose in Cannock Chase. In the winter of 1753-54, during the disputes over grazing rights at Cannock Chase, Charnwood men – referred to as the 'famous rabbit digging colliers' – were employed to help fight against the landowners of Cannock by digging out warrens.<sup>58</sup>

Fig. 3.13. Areas and places of interest in Leicestershire.



<sup>58</sup> Hay, 'Cannock Chase', pp. 227-8.

The cause of the dispute in Staffordshire was that the lords of Cannock Chase had extended their rabbit warrens onto common grazing land, which then became so over grazed by the rabbits that the commoners were unable to maintain their sheep there. The commoners and their allies recruited help from Charnwood because a similar dispute had been fought there.<sup>59</sup> Recent LIDAR (Light Detection and Imaging) surveys of Charnwood Forest show many pillow mounds – indicators of ancient warrens.<sup>60</sup> So it is clear that rabbits had become naturalised in this area as a result of extensive ancient rabbit farming, as well as any preservation of rabbits that was still going on in the nineteenth century. In 1800 there were still eight warrens listed on Charnwood, whereas in the rest of Leicestershire most of them had been ploughed up for agriculture.<sup>61</sup>

There is no evidence of any similar confrontations in the nineteenth century, but it is clear from the frequency of poaching convictions in Charnwood Forest, and from reports which mention rabbits or night netting there, that the area was still popular with rabbit poachers. For example, at Burleigh near Loughborough, in October 1859, a group of night poachers said to number 12, were seen on the land of W. P. Herrick of Beaumanor; when chased off after a fight they left an 80 yard net.<sup>62</sup> At Shepshed in September 1865 a gang of night poachers left 380 yards of net when they fled.<sup>63</sup> The confrontations over rabbits in 1748-9 in Charnwood, were between commoners, and the Duke of Stamford and William Herrick;<sup>64</sup> so rabbits may still have been being farmed on the Herrick land in 1859.

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<sup>59</sup> Hay, 'Cannock Chase', pp.227-8; E. P. Thompson, *Customs in Common* (London, 1991), p. 105

<sup>60</sup> Lecture given by Dr Julie Attard of the Charnwood Roots Project, at the History Department of the University of Nottingham, 11 Feb 2017.

<sup>61</sup> John Croker (ed.), *Charnwood Forest: A Changing Landscape* (Loughborough, 1981), p. 80.

<sup>62</sup> *NG*, 3 Nov 1859.

<sup>63</sup> *LC*, 4 Nov 1865.

<sup>64</sup> Attard lecture.

The cluster of nine night poaching convictions in the forest area, about ten miles north west of Leicester, is in the parish of Whitwick, known as a home to poachers. The area around Nailstone and Osbaston, due west of Leicester and bordering the forest, has a substantial number too.

Another area where there were many convictions is in the north near Castle Donington. On the Nottinghamshire side of this county boundary there are, contrastingly, few convictions marked; the Nottinghamshire parishes of Rempstone, Thorpe and Willoughby on the Wolds have only one conviction between them, whereas the adjoining Leicestershire parishes of Castle Donington, Hemington, Lockington and Kegworth have 30 convictions. Donington Hall and Park were in this area and known to have had game, and the village of Donington had a reputation as one where poachers lived.<sup>65</sup>

Further round to the west and close to the county border, the Leicestershire parishes including Ashby-de-la-Zouch and Staunton Harold, have multiple convictions. They adjoin the part of Derbyshire which also had many convictions, where the coalfield extended over both counties with its accompanying industrial villages. Much of central Leicestershire is notable for the lack of any convictions over these years, 1857-62; though scatterings of convictions occurred in various places, there were fewer convictions in the southern half of the county than in the north. There was a greater density of convictions in the north east, to the east of Melton Mowbray, over an area which included Stapleford parish, where there was Stapleford House and Park.

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<sup>65</sup> *DM*, 8 Dec 1886.

## Night and Day Poaching

Prosecutions for day poaching far exceeded those for night poaching, as was the case all over the country throughout the period. To put the comparative numbers of night and day poaching prosecutions in perspective, for the two and a quarter year period ending in February 1836 (for which only numbers of poachers imprisoned are available) of all those imprisoned for poaching, in Derbyshire 33% were night poachers, in Leicestershire and Nottinghamshire about 12% were night poachers.<sup>66</sup> These statistics do not allow for the fact that there will have been many more day poachers convicted who were able to pay their fines and escaped imprisonment; so the preponderance of day over night poaching convictions will have been even greater.

From the parliamentary return of the period from 1857-62, when the data came from Petty Sessions and hence all convictions will have been counted, including the day poaching convictions for which fines have been paid, the percentages of night poaching are lower and more representative of the true picture. In Derbyshire 16% of the poaching convictions were for night poaching, in Leicestershire 7% and in Nottinghamshire 9%. This shows a greater proportion of night poaching convictions in Derbyshire than in the other two counties from 1857-62.<sup>67</sup>

The *Judicial Statistics* give data from courts and show all prosecutions for game law offences. The same pattern can be seen: night poaching

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<sup>66</sup> *Game Laws Return 1836(179)*.

<sup>67</sup> *Game Laws Return 1864(9)*.

convictions continue to be far fewer than day poaching convictions. Taking the years 1871, 1876, 1881, 1886, 1891 and 1896, the average percentages of prosecutions for night poaching (out of total poaching) are: for Derbyshire 16%, for Leicestershire 16%, and for Nottinghamshire 11%.<sup>68</sup> These percentages include convictions under the 1862 Poaching Prevention Act which enabled more night poachers to be convicted, though for lesser penalties.

The fact that there were far fewer people prosecuted for night poaching than for day poaching indicates that there was more day poaching, but it was the night time activity which worried the authorities and game preservers most. Night poaching was a source of such concern for two reasons: it accounted for the greatest loss of game; and it publicly showed them to be unable to prevent or control those responsible. Groups of night poachers caught greater numbers of animals than day poachers, who generally caught a few animals at a time, whereas successful group night poaching expeditions for ground game (rabbits and hares) obtained hauls of up to 100 rabbits. For example, a group of poachers returning to Mansfield in the early hours of the morning in 1861 were reported to have 50 rabbits in their possession,<sup>69</sup> and over 90 rabbits were found in the possession of night poachers near Derby in 1876.<sup>70</sup>

Night poaching often resulted in affrays between poachers and gamekeepers and their assistants, which could injure the landowners' employees. Many poachers escaped from such affrays, in some instances all of the gang escaped and remained unknown; moreover, prosecutions,

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<sup>68</sup> *Judicial Statistics 1872 [c.600], 1877 [c.,1871], 1882 [c.3,333], 1887 [c.5,155], 1892 [c.6,734], 1897 [c.8,755]*, for the years 1871, 1876, 1881, 1886, 1891, 1896.

<sup>69</sup> *NG*, 18 April 1861.

<sup>70</sup> *DM*, 20 Sept 1876.

when undertaken, were not certain to result in a guilty verdict. Night poaching affrays occurred across the three counties, sufficiently often to be frequently in the public attention in the local newspapers. In reporting a night poaching affray in 1846, the *Derby Mercury* referred to 'Another of these abominable outrages, of which we have already had to record too many.'<sup>71</sup>

In 1861, a *Memorial* signed by the Chief Constables of 28 counties, including Leicestershire, was sent to the Secretary of State, expressing the humiliation of the authorities, their lack of power and the possible repercussions of the current state of affairs:

This is the only law of the land openly set at defiance by gangs of armed men at night, who by violence overpower all opposition, and so inflict a moral injury on the general supremacy of law and order....The desperate assaults ... [on gamekeepers and assistants] ...are, by their increasing frequency, becoming an example which is too often followed by violent assaults on the police when apprehending offenders at night for felonies, or when searching suspected parties....Poachers form a numerous class...and moreover are looked upon as village heroes for their nocturnal expeditions and assaults on keepers; which is an example of most attractive but demoralising tendency amongst the hard working and youthful population, more particularly when they observe that the constituted authorities can take no steps to prevent it.<sup>72</sup>

The authorities wanted gamekeepers and policemen to have the right to stop and search poachers when they were on public footpaths and roads.

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<sup>71</sup> *DM*, 13 April 1846.

<sup>72</sup> *Game Laws Return 1862(201)*, Copy of a memorial addressed to the Secretary of State.

These representations from county magistrates and the police added to pressure which resulted in the 1862 Poaching Prevention Act, which gave such powers to the police, assisted by gamekeepers.

Many night poachers came out from towns in order to poach in groups, but rural poachers were part of night poaching gangs as well. The *Nottinghamshire Guardian* referred in 1861 to the 'vast quantities of game' which arrived in towns in the early mornings, carried back by poachers from night poaching expeditions.<sup>73</sup> In 1862, during the Leicestershire Quarter Sessions, it was stated that large numbers of men went out of Leicester and Loughborough every night to poach, and that it was the same in all major towns.<sup>74</sup> Historians have noted that where preserves were in close proximity to towns, night poaching by urban dwellers was a problem.<sup>75</sup>

The Derbyshire authorities acknowledged the problem, and in their 1862 April Quarter Sessions quoted police information that there were 55 known poachers living in Derby who regularly poached in the surrounding area at night, where the parks of Kedleston Hall, Markeaton Hall, Locko Park and Chaddesdon Hall, amongst others, all lay within six miles of the centre of Derby.<sup>76</sup>

### **The Prey and Methods of Poaching**

Most night poaching in the three counties was for ground game. From newspaper reports, 88% of night poaching was for ground game,

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<sup>73</sup> *NG*, 31 Dec 1861.

<sup>74</sup> *LC*, 4 Jan 1862.

<sup>75</sup> Osborne and Winstanley, 'Rural and Urban Poaching', p.207; Archer, *Flash and Scare*, pp. 150-4, 170.

<sup>76</sup> *DM*, 9 April 1862.

predominantly rabbits, and 12% for winged game, mainly pheasants.<sup>77</sup>

Often, night poachers using long nets caught large numbers of rabbits and a few hares. For example, in 1876 at Mugginton, near Derby, poachers were intercepted on the road home and said to have 99 rabbits and 6 hares.<sup>78</sup> In 1886 a haul taken on the Duke of Portland's preserves in Nottinghamshire was of '26 couples' of rabbits and two hares.<sup>79</sup>

For the night poaching of ground game, long nets were set up around field boundaries adjacent to woods, or round the edges of woods, propped up at intervals with stakes. Then, by using dogs to beat, or by drawing a line across the fields where the rabbits were feeding, the poachers disturbed their prey and as the animals ran back towards their warrens they were caught in nets. Many rabbit poachers carried a stick or bludgeon to kill the rabbits caught in the nets.<sup>80</sup> Smaller nets were sometimes used over gateways, or the ends of burrows.

Pheasants were often poached at night, by shooting, because they roost on bushes or low branches of trees, are easily seen even in little light, and do not take fright and fly up when shooting begins.<sup>81</sup>

As examples of night poaching of pheasants, in Markeaton Wood, Derbyshire, in 1826, five night poachers were caught 'examining trees' looking for pheasants.<sup>82</sup> Two night poachers with guns were reported

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<sup>77</sup> This is from a sample of 51 instances of night poaching where the prey was named.

<sup>78</sup> *NG*, 15 Sept 1876; *DM*, 20 Sept 1876.

<sup>79</sup> *NG*, 15 Oct 1886.

<sup>80</sup> Garth Christian (ed.), *James Hawker's Journal: A Victorian Poacher* (Oxford, 1978), pp. 49-51.

<sup>81</sup> Richard Jefferies, *The Gamekeeper at Home and The Amateur Poacher* (Oxford, 1978), pp. 228-9.

<sup>82</sup> *DM*, 17 Jan 1827.

shooting pheasants in the Duke of Rutland's plantation at Bescaby Oakes, Leicestershire, in 1837.<sup>83</sup> Night poaching for pheasants with guns was interrupted by keepers on the land of Lord St Vincent near Newark, Nottinghamshire, in 1877, resulting in a serious affray.<sup>84</sup>

Fig. 3.14. A modern picture of a long net with a rabbit being removed.



Partridges were also poached at night, but with partridge nets. Unlike pheasants, partridges roost on the ground. Partridge nets were dragged along the ground with a man holding each side of the net, gathering up the birds, and when sufficient of them had been netted the net was dropped over them.<sup>85</sup> It is not clear whether poachers also used partridge nets in daytime, because the relatively few reports of partridge poaching do not

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<sup>83</sup> *LC*, 25 March 1837.

<sup>84</sup> *NG*, 29 Jan 1877.

<sup>85</sup> G. Bedson, *The Notorious Poacher: Memoirs of an Old Poacher* (Hindhead, 1981), p. 15.

always state the time of day. However, it clearly was done at night. For example, a group of four men were night poaching at Ratcliffe-on-Soar in 1854, and were interrupted with a partridge net spread.<sup>86</sup> Five men were caught returning home with 24 partridges and two nets in the early hours in March 1861 near Mansfield.<sup>87</sup> In 1886, Loughborough Petty Sessions heard a case of night poaching involving four or five men, who were using four long nets and one partridge net in the early hours of the morning.<sup>88</sup>

Fig. 3.15. Drag-netting partridges.<sup>89</sup>



Day poaching could range from the opportunistic taking of a pheasant which was wandering around near a footpath, to organised activity. It was, like night poaching, predominantly for ground game. In newspaper reports from all three counties of day poaching, where the animal is indicated,

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<sup>86</sup> *NG*, 21 Sept 1854, 22 March 1855.

<sup>87</sup> *NG*, 7 March 1862.

<sup>88</sup> *LC*, 11 Sept 1886.

<sup>89</sup> Bedson, *Notorious Poacher*, p. 16.

80% was for ground game (and about two thirds of this was for rabbits), and 20% for birds (over half pheasants, some partridges and two grouse). The only instances of grouse poaching were in the north of Derbyshire.<sup>90</sup>

In Derbyshire, in a sample taken from the Quarter Session records from 1835, 1842 and 1849, of convictions for day poaching in Petty Sessions courts where the prey is stated, 96% were cases of ground game poaching of which seven eighths were for rabbits; and 4% were for bird game<sup>91</sup>

*Game Laws Returns*, where some indication of the animal that was being poached are given, either by stating the animal or by stating the equipment used, support the evidence on the predominance of ground game as the prey.<sup>92</sup>

Poaching for hares was often accomplished by the setting of snares - loops suspended over a known run and put in place during the day, left overnight, and usually checked early the next morning; rabbits could also be caught in this way.<sup>93</sup> Descriptions given by poachers and contemporary observers of how to make snares, indicate that the two types of snare illustrated were commonly used. The loops were made of wire or hair.<sup>94</sup> The type shown in fig 3.17 has a little trigger, which the animal knocks, releasing the sprung stick to straighten up, thus pulling the animal up by the neck.

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<sup>90</sup> Sample size was 64.

<sup>91</sup> Sample size was 360 summary convictions, but for only 42 was the prey stated.

<sup>92</sup> *Game Laws Returns 1831-32(65) and 1836(179)*.

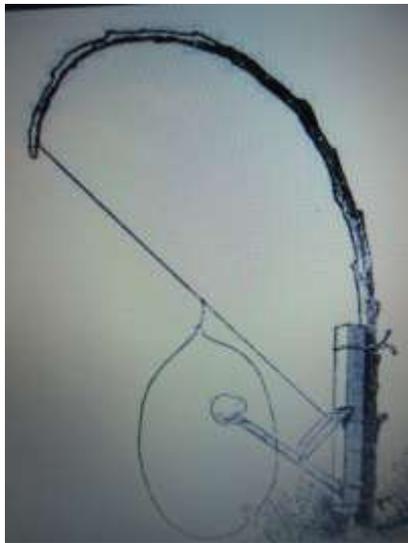
<sup>93</sup> Jefferies, *Gamekeeper and Poacher*, pp.119, 198-9.

<sup>94</sup> Jefferies, *Gamekeeper and Poacher*, pp.117-9; Bedson, *Notorious Poacher*, pp.6-8; Ian Niall, *The New Poacher's Handbook*, first pub. 1960 (London, 1979), pp. 47-8.

Fig. 3.16. Loop snare.



Fig. 3.17. Loop snare with trigger.



A woman poacher caught at Marston on Dove in 1861, was said to have snared about 40 hares over a period of a few months.<sup>95</sup> But there are few reports of convictions for trapping, and one suspects that it was difficult to catch people in the act and that few of them were prosecuted. Poaching for hares was accomplished by nets as well:

Four men went out and in three nights they killed nearly 30 hares....The nets they used were Pieces made to cover a Gate four yards wide and to cover a

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<sup>95</sup> *DM*, 27 March 1861.

Gap and open space, and small Purse Nets to cover a run.<sup>96</sup>

Nets were the most common equipment used at night, with dogs to assist; at night, guns were only used for pheasants. During the day, all types of prey were poached; pheasants often with a gun and a dog, ground game with guns, dogs, ferrets and small purse nets which went over the end of a burrow.

There was a flourishing trade in the eggs of game birds. One of the *Game Laws Returns* gives, only for Nottinghamshire, the clause of the act under which the offender was prosecuted, and this shows poachers in Blidworth, Newstead, Rufford, Boughton and Calverton, being prosecuted for egg stealing.<sup>97</sup> These are all parishes in the area running up from just north of Nottingham past Mansfield up to Worksop - the area full of aristocratic estates where birds were preserved. Payne-Gallwey said that 'half or more of partridge eggs that are offered for sale are stolen'. Poachers habitually stole the eggs and then resold them to gamekeepers.<sup>98</sup>

It is clear from newspaper reports of the 'bags' of game from shooting parties, that pheasants were extensively preserved. Near Nottingham, 102 pheasants were killed in one day by 'noble visitors' in Gedling Wood in 1851.<sup>99</sup> On the Welbeck estate in 1881 it was reported that a party of nine had shot '500 brace of pheasants, partridges and hares'.<sup>100</sup> It is likely that these most prized of game birds were so carefully protected that, by the

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<sup>96</sup> Christian, *James Hawker*, p. 49.

<sup>97</sup> *Game Laws Return 1864(9)*.

<sup>98</sup> Ralph Payne-Gallwey, *Letters to Young Shooters on the Production, Preservation and Killing of Game* (London, 1892), pp. 218-20; Archer, *Flash and Scare*, p. 158.

<sup>99</sup> *NG*, 30 Jan 1851.

<sup>100</sup> *NG*, 2 Dec 1881.

period under investigation, they had ceased to be a common prey of poachers. Jefferies, writing in the 1870s or early 1880s, said that pheasants had become so costly to keep that their preserves were carefully watched, and consequently poachers seldom ventured there.<sup>101</sup>

In 1865 the 6<sup>th</sup> Duke of Newcastle was so frustrated by his losses of game birds that he employed a detective from London, in disguise, to try and get information on poachers. This person, whose employment by the Duke became public after the event, was employed in the guise of a photographer roaming the area, and was referred to by the press as 'the Detective in the Dukeries'.<sup>102</sup>

Groups of men who poached together at night were often referred to as gangs. This nomenclature does not imply the existence of any evidence of what sociologists identify as gang sub-culture. In the Stamford area of Lincolnshire, a group of six men were tried for night poaching, and in court were referred to as 'a gang of most notorious poachers known as the Nottingham Gang'.<sup>103</sup> Thomas Billson, aged 17, who was killed by an accident with his own gun in 1852, was described at the subsequent inquest as 'one of a numerous gang of poachers'.<sup>104</sup>

Night poaching gangs could be of up to 30-40 men but more commonly were of 6-15; but there were also many skilled night poachers who operated alone or in twos and threes. According to Hawker, one man on his own could manage a long net and then not have to share the results with others, but he usually worked a long net in a group of about six. The

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<sup>101</sup> Jefferies. *Gamekeeper and Poacher*, p. 117.

<sup>102</sup> *NG*, 23 Nov 1866.

<sup>103</sup> *NG*, 24 Dec 1861.

<sup>104</sup> *LC*, 10 July 1852.

greatest amount of ground game that he ever saw caught in one night, by this method, was 188 rabbits and three hares.<sup>105</sup>

As examples of varying sizes of night groups, in Leicestershire, in Breedon parish in Charnwood Forest, in 1842, two men were 'beating for game' with a net.<sup>106</sup> In Derbyshire in 1866, two nailers from Belper were convicted of poaching hares and rabbits with nets in 1866.<sup>107</sup> Examples of large groups in Nottinghamshire include an estimate of 30 or more men at a night poaching affray at Blidworth near Mansfield in 1852.<sup>108</sup> At Shelford, in 1859, there were 18 night poachers;<sup>109</sup> in 1896, there were 16-20 in a group at Annesley.<sup>110</sup>

In Derbyshire, at Pistern Hills near Calke Abbey, in 1857 there were said to be 16-20 poachers.<sup>111</sup> At Ticknall, in 1886, there were 16-18 men night poaching.<sup>112</sup> In Leicestershire, at Hoton Hills in Charnwood Forest there were said to be more than 25 night poachers in 1870; this is the only report from Leicestershire of numbers exceeding 12.<sup>113</sup> There were more reports of large gangs in Nottinghamshire than in Derbyshire, and least reports of large gangs in Leicestershire.

Day poaching was not done in large groups. There were many reports in all the local newspapers of men on their own, or with one companion, being convicted of day poaching. However, instances of day poachers working in small groups can be found. In Nottinghamshire, in October 1849, four men

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<sup>105</sup> Christian, *James Hawker*, p. 50.

<sup>106</sup> *LC*, 19 Feb 1842.

<sup>107</sup> *DM*, 11 July 1866.

<sup>108</sup> *NG*, 11 Nov 1852.

<sup>109</sup> *NG*, 27 Jan 1859.

<sup>110</sup> *NG*, 24 Nov 1896.

<sup>111</sup> *DM*, 14 Jan 1857.

<sup>112</sup> *DM*, 24 Nov 1886.

<sup>113</sup> *LC*, 22 Sept 1870.

were seen setting snares in the daytime; 71 snares and a gate net were found.<sup>114</sup> In June 1861, William Hack was reported as having been day poaching using a gun with two others, at Thorpe Acre in Charnwood Forest.<sup>115</sup> In September 1876, four 'young lads' were convicted of poaching rabbits at Colwick Park, near Nottingham.<sup>116</sup>

The function of some accomplices was to enable the catch to be taken away rather than to assist in the hunting. A group of three were day poaching at Evington, Leicestershire, in 1865; one man was walking along hedges shooting pheasants which were 'walking around', and one was staying with the 'fly' (a type of small coach) which was parked in the lane nearby.<sup>117</sup> In Derbyshire in 1876, two men were caught on the road after a successful night poaching expedition in which about 18 men had been involved; they had a cart to transport their rabbits, and until they were searched and the rabbits found, claimed to be gathering scrap iron.<sup>118</sup>

Many other actors were participants in getting the haul back home, or into town, to be distributed or sold. In January 1866, a policeman stopped and searched a cart at Litchurch, on the edge of Derby, in the day time which proved to have 23 rabbits and seven hares hidden under a box.<sup>119</sup> In Leicestershire in 1881, a fishmonger was stopped by Superintendent Walker and found to have 21 still warm dead rabbits in hampers on his cart.<sup>120</sup> A licensed carrier was caught on Sparken-hill road, Worksop, Nottinghamshire, with '99 rabbits concealed under rugs'. The driver said that two men had put the rabbits in the cart at Budby Forest corner, where

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<sup>114</sup> *NG*, 25 Oct 1849.

<sup>115</sup> *LC*, 6 July 1861.

<sup>116</sup> *NG*, 15 Sept 1876.

<sup>117</sup> *LC*, 25 Nov 1865.

<sup>118</sup> *NG*, 2 Sept 1876.

<sup>119</sup> *DM*, 31 Jan 1866.

<sup>120</sup> *LC*, 9 Oct 1881.

they had been hidden in the bracken, and the carrier had simply had an order to fetch them.<sup>121</sup>

It is known that poachers frequently made use of trains as a means of transport, and Hawker referred to the fact that he and poaching companions frequently took a train to a station close to the poaching location, and took a train back with their haul to get it to a market in the early morning.<sup>122</sup>

### **The Seasonality of Poaching**

Osborne's research into seasonality found that, with regard to winged game, poachers largely followed the legal seasons; ground game was taken all the year round, but with rabbits taken in greater numbers immediately after the harvest. Few hares were taken in late April to early June, which was when there were young around.<sup>123</sup>

Looking for information on seasonality in the East Midlands, two types of evidence were used: firstly, reports from newspapers of poaching events which recorded the date on which the poaching was committed and the animal taken was stated. Secondly, poaching events which were reported in the paper, the animal was indicated, but the date on which the poaching was committed was not given; in the majority of cases the offence will have been committed in the same month as the date of the report, since the events either occurred in the past week and were being reported as news, or had been in the summary courts in the past week. Poachers generally appeared at summary courts soon after their offence. In a

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<sup>121</sup> *NG*, 7 Nov 1896.

<sup>122</sup> Christian, *James Hawker*, p.48.

<sup>123</sup> Osborne, 'Seasonality', pp. 35, 37-9.

minority of cases, however, the preceding month (or conceivably even earlier) may have been the time of the offence; for example if the court appearance took place in the first few days of a new month, or if the prosecution had been delayed.

For game birds there was a close season, that is a period in which no-one was allowed to hunt them. For pheasants this was from 1<sup>st</sup> February to 1<sup>st</sup> September; for partridges from 1<sup>st</sup> February to 1<sup>st</sup> October; for grouse from 10<sup>th</sup> Dec to 12<sup>th</sup> August.<sup>124</sup> These close seasons are indicated in tables 3.3 and 3.4 by a cross in the box.

Table. 3.3. Months in which different types of game were poached.

Animal	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec
Hares	1		3	1		1	1		4		2	
Rabbits	1					2	4	7	3	1	2	1
Ground Game	2	3				3	1		12	5	6	3
Partridges		x	x	x	x	x	x	x	1			
Pheasants	1	x	1 x	2 x	1 x	x	x	x	x		4	3
Grouse	x	x	x	x	x	x	x	1		1		x

Table. 3.4. Months in which reports of poaching were made.

Animal	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec
Hares	2				6	1						
Rabbits	4	3	1	3		2	3		2	3	1	
Ground Game	1	2					1	1		2		
Partridges		x	1 x	x	x	x	x	x	1	1		
Pheasants		x	1 x	x	1 x	1 x	x	x	1 x		1	
Grouse	x	x	x	x	x	x	x			1		x

<sup>124</sup> Game Reform Act, 1831

The term *ground game* has been used in the tables to denote either that it is known that both rabbits and hares were taken, or that the prey was not stated but nets for ground game were being used. The reason for having close seasons was to allow creatures to reproduce unhindered, and for the young to grow to a reasonable size before being hunted. People cognisant of this, and thoughtful for the welfare of their own preserves and for the greater good of the hunting community, might be expected to observe such regulations willingly. Since poachers were also dependent on a plentiful supply of animals which had been allowed to breed and grow freely, it might be that poachers would abstain over the months when hares and rabbits had young, as well as over the period that the same applied to game birds. The tables show that this happened to some extent.

Table 3.3 shows that over the months February to May, no rabbits were poached, and no ground game over the months March to May. However, table 3.4 shows rabbit poaching in February, March and April, and hare poaching in May. The possible explanation for this is that the events in table 3.3 are mainly affrays, where organised poaching gangs were out at night. Affrays were well publicised and the details and date of the offence would be known, whereas in table 3.4 the events are more minor affairs only reported briefly from the summary court. It would seem that the organised gangs preferred to leave the prey alone to breed and grow, and catch them during the time when they were a worthwhile size. Rabbits bred all the year round but with a reduction over the winter; serious breeding resumed around February. Such gangs were also catching by netting, which meant they would get anything that was running into their nets. Day poachers taking the odd animal could exercise discretion and only poach the larger animals, which might make them more likely to carry on poaching all the year round.

A more confused picture is presented of hare and ground game poaching. Table 3.3 shows some hare poaching over the spring, and table 3.4 shows no ground game poaching over March to June. The numbers involved here are too small, relative to the true amount of poaching going on (and the fact that of reported cases only a minority indicate the animal) for many conclusions to be drawn. But there does appear to be evidence that there was some restraint from taking rabbits during the spring. This was a time when agricultural activities were increasing with the new growing season which may have had some bearing on this, with more work available for labourers.

The most popular months for poaching rabbits and ground game in table 3.3 are the late summer and autumn months. This covers the period when the harvest was in, rabbits more exposed due to the removal of corn crops, and were of a good size. It is also the period when many farm labourers were laid off after harvest. In table 3.3 it is the ground game poaching that is greatly increased, because the organised gangs netting at night would catch a mixture of many rabbits and a few hares. Table 3.4, which represents more the day and non-gang poachers, does not show that same pattern; instances of hare and ground game poaching are too few to attribute any significance to the time of the events, and rabbit poaching appears to have carried on throughout the year.

With regard to game birds, there are only three examples of grouse where the month is known, and all of these were within the legal period, though one instance may have jumped the start of the season by one day – the report is not clear. Again, with partridges, there are only a few instances where the month is known, and all of these are within the legal season.

But with pheasants, it is clear that some poachers, at least, were willing to take them whilst they were breeding and young. Taking data from both tables, there are nine instances of pheasant poaching in the legal season, and eight of poaching in the close season. This disregard for the needs of the bird populations may be partly because pheasant poachers could exercise some discrimination; they were not just netting whatever ran into the nets, they were shooting and could choose a target, avoiding small birds. It might also be that, as the rich man's preserved game bird, the poachers had less care for the welfare of the pheasant population than they did for the ubiquitous rabbit – the poor man's food.

Fig. 3.18. Graph showing the total numbers of poaching events, by month in which committed or reported, where the animal being poached is known.

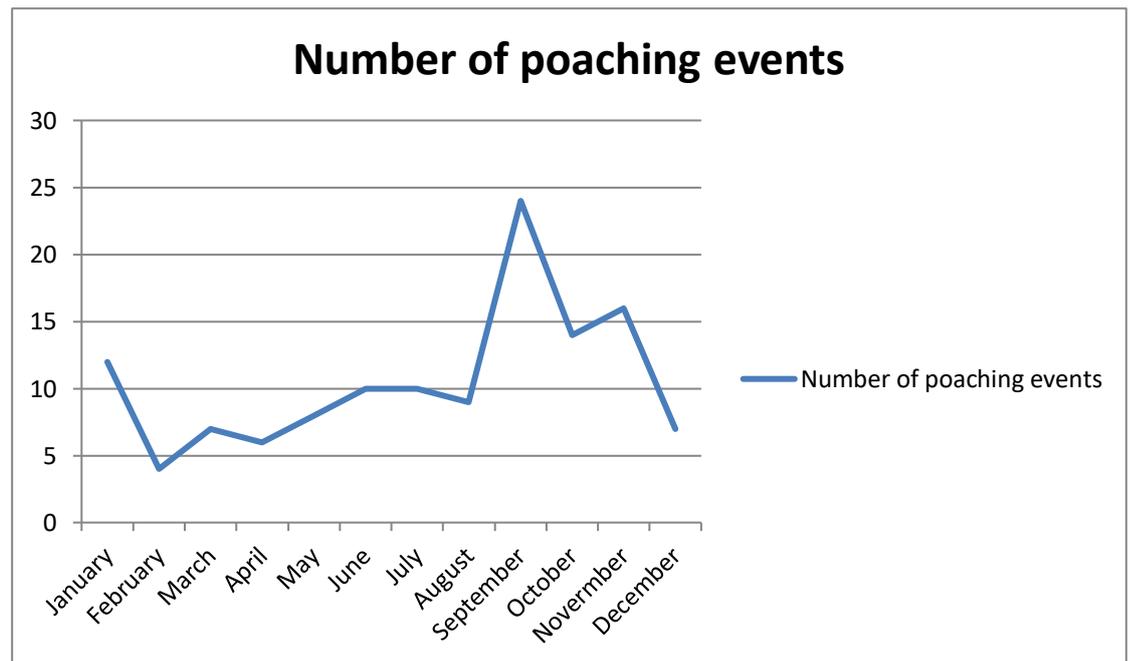


Fig. 3.18 shows the totality of poaching activity where the month is known. It points to September as the prime month for poaching, with October and November the next highest; the spring and early summer months as being a period with less poaching, and a dip in poaching in December. The frequency of night poaching events, which will have been about half of the

events shown above, does not correlate to any significant extent with the times of the year when the hours of darkness that would have counted as 'night' for the purposes of being convicted of night poaching, were longest.<sup>125</sup>

'Night' was defined in the 1828 Act, as from one hour after sunset to one hour before sunrise.<sup>126</sup> There were slightly more poaching events when the hours of official night were longest, but this is mainly due to the popular autumn months having short days. The months of September and March, which have similar hours of darkness, have very different amounts of poaching – 24 events and seven events respectively.

The months of February to June, when the nights are getting shorter up to the longest day in June, do not show a rapid fall in events, which might be expected if night poachers (who were responsible for roughly half the events on the graph) were deciding when to poach based on the hours of darkness afforded

From the limited evidence known of for this study, it appears that night poachers decided when to poach based on their own availability, and the availability of their prey, making sure that whatever time of the year this was they worked in the hours of darkness. When the times of night poaching events were given in reports, night poachers were usually poaching at times when it would have been dark at most times of the year – that is, late at night or in the very early hours of the morning.

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<sup>125</sup> An analysis was made of number of events against day length.

Information on day length from [www.timeanddate.com](http://www.timeanddate.com) (accessed 3 January 2017).

<sup>126</sup> Night Poaching Act, 1828, section 12.

## **Conclusion**

When the statistics of poaching convictions are calculated per head of population they show how prevalent poaching was in the East Midlands, which is not shown by the raw data. Viewed per head of population, the counties had significant levels of poaching, matching or exceeding many other areas where poaching was considered to be severe.

Group night poaching caused the greatest concern to the authorities. Large quantities of game came into towns in the early mornings, or was hidden to be transported later. Maps used as illustrations in this chapter show where poaching was greatest, from data in the years 1857-62.

Most poaching was for ground game, but pheasants and partridges were taken too, and grouse in the north of Derbyshire. Ground game was caught in quantity by nets at night, but a variety of equipment including guns was used as well - especially for day poaching. Night poaching gangs could number up to 30-40, but were most commonly around 6-15. Active night poaching gangs captured large hauls of rabbits, many of which were brought into the main towns for distribution.

In common with other northern and midland counties, poaching in the three counties peaked in the mid-late 1870s, and thereafter dropped to the end of the century. Between the three counties of the East Midlands, there was no great difference overall in poaching levels, though this fluctuated over the period. Derbyshire had a greater proportion of night poaching convictions (out of total poaching convictions) than the other two counties in 1833-36 and 1857-62. Nottinghamshire appears to have had the greatest number of large poaching gangs and Leicestershire the fewest.

Rabbits were poached all the year round, but there may have been a reduction in night ground game poaching over the months February-May. Pheasants appear to have been poached as much in the close season as they were in the open season. Total poaching peaked in late summer and early autumn, when many labourers were laid off after harvest and when both birds and ground game were of a good size.

## **Chapter 4 Poaching, Poverty and Social Crime**

This chapter argues that poverty was one of the major causes of poaching, in that poverty was at least a partial motivation for the vast majority of poachers. Even after wages began to rise and poaching convictions fell, poverty was still a cause of poaching - for some it was still the primary motive. The concept of social crime is examined, and historians' views about this are evaluated. It is concluded that some poaching in the East Midlands should be regarded as social crime because contemporaries recognised that many poachers were poor, and poaching was not regarded as real crime.

### **The Debate about Poverty and Poaching**

Munsche took a position of denial on the issue of whether poverty motivated poaching, saying that although rural labourers would welcome a 'hare in the pot', there is little evidence to support the idea that starving peasants snared game to survive. He also argued that it must be remembered that the principal element in the labourer's diet was bread, not meat, and that in times of dearth game was therefore more valuable to him as a source of income with which to buy bread.<sup>1</sup> These statements beg analysis, such is the extent to which they do not support their author's point. If a hare in the pot was a welcome addition, and if the principal diet was bread, that surely points to a need, or at least a desire, for a more varied diet? Moreover, the fact that a labourer might poach to sell his catch in order to buy bread does not negate his need; on the contrary. Munsche enlarged on the reasons for his position, by saying that hunger does not

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<sup>1</sup> See pp. 24-5; P. B. Munsche, *Gentlemen and Poachers: The English Game Laws 1671-1831* (Cambridge, 1981), p. 63.

appear to have been a primary motivation for poaching, because, 'there was no direct correlation between the price of wheat and violations of the game laws.'<sup>2</sup> The vehemence of Munsche's denial of poverty as a motivation may have been influenced by the Hammonds, who 70 years earlier (but with little intervening commentary on poaching and the game laws) had conveyed the impression that all village poachers were driven by dire necessity to poach, and had to risk being hanged or transported rather than starve.<sup>3</sup> Yet even Munsche has accepted that poverty was the cause of poaching at some times and in some circumstances, admitting that there is good evidence that the increase in poaching at the end of the Napoleonic Wars was directly related to the deprivation which hit the countryside at that time.<sup>4</sup>

In fact, there is a consensus amongst historians that poverty was, at least in part, a cause of poaching. The disagreement is over how much, and what sort, of poaching was motivated by a degree of need, and to what extent this was a primary cause of the activity. Archer, writing of the poachers of East Anglia from 1815-1871, said that casual poaching was an act of hunger or economic necessity; the game season coincided with the low point of the farming year when the harvest was in and men were laid off. He was referring to an area where 80% of the poachers were agricultural labourers. Archer regarded the 'professional' poacher, as opposed to 'casual' poacher, as one who poached all the time and made an adequate living out of it. He has accepted that the line between casual and professional was blurred because some labourers, when unemployed, became temporarily 'professional'. The gangs of organised night poachers,

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<sup>2</sup> See pp. 24-5; Munsche, *Gentlemen and Poachers*, pp. 62-3.

<sup>3</sup> See pp. 15-16; J. L. and Barbara Hammond, *The Village Labourer* (London, 1978), p. 134.

<sup>4</sup> Munsche, *Gentleman and Poachers*, p. 148.

Archer regarded as different again, but has said that even some of them might have 'needed the money on which to subsist.' There was not a simple relationship between wheat prices and changes in numbers poaching, but poaching convictions act as a useful index to the social and economic plight of farm labourers in East Anglia.<sup>5</sup> In his studies of Lancashire, Archer has not suggested that poverty was the primary motivation for the night poaching gangs coming out from the large towns, and has said that in this area young farm labourers were more secure than in East Anglia due to the tradition of 'living-in'. He found that 50% of the Lancashire urban night poachers were over 30 years old, which suggests that the great majority were married with families; this was sometimes raised in court by defendants in hope of mitigation.<sup>6</sup>

Jones found that the relation between poaching and poverty was strong, and that the Nottingham area was one where unemployment and strikes in hosiery and lace in the 1840s and 1860s led to an increase in poaching. In the countryside in general there was a correlation between poaching and the agricultural depression in the decades after Waterloo.<sup>7</sup>

Some historians have not, depending on their particular field of enquiry, discriminated between different types of poaching or poachers, but have indicated that they accept poverty as a motivation for some poaching. Osborne has put the case for the seasonality of game being a cause of the peaks and troughs of poaching throughout the year, but has accepted that

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<sup>5</sup> John E. Archer, *'By a Flash and a Scare': Arson, Animal Maiming and Poaching in East Anglia 1815-1879* (London, 2010), p.154-5.

<sup>6</sup> John E. Archer, 'A Reckless Spirit of Enterprise: Game Preserving and Poaching in Nineteenth Century Lancashire', in David W. Howell and Kenneth O Morgan (eds.), *Crime, Protest and Police in Modern Britain* (Cardiff, 1999), pp. 160-1.

<sup>7</sup> David Jones, 'The Poacher: A Study in Victorian Crime and Protest', *Historical Journal*, 22 (1979), p.836.

there was a link between poaching, underemployment, and poverty, between October and March when the demand for labour was slack.<sup>8</sup> Porter, in his study of poaching and social conflict in Devon, ascribed pleasure and poverty as the motivation for the occasional poacher.<sup>9</sup> Howkins classed poaching, along with wood stealing, stealing food from fields, and picking nuts, as an 'economic crime' – that is, crime committed from need. He found that in Oxfordshire, from 1840-80, poaching was undertaken mainly by labourers and small tradesmen because of poverty.<sup>10</sup>

Shakesheff has been more nuanced in his discussion of the extent to which poverty can be regarded as a cause. He has said that the fact that poaching was endemic in Herefordshire in 1800-60 was linked to economic distress, but that this has to be argued carefully because the crime occurred in years of full employment, reasonable prices and good harvests, as well as in bad years of high food prices, poor harvests and unemployment. According to Shakesheff, unemployment and high wheat prices were linked to poaching, and the majority of poaching crimes were committed to solve the problem of want.<sup>11</sup>

## **Poaching Convictions and the Rise of Wages**

From 1864 the *Judicial Statistics* present the same data on national poaching convictions in a comparable form for each year, and this has been

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<sup>8</sup> Harvey Osborne, 'The Seasonality of Nineteenth-Century Poaching', *Agricultural History Review*, 48, 1 (2000), pp. 27-8

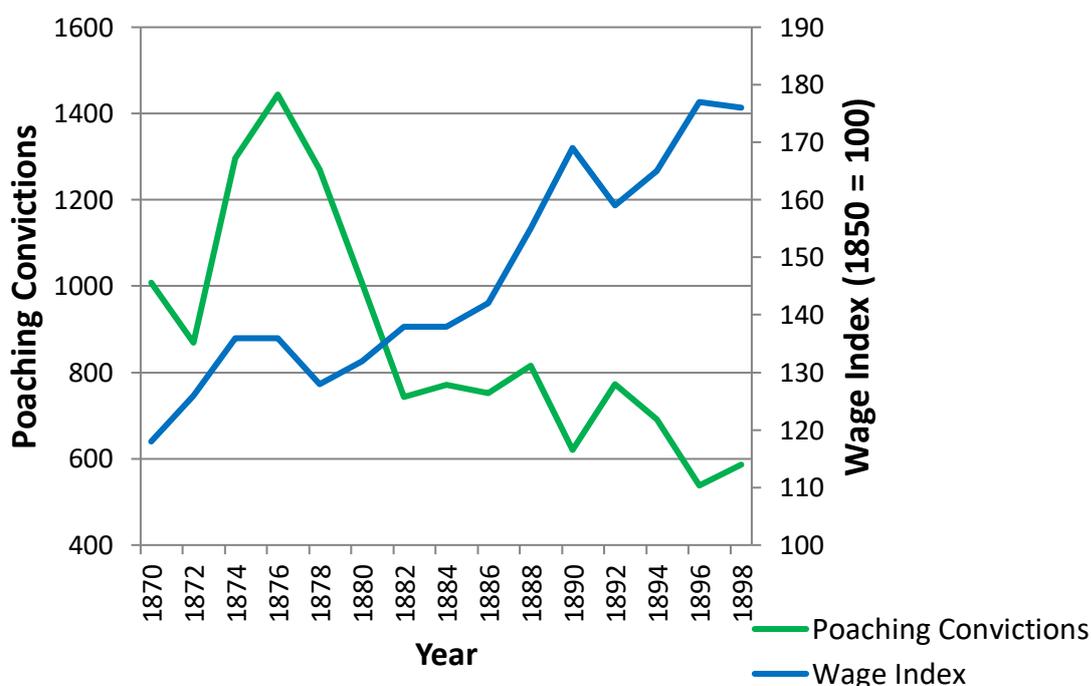
<sup>9</sup> J. H. Porter, 'Poaching and Social Conflict in Late Victorian Devon', in A. Charlesworth (ed.), *Rural Social Change and Conflicts Since 1500* (Humberside, 1982), p. 96.

<sup>10</sup> Alun Howkins, 'Economic Crime and Class War: Poaching and the Game Laws 1840-1880', in S. E. Burman and B. H. Bond (eds.), *The Imposition of Law* (New York, 1979), pp. 274, 283.

<sup>11</sup> Timothy Shakesheff, *Rural Conflict, Crime and Protest: Herefordshire 1800-60* (Woodbridge, 2003), pp. 142, 151-2.

used in the graph in fig. 4.1. Using a wage index based on 100 for the year 1850, it can be seen that from 1878 wages rose consistently until the end of the century, apart from a dip in 1892 which is reflected in a mini-peak in poaching. The peak of poaching convictions in the more northern part of England, including the East Midlands, was in the 1870s, and from then onwards they fell to the end of the century, which is also illustrated. The green line of poaching convictions mirrors the blue line of wages to a noticeable extent.

Fig. 4.1. Poaching convictions in the East Midlands, and the average real wage index allowing for unemployment, 1870-1898.<sup>12</sup>



Looking at the graph, from the peak of poaching in the 1870s to the end of the century, poaching convictions fell and wages rose. Where there is a dip in wages in 1892, a corresponding rise in poaching supports the contention that the two are connected. The steep fall between 1876 and 1880 is noted, but the reasons for it are not explained by any evidence found in

<sup>12</sup> *PP, Judicial Statistics 1862*[c 3370]-1900[cd 123]; B. R. Mitchell and Phyllis Dean, *Abstract of British Historical Statistics* (Cambridge, 1962), pp.343-4.

this study; possible factors include changes in policing methods or of senior police personnel, or in attitudes to prosecution on the part of landowners.

Some historians have said that the rise in wages and improved living conditions contributed to the fall in poaching towards the end of the century. This supports a connection between poaching and wages, which does not disallow the effect of many other factors. Improved policing from the new county police forces, new opportunities for sport and recreation, and a movement in public attitudes away from being indulgent towards poachers, are all factors which have been noted as significant in reducing poaching.<sup>13</sup>

### **Poverty in the Nineteenth Century**

'Most poachers were poor, if only because most Englishmen were poor.'<sup>14</sup> So said Hay, about the poachers of Cannock Chase in the eighteenth century, and this applies to the nineteenth century poachers of the East Midlands. Yet on Cannock Chase, then, there were more poachers who were not poor; there were those who were well off, but could not hunt because they did not have gentry status. After 1831 such people could purchase a game certificate and hunt legally, and poaching became more completely the domain of the working-class poor.

There were degrees of poverty. At its most extreme, poverty meant lack of food, shoes, clothing, adequate shelter and heat. At its least extreme it meant getting by, adequately fed but to low standards, with no spare

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<sup>13</sup> Harvey Osborne and Michael Winstanley, 'Rural and Urban Poaching in Victorian England', *Rural History*, 17 (2006), pp. 203, 207; David Jones, *Crime, Protest, Community and Police in Nineteenth Century Britain* (London, 1982), p. 84; Archer, *Flash and Scare*, p.170.

<sup>14</sup> Douglas Hay, 'Poaching and the Game Laws on Cannock Chase', in *Albion's Fatal Tree* (Harmondsworth 1977), p. 200.

resources, easily plunged into extreme poverty by illness, accident, unemployment or underemployment.<sup>15</sup> What extreme poverty entailed for the nineteenth-century working family was described by unemployed handloom weaver Willie Thom, in the mid-nineteenth century:

Imagine a cold spring forenoon. It is eleven o'clock but...the four children are still asleep. There is a bedcover hung before the window to keep all within as much like night as possible.... Our weekly five shillings has not come as expected and the only food in the house [is] a handful of oatmeal. Our fuel is also exhausted.... The youngest child awoke beyond its mother's power to hush it again to sleep, and then fell to a whimpering, and finally broke out in a steady scream....Face after face sprung up, each with one concern exclaiming, 'Oh, mother, mother, gie me a piece!' How weak a word is sorrow to apply to the feelings of myself and my wife...<sup>16</sup>

In the East Midlands in this period, there will have been many for whom such an extreme degree of distress was experienced at times, and many for whom a lesser degree of poverty was normal. John Burnett, in his survey of poverty and diet, argued that although some progress was made in the condition of the working classes from the mid-nineteenth century, 'It is important to remember that destitution was still the outstanding characteristic of our industrial society up to the First World War.' Between a quarter and a third of the whole population still lived in 'poverty', a state defined by Rowntree in 1899 as: 'earnings...insufficient to obtain the minimum necessities for the maintenance of mere physical efficiency.' According to Burnett, poverty in this period cannot be claimed to be the

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<sup>15</sup> David Vincent, *Bread, Knowledge and Freedom: A Study of Nineteenth-Century Working Class Autobiography* (London, 1982), p. 197-9.

<sup>16</sup> Vincent, *Bread, Knowledge*, p. 52.

result of being idle or improvident, but was a normal condition. Although factors such as ill health, old age, widowhood or excessive expenditure on drink contributed to its extent, the primary cause was simply inadequate earnings.<sup>17</sup>

Burnett used information from the first national food enquiry in Britain in 1863, which was established to ascertain if the 'poor labouring classes' had the weekly minimum of food necessary for subsistence and to prevent diseases bred by starvation. The 'poor labouring classes' included farm labourers and certain badly paid indoor workers such as silk weavers, shoemakers, and stocking and glove framework knitters. On average over the country it was found that the labourers themselves tended to be above the absolute minimum in nutrition, but their wives and children were not, as the lion's share of the food went to the main bread winner. For all workers, bread was the principal article of subsistence. Meat was a luxury in the diet until the 1880s when imported frozen meat made cheaper meat available. The indoor workers, including framework knitters, were found to be worse fed than the labourers and generally below the minimum standard for subsistence.<sup>18</sup> A study of working-class diet in Nottingham confirms that bread was the single most important item; meat was rare until the last quarter of the nineteenth century, when there was a great improvement in the variety of food available.<sup>19</sup>

The poor did not have recourse to savings or societies for help when they were desperate. Only a very small proportion of the working class belonged

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<sup>17</sup> John Burnett, *Plenty and Want: A Social History of Diet in England from 1815 to the Present Day*, first pub. 1966 (Harmondsworth, 1968), p. 126.

<sup>18</sup> Burnett, *Plenty and Want*, pp. 135, 158-60, 194.

<sup>19</sup> Denise Amos, 'Working Class Diet and Health in Nottingham 1850-1939', PhD Thesis (University of Nottingham, 2000), pp. 104, 116.

to Friendly Societies; for people whose income was low or irregular it was not an option. The dinners, feasts and ceremonies and the use of rituals and regalia, which were common to such societies, were a demonstration of fellowship but were also a demonstration of a sense of difference from those who were not able to benefit from membership.<sup>20</sup>

In the work of D. H. Lawrence, based on his experience of growing up in a mining village close to Nottingham, there is a portrayal of a mining family in which there was an adequate income to pay into a 'sick club', which made periods when the main bread winner was unable to work survivable. However, this is a portrait from the very early twentieth century.<sup>21</sup> Miners were not amongst the poorest of workers, particularly in the second half of the nineteenth century when the coal fields expanded and pay and conditions were reasonable.<sup>22</sup> The really poor did not have sick clubs, and fell back first on their wider family, and then on charities, out relief (when it would be given) and lastly on the workhouse. Parents had of necessity to make their children labour, if only to earn a few pence, in order to get by. Small children, too weak to perform normal labouring tasks, could carry out tasks such as carrying straw and beet to cattle, and earn a few pence.<sup>23</sup>

Burnett commented that when families had children who were old enough to have some strength and be able to work effectively, the family economy could be much improved and lifted above subsistence level; the most difficult stage was when there were several children but none of them was

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<sup>20</sup> Christopher Richardson, *A City of Light: Socialism, Chartism and Co-operation – Nottingham 1844* (Nottingham, 2013), p. 166; Vincent, *Bread, Knowledge*, p. 53.

<sup>21</sup> D. H. Lawrence, *Sons and Lovers*, first pub. 1913 (London, 1994), pp. 61, 112.

<sup>22</sup> J. V. Beckett, *The East Midlands from AD 1000* (London, 1988), pp.278-9.

<sup>23</sup> Vincent, *Bread, Knowledge*, pp. 82-3, 93-6.

of an age to earn even a few pence.<sup>24</sup> The members of a framework knitting family in Derbyshire in 1863, with several children, were said to be not adequately fed, and 'not to exhibit a high state of health'. These judgements were by the not overgenerous standards of the Medical Officer of the Privy Council in 1863. This family lived principally on bread and potatoes, with some 'sugars' – which was probably jam - some cheese and meat, and only one and a quarter pints of milk a week.<sup>25</sup>

Rowntree's definition of poverty, as having earnings insufficient to obtain the minimum necessary for the maintenance of mere physical efficiency,<sup>26</sup> was a normal state for many working-class people up until the period when wages began to rise, and cheaper food and a greater variety of products became available, in the later part of the century. In 1841, 8% of the population of England and Wales was officially classed as paupers, and the framework knitters of Nottinghamshire were classed amongst the most poorly paid workers.<sup>27</sup>

Nutrition in the families of nineteenth-century labourers has been looked at more recently in a study of the energy in eleven key nutrients and their availability.<sup>28</sup> Gazeley and Horrell used data mainly from 1835-46, 1863 and 1893, with some data from other periods. They found there were no improvements in nutritional household welfare between the late eighteenth century and 1835-46. There were gains over the next half century but they were not consistent or dramatic and left a large minority of households with nutrient deficiencies even in the twentieth century. The calories,

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<sup>24</sup> Burnett, *Plenty and Want*, pp. 191-2.

<sup>25</sup> Burnett, *Plenty and Want*, pp.191-2, 194-5.

<sup>26</sup> Burnett, *Plenty and Want*, p. 126.

<sup>27</sup> Burnett, *Plenty and Want*, p. 177.

<sup>28</sup> I. Gazeley and S. Horrell, 'Nutrition in the English Labourer's Household Over the Course of the Long Nineteenth Century', *Economic History Review*, vol. 66 (Aug 2013), pp. 757-84.

protein, and sometimes calcium and iron, in labourers' diets in 1862-3 suggested that they were typically underfed and suffered dietary deficiency; the meat and protein in a household was largely given to men, and women and children were fed on bread, tea and leftovers. Overall, between 1850-1900, half of agricultural labourers' families had deficiencies in nutrition.<sup>29</sup>

### **Relative Poverty**

So far in the discussion about poverty in this chapter, attention has been given to a degree of poverty where there was lack of adequate nutrition. But there could be economic motivation to poach even if people were not actually hungry or under-nourished. When a working-class family was managing to exist in circumstances which were satisfactory for their class, this still amounted to relative poverty. Relative poverty is illustrated by a comparison between Burnett's descriptions of menus of the poor and those typical of the middle class. In 1863 the family of a Derbyshire framework knitter who had some work, but trade was badly depressed, ate the following: breakfast was milk and oatmeal for the children, coffee, bread and sometimes bacon for the adults. Dinner was always hot, and with meat or bacon and vegetables or bread daily. Tea was bread and butter or treacle; supper was milk. As regards the quantity of food, they were not adequately fed and not very healthy.<sup>30</sup> Better off workers had more adequate amounts of food, so they would have been adequately fed as regards quantity, but the food would have been of the same limited variety. Compare this limited variety of fare with the variety of food that could be available for a middle-class family in 1856: items such as crimped

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<sup>29</sup> Gazeley and Horrell, 'Nutrition', pp. 757-8.

<sup>30</sup> Burnett, *Plenty and Want*, pp. 194-5, 234-5.

steak and caper sauce, boiled knuckle of veal and rice, cold mutton, fried soles, stewed rhubarb, lemon pudding, and baked plum pudding. A family of three from this social class could live comfortably on £2 a week spent on food.<sup>31</sup>

A framework knitter had from 6s to 15s a week as income, depending on the state of the trade, for all the necessities for a family with children. He had to take out of this income his rent and frame rent, cost of clothing and fuel. The framework knitter's family mentioned earlier spent 2s 7d a week on food.<sup>32</sup> They might have been managing on this and may not have been starving, but they were still poor and some game, either in the pot or sold to buy other food, would have been worth having. A hare, worth three or four shillings, a brace of partridges worth about two to three shillings, or a rabbit, worth one to two shillings, would have made a difference.<sup>33</sup>

### **Poverty in the East Midlands**

There is evidence from the East Midlands which substantiates the suggestion that poverty was a motivating factor in many instances of poaching, particularly before the mid-1870s when convictions began to fall. Hawker's autobiography gives an example of a man, not a habitual poacher, driven to participate purely by poverty. In 1871 Hawker was living in Leicestershire when he was approached by the father of the family living next door to him:

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<sup>31</sup> Burnett, *Plenty and Want*, pp. 234, 236.

<sup>32</sup> Burnett, *Plenty and Want*, pp. 194.

<sup>33</sup> See pp. 138, 159, for the approximate value of game, and *NG*, 7 March 1862 suggests a Rabbit was worth around 1s 6d – depending on the circumstances in which it was being sold.

The Father was out of work and the mother Heart broken. They had no hope and not much food....One Friday after everything in the house had been pledged and there was not a hope of a Dinner for Sunday, I said 'Can't you Poach?' 'I would if I could,' he said, 'but I've nothing to poach with.' 'Come with me tomorrow,' I said, 'and....we'll kill six Hares and you can sell three for twelve shillings. It will find you some food for a day or two.'<sup>34</sup>

Hawker also stated clearly that it was poverty which drove him to begin poaching when he was a young lad:

We went to live in a very Poor Part of the Town [Daventry]. In this year 1850 – when I was 14 years of age – I first commenced to Poach. My Father Had Tried to Better our Position Lawfully and had failed. So I was determined to try some other means.<sup>35</sup>

Some poachers, when in court, pleaded their poverty as the reason for their crime. This does not mean that what they said was true, but it does mean that they felt that those hearing them would consider it was possible, which in turn suggests that it was the case sometimes. In October 1849, Charles Birkin of Nottingham pleaded guilty to poaching but said he could get no other employment.<sup>36</sup> In Leicestershire in 1861, Henry Marshall of Welford pleaded guilty to trespass in pursuit of game in the day time, and said he would give up poaching if the prosecutor would find him work.<sup>37</sup> Hannah Rushton, a female poacher convicted in southern Derbyshire in

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<sup>34</sup> Garth Christian, *James Hawker's Journal: A Victorian Poacher* (Oxford, 1978), pp. 30-1.

<sup>35</sup> Christian, *James Hawker*, p.3.

<sup>36</sup> *NG*, 25 Oct 1849.

<sup>37</sup> *LC*, 13 July 1861.

1861, was snaring hares in Marston-on-Dove because her husband had been bed ridden for many weeks following an accident on the railway.<sup>38</sup>

Many poachers are known to have been framework knitters.<sup>39</sup> The East Midlands was late to industrialise and framework knitters, working at unpowered machines, were particularly at risk of underemployment since their industry suffered from the swings of the trade cycle and frequently failed to provide an adequate income.<sup>40</sup> In Nottingham and Derby, the workhouse rules were periodically bent to allow for the relief of framework knitters. In Leicestershire in 1844 the government enquiry into framework knitting found that one third of frames were not in use, and several thousand more framework knitters were underemployed.<sup>41</sup>

After an affray at Rufford, Nottinghamshire, in 1851, ten of those apprehended and accused were framework knitters. The following month the Board of Guardians in nearby Mansfield, where many of them lived, waived the workhouse rule and gave out-relief to 1,385 people in recognition of the difficult times.<sup>42</sup> A month earlier, the Basford (near Nottingham) Board of Guardians had given out-relief to 2,444 people in one week, and 2,342 in the next; Nottingham Guardians had given to 978 people in district one, and 1033 people in district two.<sup>43</sup>

In the East Midlands, the trade fluctuations for framework knitters existed alongside the seasonal unemployment of agricultural labourers, and many

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<sup>38</sup> *DM*, 27 March 1861.

<sup>39</sup> See pp. 175.

<sup>40</sup> J. V. Beckett, 'Politics and the Implementation of the New Poor Law: The Nottingham Workhouse Controversy 1834-43', *Midland History*, 41 (2016), pp. 201-223.

<sup>41</sup> Beckett, *East Midlands*, pp. 252, 285-6.

<sup>42</sup> *NG*, 6 Nov 1851; for this 1851 Rufford Affray see also pp. 166, 173, 194, 228, 249, 252-3.

<sup>43</sup> *NG*, 6 Nov 1851, 10 Dec 1851.

poachers were labourers.<sup>44</sup> Agricultural workers in the Midlands and the North were not necessarily far better paid than all of those in the South and the East, which is what Munsche appeared to imply when he referred to the area north of the Trent and said that agricultural wages were higher and alternative employment was available in the new industrial cities.<sup>45</sup> He was talking about the time only up to 1831, when the East Midlands was not industrialised; though there may have been more employment opportunities there than in the severely depressed counties of the South, there were not as many opportunities as in those counties which industrialised early.

James Caird looked at agricultural workers' wages in 1851, and his findings show that Leicestershire, Derbyshire and Nottinghamshire were not areas of very high pay for agricultural workers. In Caird's map of England, Nottinghamshire and Derbyshire fell just north of the dividing line between north and south, which passed through Leicestershire. In 1851 the agricultural wage was 11 shillings a week in Derbyshire, 10 shillings in Nottinghamshire, and 9s 6d in Leicestershire. These figures were higher than the average agricultural wage for the southern counties which was 8s 5d, but lower than the average for the northern counties which was 11s 6d. The Leicestershire wage was the same as the average over the whole of England – 9s 6d. So it would be a mistake to regard the East Midlands as an area where the labourers were amongst the best paid in the country; those areas were Cumberland, Lancashire and the West Riding. Derbyshire, with wages at 11 shillings, was equal to three other northern counties but below the average for the North. Nottinghamshire and Leicestershire were

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<sup>44</sup> See p. 175.

<sup>45</sup> Munsche, *Gentlemen and Poachers*, pp. 149.

at the bottom of the 'northern' table and had lower wages than Sussex, which was the highest of the southern counties.<sup>46</sup>

East Midlands poachers were not predominantly very young men. Of those whose ages are known, 93% were 20 years old or older, and 46% were 30 years old or older.<sup>47</sup> Once people were married, women bore children over the whole period of their fertile life; the average age of women at the birth of their last child was around 40 in England and Wales in the eighteenth century, and this did not change until the late nineteenth century.<sup>48</sup> Many of the poachers were in an occupation and of an age where they would be likely to have families, without having adequate means to support them; this is shown by information on the groups of night poachers for whom age or occupation are given. In Nottinghamshire, following an affray at Nuthall in September 1853, the five men taken to court were all framework knitters, aged 25, 30, 35, 39 and 45. At Ratcliffe-on-Soar in September 1854, the four poachers who were caught were a bricklayer aged 28, a labourer aged 26, and framework knitters aged 23 and 37.<sup>49</sup> At Gedling in May 1856, the four captured out of a group of 12 poachers were all labourers, aged 32, 36, 37 and 52.<sup>50</sup> In Leicestershire at Staunton Harold in 1861, the three who were caught were all labourers, aged 28, 34 and 35.<sup>51</sup> These men, night poaching in groups, were just as likely to be poor as were day poachers; in fact many of them may have poached during the day sometimes as well. There seems no reason to regard night poachers and day poachers as two separate groups of people, though some probably

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<sup>46</sup> James Caird, *English Agriculture in 1850-51*, first published 1852, 2<sup>nd</sup> edn. (London, 1968), pp.480, 512

<sup>47</sup> See p. 176-7.

<sup>48</sup> Martin Daunton, *Progress and Poverty: An Economic and Social History of Britain 1700-1850* (Oxford, 1995), pp. 395-6,

<sup>49</sup> *NG*, 16 March 1852.

<sup>50</sup> *NG*, 21 Sept 1854, 22 March 1855.

<sup>51</sup> *NG*, 18 Dec 1856; *DM*, 17 Sept 1856.

poached predominantly by either day or night. Hawker did both, as did some other poachers found in this study.<sup>52</sup>

Where it has proved possible to establish family details of poachers from census returns, examples emerge which illustrate family situations with dependent children. Job Kirk, who was twice convicted of poaching and imprisoned at Southwell, Nottinghamshire, between 1833-36, was one of two possible men of that name and approximate age. He was either Job Kirk, living in Greasley, who in 1851 was aged 37 and had a wife and four children aged 15, 13, 7 and 3; by the time of the 1861 census he had another child who had been born in 1853. Or he was Job Kirk, aged 39, living in Kimberley with his wife aged 32 and children Hannah aged 13 who was a glove stitcher, Thomas aged 12 a coal miner, Ann aged 10 a glove stitcher, Joseph aged 9, Jane aged 5, Patience aged 3 and Christiannah, aged 11 months. Job Kirk's two known convictions for poaching are not likely to have been the total of his poaching activity because most summary poaching convictions remain unknown, but he never appeared at Quarter Sessions or Assizes.<sup>53</sup> Another poacher, George Robinson, was in prison for poaching for three months between 1833-6, which would have been night poaching. In 1851 he was accused, but not convicted, of being involved in the Rufford affray of that year. In 1854 he was convicted at the Assizes of taking part in the Nuthall Temple affray of September 1853 and was sentenced to 14 years transportation. In 1851 Robinson was aged 35 and was a framework knitter, living in Bulwell with his wife and children Ann, 11, a glove stitcher, Samuel aged 9, Thomas aged 7, Mary aged 2 and Helen aged 2 months.<sup>54</sup>

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<sup>52</sup> See pp. 238.

<sup>53</sup> *Game Laws Return 1836(179)*; Census, 1851, 1861.

<sup>54</sup> *Game Laws Return 1836(179)*; Census 1851, Ancestry; *Criminal Registers*, Nottinghamshire, 1854; *NG*, 13 Oct 1851,

## Non-payment of Poaching Fines

Further evidence of poverty amongst those who poached in the East Midlands can be found in some of the *Game Laws Returns* which show the fines that were levied for day poaching, and whether they were paid or the offender imprisoned in default. *Game Laws Returns 1846(712)*, *1849(440)*, and *1864(9)*, make it clear how little money some poachers had. Table 4.1 gives the percentage of summarily convicted poachers in each county who paid their fines, for three periods between 1844-62. These were all convictions for day poaching.

Table 4.1. Percentage of poachers in each county who paid their fines.

	Derbyshire	Leicestershire	Nottinghamshire
<b>Return 1846(712)</b>	5%	54%	20%
<b>Return 1849(440)</b>	56%	50%	49%
<b>Return 1864(9)</b>	12%	64%	51%

*Returns 1846(712)* and *1849(440)* each cover a period of two years and *Return 1864(9)* covers a period of five years. On average 37.5% of fines were paid, with variations between counties and over years. Evidence from newspaper reports shows that offenders were allowed a week to pay, from the date of conviction, so they had time to go around friends and relatives trying to raise the money, or to pawn possessions.<sup>55</sup> Fines ranged from 3d to £5, but were most often in the region of £1 to £2. There could be extra amounts, which were not always recorded, of additional costs; these could range from a few shillings to over £1. The very low percentage for

<sup>55</sup> *NG*, 16 June 1865; *DM*, 27 Nov 1861.

Derbyshire in *Return 1846(712)*, has been noted, but the reason for it is not known.

The fines which offenders were unable to pay ranged from one shilling to the maximum fine of £5. Most of those who were fined £5 could not pay it. Twelve offenders were unable to pay even one shilling; many could not pay 10 shillings. Fines of over £2 were more often unpaid than paid.

Magistrates imposed some extremely low fines – on several occasions in Leicestershire fines of 6d were imposed, and once a fine of 3d; these were paid. Many men were imprisoned for being unable to pay amounts of between £1 and £2. This was, of course, far more than average working-class weekly earnings, which could have been as low as 5 shillings but were more likely to be around 10 shillings a week. The inability to pay even one shilling is highly indicative of poverty. This is assuming, of course, that those who did not pay were doing so due to inability to raise the sum, not because they preferred to take a prison sentence. The sentences imposed in default ranged from two weeks to two months.

It seems unlikely that any poacher who could afford the fine would choose not to pay it and take imprisonment in preference. There remains the possibility that a few did, but the evidence is that imprisonment was not regarded lightly. James Hawker, a reasonably tough man for his period, by his account of his escapades in the militia and poaching, was embittered by his only prison sentence and did not take it lightly:

There is no man in England been in more Dangerous scrapes than me. Yet the only time I have Been in Prison was Not for Poaching but for getting a Poor Old widow woman a Bundle of Sticks as she had no coal.... But they still sent me to Leicester Gaol for seven Days. They just

thought it was time I was there. Since then I have poached with more Bitterness against the Class. If I am able, I Will Poach Till I Die.<sup>56</sup>

Rolfe, the Norfolk poacher, did not take his first imprisonment lightly either. When he was a lad he was convicted of poaching rabbits and sent for one month of hard labour in Norwich Castle. He wrote with bitterness of how he had to tread the wheel and pick 'okum', and was dressed in clothes covered in arrows with his number on them.<sup>57</sup>

Further evidence of the seriousness of imprisonment for working-class men, is provided by the Reverend William Brooke Stevens, the incumbent of St Mary's Church, Sutton-in-Ashfield. Reverend Stevens spoke out in defence of several men wrongly convicted in Nottinghamshire, in 1858, and publicly accused a gamekeeper of deliberately falsely identifying several men. He was taken to court by the gamekeeper, accused of slander. The gamekeeper lost the case and Stevens was exonerated. In his evidence the clergyman, to demonstrate the serious consequences of imprisonment, said that one of the men wrongly imprisoned had died in prison, leaving a widow with three children, and that the rest of the wives and children were 'on the parish'.<sup>58</sup>

So imprisonment was no soft option for poachers and their families; apart from any suffering endured by the prisoner, removing their main bread winner for even a few weeks could have dire consequences for wives and children who were dependent each week on money coming in, with no

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<sup>56</sup> Christian, *James Hawker*, p. 20.

<sup>57</sup> Lillas Rider Haggard (ed.), *I Walked by Night: Being the Life and History of the King of the Norfolk Poachers* (Ipswich, 1974), pp.32, 40-2.

<sup>58</sup> *NG*, 7 March 1861; see pp. 43, 159. The newspaper incorrectly spelled the clergyman's surname as Stephens.

savings to fall back on. Whilst it is not impossible that there may have occasionally been men who took a short sentence lightly, especially if it was not hard labour, it seems that most poachers would pay a fine if they possibly could, and thus failure to pay a fine was an indication of inability to pay.

### **Women and Children and Poaching**

The informal economy was essential to the survival of poor labouring families in the nineteenth century, and women were the central figures in organising this. Washing and sewing, taking in lodgers, and a variety of homeworking pursuits, as well as gleaning and collecting fuel and food from wastes and commons (where this was available) were essential supplements to family income. The assistance of children was expected in this economy. In addition, the poor were often driven to regarding activities such as theft, receiving and selling stolen goods, gaining relief and charity under false pretences, embezzlement and prostitution, as a means of earning a living.<sup>59</sup> To this list can be added poaching, and assisting in poaching.

The involvement of women and children in assisting poachers is well documented, and several examples have been found in the East Midlands. Eliza Collis and Rebecca Rooke, both married women, were charged with being in possession of game unlawfully obtained at Market Harborough, Leicestershire in January 1865. Collis's husband was a known poacher, and at 11am one morning they had been seen by a policeman walking towards

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<sup>59</sup> Nicola Verdon, *Rural Women Workers in 19<sup>th</sup>-Century England: Gender, Work and Wages* (Woodbridge, 2002), pp. 168-9,174-9.

their homes carrying seven rabbits.<sup>60</sup> In 1866, PC Millington of Litchurch, Derby, stopped a horse and cart driven by a boy accompanied by a woman named Callaghan, which was found to contain 23 rabbits and 7 hares, all 'wet and warm'.<sup>61</sup> Fanny Hill, aged 13, and Mary Jane Broughton, aged 14, were found to be in unlawful possession of seven rabbits in July 1884, which they were bringing home; Mary Jane was the daughter of a known poacher.<sup>62</sup> There were women who actually poached; they were uncommon and formed a tiny proportion of the total of people who were prosecuted. Hannah Rushton snared hares, with great skill and success, in southern Derbyshire, over a period of many months before she was caught.<sup>63</sup>

Female poachers figure occasionally in the only *Game Laws Return* which gives the gender of the offender.<sup>64</sup> Since only a small proportion of poaching was prosecuted, these few women poachers signify a greater number who were actually poaching, but this would still be a small proportion of the whole. *Game Laws Return 1830-1(144)* requested the authorities to give the number of convictions against the game laws divided into male and female offenders. Most of the authorities either replied that they could not supply this information as they had not been given it by the Magistrates, or simply did not give any women offenders. But several counties sent in a return giving the number of males and females. See table 4.2.

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<sup>60</sup> *LC*, 21 Jan 1865.

<sup>61</sup> *DM*, 31 Jan 1866.

<sup>62</sup> *NG*, 18 July 1884.

<sup>63</sup> *DM*, 27.3.1861.

<sup>64</sup> *Game Laws Return 1830-1(144)*

Table 4.2. Numbers of men and women convicted of poaching, 1827-30.<sup>65</sup>

County	Year	Men	Women
Gloucestershire	1827	21	1
	1830	36	1
Hampshire	1829	119	2
Norfolk	1829	48	1
Nottinghamshire	1827	116	1
	1829	161	1
Shropshire	1830	61	1
Wiltshire	1827	74	1
Yorkshire, North Riding	1828	31	1

A recent contributor to the *Shooting Times and Country Magazine* wrote that there were many women poachers in the eighteenth and nineteenth centuries. They were considered an irritation by gamekeepers because it was difficult to search suspected female poachers in case accusations of molestation were made; eggs in particular, but rabbits as well, could easily be concealed in special pouches or on belts, fixed below a skirt. Moreover, women were prosecuted less often than men because of embarrassment on the part of the authorities at seeing 'the fairer sex' in court, particularly if they were elderly, or had a large family to bring up.<sup>66</sup>

Rolfe, in Norfolk, poached with his first wife, and has made it clear that she was as active as he was in the actual poaching and as adept in running, jumping and netting. She had a poaching dog of her own, a cross between a collie and a greyhound. She poached with him before and after they were married, but had to give up night poaching when she was pregnant

<sup>65</sup> *Game Laws Return 1830-1(144)*.

<sup>66</sup> David Jones, 'Lady Poachers of the Past', *Shooting Times & Country Magazine*, 19 Nov 2014, pp. 18-19. This author is not the same person as David Jones, the historian.

because she was not so agile; she died giving birth, and there is no mention of his second wife poaching with him.<sup>67</sup>

### **Poverty after the 1870s**

The graph, earlier in this chapter, shows how wages rose and poaching convictions fell from the late 1870s.<sup>68</sup> But poaching did not cease then, and poverty was not eliminated. Jones said that, although in some areas the main battle against organised poaching had been won by this point, it nevertheless remained a fluid situation, and a local return of serious poverty could cause an upsurge in poaching.<sup>69</sup> Jones noted that in some communities in the 1890s, the differentiation between the 'respectable' poor and the 'rough' poor was marked, and poaching may have been confined to the latter.<sup>70</sup> Archer has agreed that though some villagers were affected by 'pseudo-paternalistic methods of social control', such as allotments, harvest homes, charity and village societies, not all were amenable, and within some communities there were divisions between 'respectable' and 'rough' elements.<sup>71</sup> This need not have been the case in all villages, and certainly Hawker, though continuing to be a poacher, was also a respectable member of his local community in Oadby, Leicestershire. He was on the school board for six years, though some gentlemen were not happy with him being there, since he was a poacher. Interestingly, whilst on the Board he made the acquaintance of a local gentleman who gave him permission to shoot on his land; this, Hawker found, took all the pleasure out of it, and he seldom availed himself of the right.<sup>72</sup>

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<sup>67</sup> Haggard, *I Walked*, pp. 49, 51, 57-8.

<sup>68</sup> See p. 130.

<sup>69</sup> Jones, *Crime, Protest*, p.68.

<sup>70</sup> Jones, *Crime, Protest*, p.84.

<sup>71</sup> Archer, *Flash and Scare*, p.171.

<sup>72</sup> Christian, *James Hawker*, pp. 94-5.

Some serious poverty, as well as much relative poverty, continued to be present for working people after the 1870s. Caird published some data on wages later in the nineteenth century, but this later volume was not so focussed on agricultural wages as the 1851 one. Although Caird claimed in it that wages had risen since 1851 by about 60%, he did not differentiate between regions of the country, merely saying that by 1878 the average agricultural labourer's wage in England was 14 shillings.<sup>73</sup>

Other data on agricultural wages later in the century reveals a similar situation, comparing different parts of the country, to that in 1851. Whilst wages have risen overall, until the end of the century agricultural wages in the East Midlands (though higher than in most of the southern counties) continued to be below those in Cumberland, Durham, Lancashire, Northumberland, Westmorland, and the North and West Ridings of Yorkshire.<sup>74</sup> Though framework knitting was industrialised during the second half of the nineteenth century, some non-powered domestic framework knitters continued to exist until the end of the century, and remained poorly paid and at risk of underemployment. The full resources of the area's coalfields were not exploited until the 1870s onwards, and with this the full industrialisation of the area was completed. But even while this development was taking place, there were still many who were unable to earn sufficient for their needs.

In January 1887, the Reverend A. McKenna of St Mary's, Derby, wrote to the *Derby Mercury* about the struggles of families of labourers over the

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<sup>73</sup> James Caird, *The Landed Interest and the Supply of Food* (London, 1878), pp. 31, 64, 157.

<sup>74</sup> E. J. T. Collins, (ed.), *The Agrarian History of England and Wales, Vol. 7, part 2* (Cambridge, 2000), Table 42.2, pp. 2000-1.

winter, saying that farm labourers around Derby had had little work for five or six weeks, and were in need of charity to get through the winter. 'Their meals are scanty and their fires are small and wretched looking', he said; they needed help to pull through the next two to three weeks to save families from the 'sickness and the ills that poverty brings with it. The soup kitchen and dinners for poor children will help'. He appealed for contributions to this charity.<sup>75</sup>

Certain areas of the country had employment practices which are considered to have been beneficial for farm labourers, in that workers were hired by the year or half year, and were often accommodated by the employer. Howkins has looked into the living and hiring arrangements of farm labourers in the nineteenth century, and found that there was a mixed picture in the East Midlands, with some labourers living-in and hired by the year or half year, and some employed as day labour.<sup>76</sup> Whatever the exact circumstances of their employment, it is clear that the labourers referred to by Reverend McKenna did not have secure work or income over the winter. At Ticknall in November 1886, out of a group of 12 or more poachers, 11 were taken to court; three were colliers aged 35, 39 and 61; one was a 26 year old joiner; the rest were all labourers, aged 24, 26, 38, 39, 41 and 47.<sup>77</sup> This was the same winter as that in which the Reverend McKenna wrote his letter to the *Derby Mercury* about the hardships of farm labourers.

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<sup>75</sup> *DM*, 26 Jan 1887.

<sup>76</sup> Alun Howkins, 'The English Farm Labourer in the Nineteenth Century: Farm, Family and Community', in Brian Short (ed.), *The English Rural Community: Image and Analysis* (Cambridge, 1992), pp.87-91, 96.

<sup>77</sup> *DM*, 10 Nov 1886, 17 Feb 1887.

In March 1886 Harry Hill was convicted of being one of three men taking a hare at Spondon near Derby; he told the farmer who caught him that he was sorry, but their families were starving.<sup>78</sup> Also in 1886, William Barrowdale of Loughborough said he was out of work and needed food for his wife and children.<sup>79</sup> Of course, throughout the period, there were poachers who were not desperately poor. But even when they were not at the extreme end of the poverty scale, when they had some work and could get by, they were still members of a class that was, comparatively, always poor.

There may be some exceptions to the general rule of the poverty of poachers which is being argued here. In 1865 two Leicester beerhouse keepers and an associate were found shooting pheasants in Evington, Leicestershire; they had a fly standing by to carry off their haul.<sup>80</sup> A beerhouse would have been an excellent venue for the distribution of game, and this could be viewed as a purely commercial enterprise not motivated by any degree of poverty.<sup>81</sup>

Another such instance could be the poachers, in Leicestershire, remembered by Hawker at the end of his biography:

I was sitting in Gorse Lane one morning some ten years ago [in the 1890s] before it was light. I was waiting for anything with my gun. Two Policemen, a Farmer and Keeper came by me at Peep of Day

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<sup>78</sup> *DM*, 5 May 1886.

<sup>79</sup> *LC*, 11 Sept 1886.

<sup>80</sup> A fly was a light, covered carriage, usually drawn by only one horse, and frequently let out on hire.

<sup>81</sup> *LC*, 25 Nov 1865.

carrying Long Nets and Rabitts [sic]. They had been out most of the night...<sup>82</sup>

But even these men, beerhouse keepers, police constables, gamekeepers, and small tenant farmers, may have had an element of relative poverty in their motivation. The extra meat or income may have been a welcome addition to a frugal household economy.

Richard Heath captioned the photograph below: 'John Brinkworth, a hedger and ditcher of King's Stanley, Gloucestershire.' The photograph dates from the late nineteenth century and was taken when Brinkworth was aged 81.

Fig. 4.2. An old working man in the late nineteenth century.<sup>83</sup>



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<sup>82</sup> Christian, *James Hawker*, p.114.

<sup>83</sup> Richard Heath, *The Victorian Peasant* (Gloucester 1989), p. 186.

Retirement was no more of a possibility for any of the working class, not just labourers. Life expectancy was lower than it is now and few survived to old age, but if they did they faced consistently:

...the lack of security that had beset their younger lives from time to time....Even the most skilled and prosperous labouring man rarely enjoyed prolonged security....and at the end of their days they were likely to be preoccupied with the increasing practical difficulties which beset all working men as their strength declined and their families dispersed.<sup>84</sup>

The working class existed in situations where, even if they had sufficient of the essentials of life when times were good, it took little to reduce them to levels of inadequacy in food and other essentials. The better off sections of the working class, above the poorest paid workers, could quite easily be pulled down to the same level by unavoidable misfortune – such as sickness, accident, or the fluctuations of trade or agricultural cycles.<sup>85</sup>

### **Poaching as a Social Crime**

The fact that poverty, of varying degrees, was widespread in the working class throughout the nineteenth century, is one of the reasons that some poaching can be regarded as social crime. The other reason is that many people did not consider wild, or partially wild, animals to be the property of person on whose land they were found. They felt that stealing game was significantly different to other property crime; in this way they did not accept the game laws.

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<sup>84</sup> Vincent, *Bread, Knowledge*, p. 199.

<sup>85</sup> Burnett, *Plenty and Want*, p. 197.

There is variation in exactly what different historians have deemed to constitute social crime, but a common thread is that a social crime is one which the perpetrator, and some others from the same social group, class or community, do not consider to be morally wrong. Fisher said, of poaching in the late nineteenth century, 'Outside the privileged few, virtually the entire community were willing to take game illegally or connive at its taking...Poaching was thus ubiquitous and not regarded as a normal crime'.<sup>86</sup> Sharpe said that the poacher's claim to candidacy as a social criminal was that: 'He asserted a set of attitudes...at variance with that of his social superiors'.<sup>87</sup> This set of attitudes was that the poacher did not accept the game laws, and at the root of this non-compliance was the belief that wild animals were God's gift and everyone's property.<sup>88</sup> Even Munsche has accepted that there was a consensus among the lower classes that game was the property of anyone who could take it.<sup>89</sup> Archer has said that poachers and their peers did not regard poaching as wrong, and at the root of this was the belief that game should be there for everyone, because it said so in the Bible.<sup>90</sup>

There are caveats as to whether all types of poaching should be included in the category of social crime. For example, Jones said that distinctions were made between poaching reared pheasants and taking wild rabbits, and that some poachers prided themselves on only taking wild animals from outside preserves because they felt that this was not wrong, but that taking the

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<sup>86</sup> John Fisher, 'Property Rights in Pheasants: Landlords, Farmers and the Game Laws, 1860-1880', *Rural History*, 11, 2 (2000), pp.166-7.

<sup>87</sup> J. S. Sharpe, *Crime in Early Modern England 1150-1750*, 2<sup>nd</sup> ed. (Harlow, 1999), p.181.

<sup>88</sup> Jones, *Crime, Protest*, p. 15; Archer, *Flash and Scare*, p. 148.

<sup>89</sup> Munsche, *Gentlemen and Poachers*, p. 64.

<sup>90</sup> Archer, *Flash and Scare*, p.3.

artificially reared pheasants would have been different.<sup>91</sup> It is not impossible that one of the reasons that ground game was the most poached type of game in the three counties, was that some poachers felt similarly; but there is no evidence on this. Although Archer considered that many poachers were social criminals, he found that in Lancashire, though there were poachers who were regarded as social criminals, the gangs of violent poachers from the urban areas were not; on the contrary, they contributed to the public belief in the existence of a dangerous criminal class.<sup>92</sup>

Overall, it can be said that an accepted criterion for social crime was that the offender, and at least a section of the society from which he came, did not accept the law which prohibited the offence, and did not consider the offence to be real crime or to be morally wrong. But care must be taken in drawing broad conclusions about what does and does not constitute social crime, because different communities had different mores, and certain types of poaching may have been condoned whilst others were not. Operating in gangs, night poaching, poaching for the black market, poaching animals which were not really wild, and poaching done by men who were not poor, are possible reasons for not regarding poaching as social crime, both on the part of contemporaries and by historians.

In the East Midlands, it is clear that people sympathised with many poachers, and did not regard poaching as a crime in the same sense as they did other property crime. But it is also clear that there were some differences in attitude, and many of these hinged on the perceived economic status of the poacher. In March 1851 the *Nottinghamshire*

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<sup>91</sup> Jones, *Crime, Protest*, p.71.

<sup>92</sup> Archer, 'Reckless Spirit', pp. 170-1.

*Guardian* published an editorial railing against those who had expressed sympathy with poachers in the wake of a serious night poaching affray at Scarcliffe Park in Derbyshire. The paper acknowledged that it was said by some that 'poaching itself is not generally regarded as a crime', but went on to say that, 'It is not the poor man who perchance is starving that joins a gang of night poachers'.<sup>93</sup> This statement makes it clear that the paper did not consider that members of night poaching gangs were poor men, and that it strongly disapproved of such men. It implies that poor poachers, who were not in gangs, would be regarded differently.

Group night poaching was regarded as being different to other types of poaching. The Assize Judge at the trial of some poachers for an affray at Annesley, Nottinghamshire, in 1857, drew attention to night poaching as distinct from general poaching when he said, 'This crime of night poaching is one of great magnitude, and has reached a height in the county which is quite alarming'.<sup>94</sup> In 1891 the Judge at the Derbyshire winter Assizes said that the poaching situation was very serious in mining counties; 'It was not like one man going out to get a few rabbits, but organised groups who did not seem to care if keepers were wounded or killed'.<sup>95</sup> The implication is that one man getting a few rabbits was relatively acceptable.

The *Nottinghamshire Guardian*, in 1851, published a humorous piece which demonstrated an indulgent attitude towards some poachers. The tale was published of an 'old offender' who escaped from the police, who were about to enter his house on a Sunday, by making a hole in his 'chamber ceiling', scrambling through the attics of the attached terraced houses, then making

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<sup>93</sup> *NG*, 27 March 1851.

<sup>94</sup> *NG*, 18 March 1858.

<sup>95</sup> *DM*, 16 Dec 1891.

a hole in the ceiling of the end house and escaping. The occupier of the end house, charged by the police with abetting this escape, was reported to have said that he granted the poacher permission to descend because, 'he was commanded to do good on the Sabbath-day, and he would'. The poacher, Sampson Briddon, had been seen poaching and a summons had been taken out against him. Briddon was referred to as 'Sampo', and the whole tone of the piece was heavily patronising as well as humorous.<sup>96</sup> The significance of this article lies not in the dubious truth of it, but in the fact that the *Nottinghamshire Guardian* considered it a subject for humour and that its readers were likely to find it humorous as well.

The *Derby Mercury* also deemed poaching a suitable subject for amusement, on occasion. It printed an unlikely tale in 1866, about two separate pairs of night poachers who set out hunting near Crich in Derbyshire, and came across each other. Each pair assumed the others to be keepers, and they fought. Only in the morning did they discover that one pair were the uncles of the other pair. The tone of the piece was, again, humorous and patronising.<sup>97</sup>

Hawker provided an example of how attitudes to the poacher varied, even amongst his own class. On one occasion, while he was being chased by a keeper, he diverted and hid in an empty pig sty. But he had been seen doing so by an old woman, who told the keeper where he was. He was caught and taken to the head keeper's cottage. The police were sent for and they began to escort Hawker on foot towards the local lock-up. On the road, Hawker escaped and ran off. During the ensuing chase, he was supported and encouraged by two working men whom he passed, but later

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<sup>96</sup> *NG*, 16 Oct 1851.

<sup>97</sup> *DM*, 5 Oct 1866.

he was betrayed by three other men, who had seen him return to where he had hidden his gun and informed the police.<sup>98</sup>

Some communities were even supportive of violent, gang, night poaching. After the Assize trial of the gang of poachers involved in a night poaching affray at Thieves Wood near Mansfield in 1858, the *Nottinghamshire Guardian* reported that a crowd of over 200 waited at Sutton-in-Ashfield railway station to hear news of the verdicts and sentences. When those waiting heard that most of the poachers had got 18 months imprisonment, 'the screams of the women and the indignation of the men were terrible to hear'. Wives and families were amongst them, and such long sentences were not expected. It was after this event that the Reverend William Brooke Stevens, of St Mary's, Sutton-in-Ashfield, spoke out against the chief witness and was subsequently cleared of slander. The local community must have united behind the clergyman in this major civil trial at the county Assizes, at which, in Stevens's defence, two men admitted in court that they had been present at the affray but had not been accused, and five of the convicted men protested their innocence.<sup>99</sup>

Poaching was regarded as a normal part of rural life and the poacher was an accepted figure. Even if they were not actually involved, most people turned a blind eye. Prices for poached game at Retford market in 1861 were openly advertised: a brace of partridges would be 2s 6d to 2s 9d, or '6d less from poachers'; hares, 3s each, also '6d less from poachers'.<sup>100</sup> In

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<sup>98</sup> Christian, *James Hawker*, pp. 31-5.

<sup>99</sup> *NG*, 19 Aug 1858, 28 Oct 1858, 7 March 1861; see pp. 43, 145. St Mary's Church, Sutton-in-Ashfield, has a stone pulpit in memory of Rev. Stevens. It is inscribed, 'This pulpit is erected by friends and parishioners in memory of William Brooke Stevens, incumbent of this parish, who died Oct 22, 1866 aged 54 years'. Such an expensive memorial suggests that Rev. Stevens was greatly appreciated.

<sup>100</sup> *DM*, 18 Oct 1867.

an Assize trial of body stealers in 1827, a book keeper gave evidence that he had seen a man loading containers onto a coach and had said to the man, 'You have been making a good haul there my friend,' assuming that he was a poacher and that the containers had game in them. Had the man suspected that the containers held human bodies, as they did, his attitude would have doubtless been very different.<sup>101</sup> When landlord John Gilbert of Derby was being prosecuted for opening his public house at 10.40am on a Sunday, a witness to the offence stated that the premises had indeed been open because inside and drinking were 'three poachers and a woman'. No comment was reported about the presence of the poachers – they were just a normal fact of life.<sup>102</sup>

Hawker's observation of policemen, a gamekeeper and a farmer being out poaching with long nets for rabbits in the 1890s supports the contention that poaching was still, then, not regarded as being real crime.<sup>103</sup> If Hawker knew they poached and had seen them, then other villagers knew too. These people would not have indulged in a little burglary or robbery and been happy to risk being seen. This perception of poaching applies to this day: during the course of this research the writer has come across three men who have admitted to being old poachers, and well known as such today, with no noticeable disapprobation being voiced. Again, this would not apply had they been old burglars or robbers – but of course, they would not have admitted to such.

Along with the belief that wild animals were there for all men and the game laws were unjust, the poverty of the poacher and the fact that he was

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<sup>101</sup> *LC*, 27 Jan 1827.

<sup>102</sup> *DM*, 18 Oct 1867.

<sup>103</sup> See p. 152-3.

poaching for himself were the factors most likely to make contemporaries believe that what he was doing was not morally wrong and to make historians consider it to be social crime. The widespread knowledge that poverty was prevalent and the belief that it was a motivation for poaching, was significant in this classification. The occupations of the vast majority of poachers reveal them to be members of a class who were always relatively, and sometimes extremely, poor; this fact was appreciated by everyone.

But it is important that it was not *just* the poverty that made much poaching a social crime; after all, acts of wood stealing, crop and vegetable stealing, were committed for reasons of poverty, and Howkins has classified these activities as economic crime (as he did poaching).<sup>104</sup> When the poor stole vegetables they may have been looked upon with some understanding due to their plight, but it was not exactly the same as poaching. What made poaching different was the belief that the game laws were wrong. The fact that some game was purchased (as eggs) and nurtured (like crops), and many rabbits came from warrens which were protected and farmed, did not alter this perception. Jones's report that some poachers prided themselves on only poaching ground game which was regarded as more wild, and did not poach the artificially reared game birds, is interesting on this score.<sup>105</sup>

It may be that some poachers became comfortably off, for their class, as a result of their illegal activity, especially if they poached regularly or were part of a night poaching gang. But had they returned to depending solely on whatever their occupation or trade was, they would have been reduced to the standard financial situation of their class. As Hay said, most of the

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<sup>104</sup> Howkins, 'Economic Crime'.

<sup>105</sup> See p. 155-6.

poachers of Cannock Chase were poor just because that was the standard condition of most Englishmen at time.<sup>106</sup> In the nineteenth century, as well, most poachers were poor, and if they were not it was only because they poached.

## **Conclusion**

Though historians disagree about the extent to which poaching was a response to poverty, all are willing to admit that it was sometimes a motivation. The evidence from this chapter is that poverty was a motivation for virtually all poaching, with only rare exceptions; a conclusion which is shared by Howkins (regarding Oxfordshire) and Shakesheff (regarding Herefordshire). The fall of poaching convictions against the rise of wages is a powerful argument for a connection between poaching and economic wellbeing.

Because there was more extensive poverty up to the 1870s, there was more poaching in this period. However, the reduced rates of poaching later in the century do not negate the link with poverty; as wages went up, poaching conviction rates went down, but poverty was far from eliminated. Throughout the period the occupations of the poachers in the East Midlands were predominantly those which were among the poorest, and many were at points in their life cycles where they were likely to have had dependent children as well. Wives and children frequently assisted in the collection and distribution of the catch, just as they contributed to the household economy through legitimate occupations, and to the informal economy of the family. There was little security in the lives of the working poor; in

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<sup>106</sup> Hay, 'Cannock Chase', p. 200.

times of distress they could only fall back on help from their wider family or friends and neighbours, and ultimately, the workhouse. Even when they were not in extreme poverty, poachers were, relative to people above them in the social scale, ill fed and poor.

Social crime was crime which part of the community, at least, did not regard as being morally wrong, and poaching is an activity which is often categorised as social crime by historians. In the East Midlands, a poor man going out to poach ground game was not regarded as a real criminal by most of the population, even by many of those in authority; a man perceived to be poor and a poacher, but not involved with a gang or with violent night poaching, was a social criminal. There was an appreciation of the difficulties of earning enough legitimately and the significant difference which poaching could make to the family economy. However, how poor was poor enough to justify the label of social crime is a moot point, and one which probably varied depending on the observer. Poaching which was considered to be commercial seems to have been regarded as not driven by poverty. Opinion also divided on other types of poaching. However, some working people from the poachers' own communities also condoned organised and violent night poaching.

## Chapter 5 Affrays and the Forces of the Law

This chapter examines the poaching war on the land in the East Midlands. This includes the whole range of behaviour associated with night poaching affrays: what led up to them, how were they conducted, what resulted from them; what is known about the men involved, how violent they were; and how the law and the authorities attempted to prevent and control night poaching. Whenever possible, this is compared with nineteenth-century Lancashire.<sup>1</sup> Archer found that night poaching in Lancashire presented a significantly different picture from that found in the eastern and southern counties of England. By examining events in the East Midlands in comparison with Lancashire, the contrasts between these two areas are linked to differences in those who were doing the poaching, sport, and the regional environment.

### Night Poaching Affrays, Reporting and Frequency

Newspapers were so keen to report affrays that they reported them from all over the country. For example, between 18 January and 8 March 1862, the *Leicester Chronicle* reported on affrays in Northumberland, Yorkshire, Galloway, Cumberland and Oxfordshire. Between 3 January 1856 and December 1856, the *Nottinghamshire Guardian* reported ten affrays in counties other than Derbyshire, Nottinghamshire and Leicestershire. So, it is clear the newspapers would report any affray which they knew of in their own counties.

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<sup>1</sup> Comparisons can only be made when Archer has made equivalent evidence available in his work on poaching in Lancashire. John E. Archer, 'A Reckless Spirit of Enterprise: Game Preserving and Poaching in Nineteenth Century Lancashire', in David W. Howell and Kenneth O. Morgan (eds.), *Crime, Protest and Police in Modern Britain* (Cardiff, 1999), and 'Poaching Gangs and Violence: The Rural-Urban Divide in Nineteenth Century Lancashire', *British Journal of Criminology*, 39 (1999).

When a poaching affray had just occurred and was reported as a news item, details were usually few; sometimes no poachers were ever caught and that would be the end of the affair as far as the press was concerned. If it was a serious affray and no-one had been recognised or apprehended, then rewards were sometimes offered for information. If offenders were caught, the initial report of the affray as news was followed by reports, in later weeks, from summary courts where the poachers were either found guilty or not guilty, or arraigned and sent for trial at Quarter Sessions or Assizes. For example, from the *Nottinghamshire Guardian* in September 1853, under the heading of 'Desperate Affray with Poachers', the paper reported that, at Blidworth on the night of 28 August, 1853, seven keepers and watchers employed by Mr Hardcastle were involved in a fight with 30-40 poachers. In the fight the son of the head gamekeeper was badly hurt. The keepers were unable to catch any of the poachers, 'as generally happens in these nocturnal affrays', but several prisoners had been taken into custody who had not yet been identified.<sup>2</sup> No further reports followed about this so it is probable that no-one was convicted.

A good example of an event where the first news reports were followed by many later reports, is the affray at Pistern Hills near Calke Abbey, Derbyshire, in 1857. On 15 January, the *Nottinghamshire Guardian* reported that there had been a serious poaching affray on the night of 12 January. Seven keepers saw two poachers setting snares and approached them. Then 15 more poachers appeared and all 17 attacked the keepers. The poachers all got away, leaving three keepers injured. From the number of protagonists involved and the degree of the injuries, this rated as a serious affray, and hand bills were printed saying that a £100 reward was

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<sup>2</sup> *NG*, 1 Sept 1853.

offered for information leading to the apprehension of any of the poachers.<sup>3</sup> The *Nottinghamshire Guardian*, *Derby Mercury* and *Leicester Chronicle* all reported over subsequent weeks and months on the progress of this affair, from the arrest of several poachers, through their appearances at Petty Sessions, to their final appearances at the March Assizes. Usually, in such cases, some details emerged from Petty Sessions, such as the names those arrested, their occupations, where they lived, and sometimes other details such as what type of dogs they had with them, their clothing and appearance.<sup>4</sup> In this case the prisoners were committed to the Derbyshire March Assizes where the four men accused were all found not guilty of assaulting a keeper, but all except one were found guilty of armed night poaching and sentenced to 12 months imprisonment.<sup>5</sup>

The legal aftermath of some of the most notorious affrays was often protracted, with progress being reported by the local newspapers over a period of many months. The most common cause of repeated appearances at Petty Sessions was either that matters were delayed because the injuries of poachers or keepers made it impossible for them to appear in court, or that investigations were still going on. In the case of the Rufford poaching affray of October 1851, the *Nottinghamshire Guardian* first reported the event on 16 October, the event having taken place on the night of 13 October. The newspaper subsequently carried reports in five more editions as the accused came before magistrates, a few more men having been apprehended each time. Watcher William Roberts had been killed, so there was also a report from the inquest. Gamekeeper Charlesworth was so badly injured that he was unable to give evidence for

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<sup>3</sup> *NG*, 15 Jan 1857.

<sup>4</sup> *DM*, 28 Jan 1857; *NG*, 12 Feb 1857; *LC*, 14 Feb 1857.

<sup>5</sup> *DM*, 25 March 1857.

some time, and poacher Simms was under police guard in Nottingham infirmary with a compound fracture of his arm which prevented him appearing for many weeks. The final arraignment before magistrates was reported on 20 November. The Assize trial took place the following March, 1852.<sup>6</sup>

For this study, over the period 1841-91, reports from newspapers were sampled every five years (1841, 1846, 1851, etc.). A total of 67 affrays were found to have been reported taking place in these years.<sup>7</sup> 'Affray' has been defined, for this study, as an event where at least four people were involved. This definition was settled on because, looking at other instances of the use of the term 'affray' in the newspapers of the period, it was found to be applied to fighting involving small numbers of participants, up into the 20s. It is, therefore, within the contemporary meaning of the term to consider four fighters to be a minimum size constituting a group, as opposed to less than four which falls more within the concept of 'two or three', or 'a few'. So, for example, the report of two poachers fighting with a gamekeeper and throwing him in the canal near Burton-on-Trent has not been counted as an affray.<sup>8</sup> These 67 affrays do not include events where keepers appeared and poachers fled, or vice-versa; there has to have been evidence of blows having been exchanged or missiles thrown.

From table 5.1 it can be seen that Leicestershire had fewer than half the number of affrays that the other two counties had.<sup>9</sup> The 1850s were the

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<sup>6</sup> *NG*, 16, 23,30, Oct 1851; 6, 13, 20 Nov 1851. There were many affrays on the Rufford estate in Nottinghamshire, but this October 1851 affray is the most famous. It is well known in Nottinghamshire and there is a plaque about it on the wall in the ruin of Rufford Abbey. See also pp. 139, 173, 193-4, 228, 249, 252-3.

<sup>7</sup> More than 67 affrays are known of in the three counties in this period, some of them outside the years of 1841, 1846, 1851, 1856 etc.

<sup>8</sup> *DM*, 20 May 1891.

<sup>9</sup> P. 168.

period when there appears to have been most activity in Nottinghamshire; the 1860s look like the most active period in Leicestershire; and the 1880s in Derbyshire. Leicestershire, though with fewer affrays, had its own peak in the early 1860s. However, the sampling being every five years, it is not possible to be certain of these patterns; had the intervening years been filled in it could have looked very different.

Table 5.1. Group affrays reported by newspapers every five years 1841-1891.

<b>Year</b>	<b>Derbyshire</b>	<b>Leicestershire</b>	<b>Nottinghamshire</b>	<b>Total</b>
<b>1841</b>	2	0	1	3
<b>1846</b>	3	1	0	4
<b>1851</b>	0	0	4	4
<b>1856</b>	0	0	5	5
<b>1861</b>	1	4	3	8
<b>1866</b>	5	2	1	8
<b>1871</b>	0	1	1	2
<b>1876</b>	2	2	2	6
<b>1881</b>	6	0	3	9
<b>1886</b>	5	1	3	9
<b>1891</b>	3	1	5	9
<b>Total</b>	27	12	28	67

Archer gathered information on 70 affrays in Lancashire, taken from 'a limited sample of years between 1824 and 1862'.<sup>10</sup> The years consulted were 1819, 1820, 1825, 1826, 1837, 1838, 1841, 1842, 1843, 1848, 1849, 1850, 1851, 1858, 1859 1860, 1861 and 1862. The research began as a random sample but many years were added because cases continued into the succeeding year.<sup>11</sup> The research was conducted before the existence of online newspapers and key word searching. There are two main significant differences between Archer's method of obtaining data and the method used in this study, which may have affected the results. The first is that Archer's data starts earlier and finishes earlier than the data

<sup>10</sup> Archer, 'Reckless Spirit', p. 156.

<sup>11</sup> Email correspondence with John Archer, 19 June 2012.

from this study, though there is an overlap range of 20 years – 1841-1861. The second is that the method employed in this chapter is objective with its five year interval; affrays are known of which occurred outside the years given, but they have not been included in the table above, though they may be referred to in other parts of this chapter. Archer's method of sometimes including consecutive years may have caused years to be included where the incidence of affrays was particularly high; conversely, this study may have missed out on some years with a high number of affrays.

In Lancashire, 70 affrays in 18 sample years gives an average of 3.9 per year. In the East Midlands, 67 affrays in 11 sample years gives an average of 6.1 per year. However, there are two considerations to take into account. The first is that Archer referred to his 70 affrays as all being 'major, bloody affrays'.<sup>12</sup> The 67 affrays in the East Midlands could not all be described as such; some involved only four or five poachers, and some fights were brief and did not result in any serious injury. On examination of the detailed descriptions of the 67 affrays, it emerged that only 34 were major events involving serious injury to at least one person and minor injury to more people, and it seems fairer to compare only these to the Lancashire sample. If these 34 are compared to the 70 serious affrays in Lancashire then the result is more similar for both areas: Lancashire averages 3.9 serious affrays per year, and the East Midlands average is 3.1 serious affrays per year.

The second consideration is the population of the two areas. The population of Lancashire in 1851 was 2.03 million, while that of the East Midlands was

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<sup>12</sup> Archer, 'Reckless Spirit', p. 156.

0.796 million.<sup>13</sup> If the average number of serious affrays per year from each area is taken, and is calculated per million head of population, the result is 1.9 affrays per year per million population for Lancashire, and 3.9 affrays per year per million population for the East Midlands. So, per head of population, the three counties had approximately twice as many serious poaching affrays as Lancashire, based on this limited data.

The figures can also be calculated on the basis of the areas of the counties. Lancashire had an area of 1.2 million acres, and the three counties had a combined area of 1.7 million acres. When this is done, Lancashire has 3.3 affrays per million acres per year, and the three counties 1.8 affrays per million acres per year.

So, on the basis of area, Lancashire had more affrays of a serious nature than the East Midlands; based on population the East Midlands had more than Lancashire. Since it is people who make affrays, the figures based on population would seem to be more relevant; the East Midlands was not as densely populated as Lancashire, and when this is taken into account and the number of affrays are viewed per head of population, there were more serious poaching affrays in the East Midlands.

### **The Location of Affrays**

Fig. 5.1 shows the locations of all the known affrays in the East Midlands from 1828-96.<sup>14</sup> There are more than 67 marked because the map includes affrays known of, but which occurred outside the sample years used in table 5.1. There will have been even more affrays than this, which have

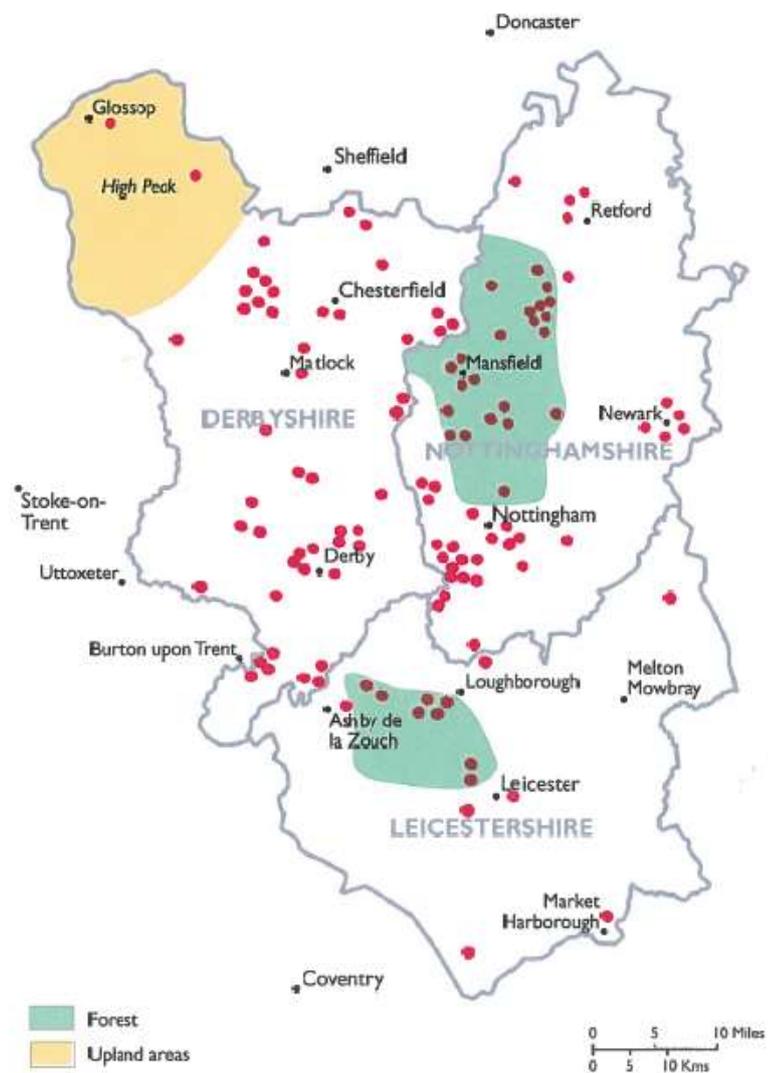
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<sup>13</sup> 1851 Census.

<sup>14</sup> See p. 171.

not been found in this study as not every year was investigated. In each county, the affrays were in the areas where there was most night poaching, which can be seen if the map is compared with the maps in Chapter 3.<sup>15</sup>

Fig. 5.1. Derbyshire, Leicestershire and Nottinghamshire, showing the location of all known affrays, 1828-96.



<sup>15</sup> See pp. 94, 97, 101.

In Derbyshire, the affrays were mainly around Derby, in the southern coalfield area, and in the central north to north west, with few in the north-east area where day poaching was very common but night poaching was not. In Nottinghamshire, there was a scattering around Newark in the east, but most were in the Sherwood Forest area, around Nottingham and over towards the border with Derbyshire. In Leicestershire, most affrays were in the Charnwood Forest area.

Archer's map of the location of affrays in Lancashire shows a similar pattern of affrays located over much of the county, but excluding the south east of Lancashire.<sup>16</sup> Archer has noted the proximity of preserves and affrays to major urban areas. Similarly, in the East Midlands, affrays were close to Leicester, Derby and Nottingham; but also close to the industrial areas of the northern Leicestershire and southern Derbyshire coalfield, forest areas and the industrial area which lay along either side of the Nottinghamshire/Derbyshire border.

From instances where the landowner is named in the report, the landowners of the three counties who suffered from the most affrays were the Earl of Chesterfield, the Dukes of Devonshire, Newcastle and Rutland, Lord Scarsdale, the incumbents of the Calke Abbey estates (the Harpur-Crewes), and the owners of the Rufford estate (the Earl of Scarborough and later H. Savile, Esq.). After them, there are 20 more named landowners with one or two affrays known of on their lands, of whom 13 are Earls, Lords or Dukes. Of the 27 named landowners, only five were untitled. The aristocracy, who predominated amongst owners of the largest estates and

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<sup>16</sup> Archer, 'Reckless Spirit', p.157.

were the keenest preservers, bore the brunt of the violence and cost associated with the poaching war.

## **The Poachers**

The poaching gangs of the East Midlands were made up of men whose locations were scattered over the towns and small industrial and rural villages of the area. The gang of night poachers responsible for the serious affray at Scarcliffe Park in Derbyshire, in 1850, had members who came from Bolsover, Staveley, Callow, Heath and Palterton.<sup>17</sup> Bolsover was a small industrial town and the others were villages, all within the industrialising area around Mansfield and Chesterfield. In an editorial about poaching gangs, the *Nottinghamshire Guardian* referred to, 'Gangs [that] are well known to Magistrates and the police. They exist at Nottingham, Hucknall, Sutton [-in-Ashfield] and did exist at Bolsover. These individuals generally claim to be framework knitters....'<sup>18</sup>

Of the gang of 30-40 poachers involved in the Rufford Park affray in Nottinghamshire in 1851, those apprehended included four from Mansfield, two from Bulwell, and six from Sutton-in-Ashfield. Mansfield was a large industrial town, Sutton-in-Ashfield a smaller town to its south-west, and Bulwell an industrial suburb of Nottingham.<sup>19</sup> These settlements were within the industrial area which lay at the centre of Nottinghamshire and Derbyshire combined, along and either side of the county border. Another serious affray at Calke Abbey in southern Derbyshire in 1857 was said to have involved about 17 poachers. Of the eight caught, six came from

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<sup>17</sup> *NG*, 28 Nov 1850; 12 Dec 1850; 20 March 1851.

<sup>18</sup> *NG*, 27 March 1851.

<sup>19</sup> *NG*, 16, 23, 30 Oct 1851 and 6, 13, 20 Nov 1851; see pp. 139, 167, 193-4, 228, 249, 252 for this 1851 Rufford affray.

Whitwick, a mining village in Charnwood Forest, about seven miles away.<sup>20</sup> After an affray said to involve 'large numbers of poachers', at Bramcote, Nottinghamshire, in 1862, the only five men who were caught came from the adjoining industrial village of Stapleford.<sup>21</sup> The poaching affray at Hartshorne in Derbyshire in 1866, involving 11 poachers, was between poachers and police who met them on the public road. The poachers were said to be from Derby, Leicester and Melbourne.<sup>22</sup> Melbourne was a small market town and framework knitting centre in south Derbyshire. On other occasions poachers who were caught in groups returning by road to Nottingham, Leicester, Loughborough and Derby, lived in these towns. The night poaching gangs in the East Midlands appear to have been less dominated by men from large towns than was the case in Lancashire, though the size of the groups appears to have been the same, with most gangs of 6-20 men.<sup>23</sup>

The reports on night poaching affrays sometimes gave the men's occupations. In Derbyshire, out of 51 known occupations, 15 were labourers (it is not stated whether they were agricultural labourers or not), 25 were miners or colliers, and the remainder were a hatter, a brickmaker, three blacksmiths, and a joiner. Three were said to be ex-gamekeepers or assistant gamekeepers, and two were said to have the occupation of 'poacher'. So, 40 out of 51 of the Derbyshire poachers involved in affrays were labourers or miners/colliers. In Leicestershire fewer affrays and occupations are reported. Of ten known occupations, three were colliers, four labourers, and three were shoe riveters. In Nottinghamshire, out of 65 poachers involved in affrays whose occupations are known, 20 were

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<sup>20</sup> *NG*, 15 Jan 1857, 12 Feb 1857; *DM*, 28 Jan 1857.

<sup>21</sup> *NG*, 11 July 1862.

<sup>22</sup> *NG*, 5 Oct 1866; *DM*, 3 Oct 1866.

<sup>23</sup> Archer, 'Reckless Spirit', pp. 154, 159, 161.

labourers, 12 miners/colliers, and 20 were framework knitters. So, 52 out of 65 were labourers, miners or framework knitters. The other participants in Nottinghamshire were a cordwainer, a besom maker, a sinker, a bricklayer, an engineman, a groom, a quarryman, a carrier, a striker, two glovemakers and two navvies.

Table 5.2. Percentage totals of occupations involved in affrays in each county.

County	Labourers	Miners/colliers	Framework knitters	Other occupations
Derbyshire	29	49	0	22
Leicestershire	40	30	0	30
Nottinghamshire	31	18	31	20
<b>% over all three counties</b>	32	32	(16)	20

The predominance of labourers and miners/colliers is clear. The percentage for framework knitters over all three counties is not meaningful, since the poachers who were framework knitters were all in Nottinghamshire, though framework knitting was a common occupation in both Derbyshire and Leicestershire as well. In Nottingham in the mid-nineteenth century more than half the working population were employed in this trade.<sup>24</sup>

This occupational range is in contrast to that in Lancashire, where a wider spread of occupations was reported, and very few were farm labourers. The question of whether or not a 'labourer' is an agricultural one is a vexed one. It is arguable that many of the reported 'labourers' in the East Midlands were agricultural workers. Workers from other industries, even if basically just labourers, have given their occupations according to their

<sup>24</sup> J. V. Beckett (ed.), *The East Midlands from AD 1000* (London, 1988), pp. 284-5.

industry; for example, quarryman, ironfoundry man, railwayman. This suggests that if the occupation was given as just labourer, it was likely to have been agricultural labouring. If this is the case, then the three counties differ from Lancashire in having around one third of the poachers as agricultural labourers. Other differences lie in the range of jobs given. Archer cites glassblowers, weavers, miners, mechanics, pavement layers, and canal men as figuring prominently in Lancashire.<sup>25</sup> In the three counties, apart from labourers, miners and framework knitters predominate. Archer does not state any particular occupation as being dominant. The greater diversity in Lancashire reflects the earlier and greater degree of industrialisation and consequent variety of employment, and the level of urbanisation and population increase.

The ages of 99 poachers in the East Midlands are known from newspaper reports and from *Criminal Registers*. This data, illustrated in fig. 5.2., shows that 46% of poachers were in their 20s, and 33% in their 30s, making a total of 79% in their 20s-30s.<sup>26</sup>

Archer's findings in Lancashire and East Anglia compare and contrast with the poachers of the three counties. In East Anglia, Archer found that group night poaching was a young, single man's game, and most were under 30 years of age, many under 20. But in Lancashire, out of a sample of convicted night poachers, 50% were 30 years old or above, and only 5% were under 20 years old.<sup>27</sup> In this study of the East Midlands, of the poachers involved in night affrays whose ages are known, 46% were over 30 years old; only 7% were under 20 years old.

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<sup>25</sup> Archer, 'Reckless Spirit', p. 159.

<sup>26</sup> P. 177.

<sup>27</sup> Archer, 'Reckless Spirit', pp. 160-1.

Fig. 5.2. Ages of poachers involved in affrays in the East Midlands

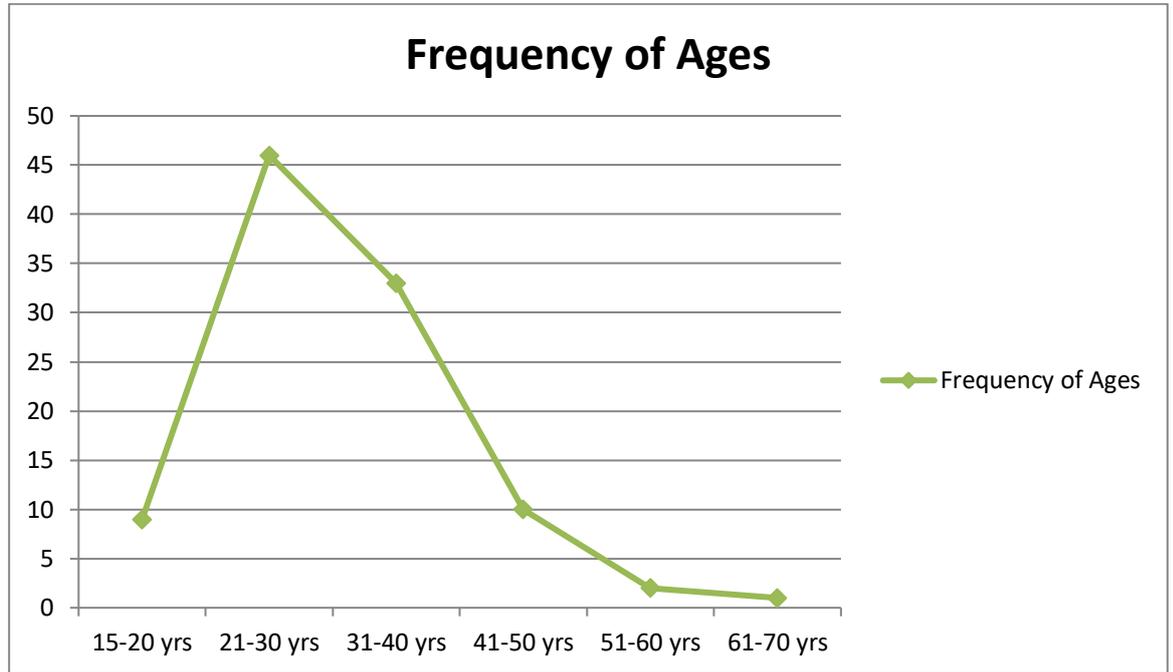


Table 5.3 shows how the Lancashire age profile compares with that of the East Midlands counties, and with that of Derbyshire alone.

Table 5.3. Percentage of poachers aged below 20 and above 30, in the three counties and in Lancashire.<sup>28</sup>

	East Midlands	Lancashire	Derbyshire alone	Leicestershire and Nottinghamshire
<b>Less than 20 years old</b>	7	5	5	12
<b>30 years or older</b>	46	50	48	44

<sup>28</sup> Archer, 'Reckless Spirit', pp.160-1.

The overall data for the East Midlands is in contrast to East Anglia (where Archer found the majority of poachers were younger men in their late teens or early 20s) and is similar to that of Lancashire. When the Derbyshire data is viewed separately it can be seen that, for Derbyshire, the data is even more similar to that of Lancashire. This points to a different poverty cycle for the East Midlands compared to that of East Anglia, where the young unmarried agricultural labourers were in the most need. Archer found that in Lancashire most of the poachers were married men with families.<sup>29</sup> There is no data on how many of the three counties poachers were married men with families; such information has been found on only a few of them. But their ages suggest that many of them would have been married and had dependents.

Because reference has been made to the relative closeness of preserves to urban areas, it is relevant to know how far poachers generally travelled to their poaching grounds. As a comparison, Howkins found that most poachers in mid-Victorian Oxfordshire had travelled less than four miles from their homes. Only 4% of his sample from Petty Sessions records had travelled ten or more miles, and there were few poachers from outside the county and few organised gangs.<sup>30</sup>

Howkins's evidence was of cases prosecuted at Petty Sessions, which one would expect to have been predominantly day poachers, but with some night poachers. Day poachers in this study were most often poaching within the boundaries of the parish in which they lived, which has been assumed to be not more than five miles from their homes.<sup>31</sup> From a sample

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<sup>29</sup> Archer, 'Reckless Spirit', p. 160-1.

<sup>30</sup> Alun Howkins, 'Economic Crime and Class War: Poaching and the Game Laws 1840-1880', in S. E. Burman and B. H. Bond (eds.), *The Imposition of Law* (New York, 1979), pp. 282-3.

<sup>31</sup> This might, in fact, not always have been the case because some parishes were big

of Derbyshire day poachers, for those for whom their home parish and the parish of the poaching was known, it was found that they had all travelled less than ten miles to their poaching location, apart from two men from Ashbourne who were found day poaching at Vicar Wood near Derby, about 12 miles from Ashbourne.<sup>32</sup> Widening the sample to include some from Nottinghamshire and Leicestershire, day poachers who travelled more than five but less than ten miles included: four caught on the Hexgrave estate near Kirklington in Nottinghamshire who were all from Mansfield, which was seven to eight miles away;<sup>33</sup> two caught at Newton Linford in Leicestershire who were both from Mountsorrel, six to seven miles away.<sup>34</sup> Overall, most east midlands day poachers travelled less than five miles to their poaching grounds. This accords well with Howkins's findings, for which it is not known how many of his sample were day or night poachers. Many travelled across county boundaries in the East Midlands, but still to destinations within their own local area.

With regard to night poaching, from newspaper reports where the location of the poaching is known, 50% were poaching five miles or less away from home; 32% were six to ten miles from home; about 11% were 10-15 miles away; and 7% were more than 15 miles from where they lived.<sup>35</sup>

Examples of night poaching where the poachers were within five miles of home, include an affray at Scarcliffe Park, Derbyshire, in 1851, where at least 15 poachers were involved. Of those caught one came from Calow which was about five miles away, and all the others came from Bolsover,

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enough to get a little over five miles away from where they lived and still be in the parish. But these cases would be few.

<sup>32</sup> DRO, D 199/1/1-6, information gathered for the writer's MA Dissertation, 'Industrial Poachers?: Poaching in Nottinghamshire and Derbyshire 1835-1850', (Open University, 2009), samples from the Register of Courts of Summary Jurisdiction for the years 1835, 1842 and 1849. This totals a sample size of 248 day poachers, of which home parish and poaching parish were known for 185; *DM*, 16 Jan 1861.

<sup>33</sup> *NG*, 28 May 1857.

<sup>34</sup> *LC*, 6 Jan 1866.

<sup>35</sup> Sample size was 44.

Staveley, Heath, and Palterton – villages within three miles.<sup>36</sup> At Willesley Park close to the border in Leicestershire, 11 men were involved in an affray in 1881; of those caught whose home village is given, although five came from over the border in Derbyshire and two from Leicestershire, all were within five miles of their home villages of Ashby-de-la-Zouch, Newhall and Church Gresley.<sup>37</sup>

As examples of distances over five miles, at the Rufford poaching affray of 1851, of those eventually convicted whose home is given, four had travelled about seven miles, five about eight miles, and two about 12 miles.<sup>38</sup> There was a report, in 1836, of a gang of 15-18 night poachers at Sutton-cum-Duckmanton in north east Derbyshire, who were believed to have come from Sheffield or Sutton-in-Ashfield. This report is interesting because the keepers stated that none of the poachers were known to them, and so for this reason they could not be local men. This was the basis for their suggestion that they must have come from Sutton-in-Ashfield or Sheffield – both of which were 10-15 miles from the poaching location.<sup>39</sup> Since this was speculation, this example has not been used in the figures previously quoted.<sup>40</sup>

As examples of the greatest distances travelled, a Leicestershire 'gang' was captured poaching near Grantham in 1881, all of whom were men from Melton Mowbray who had hired a horse and trap the previous day, and had travelled over 15 miles; it is not clear from the report if this was night or day poaching.<sup>41</sup> From a group of poachers at Clipstone in Nottinghamshire

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<sup>36</sup> *NG*, 28 Nov 1850, 20 March 1851.

<sup>37</sup> *LC*, 25 June 1881, 29 June 1881.

<sup>38</sup> *NG*, 16, 23 and 30 Oct 1851, and 6, 13, and 20 Nov 1851; see also pp. 139, 167, 173, 194, 228, 234-5, 249, 252-3, about this Rufford affray.

<sup>39</sup> *DM*, 20 Jan 1836.

<sup>40</sup> See p. 179.

<sup>41</sup> *LC*, 19 March 1881.

in 1886, three were captured who came from Leicester, which was about 40 miles away.<sup>42</sup> By this late stage of the century an extensive railway network was in existence which might have facilitated travel to these more distant poaching grounds; a railway line came within six miles of Clipstone and it was possible to get there by train from Leicester, though the journey would have involved changing trains.<sup>43</sup> In September 1848 a party of night poachers was discovered by keepers at Martin Wood, Trowell, on land of Lord Middleton. Only three were apprehended and tried, and of these one came from Derby (about ten miles away) and one from Codnor (about 12 miles away) in Derbyshire. The other was reported to be from Polesworth in Staffordshire (about 35 miles away); Polesworth may have been his official village of residence but this does not necessarily mean that he was living there at the time.<sup>44</sup>

Although day poachers in the East Midlands seldom travelled more than five miles to their poaching grounds, night poachers more often did so. About half of night poachers travelled more than five miles and just under one fifth travelled more than ten miles. Looking back at the maps of the counties and the location of affrays, it can be seen that most of the affrays took place within ten miles of a town or an industrial area where industrialising villages were expanding over the period.<sup>45</sup> Archer found that Lancashire poaching gangs often travelled long distances, fifteen miles or more, using ferries, canals and railways to reach their destinations; but this may be connected to the fact that they frequently took several days over their expeditions, and visited several poaching locations.<sup>46</sup>

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<sup>42</sup> *NG*, 29 Oct 1886.

<sup>43</sup> Beckett, *East Midlands*, pp. 265-6.

<sup>44</sup> *NG*, 22 March 1849.

<sup>45</sup> See pp. 95, 99, 102, 171.

<sup>46</sup> Archer, 'Reckless Spirit', pp. 158, 164.

There is little evidence that poaching trips in the East Midlands lasted more than one day or night (entailing staying away from home) apart from one reference made during an inquest into a woman found dead. She was found in 'Mr Toder's barn ... near the Debd-hill toll-bar,' which was 'notorious as a place of refuge for tramps and poachers', in Nottinghamshire;<sup>47</sup> and the gang from Melton Mowbray, already mentioned, who had hired their horse and trap the day before.<sup>48</sup> Due to lack of evidence of long poaching trips, it would seem likely that poachers in the East Midlands did not habitually take part in poaching trips that were several days long; an expedition lasting most of a night or part of a day was usual.

### **Police Involvement**

The major changes in the policing of poaching in the century were due to the formation of the new borough and county police forces, and later the passing of the 1862 Poaching Prevention Act. For the first 40-50 years of the century, before the formation of the new police in the East Midlands, old systems of policing involving local constables and night watchmen appear to have had little participation in preventing poaching, apart from generally being on the lookout for known offenders and accepting for detention those taken by keepers. The Rural Constabulary Act of 1839, and its amending act of 1840, left the decision as to whether or not to establish a rural police force, and the control of such a force, to the county magistrates. The Municipal Corporations Act of 1835 had obliged boroughs to establish forces earlier.<sup>49</sup>

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<sup>47</sup> *NG*, 27 Jan 1859. Debd Hill is in Misterton, in the far north-east of Nottinghamshire, close to the Lincolnshire border, an area where there was relatively little poaching going on (see p. 97) yet evidently still enough for poachers to be known to use this barn.

<sup>48</sup> See pp. 180.

<sup>49</sup> Municipal Corporations Act 1835, 5&6 William 4, c. 76.

In Leicestershire and Nottinghamshire, a county police force was formed relatively early, in 1839 and 1840 respectively.<sup>50</sup> However, in Derbyshire there was no county police force until 1857. Although the Derbyshire magistrates had recommended the setting up of a county police force in 1839, there was concern over the cost. In 1839 the proposal to form a county police force was narrowly defeated at the County Quarter Sessions.<sup>51</sup> Derbyshire was one of 22 counties to fail to create a police force until it became compulsory, after the passing of the 1856 County and Borough Police Act.<sup>52</sup> The lack of a county police force may have affected control of poaching in the county and been a factor in the establishment of the hard core of night poachers, living in Derby and poaching in the county, who troubled the authorities from the mid-1850s.

With the formation of the county police forces, a greater number of officers were available, with better organisation. However, the new police were looked upon with dislike and suspicion by the working class generally, as they were charged with a mass of petty enactments which regulated working-class life. This has been more the case in industrial areas in the north than in agricultural southern and eastern regions.<sup>53</sup> As police began to play a more significant part in finding and arresting poachers after affrays, poachers were not notable for instant obedience to policemen and many did not hold back from violence against them. Typically, the police received information, often within an hour or so of an affray, and took

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<sup>50</sup> Clive Emsley, *The English Police: A Political and Social History*, 2<sup>nd</sup> edn. (Harlow, 1996), pp. 43-4.

<sup>51</sup> Janet Gilks, 'Crime and Punishment in Derbyshire 1811-71', M. Phil thesis (University of Nottingham, 2014), pp. 238-249.

<sup>52</sup> County and Borough Police Act 1856, 19&20 Victoria, c. 69.

<sup>53</sup> Robert D. Storch, 'The Plague of Blue Locusts: Police Reform and Popular Resistance in Northern England 1840-57', in M. Fitzgerald, G. McLennan, J. Pawson (eds.), *Crime and Society: Readings in History and Theory* (London, 1981), pp. 103, 108; Emsley, *Crime and Society*, p. 75.

action to find the offenders. An example of this was near Newark, Nottinghamshire, in 1856, where five or six poachers fought with keepers and all got away; two poachers had been recognised by the keepers and were arrested by Superintendent Leaper the next day.<sup>54</sup> There was a major affray on the Barton in Fabis estate of Sir Arthur Clifton, in Nottinghamshire, in 1861, from which all 12 poachers escaped; Superintendent Palethorpe received information about this at about 3am, and sent police constables to various approaches into Nottingham over the Trent, to watch for men returning home. Six men were taken into custody on suspicion of having been involved.<sup>55</sup>

There was liaison between forces over finding and arresting poachers. In 1851 two poachers wanted in Staffordshire fled to Worksop; Inspector Kidney of Uttoxeter police co-operated with Inspector Curzon of the Nottinghamshire police, and the two were found hidden in a house in Worksop. Seven more of the gang were found soon after, and all were taken back to Staffordshire for trial at the next Assizes.<sup>56</sup>

An Act of 1844 extended the Night Poaching Act of 1828, in an attempt to catch more night poachers. However, it made no impact in the East Midlands; there are no records of it being used in prosecutions. It extended the provisions of the 1828 Act to enable action against poachers found outside the boundaries of enclosed land, 'unlawfully taking or destroying game or rabbits on any public road, highway or path, in the like manner as

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<sup>54</sup> *NG*, 2 Oct 1856.

<sup>55</sup> *NG*, 24 Jan 1861.

<sup>56</sup> *DM*, 31 Dec 1851.

upon any such land, open or enclosed.<sup>57</sup> The difficulty of finding someone on a road or path, who could be proved to have been actually poaching whilst there, may explain the lack of use of this Act.

The Nottinghamshire police force was involved with gamekeepers and watchers well before the 1862 Poaching Prevention Act. This is shown by an 1849 report of a night poaching event at Nuthall Temple Park, which said that upwards of 20 poachers with bludgeons threatened a group of watchers who found them; then, 'by loud and violent conduct they attracted the attention of a policeman who gathered together a force to help him and entered the park'. The poachers retreated. It sounds as if the policeman in question was not far away; he certainly quickly and easily became involved.<sup>58</sup> At Cotgrave in 1855, night poachers were reported to have been found by a group of three men – a keeper, a watcher and a police constable. It was the policeman who approached the poachers and asked for their names, and there was subsequently a fight.<sup>59</sup> Again, in 1857 at Plantation Field at Wollaton, six or seven night poachers were seen by PC Shaw. Later, PC Marshall apprehended John Arram; there is no mention of any involvement of keepers or watchers in this event.<sup>60</sup> These reports are exclusive to Nottinghamshire; there are no reports indicating that this sort of closer police involvement happened in Derbyshire or Leicestershire before 1862.

Before the passing of the 1862 act, the police sometimes confiscated game and equipment from poachers who they had stopped on the roads, even

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<sup>57</sup> Victoria 7&8, c. 29, 1844, An Act for the More Effectual Prevention of Armed night Poaching, hereafter known as the Night Poaching Act, 1844.

<sup>58</sup> *NG*, 1 Nov 1849.

<sup>59</sup> *NG*, 3 May 1855.

<sup>60</sup> *NG*, 23 July 1857.

though there was no law which allowed them to do this. There were instances, in the East Midlands, of poachers who challenged police in court for having done this. Nottinghamshire police were challenged in a court case in March 1862 for having confiscated game and nets in September 1861; one of the poachers successfully took civil action against them for taking two nets, 24 partridges and one rabbit. A superintendent and six police constables had met them at 4.30am coming along the Southwell Road towards Mansfield. The Judge said he accepted that they probably had been poaching but that the police were not entitled to act as they had; the poachers won the case.<sup>61</sup> Similarly, in Derbyshire in March 1861, poacher John Wilmot sued the police for the value of hares, rabbits and nets confiscated on the London Road in Derby at 6 am on 4 October 1860. The Judge called it 'a very impudent action', but was clear in delivering his judgement that the police had no right to take the items.<sup>62</sup>

There was particular animosity between police and poachers in and around Derby. Leading up to the civil suit by the poachers against the police referred to above, in February 1861 the *Derby Mercury* reported, 'The contention between the poachers and the police in this town is not at an end. A trial will take place in March next, and no doubt some interest will be excited on a point of law. Serjeant Hayes has, we believe, been retained for the defendants [the police].'<sup>63</sup> In July 1861, the same paper reported,

The re-opening of the anti-poaching campaign has been signalised [sic] by a seizure more remarkable than any ... last season. In their first encounter with poachers the

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<sup>61</sup> *NG*, 7 March 1862.

<sup>62</sup> *DM*, 27 March 1861, see p. 238.

<sup>63</sup> *DM*, 27 Feb 1861.

Derby police managed to become possessed of the ordinary portable property which these daring fellows carry.<sup>64</sup>

The poachers were to come before magistrates shortly but, on this occasion, they did not challenge the police action.<sup>65</sup> Later in the same year, Magistrate Mr T. Bateman referred to 'the notorious contests of the police with the Derby poachers'.<sup>66</sup>

Police forces all over the country were frustrated at being unable to stop, search and prosecute men whom they knew full well were poachers returning home with their haul. The Derbyshire Magistrates sent a petition to the House of Commons in April 1861, 'praying the legislature to take into consideration the law affecting the possession of game.' It was presented to the House by Lord George Cavendish, MP for North Derbyshire.<sup>67</sup> The Leicestershire magistrates instructed their Chief Constable to sign the Memorial to the House of Commons which detailed the damage and violence caused by night poaching and requested a change to the law. This move at the Leicestershire Quarter Sessions was proposed by Lord Berners, the Leicester MP; the Memorial was signed by the Chief Constables of 27 other counties.<sup>68</sup> No record has been found of the Nottinghamshire magistrates or Chief Constable having sent, or subscribed to, any similar plea.

With the passing of the Poaching Prevention Act in August 1862, the actions of police who stopped, searched and confiscated items from

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<sup>64</sup> *DM*, 2 Oct 1861.

<sup>65</sup> *DM*, 2 Oct 1861.

<sup>66</sup> *DM*, 27 Nov 1861.

<sup>67</sup> *DM*, 1 May 1861.

<sup>68</sup> *LC*, 4 Jan 1862; *Game Laws Returns 1862(201)*. See p. 107.

suspected poachers on the road, became legal. If in possession of game or equipment for taking game, the suspects could be prosecuted, before at least two magistrates, and fined £5. The act included rabbits in the definition of 'game' and stated that a police constable or Justice of the Peace had to be present and authorise the search. Prosecutions under this act were brought by the police.<sup>69</sup> Subsequent to this act, police were able to station themselves on the roads into towns which they knew to be routes frequented by poachers, and to wait on minor roads and paths near preserves. But as well as undertaking more of this type of activity, some police forces also became involved, to varying degrees, in co-operating with game keepers and watchers off the roads, on enclosed land. Of the three counties, this appears to have happened most in Nottinghamshire, and not at all in Derbyshire.

As an example of such closer involvement in game law policing after 1862, in Nottinghamshire in 1867 a gang of poachers was caught near the river Trent by, 'A body of policemen who had been stationed there for that purpose'.<sup>70</sup> In another example poachers were caught by keepers and police who were watching together, in the Duke of Portland's preserves in October 1886.<sup>71</sup> Similarly with an affray in July 1886 in the fields of Sparken Hill on the Duke of Newcastle's Worksop estate, a gamekeeper and several policemen were watching at 3 am.<sup>72</sup> In Leicestershire in 1865 poachers were apprehended after a fight with two keepers and two policemen who had been waiting and watching on enclosed land for several hours.<sup>73</sup>

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<sup>69</sup> Poaching Prevention Act, 1862, section 2.

<sup>70</sup> *NG*, 15 Feb 1867.

<sup>71</sup> *NG*, 15 Oct 1886.

<sup>72</sup> *NG*, 30 July 1886.

<sup>73</sup> *LC*, 28 Jan 1865.

In Derbyshire, there are no reports which indicate that police were actually out watching with keepers. The closest that a Derbyshire report comes to suggesting that police may have been on land, watching, is one from Long Eaton in 1881, where a news report states that Captain Smithers' two keepers, and a policeman whom they had met and who had 'accompanied them for a short distance' found themselves 'in the midst of' about 12 poachers.<sup>74</sup> Most common from Derbyshire are reports about police stopping poachers on their way home, resulting in affrays on the public road. For example, a group of poachers were stopped on the Ashby and Burton turnpike road in Smisby by Inspector Russell and Sergeant Barker in 1866; when asked what was in their bags they attacked the police.<sup>75</sup> In September 1876, a large body of police were waiting on the road at Mugginton, near Derby, six miles from Lord Scarsdale's estate (Kedleston Hall and Park) when, at 3am, a gang of ten poachers came along the road. There was a severe struggle and several poachers were captured.<sup>76</sup> The *Nottinghamshire Guardian* reported in 1876 that, 'in consequence of the ill treatment which individual members of the Derbyshire police force have recently suffered by gangs of poachers...in the neighbourhood of Derby, Mr Lawson the Deputy Chief Constable is determined to secure conviction of the offenders if possible.'<sup>77</sup> The *Leicester Chronicle* also reported that the police had got particular problems with poachers from Derby night poaching in the nearby preserves at this time.<sup>78</sup> It seems that the problems that the police were having with poachers in and around Derby in the 1860s had either never been resolved, or had re-occurred in the 1870s.

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<sup>74</sup> *DM*, 14 Sept 1881.

<sup>75</sup> *DM*, 8 Aug 1866.

<sup>76</sup> *NG*, 22 Sept 1876.

<sup>77</sup> *NG*, 15 Sept 1876.

<sup>78</sup> *LC*, 16 Sept 1876.

In Leicestershire and Nottinghamshire, where the police sometimes watched for poachers with the keepers on the land, there was negative public reaction to this practice. Letters to the papers, and supporting editorials, complained about the police being used as 'hangers on and assistant gamekeepers to the squirearchy...[and] spectators in the assaults committed by the latter.'<sup>79</sup> The Nottinghamshire paper enquired how much it cost to support the constabulary for watching and approaching poachers, and went on to say that, 'This outlay is not for the protection of the community or human life – it is to enable noblemen and esquires to supply to the stalls of the poulterer and the fishmonger.'<sup>80</sup> The *Leicester Chronicle* commented, in an editorial, that it objected to police being used as 'hangers on and assistant gamekeepers to the squirearchy', and especially being 'acquiescent spectators in the assaults committed by the latter [keepers]'. This was after poachers had appeared at Little Bowden Petty Sessions following an affray with keepers at which two policemen had been present.<sup>81</sup> A letter from a Leicestershire rate payer said that he was against the game laws, which he referred to as 'a fruitful source of crime and of consequent expense to the ratepayers'. He wrote that it would be acceptable if the police restricted themselves to searching suspected poachers on the highways and in public places, but it was not acceptable that they spent time watching, with keepers, for poachers.<sup>82</sup> There were no similar objections in the Derby paper, adding to the supposition that in Derbyshire police were not acting with keepers on the land.

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<sup>79</sup> *LC*, 28 Jan 1865.

<sup>80</sup> *NG*, 15 March 1860.

<sup>81</sup> *LC*, 28 Jan 1865.

<sup>82</sup> *LC*, 4 Feb 1865.

Whilst the police had a greater role against poaching after 1862, the main onus for catching poachers while they were actually on the land continued to be with the keepers and watchers, with police playing their greatest part by assisting after any affray in catching the offenders.<sup>83</sup> Even in Leicestershire and Nottinghamshire, where it is known that police did sometimes watch with keepers on the land, police were more active on the roads than in the coverts. In Nottinghamshire, the county with the greatest involvement of police on the land, there are still far more reports of affrays which involve only keepers than there are of those involving keepers and police. At an affray in May 1871 at Rufford, seven to nine poachers fought with keepers and all escaped; the police help was limited to making arrests afterwards.<sup>84</sup> At Wollaton Hall in May 1872, seven keepers fought a gang of poachers.<sup>85</sup> At Rufford in October 1877 seven keepers fought with 18 poachers.<sup>86</sup>

There are major differences between the poaching war as waged in Lancashire and that in the East Midlands. The Lancashire county force, having been established in 1839, was, within a few years, reduced in size due to ratepayer anger at the cost, and a great outcry about the police being established to protect game. Consequently, the Lancashire police tried to avoid giving the impression that they were supporting preserving landlords, whilst showing how essential it was to have a police force. In doing this, they talked up the danger to the public from poaching gangs and made it clear that they considered that such gangs were criminal, dangerous, and a threat to the fabric of law and order in the county.<sup>87</sup>

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<sup>83</sup> *NG*, 17 Sept 1866.

<sup>84</sup> *NG*, 12 May 1871.

<sup>85</sup> *NG*, 25 May 1872.

<sup>86</sup> *NG*, 12 Oct 1877.

<sup>87</sup> Archer, 'Reckless Spirit', pp. 164-6.

Lancashire police were active against poachers from about 1843, and felt themselves greatly hampered by their inability to legally search suspected poachers on the roads. After 1862, though they were undoubtedly very active in stopping and searching poachers, Archer has not mentioned that they were involved in watching with keepers on the land. There is a brief reference to a policeman having fought well in an affray where he engaged with four poachers, all but one of the keepers having run away; but this was in 1843, and it seems possible that Lord Sefton of the Molyneux estate may have paid for the employment of extra police for his own benefit, in this instance.<sup>88</sup> There is no other indication that police were watching with keepers; the narrations of violent affrays which Archer has given were all between poachers and keepers.

### **Conduct of Affrays and Violence**

Magistrates' lists of the period feature many summary convictions involving rough and violent behaviour. Assaults were common between men, as was being drunk and disorderly and disturbing the peace. These minor crimes reflect the rough element in the life of working men. A typical list from Mansfield Petty Sessions in 1851 comprised 23 cases, of which four were poaching offences, three were for an affray that was not a poaching affray, one for assault, one for breach of the peace, and the others assorted minor offences to do with property or misbehaviour.<sup>89</sup> A Derby Borough Police Court list, of 1891, comprised 28 offences, of which 12 involved rough, resistant or aggressive, frequently drunken, behaviour.<sup>90</sup> Martin Wiener, in his study of male violence in the Victorian period, found that even in the

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<sup>88</sup> Archer, 'Reckless Spirit', p. 166.

<sup>89</sup> *NG*, 9.1.1851.

<sup>90</sup> *DM*, 6.5.1891.

late nineteenth century, fighting of various sorts, in streets, public houses and other places, was deeply rooted in working class culture.<sup>91</sup> Therefore to fight, in a way which did not inflict serious injury, was not a peculiarity of poachers and does not mark them out from their peers.

It is clear that, in many poaching affrays, though blows were exchanged, the injuries received were not considered severe by the recipients, witnesses or reporters. The most commonly used weapons were sticks and stones and the vast majority of descriptions of affrays report that these were the weapons used. A stick, however, could be a bludgeon, and flails (sometimes referred to as whips) were used in several affrays, but not in most. A flail, legitimately used for threshing corn, was two pieces of wood joined by a leather thong, and made a dangerous weapon. Keepers as well as poachers were sometimes armed with these.<sup>92</sup> A similar weapon called a swivel, also used for threshing corn, was used by keepers at an affray at Stapleford, Nottinghamshire, in 1851. Other handy farm implements were occasionally used as weapons, such as forks.<sup>93</sup> Stones could also include very large stones weighing several pounds, and on at least one occasion stones were put into stockings and swung as a weapon.<sup>94</sup>

There is only one report of poachers deliberately using guns as a weapon against a keeper in an affray, and that was in north Derbyshire in 1846 where a group of poachers shooting pheasants at night shot a keeper, who accosted them, in the legs.<sup>95</sup> Since they were pheasant poaching, they

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<sup>91</sup> Martin J. Wiener, *Men of Blood: Violence, Manliness and Criminal Justice in Victorian England* (Cambridge, 2004), pp. 50-51.

<sup>92</sup> *NG*, 11. Dec 1851, 18 Dec 1851, 1 Jan 1852;

<sup>93</sup> *NG*, 11 Dec 1851.

<sup>94</sup> *NG*, 18 Dec 1851.

<sup>95</sup> *DM*, 15 April 1846. See pp. 204, 208. Arguably, the case on p. 199 may count as a deliberate shooting as well, when Draper shot keeper Wingfield.

would all have been armed with guns, as opposed to ground game poachers. However, at times the injuries from sticks and stones wielded in the ways which have been described, were severe, even by the standards of the time, and wounds were sustained from which men took some time to recover; deaths were not common but did sometimes result. At Scarcliffe Park in 1850 a poacher was killed and a keeper injured seriously, remaining close to death for some time.<sup>96</sup>

At the most notorious Rufford affray in 1851, a keeper was killed. At this affray, several of the keepers had flails and used them; a very large flail was left at the scene by a poacher. Two of the poachers involved said in court that they had been armed with a 'small pistol'. However, there is no record in the lengthy reports from court of firearms having been fired.<sup>97</sup>

Poachers routinely had dogs with them to assist in the poaching, and keepers also often had dogs with them, which sometimes assisted in chasing poachers. The issue of keepers' use of dogs against poachers is a vexed one, as they were not supposed to use a dog to bring a man down. However, it appears that they did sometimes do this, though infrequently.<sup>98</sup> Since the use of dogs is not directly relevant to any of the arguments being put here, the issue has not been reported in any further detail.

The pattern of events in an affray was generally that keepers and watchers either came across men in the act of poaching, or quietly followed them

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<sup>96</sup> *NG*, 28.11. 1850, 12.12.1850, 20.3.1850; *DM*, 19.3.1851.

<sup>97</sup> *NG*, 16, 23, 30 Oct 1851, 4 Dec 1851. For the Rufford Affray of 1851 see also pp. 139, 167, 173, 228, 249, 252.

<sup>98</sup> *LC*, 20 July 1861, 23 Feb 1865; *NG*, 14 Jan 1861, 20 July 1861.

until they had started poaching. The keepers then either made themselves known to the poachers and asked for their names, or the poachers saw them; if on the road and the enforcers were acting under the 1862 Act, it had to be a policeman who asked for names and authorised searching them.<sup>99</sup> After this, the poachers might just accede to the request and give their names or, if it was on the road, allow themselves to be searched; or they might flee or resist. If there was a fight, it was rare for more than one or two to be captured on the spot. It was not uncommon for a few keepers to discover a few poachers and challenge or attack them, only to find that more poachers then appeared over a hedge or from an adjoining wood and assisted the original gang, outnumbering the keepers. Whether, when this happened, the extra poachers were from the same group but operating a small distance away, or they were from another group and joining in from a sense of solidarity, is not clear. But what is clear from examination of the many accounts of affrays, is that the poachers' main concern, in practically every case, was just to get away. They would turn and fight only in order to achieve this, or to free one of their own party who had been taken prisoner.

As examples of this, at Barton in Fabis in Nottinghamshire in 1851, gamekeeper Geary and two assistants watching at 2am saw three poachers setting gate nets. The keepers approached and a fight ensued, during which about 15 more poachers appeared from a nearby field, carrying game bags filled with stones. The poachers threw stones at the keepers for about 15 minutes, after which the keepers left to get help. On their return, they found the wounded poachers had been taken away and there was no

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<sup>99</sup> Or a Magistrate – but in practice policemen were present at these events and Magistrates seldom were.

sign of any of them.<sup>100</sup> At Wingerworth Hall in Derbyshire, in January 1852, the head keeper and an assistant came across three poachers with sticks and dogs. The head keeper 'boldly seized' one of the poachers. The other two poachers beat a retreat, but then came back to recapture their fellow. The three poachers hit the keepers with sticks and then escaped.<sup>101</sup>

At Staunton Harold, Leicestershire, in June 1861, two keepers found two poachers setting nets who ran off, pursued by the keepers. But they then met four more poachers and the six of them turned and fought. They were armed with sticks and stones, one of which was said to have weighed six and a half pounds. In some other fights missiles are referred to as 'boulders' rather than stones and this would seem to have been the case here. One poacher was taken at the scene but the rest escaped.<sup>102</sup>

There were many reports of poachers who simply fled upon being discovered, making their escape without needing to fight. The *Nottinghamshire Guardian*, reporting on night poaching at Alfreton Park in 1876, noted there were four keepers and a gang of ten poachers: 'None of the poachers are known. They were certainly not very valiant to run away from four not over young men, as the keepers and watchers are.'<sup>103</sup> At Chatsworth Park in 1866 a group of 12 keepers came upon a poaching gang who, 'showed no fight but took to their heels.'<sup>104</sup> However, it is clear from instances where poachers had blacked their faces to make themselves less visible and recognisable, or had tied white strips of cloth around their

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<sup>100</sup> *NG*, 18 Dec 1851, 1 Jan 1852.

<sup>101</sup> *DM*, 14 Jan 1852; *NG*, 15 Jan 1852.

<sup>102</sup> *LC*, 22 June 1861, 20 July 1861.

<sup>103</sup> *NG*, 25 Aug 1876.

<sup>104</sup> *DM*, 15 Nov 1886.

arms so that in a fight they would know who was on their side, that some poachers started off being prepared for a fight.

Fig. 5.3. A contemporary illustration of a poaching affray, showing a main scene of a fight in progress, and supplementary scenes, at top left and right, of keepers in waiting and dead game. From the *Illustrated Sporting and Dramatic News*, 1885.<sup>105</sup>



There were some instances of unnecessary or gratuitous violence, and there is no doubt that at least some poachers were violent men, even by the standards of their day and class. In November 1850, at Scarcliffe Park in Derbyshire, seven keepers met 15 poachers who were armed with guns, cudgels, and a sword. The poachers had assembled beforehand on

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<sup>105</sup> Harry Hopkins, *The Long Affray: The Poaching Wars in Britain* (London, 1986), p. 279.

Bolsover Moor, which adjoins Scarcliffe Park, where they had tied 'white rags or ribands' around their arms, and some had their blacked their faces. They were poaching for pheasants. The fight was 'severe', and keeper Booth suffered a cut to his neck from the sword which it was thought for a time might prove fatal. A keeper's gun went off accidentally in the struggle and killed a poacher. Poacher Cutts, who turned Queen's Evidence, said that gamekeeper Booth had initially shouted out that they (the keepers) would not attack the poachers and 'you may have all the game but have mercy on us.' But, said Cutts, 'some of our party pressed on them.' This was a notorious event which occupied the papers for weeks as Booth's life hung in the balance. Some of the poaching party appear to have been far more aggressive than others; Cutts seemed horrified by the level of violence, and another poacher was reported to have knocked poacher Chapman's weapon to one side when it was presented at a keeper, saying 'John Chapman, what have you done'. Superintendent of police William Picker overheard some of the prisoners talking as they were taken to Mansfield, and said they seemed shocked and repentant.<sup>106</sup> It appears from this report that at least some of the poachers involved were willingly violent to a degree above what was normal in affrays.

There are a few other examples of events where poachers appear to have been brutal, but these must be considered against the many events where the violence was not above the normal. At an event in December 1848, near Glossop in north Derbyshire, there was only one keeper and three night poachers. After disabling the keeper, rather than just making good their escape the poachers were said to have abused him further to the

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<sup>106</sup> *NG*, 28 Nov 1850, 12 Dec 1850, 20 March 1851; *DM*, 19 March 1851. Poacher Chapman's weapon was said to have been a 'two edged sword', the only instance of such a weapon being used which has been found in this research. See also pp. 203, 219, 251-2 for this Scarcliffe affray.

extent that, for a while, his life was in danger, though he eventually recovered.<sup>107</sup> At Bretby in Derbyshire, on the Earl of Chesterfield's estate in 1841, two keepers separated in pursuit of a group of night poachers; Robert Harvey, the assistant keeper, was found later by his colleague, shot through the heart at close range. This was a very rare instance where a poacher may have used a gun deliberately against a keeper; but since no affray was witnessed it not possible to be sure what happened.<sup>108</sup> At Coleorton in Leicestershire in 1866, a keeper was left pinned to the ground by a net peg thrust through his mouth, with other multiple head and body injuries.<sup>109</sup>

When there were instances of a greater degree of violence, it was not necessarily always caused by the poachers. At Annesley in Nottinghamshire, on the preserves of Captain Hammond in 1857, five keepers found eight men poaching. The poachers had at least one gun, and threw stones at the keepers. Keeper Wingfield was shot by poacher Draper and later died. At the Assize trial, Draper's defence lawyer claimed murder was not intended, but that the keepers were hitting the poachers, and Draper had a gun in his hand for the purpose of taking game. The Judge said,

The evidence was that it was not in self-defence that the keepers used their sticks, but that the keepers struck the poachers violently, and that just before the shot was fired. If...done in heated blood and on sudden impulse.. [this] would not amount to the crime of wilful murder.<sup>110</sup>

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<sup>107</sup> *DM*, 16 Dec 1846.

<sup>108</sup> *DM*, 10 Feb 1841.

<sup>109</sup> *LC*, 10 Feb 1866.

<sup>110</sup> *NG*, 31 Dec 1857, 14 Jan 1858, 18 March 1858.

As a result, Draper was found guilty of manslaughter rather than murder.<sup>111</sup> In 1871 at Newton Linford, in Charnwood Forest, five poachers armed with sticks and stones were initially approached by two keepers, who then thought better of it and retreated. But after the keepers had gone away and fetched more help and armed themselves with bludgeons, an affray took place and keeper Thomas Hill was killed. It was said that about five poachers surrounded Hill and beat him severely until, 'His brain protruded and his eyes and teeth were knocked out. Death must have been very speedy.' Two of the poachers, Webster and Kirk, were subsequently sentenced to death for murder. Webster said, 'We gave it to them as they gave it to us...I am very sorry for it.' There was a public campaign to reprieve them from the death sentence. Mr Alfred Ellis, the landowner and employer of the deceased Hill, in a letter to *The Times*, reprinted in the *Leicester Chronicle*, said that keeper Hill was,

...an impetuous man who rushed ahead of the others in the pursuit... The deceased watcher, by his own imprudence [sic], needlessly exposed himself to the danger which he encountered, and to the death which he received at the hands of the poachers. He pursued them while they were fleeing, and he brought them to bay single-handed, and in the conflict he lost his life. The poachers are not men whose pursuits entitle them to public sympathy; but it cannot be said that their brutality was spontaneous and unprovoked.<sup>112</sup>

There were several memorials asking for commutation, signed by Mr Ellis the landowner, the Mayor of Leicester, the Town Clerk, the Clerk of the Peace, three magistrates, three reverends and Mr James Thompson the

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<sup>111</sup> *Criminal Registers*.

<sup>112</sup> *LC*, 19.8.1871.

proprietor and editor of the *Leicester Chronicle*. A total of 700 people signed. The *Leicester Chronicle* said in an editorial that the victim was the assailant: 'He advanced towards the prisoners, flourishing his stick and shouting,

"Come on! Here they are!", in this way exciting the fears and arousing the passions of the lawless men whom he was about to attack.<sup>113</sup>

The two condemned poachers were reprieved three days before they were due for execution, and sentenced to imprisonment for life instead.

According to Hopkins, the issue of gamekeepers being over violent and inciting poachers to retaliate had been controversial for some time, and by around 1859 a consensus was emerging, nationally, that gamekeepers must use no more than the minimum force necessary to make an arrest. In a case at York Assizes in 1859, a Judge ruled that the gamekeepers had used excessive force, and remarked that it was a pity that gentlemen allowed their servants to go out as heavily armed as in this case. The keepers had been equipped with firearms.<sup>114</sup>

Overall, looking at all the reports of poaching affrays, there is no doubt that the poachers of the East Midlands were, generally, not looking for a fight. They did their best to be unobserved and, if they were found, they did their best to escape, preferably with their equipment but willing to leave their prey behind. When a fight ended up being very violent, it was

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<sup>113</sup> *NG*, 18 Aug 1871, 15 Dec 1871, 22 Dec 1871, 29 Dec 1871; *LC*, 19 Aug 1871, 17 Sept 1871, 9 Dec 1871, 16 Dec 1871, 23 Dec 1871; *DM*, 16 Aug 1871.

<sup>114</sup> Harry Hopkins, *The Long Affray: The Poaching Wars in Britain* (London, 1986), p. 236.

because they were fighting to make their escape, or to free a fellow poacher who had been taken.

The greater than usual degree of violence evidenced in the few examples from the East Midlands above, may have been more normal in Lancashire. According to Archer, the Lancashire gang poachers had a propensity to be violent when challenged;<sup>115</sup> the poachers of the East Midlands had a propensity to disappear when challenged.

Why, then, were the Lancashire poachers more inclined to violence than the poachers of the East Midlands? Archer cites the severe penalties for violent night poaching as a possible reason why poachers were violent, and it may be that in Lancashire the authorities were harsher in sentencing.<sup>116</sup> But the best way to avoid such penalties would be to evade capture, if possible avoiding being recognised as well, and certainly not to compound the likelihood of a severe sentence by indulging in violence against the keepers. Archer has reported that Lancashire gamekeepers also appear to have been more inclined to violence.

The Lancashire keepers could be unusually brutal and appear to have warmed to their task....Many of them... were dressed for war, donning leather breastplates and cutlasses as a matter of course. This was in addition to any firearms which they might have been carrying.<sup>117</sup>

This behaviour, stated to be normal for Lancashire, was not replicated in the East Midlands. There is only one reported instance of keepers having

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<sup>115</sup> Archer, 'Reckless Spirit', p. 161.

<sup>116</sup> Archer, 'Reckless Spirit', pp.161-2; 'Poaching Gangs', p. 25.

<sup>117</sup> Archer, 'Reckless Spirit', p. 162.

any special equipment, apart from what were basically big sticks, and that was in 1882 when Admiral Cummings was reported as having had 'strong winker shields' made for his keepers on his Foston, Derbyshire, estate.<sup>118</sup> Such protection would have been sensible and useful in the normal affray, in which keepers were pelted with stones and hit with sticks.

There is no report which states that in any affray in the East Midlands keepers were carrying firearms which they deliberately used against poachers. In their day time duties gamekeepers carried guns, but when the weapons which keepers used in fights with poachers were reported, they were sticks or bludgeons, occasionally a flail. There is only one report which mentions an injury to a poacher from a keeper's gun, and that is the report of the affray at Scarcliffe in November 1850, where it is stated that a keeper's gun went off by accident killing a poacher; no claim was made by either side that the gun was deliberately used against the poachers.<sup>119</sup> Earlier, in 1836, the *Derby Mercury* had to print an apology and correct itself over having initially reported that the keepers at Hopwell Hall, in Derbyshire, had been carrying guns when they fought with poachers. The paper said, 'We regret that we stated the keepers were armed. This is not correct, Mr Pares never having suffered them to carry arms.'<sup>120</sup> In contrast, in Lancashire, the wounding of poachers by keepers with guns was common and a prison chaplain, used to meeting offenders with such wounds, claimed that Lancashire keepers used angular rather than round shot pellets against poachers, because this exacerbated the wounds.<sup>121</sup>

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<sup>118</sup> *DM*, 2 Aug 1882.

<sup>119</sup> *NG*, 28 Nov 1850, see p. 197-8, 219, 251-2 for the Scarcliffe affray.

<sup>120</sup> *DM*, 13 Nov 1836; 14 Dec 1836,

<sup>121</sup> Archer, 'Reckless Spirit', p. 162.

A contributory factor, with regard to the issue of the greater use of firearms in Lancashire, may have been the prey which was being poached. The vast majority of group night poaching in the East Midlands was for ground game with nets. Contrastingly, when pheasants were the game, all the party would be armed with firearms; this was the case in the only incident of deliberate use of firearms by a poacher against a keeper which is known in the East Midlands.<sup>122</sup> If Lancashire poachers were more often poaching pheasants than was the case in the East Midlands, then they would have been armed with guns more often, and this might explain why the keepers were also equipped with firearms. Archer has noted that in the North East there was huge market for grouse and pheasant. Lancashire is recorded as being a county with excellent shooting of partridges, pheasants, and hares, with wild pheasants also well established.<sup>123</sup>

If a greater degree of provocation on the part of keepers was missing in the East Midlands, this may go some way towards accounting for the lesser degree of retaliatory violence; but a greater willingness to be violent when challenged is also attributed to the Lancashire poacher. A vicious circle may have been in place in Lancashire, in which it is impossible to ascertain which side was the initiator. Seeking further explanation for these differences, the greater violence in Lancashire seems attributable to wider influences at work in that county. Archer has explained that the Lancashire police came to regard poachers as 'also highway robbers, burglars and common thieves'. As they became actively involved in the poaching war, the police amplified 'both the criminal behaviour and the dangers to society

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<sup>122</sup> See p. 193-4.

<sup>123</sup> Archer, 'Poaching Gangs', p. 31; W. Page (ed.), *Victoria County History of Lancashire* Vol. 2, first pub. 1907 (London, 1966), p. 467.

which [the poachers] ... presented,' in order to retain public support whilst they tackled the poaching gangs.<sup>124</sup> This did not happen in the East Midlands, where night poachers were not regarded as a threat to the population at large, nor did the police amplify the dangers of poaching in order to justify the existence of the police forces.

Part of the mix of factors leading to a different situation in Lancashire could also have been to do with attitudes towards preservation, which may have been linked to differences in gentry sport in the two areas.<sup>125</sup> Archer has said that in Lancashire farmers were generally supportive of intensive game preservation, feeling that the existence of preserves and activity to keep poachers at bay was useful to them as it helped in keeping trespassers off their land. This does not seem to have been the case in the East Midlands where protests at police assisting preservers sometimes included expressions of antagonism towards preservation.<sup>126</sup>

Another cause of the different situation in Lancashire may have been that the men in the poaching gangs simply were more criminal and violent than the night poachers of the East Midlands.<sup>127</sup> Archer's work on policing and violence in Victorian Liverpool shows that Liverpool was, for most of the nineteenth century, a place with a greater degree of violent criminality than other large English towns and cities. Many of the members of the

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<sup>124</sup> Archer, 'Reckless Spirit', pp. 164-6.

<sup>125</sup> See pp. 272-3, 275, on fox-hunting in the East Midlands and in Lancashire.

<sup>126</sup> Archer, 'Reckless Spirit', p. 153; see pp. 44, 190, 243, 270-2.

<sup>127</sup> See pp. 239-41, where the criminality of east midlands poachers is discussed.

Lancashire poaching gangs came from Liverpool.<sup>128</sup> Lancaster and Manchester may also have had significant differences compared to the towns of the East Midlands. The biggest towns there had their fair share of criminal activity, and Nottingham had a reputation as a difficult town – but this was with a view to political radicalism and riot not pure criminality or violence.<sup>129</sup>

### **The Danger of Poaching**

*Game Laws Return 1846(712)* was commissioned to report the results of inquests held on the bodies of gamekeepers (this included assistants and watchers) in England and Wales from 1844-1846. Only seven counties reported keepers killed in this period, all having only one killed except Suffolk where three had been killed. None of the counties of the East Midlands reported deaths. *Return 1849(440)* reported on inquests on the bodies of gamekeepers and other persons (thus including poachers) killed in affrays between gamekeepers and poachers from 1 November 1832 to 1 August 1848. (This includes the period of the *1848(712) return* which has just been quoted.) In the 1848 return, there are no deaths in Nottinghamshire or Leicestershire, but two in Derbyshire: one in April 1840 at Eckington, a game tenter killed; and one at Newhall in February 1841, wilful murder of an assistant gamekeeper. In Lancashire in the same period five people were killed which means Lancashire had the highest number of deaths in poaching affrays in the country for this period.<sup>130</sup>

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<sup>128</sup> Archer, *The Monster Evil: Policing and Violence in Victorian Liverpool*, (Liverpool, 2011), pp. 5, 13-14, 65.

<sup>129</sup> J. V. Beckett, 'Radical Nottingham', in J. V. Beckett (ed.), *A Centenary History of Nottingham* (Chichester, 2006), pp. 284-6, 310-12.

<sup>130</sup> *Game Laws Returns 1846(712), 1849(440)*.

From the known 121 affrays in the three counties from 1841-1891, there were ten deaths of keepers or poachers, which includes one from blood poisoning and one from lockjaw. This is an 8% incidence of fatality in affrays – not a negligible rate. When, earlier in this chapter, the 67 affrays from the 11 sampled years were rated as either not serious (in that no severe injuries were sustained), or serious (in that severe injuries were sustained by either keepers or poachers), 34 of the 67 affrays were rated serious, which means that even if no-one died, at least one person sustained serious injury. The vast majority of injuries were inflicted by stones, sticks or bludgeons, and other missiles. Turnips were pulled up and used in one affray, and frozen clods of earth in another.<sup>131</sup> But although the weapons used in affrays in the East Midlands sound less alarming than firearms, in fact heavy stones, bludgeons and flails were at least as dangerous as guns. The 8% fatality rate, as an indication of the danger to poachers and keepers, does not take account of those who, in an age before modern medicine or even the availability of any treatment for working-class people, never fully recovered from their injuries and as a result suffered for the rest of their lives. If about half of affrays were serious, then, all things considered, night poaching was a dangerous game for all involved when violence broke out. However, the majority of night poaching expeditions were accomplished without being detected. James Brock junior and his brother were both present at the 1851 Rufford affray, and James said in court that they 'went out' four or five times a week, and had no more reason to expect trouble on this occasion than on any other.<sup>132</sup> An affray was not the usual result of a night poaching expedition.

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<sup>131</sup> *DM*, 31 Dec 1841, 10 Nov 1886; *NG*, 24 Jan 1861.

<sup>132</sup> *NG*, 4 Dec 1851, and pp. 139, 167, 173, 180, 194, 228, 234-5, 249, 252-3 for the Rufford affray.

In the East Midlands there are many instances of gamekeepers and watchers showing considerable bravery. Their group was virtually always smaller in number than the poaching gang, and often outnumbered by many to one. Keepers and poachers did of course come from the same backgrounds, and many keepers had been poachers at some time. Three of the Derbyshire poachers involved in affrays were ex-gamekeepers or ex-assistant gamekeepers. At the joint Derbyshire and Leicestershire Assizes in 1886, under questioning by lawyer Mr Weightman, one of the assistant keepers admitted he was an old poacher himself, and had been convicted many times.<sup>133</sup> The relationship between poaching and gamekeeping was a revolving door, and was acknowledged as such.<sup>134</sup>

In illustration of the bravery of keepers, at Renishaw Hall in Derbyshire in 1846, the seat of Sir George Sitwell, a party of poachers 'commenced their deprivations [sic] close to the south front of the house, and the game-keeper hearing the firing went to the spot totally unarmed....' He was shot in both thighs, was said to be severely hurt but that it was hoped he would recover.<sup>135</sup> The *Nottinghamshire Guardian* reported in 1851, under the sub-headline 'Spirited Behaviour of Three Keepers Against a Large Body of night Poachers', that at Barton in Fabis three keepers armed with sticks and flails had accosted 18 night poachers armed with stones, sticks, flails and knives. Three of the poachers were sentenced to 10 years transportation as a result of this affray, where they were considered to have been seriously violent.<sup>136</sup> Near Ashby in Leicestershire in 1866, four keepers fought with nine poachers. At one point, keeper Ford cried out,

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<sup>133</sup> *DM*, 17 Nov 1886.

<sup>134</sup> Archer, *'Flash and Scare'*, p. 158.

<sup>135</sup> *DM*, 15 April 1846. See pp. 193-4, 204.

<sup>136</sup> *NG*, 18 Dec 1851, 1 Jan 1852.

'...they are murdering me', as he had three men attacking him. He was seriously injured and not fit to attend court as a witness for some time afterwards.<sup>137</sup>

Gamekeepers made a good living, and probably felt it was worth their while to take risks to maintain the confidence of their employers and keep their jobs. Poachers, equally, were profiting economically from their activity. Both sides had good reasons for fighting – the keepers in order to apprehend poachers, the poachers to make their escape. Many on both sides had a strong sense of self-preservation and fled when they were outnumbered; a sensible strategy on the part of poachers, but one which employers may not have approved of as far as keepers were concerned.

It has been demonstrated that, in the East Midlands, levels of risk were considerable for poachers and keepers even though the violence was less extreme than in Lancashire. The newspaper reports relished and highlighted this violence. The *Nottinghamshire Guardian* reported on 27 January 1859, of an affray at Shelford, that 'for a time the battle was fearful, and has been described to us by a witness as almost on a par with the memorable battle of the Alma'. The poachers had life preservers and loaded sticks, prongs of forks, and were 'seen to have full determination of offering battle.' The keepers let loose their dogs and 'a cry went forth from the poachers "shoot them, stab them".' In 1841 the *Derby Mercury* stated, 'We have the melancholy task of recording another murder arising, we have much reason to believe, from unprincipled and lawless poachers'.<sup>138</sup> The

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<sup>137</sup> *LC*, 10 Feb 1866.

<sup>138</sup> *DM*, 10 Feb 1841.

*Leicester Chronicle* reported in 1871 that, 'this neighbourhood [the Charnwood Forest area] is visited from time to time from the colliery districts by bands of reckless men, who have been notorious as poachers from time immemorial, and are a terror to the country around.'<sup>139</sup>

Some of the language of the reports can be interpreted as witnesses and reporters being keen to talk up the violence. There were some suggestions that night poachers were causing anxiety, but there is no evidence that the ordinary people of the East Midlands were in fear of poachers, though no doubt many would avoid getting mixed up with them or their activities. Rather, the few pointers that there are, suggest that working people got on with their lives, aware of poaching, keeping clear of it, without feeling threatened. In the mid-1850s, a period when there were many affrays in Nottinghamshire, Assize Judge Mr Justice Wiles, addressing the Grand Jury before the Nottinghamshire December Assizes, referred to, 'Quiet times like these, prosperous and not troublous'.<sup>140</sup>

## **Conclusion**

Viewed per head of population, for a sample of years, the three counties had a greater number of serious affrays than Lancashire. However, the nature of poaching in the two areas was very different. Lancashire was a game county in which the poaching war was of a more violent character, and viewed by the authorities as a wider law-and-order issue. The gangs were dominated by men from the big towns, who had a tendency to be violent when challenged. The keepers too were predisposed to violence, and used firearms against the poachers.

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<sup>139</sup> *LC*, 19 Aug 1871.

<sup>140</sup> *NG*, 18 Dec 1856.

In the East Midlands, the poachers came from the towns and villages of the area and were not predominantly from the biggest towns, though there were some poaching gangs which were mainly from the big towns. The poachers came from a narrower range of occupations than the Lancashire men. In the East Midlands, from the known sample, one third of poachers were labourers, and this probably meant agricultural labourers; one third were miners; and in Nottinghamshire one third were framework knitters. The ages of poachers in the East Midlands were closer to the profile of Lancashire men than East Anglian poachers, with a majority of an age to have dependent families.

There were some differences in policing between the three counties, with Derbyshire having had a late formation of a county police force, which may have exacerbated the problem with the Derby poachers. But in Derbyshire police were not involved in actually watching on the land with keepers, as they were to some extent in Leicestershire and more so in Nottinghamshire. Police of all the three counties of the East Midlands, after the 1862 Prevention of Poaching Act, were active in waiting on public roads and paths in the hope of catching poachers on their way home. Affrays, after 1862, were sometimes between police, keepers and poachers; but the majority were between keepers and poachers, as was the case before 1862.

In Lancashire, for reasons of both combatting poaching and justifying their own existence, police portrayed poaching gangs as being generally criminal and as dangerous to the general public. This did not happen in the East Midlands where the poachers were not, in general, as violent as those of

Lancashire. East Midlands poachers preferred to escape, preferably with the haul and certainly with their equipment. As to why Lancashire poachers were more violent, the aggressiveness of the keepers – who were routinely armed with firearms which they used against poachers, has been suggested as a cause. In the East Midlands firearms were not used in poaching affrays; stones and various types of sticks and flails, some very dangerous, were the usual weapons. Though there were some instances of poachers being gratuitously violent, this was the exception.

The Lancashire poachers were often men who were involved in other criminality, and the most notorious had links with Liverpool, a city known for its violent criminality. No town in the East Midlands had a reputation for crime and violence on a par with that of Liverpool; the poachers were as rough and violent as their peers, but not any more so.

The common use of firearms in Lancashire may have been connected to the frequency of night poaching of pheasants, for which guns were needed. The escalation of the violence in Lancashire could also be partly due to a greater unanimity of antagonism to poachers in a county where extreme preservation was approved of by farmers, which was not the case in the East Midlands.

Night poaching was a dangerous game in the East Midlands, for poachers and keepers, and people were frequently seriously injured and occasionally killed; but the danger was not perceived by the population or the authorities as extending to the general public, or as being a threat to wider law and order.

## Chapter 6            The Law, the Courts, and Protest

This chapter follows the poaching war into the court rooms and shows how the authorities, through the use of the law and punishment, tried to deter poaching, and how poachers fought back with guile and irreverence to try to avoid conviction. It looks at the laws which were used, the courts in which they were applied and the sentences given; the poachers' defence mechanisms, their behaviour in court, and their recidivism. The problems facing the poachers were that they were breaking the law, albeit one which they did not accept, and the forces against them were far more powerful than they were; but this power was not absolute. The problem facing the authorities was that the poachers were ungovernable; only a small proportion of poaching crime was punished and they were not deterred. This intractable situation represented a form of protest on the part of the poachers, and this is made clear by glimpses of hidden transcripts. The authorities could punish individual offenders, but were powerless to stop the endemic poaching.

### Day Poachers and Prosecution

Before 1831 day poachers could be prosecuted and punished under various different parts of the game laws, involving different sections for rabbits than for game. Fines and periods of imprisonment could be given. *Game Laws Return 1817(212)(251)* shows some Leicestershire poachers imprisoned for periods of three months for having a hare in their possession, or for keeping and using a snare.<sup>1</sup> A later return, giving the numbers of people in prison immediately before the passing of the Game

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<sup>1</sup> *Game Laws Return 1817(212)(251)*.

Reform Act, shows, in all three counties of the East Midlands, the vast majority of day poachers as having been sentenced to three months. This was for offences ranging from actually poaching using various types of equipment, to merely owning equipment for poaching.<sup>2</sup>

After 1831 the majority of day poachers were prosecuted summarily under section 30 of the Game Reform Act, which gave a fine of up to £2, up to £5 if in a group, for trespass on enclosed land.<sup>3</sup> Costs were imposed on top of this, and could be just one or two shillings, or far more - sometimes up to £1. *Game Laws Return 1864(9)* shows that section 30 was by far the most frequently used.<sup>4</sup> Because it was day time, there were seldom any disputes about identity. There was little poachers could do to deny having been there, and many just accepted their punishment. But there were those who made efforts to refute the accusation, sometimes successfully.

If poachers were not actually caught with game or equipment in their possession, then the need on the part of the prosecutor to demonstrate that their purpose was to search for game, left room for manoeuvre. Samuel Harrison claimed he was in a field near Newark scaring crows with his gun for Mr Brownlow (presumably the tenant farmer) not shooting at partridges as claimed by the gamekeeper; the bench dismissed the case because there was so much conflicting evidence.<sup>5</sup> Three Leicestershire men, who were in a wooded area accompanied by three dogs, claimed they were 'nut plucking', and they had assiduously engaged in picking nuts from nearby trees when the gamekeepers came on the scene; the bench

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<sup>2</sup> *Game Laws Return 1831-32(65)*.

<sup>3</sup> Game Reform Act 1831, section 30; also, see page 5.

<sup>4</sup> *Game Laws Return 1864(9)*.

<sup>5</sup> *NG*, 15 Dec 1859.

convicted the only man who had attended the court of damage, because some trees appeared to have been harmed.<sup>6</sup> He was given a fine of 2s 6d, including costs.<sup>7</sup> Robert Richards, accused of trespass in pursuit of game at Woodborough, claimed that although his dog was in a field and appeared to be searching for game, he was not exercising control of the dog at the time, and the case was dismissed.<sup>8</sup>

The scene illustrated below shows a likely scenario: the pursuit of poachers in the day time, by a Magistrate. The fact that it was illustrated in a lady's sketch book shows what a common occurrence it was to get a sighting of men trespassing, almost certainly in pursuit of game.

Fig. 6.1. 'A County Magistrate interrupted in his drive home'.<sup>9</sup>



<sup>6</sup> This case came to a summary court in November 1851, a time of the year when there would have been plenty of ripe wild nuts in wooded and forest areas.

<sup>7</sup> *LC*, 16 Oct 1886.

<sup>8</sup> *NG*, 6 Nov 1851,

<sup>9</sup> Sketch by Emma Wilmot, from Richard A. Gaunt (ed.), *Emma's Sketchbook: Scenes of Nottinghamshire Life in the 1840s'* (Nottingham, 2013), p. 41.

Section 30 of the act was for trespassing on enclosed land and most day poachers were on enclosed land, but this was not always the case. Section 23 of the act was for killing game without a game certificate, or having a dog or 'engine' without a game certificate, and this could be used when the offender was on unenclosed land.<sup>10</sup> It can be seen from *Game Laws Return 1864(9)* and reports from newspapers that this section was sometimes used. Some landowners brought prosecutions under both section 30 and 23, getting a poacher on two counts for the same offence. There was also section 3 of the act which precluded hunting on Sundays, Christmas Day and out of the season (if for winged game) and also gave a fine of up to £5. As an example of prosecution under two sections for one offence, Henry Hurst pleaded guilty to game trespass at Babworth, and to using a dog and a gun on a Sunday, before four magistrates.<sup>11</sup> Two colliers were prosecuted at Heanor petty sessions for day poaching at Smalley, and were each given £5 plus costs for not having a certificate, and £2 and costs for trespass in pursuit of game.<sup>12</sup> Although most prosecutions for day poaching were successful, the incidents which were prosecuted were a small fraction of the actual day poaching going on.

### **Night Poachers and Prosecution**

Before 1828 those hunting game at night could be fined £10-£50, depending on whether or not for subsequent offences, or imprisoned for up to 12 months. These fines were so large that, for working class poachers, they were effectively automatic imprisonment; only gentlemen poachers were able to pay them. From 1816 night poachers could be given any period of imprisonment available for a misdemeanour or seven years

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<sup>10</sup> See p. 5.

<sup>11</sup> *NG*, 16 June 1853.

<sup>12</sup> *NG*, 23 June 1876.

transportation without any option of a fine.<sup>13</sup> The *Game Laws Return* which gives those in prison just before the 1831 act, has many prisoners convicted of night poaching and serving periods of three months or six months, with sureties to find at the end of the period; failing to provide the securities meant serving more time.<sup>14</sup> If armed, penalties were worse and conscription into the army or navy was a possible punishment.<sup>15</sup>

The 1828 Night Poaching Act simplified the law and cancelled many previous laws. Most night poaching was now tried summarily under a minimum of two Justices, and always resulted in imprisonment.<sup>16</sup> On top of the periods of imprisonment, there were securities of substantial amounts to pay at the end of the sentences in order to secure release - £10 at the end of three months and £20 at the end of six months. No evidence has been found to indicate how many poachers had to serve further terms due to being unable to find these securities. For the third or subsequent offence the sentence could be transportation for seven years or imprisonment with hard labour for up to two years; but for this the case had to go before a jury at Quarter Sessions or Assizes. For offering violence with any weapon, or for being in a group of three or more, the possible sentences were greater – up to 14 years transportation.<sup>17</sup>

All were aware what the law said and what the maximum sentences were, and this made night poachers keen to avoid being proved to have been armed, or in groups of three or more. Night poaching where less than three were involved, or where there was no violence above the ordinary, was

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<sup>13</sup> See p. 5.

<sup>14</sup> *Game Laws Return 1831-32(65)*.

<sup>15</sup> See p. 5.

<sup>16</sup> See p. 5.

<sup>17</sup> Night Poaching Act, 1828.

always dealt with summarily in practice. The *Game Laws Return* which gives the most details of the offences, shows many poachers imprisoned summarily under '9 Geo 4, c 19, s.1' (which is the Night Poaching Act, 1828) and given, most often, 3 months with sureties, and less often, 6 months with sureties.<sup>18</sup>

The situation as to when and why a night poaching case was referred to a higher court is complicated. Although the law said that third offences were liable to more severe sanction and should go to a higher court, and that offering violence or being in a group of three or more should be treated the same, in practice this did not always happen. David Philips, looking at all crimes, not just poaching, in the Black Country, found that some offences could be tried either summarily or on indictment; all offences for which a bill of indictment was drawn up had to go before a court with a jury. How Justices decided to deal with each case depended on the seriousness of the act. For assaults and riots, Magistrates at preliminary sessions could choose to try summarily directly, or could commit for trial at Quarter Sessions or Assizes. A serious assault was a misdemeanour and would go to a jury court.<sup>19</sup>

The magistrates in the East Midlands appear to have acted in this fashion, referring cases upwards only when a certain degree of violence had been reached, and trying summarily otherwise. For example, three men were tried at a Derbyshire summary court for 'night poaching with violence' at Winhill, for which they were all sentenced to two months imprisonment with sureties to be paid before release.<sup>20</sup> In another case, after an affray at

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<sup>18</sup> *Game Laws Return 1864(9)*.

<sup>19</sup> David Philips, *Crime and Authority in Victorian England: The Black Country 1835-1860* (London, 1977), p.299.

<sup>20</sup> *DM*, 19 Jan 1881.

Papplewick, Nottinghamshire, in which a gamekeeper was seriously injured, night poachers appeared before a summary court the next morning. There were three of them, from a group of many more, and serious violence had been used. The paper reported that the magistrates believed the case should go to the Assizes, but they could only make a case for night poaching. They discharged the men, but warned that they could be arraigned if further evidence came to light.<sup>21</sup> Presumably the Magistrates were seeking witnesses to prove that a certain degree of violence had been used by the men whom they had before them, or seeking identification of other men involved. It was not the case that men referred by Magistrates to trial by jury would be easily, or certainly, convicted; the jury had to be persuaded and for that the evidence had to be carefully collected.

Instances where the violence was of such a degree that it was referred to a higher court include, for example, a severe affray at Scarcliffe, Derbyshire, in 1850, in which a poacher was killed and keepers seriously injured. There were many preliminary appearances before magistrates after this Scarcliffe affray, to ascertain the evidence and decide who to prosecute, but the case was finally tried at the next Assize.<sup>22</sup> An affray at Walesby, Nottinghamshire, in 1861, was another such case; there was a preliminary hearing before magistrates at which it was heard that several keepers were hurt, one said to be 'in a precarious condition'. The six men who appeared were all committed to the next Assize.<sup>23</sup> In another example, after an affray at Stanford Hall in Leicestershire in which a gun was fired in a keeper's face and he was expected to die (he did not), the six apprehended

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<sup>21</sup> *NG*, 1 Sept 1876, 15 Sept 1876.

<sup>22</sup> *NG*, 28 Nov 1850. See pp. 197-8, 203, 251-2, for further information on this Scarcliffe event.

<sup>23</sup> *NG*, 29 Nov 1861, 13 Dec 1861.

were charged with night poaching and intent to kill. The case went to the Assizes, but with only two of them appearing, charged with 'feloniously discharging a loaded gun or pistol with intent to kill'. They were found not guilty of this, the shot was considered to have been accidental, but they were convicted of night poaching.<sup>24</sup>

As in this last example, when keepers' injuries were serious, poachers were often indicted for more than one offence, one of them not a game law offence. After an affray at Attenborough two men were apprehended and accused; they were indicted for entering enclosed land at night armed to kill game, and also for assaulting gamekeepers.<sup>25</sup> Four Derbyshire poachers were convicted of night poaching, and assault separately, at Derbyshire spring Assizes after an affray at South Normanton.<sup>26</sup>

### **Lawyers, Magistrates, Judges and Juries**

With night poaching, identification was the great issue, and lack of convincing testimony on this point from witnesses frequently resulted in the accused being either discharged before the trial, or found not guilty.

Many of the night poachers who appeared at Quarter Sessions or Assizes employed solicitors for their defence. This practice increased later in the century, and by around 1860 few night poachers appeared at higher courts without a defence lawyer; they sometimes had representation at preliminary sessions. A few even employed lawyers for trials at summary courts.

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<sup>24</sup> *LC*, 25 Feb 1865, 1 April 1865, 22 July 1865.

<sup>25</sup> *NG*, 11 March 1852.

<sup>26</sup> *LC*, 15 Jan 1876, *DM*, 5 April 1876; *Criminal Registers*, 1876.

As examples: in 1828, three poachers appearing at the Derbyshire Easter Quarter Sessions had a Mr Clarke to defend them, as did a single poacher at the 1828 Derbyshire Summer Assizes;<sup>27</sup> but at Derbyshire January Quarter Sessions in 1827, the accused, Richardson, had no representation and himself called his father and two sisters as witnesses.<sup>28</sup> At this early stage in the period, it was common for defendants in jury trials not to have representation, but by the 1880s it was very unusual not to have a professional defender at Assize courts, though it did still occur occasionally. At Derbyshire Assizes in 1886, following an affray at Ticknall, 12 men appeared in the court. Mr Weightman defended two, Mr Hextall defended another, but the other nine had no professional defence.<sup>29</sup>

Though by the 1870s most poachers being tried summarily still did not have professional defenders, increasing numbers did so. At a Nottinghamshire Petty Sessions in 1874, a single poacher accused of night poaching and being involved in an affray with three others, employed Mr Cranch to act for him.<sup>30</sup> Robert Trussell of Ashby employed Mr Mears to defend him at Melton Mowbray Petty Sessions in 1876, but the four other poachers appearing at the same sessions for day poaching were undefended.<sup>31</sup>

How did working class men afford to have a lawyer to act for them in court? The answer must be, the same way as some of them managed to pay fines of several pounds. There certainly were poachers who did sufficiently well out of poaching to do this, and these may have also had

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<sup>27</sup> *DM*, 16 April 1828, 22 July 1829.

<sup>28</sup> *DM*, 17 Jan 1827.

<sup>29</sup> *DM*, 24 Nov 1886, 7 Feb 1887.

<sup>30</sup> *NG*, 21 Jan 1876, 4 Feb 1876.

<sup>31</sup> *LC*, 30 Sept 1876.

sufficient funds of their own to pay for their defence. Philips found that in the Black Country there were barristers who 'travelled the circuit', attending all the Quarter Sessions and Assizes held on a particular circuit. For the Oxford circuit, there was a pool of between 30 and 40 barristers who interchangeably took the prosecuting and defending roles in trials. Fees were low by barristers' standards, usually a guinea, but if a solicitor had been employed as well that would be another guinea.<sup>32</sup> From the names of the lawyers mentioned in poaching trials at Assizes and Quarter Sessions in the three counties, it can be seen that the same lawyers sometimes prosecuted and sometimes defended, so it seems likely there was a similar arrangement on the Midland circuit. Secondary evidence suggests that many poachers received funding from contacts in their black market networks or from associations of poachers.<sup>33</sup> Grantley F Berkeley, the well-known agitator against poaching and poachers, had no doubt that poachers were getting funding from such sources. Enraged by the series of cases where Derby poachers were conducting civil cases against the police for confiscation of their equipment and catch,<sup>34</sup> he wrote, 'These thieves and marauders ...has [sic] brought to bear on head constable Hilton the funds of every rogue-association at their command, with a view to crush him.'<sup>35</sup>

Defence lawyers appear to have made a difference to the outcomes for the defendants, though it is not possible to be sure whether this was so in a majority of cases or not. The frequent employment of professional defenders suggests that many poachers thought it would aid their case.

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<sup>32</sup> Philips, *Crime and Authority*, p. 104.

<sup>33</sup> P. B. Munsche, *Gentlemen and Poachers: The English Game Laws 1671-1831* (Cambridge, 1981), pp. 98-99.

<sup>34</sup> See pp. 186-7.

<sup>35</sup> *DM*, 12 June 1861.

All night poachers, and some day poachers, contested the prosecution case, and defence lawyers were often reported as being very active in court, refuting witness and police evidence and calling their own witnesses to provide alibis. At Cossall, Nottinghamshire, Petty Sessions in 1851, two poachers employed Mr Bowley in their defence. Mr Bowley admitted to the court that his clients were at the scene of the offence, 'but only for the purpose of shooting small birds'. They were convicted 'in the mitigated penalty of £1 each including costs'.<sup>36</sup>

As further examples, at Nottingham Assizes in 1856, two men were accused of night poaching with violence. The two keeper witnesses said there had been a third man there. For the prosecution, Mr O'Brien said that the presence of the third man was an important issue. Mr Boden for the defence made a real effort to sow doubt as to the existence of the third man in the minds of the jury, successfully so. These men must have been indicted under section 9 of the act, because the jury found them not guilty because they were not sure there had been three of them.<sup>37</sup> The Judge, obviously displeased, said that they would now be prosecuted by the county Magistrates for night poaching.<sup>38</sup>

Having a professional defender appears to have served good purpose in the preliminary hearings, before magistrates in 1859, of five poachers who had been stopped coming back into Mansfield in the early hours with wet nets and rabbits. There had been an affray that night at Warsop Wood. These

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<sup>36</sup> *NG*, 1 May 1851.

<sup>37</sup> Section 9 of the Night Poaching Act, 1828, was for three or more acting together and gave up to 7-14 years transportation, or hard labour up to three years, for even a first offence. When transportation had ceased, terms of over three years were sometimes given in lieu.

<sup>38</sup> *NG*, 18 Dec 1856.

five were linked to this event by the identification of the keepers, who said they recognised them as the men they had fought with, and by a footprint in the field which matched poacher Skidmore's boot. Lawyer Mr Shacklock defended poachers Hurst and Hall, but the others had no-one defending them. After Mr Shacklock's cross examination, the keepers said that they were still sure about their identifications of Heathcote, Peet and Skidmore (the men who were undefended), but they were not sure about Hurst and Hull (the two who were defended).<sup>39</sup>

The most common defence tactic for night poachers who had not been caught at the scene, was to produce witnesses who claimed to have been with them elsewhere, and these witnesses could appear very convincing to a jury. At Leicester Assizes in 1865, two men, Thomas and Benjamin Mountnay, were accused of taking part in an affray at Shepshed. There had been more poachers present, but these were the only two prosecuted. Mr Merewether defended them both, bringing Thomas Mountnay's sister as a witness who said that he was at her house sleeping with her son until 9am the next day. Another witness, George Flewitt, said that he had been at the *White Swann* public house with Benjamin Mountnay; he had bought a white rabbit from Mountnay and they drank five pints of ale, which was why he remembered it. The jury found them both not guilty. After the verdict, the Judge addressed the prisoners and told them they 'had been tried by a very merciful jury'; he advised the Mountnays 'to be very cautious in future'.<sup>40</sup>

After an affray at Drakelow, Mr Weightman defended three of the six men in court at Derbyshire Assizes. He called a number of witnesses to prove

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<sup>39</sup> NG, 6 Oct 1859.

<sup>40</sup> LC, 3 March 1866.

that they were not present at the affray. The jury found all three not guilty. After the verdict had been delivered, the Judge informed the court that 'they were old poachers and if the jury had known what he knew they would not have acquitted them'.<sup>41</sup>

Magistrates, trying cases without juries, were less easy to convince of the truth of alibis. At a summary court in Nottinghamshire, John Selby was identified by a keeper as the person who he had seen shoot and take a hare. Mr Coope, for the defence, produced two witnesses who said they had been with Selby in a public house from 4.30-7pm, the time of the offence. But the Magistrates convicted Selby, clearly discounting his alibi.<sup>42</sup> Prosecutors could be more certain of getting a conviction at a summary court, where Magistrates alone decided the outcome, but the maximum penalties were far less than those from a higher court where there was a jury.

These examples which have been cited, both of juries finding defendants not guilty where the Judge thought otherwise, and of poachers going to trial for offences further than just night poaching but being found not guilty of the further offences, are evidence that trials of poachers were far from being show trials. There was a law, it was in play – evidence had to be produced and be convincing; moreover, juries were not necessarily under the influence of the Judge at Assize trials. Whilst there were also instances of wrongful conviction,<sup>43</sup> the court was an arena in which poachers could fight with some chance of success, though it remained the case that the majority of poachers tried at jury courts were convicted. Historians have

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<sup>41</sup> *NG*, 18.2.1881; *DM*, 16.2.1881

<sup>42</sup> *NG*, 1 May 1851.

<sup>43</sup> For example, see pp. 43, 145, 159,

noted examples of juries ignoring the summing up of Judges and having the reputation of being unwilling to convict poachers.<sup>44</sup>

The jury who tried the prisoners were called the Petit Jury; the Grand Jury were the different group of people, who vetted all the bills of indictment before the court hearing began, for both Quarter Sessions and Assizes. If a bill had anything wrong with it, or showed that the evidence was inadequate, in their opinion, then the Grand Jury would 'ignore' the bill and the offender would not be tried. Philips does not differentiate between the social composition of the Petit Juries for Quarter Sessions and Assizes, saying that for both the jury list had been prepared by the High Sheriff of the county from eligible men, who had to own a certain amount of land or occupy dwellings of a certain size, which ruled out the working class. But Grand Juries were composed of men of higher social status than Petit Juries.<sup>45</sup> Lists of juries published in the *Nottinghamshire Guardian* show that, for the Assizes of March 1854, the Petit Jury were all men titled 'Mr', and the Grand Jury were all men titled 'Esquire'.<sup>46</sup> In the East Midlands there are no discernible differences in conviction rates or sentencing policy for poaching between Quarter Sessions and Assizes.

## **Conviction and Sentencing**

Most poachers escaped justice for most of their offences by various means: primarily, by failing to be apprehended in the first place; being apprehended but there being insufficient evidence for the prosecution to continue; a Grand Jury finding the bill of indictment inadequate; being found not guilty by a Magistrate summarily or by the jury in a Quarter

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<sup>44</sup> Munsche, *Gentleman and Poachers*, p. 103; Hopkins, *Long Affray*, pp. 206, 236.

<sup>45</sup> Philips, *Crime and Authority*, p.106.

<sup>46</sup> *NG*, 16 March 1854.

Session or Assize court. In the case of day poachers, it was generally the first reason which meant they avoided conviction. In the case of night poachers, after apprehension it was identification that was the problem for the prosecutors. It was difficult to prove that men who were undoubtedly poachers because they were out at night and were wet, muddy and bearing equipment or game, were the men who had taken part in a particular affray, or been in a particular place, when poaching was going on in various locations every night. It was much easier to get night poachers convicted after the passing of the 1862 act, but only for the lesser penalty of a fine of up to £5, with imprisonment only if the fine was not paid.

A prosecutor had to surmount a series of hurdles in order to achieve the conviction of a night poacher. The first was finding someone who could reasonably be accused of the crime. Instances where the poachers had been seen and possibly engaged with, were a minority of events; even when the poachers had been found in the act, only a small minority of the group, if any, were usually apprehended, either at the scene or later.

Typical examples which illustrate this are: after a serious affray at Nuthall, nine poachers were seen and four men taken; of 15 or 16 seen at Gedling, four were taken; from a major affray at Calke Abbey with rewards offered, of more than 20 poachers only four were taken; of 11 poachers at Bingham, three were taken; after an affray at Whetstone, with 11-12 poachers, two taken; after a severe affray at Kedleston with 12 poachers, four taken; after an affray at Foston, ten poachers and four taken.<sup>47</sup>

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<sup>47</sup> *NG*, 13 Oct 1853, 16 March 1854, 18 Dec 1856, 15 Jan 1857, 29 March 1860; *DM*, 29 Oct 1860, 2 Aug 1882; *LC*, 4 Jan 1862.

Occasionally there were great successes for landowners. After the major Scarcliffe affray in 1850, out of 15 poachers who were seen, 11 were apprehended and accused and, unusually, all 11 convicted; one poacher had been killed.<sup>48</sup> At Bramcote, Nottinghamshire, out of a few more than seven poachers, seven were taken after an affray; again, out of a few more than seven, seven were taken after a Chatsworth affray.<sup>49</sup>

As against this, it was also common, when poaching gangs had been seen, possibly fought with, and the number of poachers estimated, for no-one to be caught: after a serious affray at Blidworth involving more than 20 poachers, none were caught; after another affray at Blidworth the next year, 30-40 poachers were said to have fought with the keepers, and yet none were caught and the paper commented that this was, 'as generally happens in these nocturnal affrays'. After a fight with 10 poachers at Alfreton Park, none of them were known and none captured.<sup>50</sup> Overall, as a rough estimate, it might be considered that of poaching raids that were detected and challenged, on average approximately one fifth of the poachers were apprehended. Consider the raids which were unseen and unknown, of which if there were twice as many, an estimate of at most about one fifteenth of poachers being caught per night poaching expedition seems possible. This is high estimate of the probability of being caught – it would possibly be far less than a one in 15 chance of capture; the men who gave witness statements at the 1851 Rufford affray said that they went out poaching four or five nights a week, and had no more reason to expect

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<sup>48</sup> *NG*, 12 Dec 1850, 20 March 1851; *DM*, 19 March 1852; *Criminal Registers*, 1852.

<sup>49</sup> *NG*, 28 Nov 1850, 11 July 1862, 18 July 1862; *DM*, 15 July 1891, 16 Feb 1891, 22 July 1891, 16 Dec 1891.

<sup>50</sup> *NG*, 11 Nov 1852, 1 Sept 1853, 25 Aug 1876.

'trouble' that night than any other.<sup>51</sup> This suggests that less than one in three night poaching expeditions resulted in detection and apprehension.

For the would-be prosecutor, having caught a man and obtained reasonable evidence, matters could proceed to court. Records from some of the *Game Laws Returns* indicate what proportion of those who were indicted for game laws offences were ultimately convicted; these are prosecutions which went to Quarter Sessions or Assizes. Data for the years 1820-31 and for 1842 shows that nationally about 75% of those indicted were found guilty. Of the 25% who were not convicted, for about one third of them it was because the bill of indictment was found to be inadequate and they were not tried.<sup>52</sup> This national information, put together with the estimate made earlier that about one fifteenth of night poachers were caught, means that if about three quarters of these were in the end convicted, a night poacher had around a 5% chance of being convicted each time he went out – one in twenty. Such an estimate is necessarily rough, but it serves to give some idea of the risk taken by poachers, and of preservers' chances of catching and punishing poachers. If the poacher was only taken to a summary court the chances of conviction would have been a little higher.

Evidence from *Game Laws Returns* about the proportion of those prosecuted in the East Midlands who were found guilty, is available only later in the century, and only for a few years. For the years 1857-62, in the East Midlands, of those who actually stood trial at Quarter Sessions or Assizes for game law offences, 8% were found not guilty; but there is no information about the number whose cases had been rejected by the Grand

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<sup>51</sup> NG, 4 Dec 1851. For the 1851 Rufford Affray see pp. 139, 167, 173, 193-4, 249, 252.

<sup>52</sup> *Game Laws Returns* 1826-27(235), 1830(197), 1831-32(375), 1843(465).

Jury before the trial.<sup>53</sup> Information is available again for the years 1870 and 1871: in the three counties in 1870, of the 39 accused who stood trial 23 of them were found not guilty – that is, 59% not guilty.<sup>54</sup> Such a dire record may well have affected prosecutors' choice of how to proceed, because the next year, 1871, only three offenders were sent to the higher courts for game law offences, one in Derbyshire and two in Nottinghamshire, and all three were found guilty.<sup>55</sup> Some prosecutors may have decided, in 1871, that they were better off just taking their poachers to summary trial.

The two later *Game Laws Returns*, which give data for the East Midlands about the years 1870 and 1871, also supply evidence on discharges by summary courts for the first time. For the year 1870, 25% of those appearing before Magistrates at summary courts (Petty Sessions or Police Courts) for game laws offences were discharged; in 1871, 18% were discharged.<sup>56</sup> These slightly higher conviction rates suggest that a night poacher might have had closer to a 5.5% chance of conviction (each time he went out poaching) if taken to a summary court – a bit more than one in twenty.

King, in his study of the activities of Magistrates from 1750-1840, found that for many of those appearing before summary courts who were not convicted, it was because some cases were considered suitable for settlement by other means, such as payment of compensation, or warnings and reprimands. However, he says, certain types of theft which could be tried summarily, including poaching, were more likely to produce a formal

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<sup>53</sup> *Game Laws Return 1864(9)*.

<sup>54</sup> *Game Laws Return 1871(247)*.

<sup>55</sup> *Game Laws Return 1872(103)*.

<sup>56</sup> *Game laws Returns 1871(247), 1872(103)*.

response – a committal for trial or a summary conviction.<sup>57</sup> But it may, nevertheless, be the case that some of the failures to convict for poaching at summary sessions were because the offenders were subject to informal responses from the Magistrates. For example, Fanny Hill and Mary Jane Broughton, aged 13 and 14, were brought before the Derby Borough Police Court in 1884; they had been found bringing rabbits back to their homes by PC Shirley; although the evidence was indisputable they were discharged with a caution.<sup>58</sup>

The *Criminal Registers* give information by county on all those who appeared in court for offences against the game laws at Quarter Sessions and Assize courts, from 1820-92. Overall for this period, in Nottinghamshire, 10% of those indicted for game laws offences were found not guilty, in Derbyshire 14%, and in Leicestershire 16%.<sup>59</sup> This does not include those indicted but then found to have no true bill. As is suggested by the 59% found not guilty in the three counties in 1870, the figures are very variable.

As well as acquittals, many short sentences were given. In 1833 at Nottingham Lent Assizes, five men were tried for offences against the game laws; one was found not guilty, and the other four who were found guilty were all given sentences of three months – sentences which they could have been given at a summary court. In 1848, again at Nottingham Lent Assizes, nine men are listed in the register, charged with being armed at night in search of game. Five of them had been involved in an affray at Nuthall Park, and they were discharged on sureties for good behaviour. The

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<sup>57</sup> King, *Crime and Law*, pp. 8, 29.

<sup>58</sup> *NG*, 18 July 1884.

<sup>59</sup> *Criminal Registers*, Derbyshire, Leicestershire, Nottinghamshire.

other four, not involved in the event at Nuthall, were all given sentences of two weeks.<sup>60</sup>

Similar instances of acquittals and short sentences can be found in the other two counties. At the Leicestershire Assizes in March 1849, six poachers were found guilty of night poaching and given sentences of three days for three of them, and three months for three of them. In March 1859, six men were found guilty and were all given three months. In Derbyshire in 1832 at the Lent Assizes five were charged with offences against the game laws, and were all found not guilty. At the following Summer Assizes, the two poachers who were tried were found not guilty; and at the 1833 Lent Assizes, of the five accused only one was found guilty. In 1870 at the Spring Assizes nine were accused of night poaching, and all acquitted.<sup>61</sup>

Table 6.1. Sentences given at Quarter Session and Assize courts, as numbers and as percentages, for the periods 1820-28, 1829-60, 1861-92, and 1820-92, for the three counties.<sup>62</sup>

	Less than 1 month	Over 1 month and up to 3 months	Over 3 months and up to 1 year	Over 1 year and up to 2 years	Over 2 years	Transportation	Total
1820-28	0	6 7%	42 48%	15 17%	0	25 28%	88
1829-60	18 6%	42 13%	144 45%	58 18%	7 2%	49 16%	318
1861-92	12 4%	20 7%	147 53%	57 21%	39 14%	0	275
1820-92	30 4%	68 10%	333 49%	130 19%	46 7%	74 11%	681

<sup>60</sup> *Criminal Registers*, Nottinghamshire.

<sup>61</sup> *Criminal Registers*, Derbyshire.

<sup>62</sup> *Criminal Registers*, Derbyshire, Leicestershire, Nottinghamshire.

Looking at the table 6.1, between 1820-28, 7% of those convicted were given sentences of three months or less; from 1829-60, 19% were, and from 1861-92, 11%. After the passing of the 1828 Night Poaching Act, the next approximately 30 years saw a higher proportion of lenient sentences than was the case either before 1828 or in the 30 years from 1861 onwards.

Regarding severe sentencing, from 1820-28, 28% of those convicted were sentenced to the most severe penalty, seven years transportation. Contrastingly, from 1829-60, only 18% were sentenced to the most severe penalty, which was transportation until 1855 when transportation sentences ceased and terms of imprisonment of more than two years replaced them. During the part of this period (1829-55) when transportation sentences were being given, there were 19 instances of seven years, 15 instances of 10 years, and 17 instances of 14 years. Table 6.1 shows that over the whole period, 14% of those convicted were given sentences of three months or less. Again, over the whole period, only 18% were given sentences which were very severe – that is, over two years in prison or transportation. If the early period of 1820-28 is presented separately from the period 1829-92, as in table 6.2, then the contrast between the early period and the main part of the century is noticeable.

Table 6.2. The contrast between sentencing in the years 1820-28 and 1829-92.

	Up to 1 month	Over 1 month and up to 3 months	Over three months and up to 1 year	Over 1 year and up to 2 years	Transportation or over 2 years
1820-28	0	7%	48%	17%	28%
1829-92	5%	11%	53%	19%	16%

After 1828 the most lenient sentences were given more often, and the most severe less often. This is in contrast to the sentences which Munsche found in Wiltshire in the 11 years leading up to 1828; in Wiltshire only 10% were given sentences of transportation, where as in the East Midlands 28% were. The Wiltshire preservers felt that Magistrates (who did not try the accused at Quarter Sessions but who did sentence them) sentenced too leniently, and there were calls for night poaching cases to be sent to Assizes rather than Quarter Sessions.<sup>63</sup> In the East Midlands there is no discernible difference in sentencing between the two types of court, though the use of Quarter Sessions for poaching offences was phased out, and by the end of the 1860s all indictable poaching cases were going to Assize courts. Munsche has said that the authorities followed a policy of making examples by giving heavy sentences now and again, not steady and uniform severe sentencing, and that this may have been the reason why they failed to deter night poachers; the poachers may have seen the occasional example as just an exceptional case, rather than regarding it as a warning to them.<sup>64</sup> This seems to have been the case in the three counties over this later period, where there is little consistent heavy sentencing, and, as will be discussed, poachers were undeterred.<sup>65</sup>

It can be seen that, in the East Midlands, severe sentences were given every now and again, rather than there being consistent periods of heavy sentencing. In Nottinghamshire from 1845-9, despite there having been plenty of poaching convictions, many of them for violent night poaching, no-one was sentenced to more than two years, many to periods of nine to 14 months, and four men to only two weeks. Then, at the 1850 March

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<sup>63</sup> Munsche, *Gentlemen and Poachers*, p. 103.

<sup>64</sup> Munsche, *Gentlemen and Poachers*, p.105.

<sup>65</sup> See pp. 237-9.

Quarter Sessions, Magistrates sentenced one offender to ten years transportation and one to seven years, and in March 1852 the Assize Judge gave transportation sentences to seven of the poachers from the major Rufford affray of 1851.<sup>66</sup> From 1857 to 1861 there were no prison sentences exceeding 18 months, despite some of those being tried having been convicted of taking part in several serious night affrays; then in 1862, six men were given seven years penal servitude, a very heavy sentence now that transportation was finished.

In Leicestershire, from 1849 to 1865, there were no sentences of over two years, despite 43 night poachers being found guilty in this period, most of whom got sentences of three or six months; then in 1866 at the February Assizes, four men got five years. From 1867 onwards, apart from one man getting 5 years, there were sentences of six weeks to 18 months until 1888, after which there were no poaching cases at Quarter Sessions or Assizes.

In Derbyshire, the same lack of consistent severity, but the occasional burst of it, is evident. In 1829 four men were sentenced to transportation, then no more until 1837, when one man was given seven years transportation. There then followed another five years of sentences of no more than 18 months, some of only 4-6 weeks, until at the 1843 March Assizes three were given ten years transportation. Five years passed again before a burst of heavy sentences in 1849-51, which totalled eight sentences of seven, ten and 15 years transportation. After this there was no dearth of poaching cases, they continued to come steadily before the

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<sup>66</sup> The 1851 Rufford affray, pp. 139, 167, 173, 180, 194, 207, 228, 234-5, 249, 252-3.

Quarter sessions and Assizes, but only getting a maximum of 18 months up to 1866.

It was not the case that after a burst of severe sentencing there were very few, or no, cases of poaching before the higher courts; had this been so this might have indicated that poachers were deterred. Whilst Magistrates sentencing night poaching summarily were limited to three months for a first night poaching offence, and six months for the second, all cases sent to the higher courts involved groups of poachers and violence, and for this sentences of up to three years hard labour or 14 years transportation were available, without any need for it to be a second or subsequent offence.<sup>67</sup>

Munsche has argued of the period up to 1830, that considerable amounts of discretionary power remained in the hands of the Magistrates; the game laws permitted the authorities to treat poachers harshly, but did not force them to do so. (In much of the period of which Munsche writes, game laws offences were going to Quarter Sessions).<sup>68</sup> This seems still to have been the case in the later nineteenth century in the East Midlands. Magistrates and Judges, when sentencing, were aware that putting men in prison meant putting their dependents on the parish, and there could be several reasons for reluctance to do this: awareness of the feelings of ratepayers; paternal concern for the plight of the poor; and lack of sympathy with extreme game preservers. King found that, with regard to some laws, the delivery was shaped by strong reactions to specific legislation. He has cited the way prosecutors, jurors, Judges and others reacted against the rapid expansion of the bloody code in the eighteenth century, as a notable

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<sup>67</sup> Night Poaching Act, 1828, section 9.

<sup>68</sup> Munsche, *Gentlemen and Poachers*, p. 26.

example.<sup>69</sup> He also noted a tendency for some circuit Judges to impose less severe sentences when they were away from the London and its immediate area.<sup>70</sup> There certainly were people, in the East Midlands, who disapproved of the game laws and of preservation, and who would resent money spent on keeping men in prison as well as on supporting their dependents.<sup>71</sup>

### **Deterrence, Recidivism, and Criminality**

Most sentences were well short of the maximum allowed. Most significant, though, is the fact that the overall sentencing policy failed to deter poachers, though it may have made them take evasive action. Hawker related that early in his poaching career he left home, in Daventry, to escape a charge of night poaching. Later on in his journal he said, 'Soon afterwards I made for Northampton rather than pay a Fine of £8 which I owed'.<sup>72</sup> But though they may have moved on, it seems that seldom, if ever, were habitual poachers deterred from continuing to poach.

Magistrates and Judges were well aware of this. On sentencing John Aram to eight months for night poaching at Wollaton in 1857, the Assize Judge remarked that this 'Would at least stop him from poaching for next season'.<sup>73</sup>

That most were not deterred, is shown by the lists of previous convictions of many poachers. Courts knew about the accused men's previous convictions, and newspapers sometimes reported them - when they had been stated in court. For example, two day poachers from Mansfield,

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<sup>69</sup> Peter King, *Crime and Law in England: Remaking Justice from the Margins* (Cambridge, 2006), p. 11.

<sup>70</sup> King, *Crime and Law*, p. 37.

<sup>71</sup> See pp. 190, 270-2.

<sup>72</sup> Christian, *James Hawker*, pp. 20. 104.

<sup>73</sup> *NG*, 23 July 1857.

Knowles and Crooke, who were fined in March 1858, had respectively two and one previous convictions for poaching, in the case of Crooke, the previous was only one month ago.<sup>74</sup> When night poacher John Wilmot sued the Derby police in 1861, he admitted the following imprisonments for poaching to the court: 1842, two months; 1844, three months; 1848, three months and another three months later the same year; 1854, six months.<sup>75</sup> William Hack of Hathern who was convicted of using a gun without a license at Loughborough Petty Sessions in June 1861, had been convicted five times before for poaching.<sup>76</sup> Both Wilmot and Hack had convictions for day and night poaching. In 1862 the *Derby Mercury* reported James Turner had been convicted of poaching and that this was his 39<sup>th</sup> or 40<sup>th</sup> conviction for poaching:

This notorious fellow seems to be proof against all the punishments the game laws enable our justices to inflict. He resumes his occupation immediately after his release and meekly undergoes the small modicum of punishment he knowingly incurs.<sup>77</sup>

The law allowed no escalation of punishment for day poachers. All Magistrates could do was give them the maximum fine, of £2, and perhaps convict them of not having a license as well. Rolfe said in his memoirs:

Of course I have had a lot of summonses, but that did not worry me as long as I could pay, and I suppose it must have cost me a hundred pounds one way and another in fines.<sup>78</sup>

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<sup>74</sup> *NG*, 3 June 1858.

<sup>75</sup> *DM*, 27 Feb 1861, see p. 186 for Wilmot suing the police.

<sup>76</sup> *LC*, 15 June 1861.

<sup>77</sup> *DM*, 29 Jan 1862.

<sup>78</sup> Lilius Rider Haggard (ed.), *I Walked by Night: Being the Life and History of the King of the Norfolk Poachers* (Ipswich, 1974), p.69.

In the case of Wilmot, he was a persistent night poacher, and yet he was given four sentences of three months or less before the sentence of six months, which was available for a second night poaching offence.<sup>79</sup> So whilst it is true that sentencing failed to deter, it is also true that sentencing was lenient for most poachers, and continued to be so. In 1886 after a severe affray at Ticknall in Derbyshire, 12 men appeared at the Assizes. After their conviction, the Judge informed the court that: Richardson had three previous night poaching convictions; Coates had 17 previous convictions including five for night poaching; Robinson had 39 and Salt had 17 previous convictions - but their nature was not specified. These men were all said to have taken part in the violence and yet were all given only five months. The other eight were convicted of taking part in the night poaching, but were said not to have been violent, and were given sentences ranging from one day to one month.<sup>80</sup>

Though many men had previous convictions for poaching, instances of convictions for other crimes were much less common; but some poachers were criminal in other respects and had convictions to show it. Four poachers were convicted in 1853 after an affray at Nuthall. Glazebrook, who was given 14 years transportation, was revealed to have been convicted five times previously; three of these convictions were for poaching but two were for felony. No offence against the game laws was a felony, so this must have been for other crime.<sup>81</sup> In 1860, after an Assize Judge sentenced Thomas Walker to 12 months following an affray at Bingham, he said that Walker had been imprisoned nine times previously, for poaching and for other, more serious, crimes.<sup>82</sup> Two poachers, Ottewell

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<sup>79</sup> P. 238.

<sup>80</sup> *DM*, 24 Nov 1886, 7.2.1887; *Criminal Registers*, Derbyshire.

<sup>81</sup> *NG*, 16 March 1854.

<sup>82</sup> *NG*, 14 March 1861; *DM*, 13 March 1861.

and Goodwin, who were committed to the next Assizes in Derbyshire in 1861, were reported to have respectively eight previous convictions including one felony, and three previous convictions including one for sheep stealing.<sup>83</sup> A group of night poachers, three of whom were captured at Clipstone, Nottinghamshire, in 1886, were later discovered to have 129 awls in their possession, which had been stolen from Mansfield.<sup>84</sup> John Barratt, convicted in 1891 after an affray at Chatsworth, had six previous convictions including for counterfeiting coin, stealing, and assaults.<sup>85</sup> Much earlier, in October 1848, a poacher at Chatsworth had been caught with two geese in his possession as well as game – geese being domestic birds this was theft.<sup>86</sup> Poachers were frequently suspected of theft of domestic fowl.

That some poachers had previous convictions for assault is not surprising; these were working-class men and for many of them life was rough and physical attack not uncommon.<sup>87</sup> Magistrates' lists of the period included many cases of assault outside poaching situations. Sometimes poachers will have acquired a conviction for assault as part of a poaching offence, because poachers were often indicted for assault instead of, or as well as, for poaching.<sup>88</sup> For example, at the Leicester quarter sessions in January 1862, two poachers, Pratt and Johnson, were convicted of common assault as a result of violence on keepers during an affray at Whetstone; Pratt had previous convictions of four felonies and other offences, and Johnson had three previous convictions, all of different types of assault.<sup>89</sup>

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<sup>83</sup> *DM*, 19 Aug 1861.

<sup>84</sup> *NG*, 29 Oct 1886.

<sup>85</sup> *DM*, 16 Dec 1891.

<sup>86</sup> Basil and Jessie Harley (eds.), *A Gardener at Chatsworth: Three Years in the Life of Robert Aughtie 1848-50 (Worcestershire, 1992)*, p. 124.

<sup>87</sup> Pp. 192-3.

<sup>88</sup> P. 220.

<sup>89</sup> *LC*, 4 Jan 1862.

No doubt men who were criminal in other respects would have no compunction about poaching if they wished to do so. But it seems that it would be closer to the truth to say that some criminals poached, rather than regarding poachers as ordinary criminals. Thomas Bloxham was an example of a criminal who poached. He was eventually executed for the murder of his wife in 1876, and had a string of offences for drunkenness, assaults and larceny; he was also a poacher with six convictions for poaching.<sup>90</sup> Hezekiah Beardsall was another, his known convictions were: 1836, a summary conviction for night poaching of three months;<sup>91</sup> 1840, convicted of larceny in a dwelling house at Nottinghamshire Quarter Sessions and sentenced to transportation; 1848, convicted of burglary at Nottinghamshire Assizes and given transportation for life.<sup>92</sup> It is known that many of those sentenced to transportation never actually went.<sup>93</sup> In the 1841 census Beardsall appears as resident in the General Penitentiary of St John the Evangelist, Middlesex.<sup>94</sup> After his second sentence of transportation he did actually go, and arrived in Australia aboard the *William Jardine* in August 1852, delivered to Swan River Colony.<sup>95</sup>

In this research, the examples found of poachers with long strings of previous poaching convictions far exceed the examples of poachers with previous convictions which include other types of crime. Some poachers were able to call on credible character witnesses to speak for them in court. Benjamin Dennis, a framework knitter being tried at Nottingham

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<sup>90</sup> LC, 19 Feb 1887.

<sup>91</sup> *Game Laws Return 1836(179)*.

<sup>92</sup> *Criminal Registers*, Nottinghamshire.

<sup>93</sup> Munsche, *Gentlemen and Poachers*, p. 103. Munsche found that in the years 1817-28 as many as one third of those sentenced to transportation in England and Wales may not have been shipped.

<sup>94</sup> 1841 Census.

<sup>95</sup> TNA, HO11, piece 17, 'Convicts to Australia', [www.Ancestry.co.uk](http://www.Ancestry.co.uk) (last accessed 20 August 2016).

Assizes for night poaching, was given an excellent character by his employer Mr Roger Allen 'for whom he had worked all his life'. But Colonel Rolleston's gamekeeper said he had always been 'an old poacher and cocker'. Dennis was found guilty.<sup>96</sup> Historians of poaching have generally found that most poachers were not criminal in other respects, though in some parts of the country there was more criminal involvement than in others, as Archer found in Lancashire.<sup>97</sup>

The unreliability of conviction due to juries, combined with the frequent giving of low sentences by Judges and Magistrates, caused anger amongst many of the gentlemen sportsmen. In October 1860, the *Nottinghamshire Guardian* published a letter from a correspondent calling himself 'Prevention' objecting to the short sentences of three months given to 'an organised gang of night poachers' by the Nottingham bench. He remarked that the law for three or more armed night poachers was up to seven years transportation or two years imprisonment if any violence was offered, which it was in this case, and went on to say that now all eight would be free by Christmas and at liberty to carry on with their night poaching.<sup>98</sup> Grantley F. Berkeley wrote in 1861 saying that the police should, 'Know what really is their duty and those in the road at night unable to give a satisfactory account of themselves should be prosecuted for vagrancy.'<sup>99</sup>

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<sup>96</sup> *NG*, 22 March 1849.

<sup>97</sup> David Jones, *Crime, Protest, Community and Police in Nineteenth-Century Britain* (London, 1982), pp. 74-5; John E. Archer, 'A Reckless Spirit of Enterprise: Game Preserving and Poaching in Nineteenth Century Lancashire', in David W. Howell and Kenneth O. Morgan (eds.), *Crime, Protest and Police in Modern Britain* (Cardiff, 1999), pp. 154, 163, 170-1; Douglas Hay, 'Poaching and the Game Laws on Cannock Chase', in *Albion's Fatal Tree* (Harmondsworth, 1977), pp. 205-8.

<sup>98</sup> *NG*, 18 Oct 1860.

<sup>99</sup> *DM*, 14 Aug 1861, letter printed in this newspaper.

Whilst the passing of the 1862 act allowed those on the roads at night to be more easily convicted, it did not lead to great satisfaction. The *Leicester Chronicle* objected in 1865 to the police being used as 'hangers-on and assistant gamekeepers to the squirearchy', and a letter published in the same paper later objected to the game laws as a 'fruitful source of crime and of consequent expense to the ratepayers...[and] a remnant of feudal barbarism'.<sup>100</sup> The game laws and the activities of poachers continued to be a source of annoyance and friction for those of the ratepaying and landowning classes.

Philips recorded the average expense of prosecutions at Quarter Sessions and Assizes in the Black Country over a 25 year period of the nineteenth century. From Philips's data, Assize prosecutions were considerably more expensive than those at Quarter Sessions. From 1829-54, the average cost of a Quarter Sessions prosecution ranged from £5 11s to £9 12s, with the most common cost around £6-£7. For an Assize prosecution the average ranged from £16 to £22..11s, with the most common around £19-£20.<sup>101</sup> It is possible that poaching convictions may have been less costly than prosecutions for some other types of crime, because the witnesses for a preserving landowner bringing a prosecution were usually his own employees. After 1828, more poaching cases in the East Midlands went to Assizes rather than to Quarter Sessions, until by 1840 the majority were being tried at Assize courts. From 1860 the *Criminal Registers* do not show any game offences in the East Midlands tried at Quarter Sessions, they have all been tried at Assizes.<sup>102</sup> So most prosecutors at jury courts had to bear the greater expense of an Assize prosecution. The advantage of a

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<sup>100</sup> *LC*, 28 Jan 1865; 4 Feb 1865. See p. 294.

<sup>101</sup> Philips, *Crime and Authority*, p. 117.

<sup>102</sup> *Criminal Registers*, Derbyshire, Leicestershire, Nottinghamshire.

prosecution using the Poaching Prevention Act, 1862, was that the police brought the prosecution and bore its cost, though these prosecutions were summary ones and thus less expensive.

From 1818 all prosecutors and witnesses in felony cases were given expenses by the court. But poaching cases were not felonies; severe assaults were misdemeanours, and it was into this category that poaching cases with serious violence would fall. From 1826 expenses could be awarded for certain misdemeanours, but poaching with violence was not one of these.<sup>103</sup> Amounts of up to £20, a likely cost for a prosecution at an Assize court, were such that even rich men would grudge the expense if the result did not seem to be a punishment befitting the crime.

### **Poachers and Protest**

Poachers displayed their ungovernability in ways which annoyed, but fell short of providing anything for which they could be further summonsed: activities which could be classed as impudent and attitudes which displayed lack of respect. Archer has said that, in East Anglia, poachers held the law and its institutions in contempt, and demonstrated this by their behaviour in court.<sup>104</sup> Porter has argued that, in rural Devon, regular day poachers and night poachers were protesting against the game laws and the weakening of customary rights as late as 1880.<sup>105</sup> Jones has said that many poachers were waging social war, and some were radicals, striking at 'the heart of class control, privilege and ostentation'.<sup>106</sup> Examples of this

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<sup>103</sup> Philips, *Crime and Authority*, pp. 112-13.

<sup>104</sup> John E. Archer, *'By a Flash and Scare': Arson, animal Maiming and Poaching in East Anglia 1815-1879* (Oxford, 1990), p. 147.

<sup>105</sup> J. H. Porter, 'Poaching and Social Conflict in Late Victorian Devon', in A. Charlesworth (ed.) *Rural Social Change and Conflicts since 1500* (Humberside, 1982), pp. 96-7, 100-04.

<sup>106</sup> Jones, *Crime, Protest*, pp. 62, 72, 82.

are difficult to find. Whilst there are many letters to newspapers expressing the feelings and opinions of landowners and ratepayers, there are none from poachers. Apart from the memoirs of poachers such as Hawker and Rolfe, who make their radicalism clear, the historian has to rely on small items of reported behaviour for insights into poachers' attitudes.

James C. Scott's concept of hidden transcripts affords a way of gaining some insight into the lives and views of the poor, by taking as evidence scraps of information and considering carefully the meaning underlying these small acts.<sup>107</sup> King has used this concept to justify his contention that the fact that the poor used the law to protect their property, as well as the elite doing this, does not mean that labouring men and women had any respect for, or felt any deference towards, the law and those who administered it. His evidence for this is, 'The tiny fragments of the poor's hidden transcripts that have come down to us...'<sup>108</sup>

As overt evidence on protest from poachers from within the East Midlands, there is only Hawker, who declared that he originally began to poach from poverty, and that he waged war against what he calls 'The Class' by poaching throughout his life.<sup>109</sup> Most succinctly, towards the end of his biography he wrote:

We had no voice in making the Game Laws.... I am not going to be a Serf. They not only stole the land from the People but they Stocked it with Game for Sport, Employed Policemen to look after it.... And we

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<sup>107</sup> James C. Scott, *Domination and the Arts of Resistance: Hidden Transcripts* (London, 1990), pp.36, 140, 148.

<sup>108</sup> Peter King, *Crime, Justice and Discretion in England 1740-1820* (Oxford, 2000), pp.369-371.

<sup>109</sup> Garth Christian (ed.), *James Hawker's Journal: A Victorian Poacher* (Oxford, 1978), pp. 3, 20, 23, 62,

Toilers have to Pay the Piper.... All my Life I have  
Poached. If I am able, I will Poach till I Die.<sup>110</sup>

Apart from Hawker, there are only small indications of protest from the hidden transcripts of the working-class men and women involved in poaching in the three counties. It is clear that in court many offenders and witnesses were far from subservient. Some newspaper reports showed poachers as confident in court, not cowed, and able to assert their own authority and knowledge of the law, as Archer reported regarding many of the East Anglian poachers.<sup>111</sup>

When William Ault appeared, without a solicitor to represent him, at a preliminary hearing following an affray at Kedleston in Derbyshire, he conducted his own defence. He was reported as questioning several witnesses, and when asked by the bench if he had anything to ask of another witness, he replied, 'No, he seems to have spoken the truth I think'.<sup>112</sup>

The same confidence emerges from the report of the appearance of George Hibbert before a Petty Sessions court, being prosecuted under the Poaching Prevention Act of 1862. He was one of 11 poachers caught with poaching equipment and 85 rabbits. The Chair of the Bench said to Hibbert, who appears to have been the poachers' spokesperson:

'I suppose you don't deny you were there?'

Hibbert replied, 'We were on the road but the gamekeepers had

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<sup>110</sup> Christian, *James Hawker*, pp. 62-3.

<sup>111</sup> Archer, *Flash and Scare*, p. 147-8.

<sup>112</sup> *NG*, 5 Oct 1866; *DM*, 3 Oct 1866.

no right to take us. If the Bobby had been alone he could not have managed it’.

The clerk replied, ‘You seem to understand the law. It says a constable or a peace officer [Justice of the Peace], but then the constable was present all the time’.

When the court found them guilty and fined each man 50 shillings for possession of game and 50 shillings for assault, or two months imprisonment, the prisoners were asked which would they take. Hibbert replied, ‘Oh, we’ll have the two months’, as if it was a choice to take the two months, when it is most likely that they could not find the total of £5 plus costs each.<sup>113</sup>

Similarly, Joseph Hallam was before a summary court after a night poaching affray at Strelley Park, Nottinghamshire, in 1896. Three men were in court, and a witness identified Hallam as having a stick with him. Acting as his own defence, Hallam said to the witness, ‘Now don’t ee say so. Deary, deary me, do say what is true’.<sup>114</sup>

These fragments suggest working people determined to avoid losing face, ‘keeping their end up’, when faced with the array of gentlemen magistrates on the bench, with all the differences of dress, speech and natural authority which marked the profound contrast in their position in society. The spectacle and ritual of a Magistrates’ Court may not have equalled that of an Assize Court, as described by Hay on the majesty of the law, but a

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<sup>113</sup> *NG*, 28 Oct 1881.

<sup>114</sup> *NG*, 22 Aug 1896.

similar influence was being brought to bear - it could be a daunting experience for working people.<sup>115</sup>

When Ellen Bates was before the Derby Police Court, a summary court, having been caught, by a police sergeant, carrying a hare home, she was fined 10 shillings and costs or 14 days. 'Can't I have my hare back?' she asked the bench. She was told that the bench had ordered it to be destroyed. It was widely believed that in these situations the game was not destroyed, but ended up on somebody's table. 'Well, I can eat a hare as well as you', she told the bench, to laughter from those present.<sup>116</sup>

Fig. 6.2. A poacher before the bench. An illustration by James West from one of the many books of old poachers' memoirs, this one published in 1890.<sup>117</sup>



<sup>115</sup> Douglas Hay, 'Property, Authority and the Criminal Law', in *Albion's Fatal Tree* (Harmondsworth 1977), pp. 27-8.

<sup>116</sup> *DM*, 23.11.1881.

<sup>117</sup> John Watson, *Confessions of a Poacher*, pub. 1890 (Moretonhampstead, 2006), p. 171.

Thomas Thame was brought before Leicester magistrates, in 1881, by police Superintendent Walker, who had stopped him driving his cart with 21 rabbits, still warm, in hampers. The Superintendent informed the court that he had asked Thame to whom the rabbits belonged. Thame had replied, with some wit, that he supposed they were his (the Superintendent's), but if he had waited a little longer they would have been his (Thame's). The Superintendent told the court he was sure they had been poached, but the Magistrates dismissed the case. Thame was a fishmonger, so he may have had a license to sell game, but the police and the court were probably quite sure that the rabbits had been poached; very likely Thame went off with a grin on his face leaving the superintendent fulminating.<sup>118</sup>

When the most famous of all the Rufford affrays eventually got to the Nottinghamshire Assize court in March 1852, it was only after many preliminary hearings at which the Magistrates battled to gather a coherent account of events, with credible witnesses to sustain the prosecution case. Mary Hinds of Bulwell had, in early hearings, given evidence implicating certain men, but at a later hearing she denied everything she had previously said. When asked why she had said what she originally had, she replied that she had just guessed it all and was acting out of malice to the people she had implicated. Colonel Wildman, one of the five magistrates present, said that she was making herself out to be a very bad woman. Mary replied, 'Well, it's truth, I am a bad woman; it's all malice; the devil put me up to it; he's a cunning man and puts folks up to many things they shouldn't do; he'll perhaps tempt you as well some day'.<sup>119</sup>

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<sup>118</sup> *LC*, 9 Oct 1881.

<sup>119</sup> *NG*, 16, 23, 30 Oct 1851, 6, 13, 20 Nov 1851, 4 Dec 1851; *DM*, 22. Oct 1851. For other references to this 1851 Rufford Affray see pp. 139, 167, 173, 193-4, 228, 252.

Whether or not Mary Hinds had been threatened by the men she had originally implicated, and this had caused her to withdraw her earlier statement, is not germane here; the point is that this statement was rude and impertinent, and especially so since she ended up by putting Colonel Wildman, the local landowner at Newstead Abbey, and a soldier of some reputation, in the same bracket as herself, as someone who could be tempted to do wrong.<sup>120</sup> It is possible to imagine the frustration of the bench as this woman failed to bend to their wishes or be intimidated by them.

Mary Hinds was present at a further hearing, where, questioned once again about her previous testimony, she said, 'I don't know nothing and I can't say nothing'. Her husband was asked by the bench if he could 'undertake that his wife should be more forthcoming at a future time'. He replied that he could not, and that he could not afford to keep coming with her to these hearings either (which were at the town hall in Mansfield). The prosecutors then agreed to pay the woman's travel costs and expenses if she would answer questions properly. Aside from the issue that the Magistrates' request to the husband to regulate his wife's behaviour demonstrates the Magistrates' assumptions about women's position in a marriage relationship, the whole exchange gives an impression of a couple taking pleasure enjoying their temporary power, forcing the gentlemen to beg them to co-operate, and wringing expenses out of the prosecutor; this was Mr Powell, the Earl of Scarbrough's London solicitor, who was representing

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<sup>120</sup> Colonel Thomas Wildman had bought Newstead Abbey from Lord Byron in 1816. Wildman's journal of his experiences in the Peninsula War is available: Michael Birks, (ed.), *The Young Hussars: The Peninsula War Journal of Colonel Thomas Wildman of Newstead Abbey* (Kibworth, 2007).

him at the hearing.<sup>121</sup> It is clear that Mary Hinds felt no need to ingratiate herself to the gentlemen on the bench, and had scant respect for them and their court.

Most of the poachers and their peers were either industrial workers of some type, artisans, or labourers, and very few of them – if any – would be in the position of owing their accommodation or employment to the gentlemen of the bench. If they had the nerve not to be intimidated by the court and the process, there was little that the Magistrates had over them.

It was reported in 1853, under the heading 'Cool Impudence' in the newspaper, that John Lant, Captain Welfitt's gamekeeper, had found 160 partridge eggs strung up and hung on an out-house door. There was a strip of paper attached to the string of eggs, on which was written, 'A sight for John Lant and a present to Captain Welfitt'.<sup>122</sup> Such a large number of partridge eggs will have been worth a substantial amount of money, presumably taken from Captain Welfitt's preserves.

The captain was a well-known and celebrated sportsman, who remained active into his old age and became a legend for his sporting prowess; in 1885 the 'Ballad of Rufford Hunt' was written, celebrating Welfitt, then aged 79, who rode for hours in the hunt and was always first in the field (so the ballad said).<sup>123</sup> He was, by the end of his life, a Colonel, and the epitome of the landed country sportsman. Captain Welfitt preserved in Scarcliffe Park, and it was there in 1850, after the serious affray involving 15 poachers and seven of his keepers, that he himself turned out and

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<sup>121</sup> *NG*, 23, 30 Oct 1851 and 6, 13, 20 Nov 1851.

<sup>122</sup> *NG*, 6 Sept 1853.

<sup>123</sup> *NA*, DD/496/7.

pursued the fleeing poachers on horseback, dragging one of them out of a drain where he was hiding.<sup>124</sup> This personal involvement is likely to have increased feelings of antagonism between him and the local poachers. As well as laughing at his keeper, who had failed to protect these eggs, the stringing up of the eggs and the note made a fool of the captain – ‘Look what we can do’, this message means, ‘in spite of all your money and efforts’.

Fig. 6.3. Captain Welfitt, and his signature, in 1880. By this time, he was an Honorary Colonel of the Sherwood Rangers.<sup>125</sup>



The most striking episodes, however, are ones which two Magistrates chose to disclose in a summary court, presumably when there were no prisoners present. At one of the preliminary sessions at which the 1851 Rufford poachers were being examined, Colonels Coke and Wildman

<sup>124</sup> NG, 28 Nov and 12 Dec 1850. Also see pp. 197-8, 203, 219, for this Scarcliffe event.

<sup>125</sup> [www.hussards-photos.com](http://www.hussards-photos.com) (last accessed 22 August.2016).

expanded on the impudence of poachers by relating two recent incidents. Colonel Coke said that the night before the Rufford affray, whilst he was out, he had seen a large gang of poachers camped in Broomer Wood. They were sat around a fire, and when they saw him and the keepers who were with him, they got out their knives and pretended to be eating or whittling sticks; the keepers were frightened by them and not willing to approach them. Colonel Wildman then remarked that it would be necessary to have a fresh lot of keepers, since the present ones were scared of the poachers. Colonel Coke said it was 'common enough for these lawless fellows to call the bench "spoony magistrates", and dare them to go forward with a prosecution; one said to him, "I wouldn't be a spoony magistrate".'<sup>126</sup>

Colonel Wildman then narrated a second incident, in which he said that 'their impudence was beyond bearing'. Wildman's estate of Newstead Abbey was in Sherwood Forest, an area where poaching was a problem. A while before, he had been out on his land in the day time when he met a gang of Sutton poachers (Sutton-in-Ashfield near Mansfield). He asked them what they were doing, and they said, 'nothing of any harm'. Colonel Wildman reported to the court that he then said to them, ' "You are looking out, I suppose; you had better come and take a sheep instead of fetching game". The fellows coolly replied, "Oh, a sheep's of no value compared to ten pounds worth of rabbits – we like your rabbits best, colonel".'<sup>127</sup>

These two gentlemen stated that they found the poachers' behaviour to be impudent beyond bearing, but clearly they had to bear it, and the poachers knew this. Obviously, a prosecution for mere trespass was not feasible – probably because without any damage having been done it would warrant

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<sup>126</sup> *NG*, 6 Nov 1851; 'spoony': a simpleton or a silly or foolish person, *COD*, 1982.

<sup>127</sup> *NG*, 6 Nov 1851.

no costs. Whatever the reason, it is clear the Magistrates felt they had no recourse to law for the trespass, the cheek, and the stated intention to poach. Colonel Wildman said that at present the poachers were masters and did almost as they wanted.<sup>128</sup>

Deconstructing the first incident, the description of a group of poachers sitting around a fire and taking out their knives on seeing the gentleman and his keepers approaching, for the ostensible purpose of eating or whittling sticks, is a clear instance of intimidation; the knives would be perceived by the keepers as weapons which could be used in any fight between them, and this is what the poachers intended. Men who behaved like this were taking advantage in the knowledge that, at that moment, in that context, they had the upper hand. The same applies to the men who, in the second incident, informed the colonel that they preferred his rabbits to his sheep, and called Magistrates 'spoony'.

Beneath such behaviour, on the part of the poachers, lies protest. Men who were happy with their social status, content with their situation as poor and landless, would not have behaved like this. But, powerless to actually affect their situation, they enjoyed discomforting their 'betters'.

Some landowners went to considerable trouble and expense to try and maintain an atmosphere of harmony in this unequal rural society. To celebrate the marriage of the son of the 4<sup>th</sup> Duke of Newcastle, there were two days of feasting and celebration in January 1833. The tenantry were invited, and 1,200 people were dined. Such attempts to placate doubtless

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<sup>128</sup> *NG*, 6 Nov 1851.

worked with some of the lower orders, but discontent and resentment lurked beneath the surface for many.<sup>129</sup>

Scott has said, 'At its most elementary level the hidden transcript represents an acting out in fantasy of the anger and reciprocal aggression denied by domination'.<sup>130</sup> What were these poachers thinking as they, ostensibly innocuously, whittled with their knives? The hidden transcript glimpsed here, continued in the lives of these men, in their conversations, their view of the world.

We have no direct access to the hidden transcripts of cottagers as they prepared their traps or shared a rabbit stew....The plebeian voice is mute. Where it does speak, however, is in every-day forms of resistance...often at night and in disguise.<sup>131</sup>

The only anonymous letter, which is more of a note, found in this research, is very different from those found by Thompson in his study of eighteenth century anonymous letters.<sup>132</sup> Thompson's letters were all threatening, whereas the only example found here is the anonymous note that was pinned to the partridge eggs and left for Captain Welfitt's gamekeeper to find. Like the incidents narrated by Colonels Coke and Wildman, this stunt laughs at the gentlemen preservers; it holds them up for ridicule. All the labouring poor who heard about the partridge eggs would find it funny, and repeat it for others' amusement, but with an element of malice

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<sup>129</sup> Richard A. Gaunt, 'Patrician Landscapes and the Picturesque in Nottinghamshire c. 1750-1850', *Rural History*, 26, 2 (2015), pp. 174-5.

<sup>130</sup> Scott, *Domination*, p.37.

<sup>131</sup> Scott, *Domination*, p.190.

<sup>132</sup> E. P. Thompson, 'The Crime of Anonymity', in *Albion's Fatal Tree* (Harmondsworth 1977), pp. 255-308.

underneath; the poor understood what would make their betters look silly.<sup>133</sup> Ridicule is a powerful weapon.

Scott assigns disguised, low profile resistance to the realm of 'infra politics', where non-overtly declared anger and aggression is supported by dissident sub-cultures, and practitioners become class heroes. He cites poaching as an example of infra-political activity.<sup>134</sup> Certainly, some poachers did become class heroes, celebrated in broadsheet and ballad.<sup>135</sup> The hidden transcript broke though in the confidence with which some poachers conducted their defence in court, their impudence in taking police and gamekeepers to court for confiscation of items, their refusal to be cowed by the punishments which were handed out to them, and the imaginable glee with which Mary Hinds declared herself to be, indeed, a bad woman, and informed the Magistrate that he too might be tempted by the devil and be a bad man. Jones has said that many poachers exhibited a keen knowledge of the law, and some humour, in court; 'Through humour, men about to be transported could express their contempt for the Game Laws and for the "justice" associated with them'.<sup>136</sup>

Many historians of poaching have concluded that at least some poachers were protesting about their social and political situation, to at least some extent.<sup>137</sup> Archer has said that, 'Poaching was the most constant and common method employed by the poor of snubbing the tenets of the

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<sup>133</sup> Carolyn Steedman, 'Threatening Letters: E. E. Dodd, E. P. Thompson, and the Making of "The Crime of Anonymity"', *History Workshop Journal*, (2016), 82 (1), p. 73.

<sup>134</sup> Scott, *Domination*, pp. 198-205.

<sup>135</sup> Jones, *Crime, Protest*, pp. 62, 82; Archer, *Flash and Scare*, p. 153; Roly Brown, 'Glimpses into the 19<sup>th</sup> Century Broadside Ballad Trade', Article 24, (6.11.2006), [www.mustrad.org.uk](http://www.mustrad.org.uk) (last accessed 23 August 2016).

<sup>136</sup> Jones, *Crime, Protest*, p. 75.

<sup>137</sup> See pp. 23-4.

wealthier classes'.<sup>138</sup> Munsche has suggested the possibility of a connection, 'in more northern industrial areas', between class antagonism and resistance to the game laws.<sup>139</sup> Porter considered poaching continued to be a protest against the game laws and the weakening of customary rights, even in the late Victorian period.<sup>140</sup>

Patrick Joyce, not a historian of poaching, has identified a type of radical populism, more present in northern industrial areas: a feeling of being righteous but dispossessed, of being part of a section of society which comprised the 'excluded English', who were the labouring English. He has said that, in the sphere of work and trade unions, the idea of social class was more evident in the sense of social relations turning centrally on the relations of capital and labour and this relationship tending to conflict; but outside the area of work and trade unionism there was, in some areas of provincial England, a sense of a crusade against privilege on the part of ordinary people who were refusing to take their 'proper' place in the scheme of things. He connects this strain of radical populism with religious notions of the past and the liberties of a protestant people.<sup>141</sup>

This formulation fits well with poaching. Poachers were refusing to be excluded from their share of game, a commodity which they believed belonged to all, and what they did was no ordinary crime. They were, by their behaviour, refusing to take their allocated place in the scheme of things which the landowners and the authorities wishes to impose. Even if they had no concept of social class – and many of them may have had

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<sup>138</sup> Archer, *Flash and Scare*, pp.3, 148.

<sup>139</sup> Munsche, *Gentlemen and Poachers*, p.150.

<sup>140</sup> Porter, 'Poaching and Social Conflict in Late Victorian Devon', in A. Charlesworth (ed.), *Rural Social Change and Conflicts since 1500* (Humberside, 1982), p. 96.

<sup>141</sup> Patrick Joyce, *Visions of the People: Industrial England and the Question of Class, 1848-1914* (Cambridge, 1994), p. 329-332.

class awareness – they were protesting at the status quo by poaching; they felt the privilege of legitimate hunting, which the game laws granted to the gentry, was wrong.

Rudé has said that protest crime was a social act, and generally a collective one, offering a challenge to the established norms of society.<sup>142</sup> Some poaching was a collective act, but even when it was not, the poacher had an awareness that he was part of, almost a brotherhood, of poachers. He would be aware who the other local poachers were, and narratives of affrays show that poachers were willing to come to the aid of others who had been found by keepers.<sup>143</sup> He would also be aware of the degree of solidarity that there was within the local community, where not all would necessarily support his activity, but many would.<sup>144</sup>

There are two arguments for the contention that is being made here, which is that poaching involved protest. One is that since all commentators, contemporary and present, are agreed that poachers did not accept that the game laws were fair, this intrinsically embodies an element of protest. To poach was to express resistance to the class based game laws, even if your primary purpose was other. The second argument is that, accepting that the thoughts and opinions of the labouring poor are not available, there are small items of evidence which indicate protest. Fragments have been found in this study, manifested in a minority of recorded events, which indicate that for many poachers, protest was a significant part of their mindset. The fact that a man benefitted from his poaching does not rule out the possibility that he was also protesting against the game laws

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<sup>142</sup> See p. 23.

<sup>143</sup> See pp. 195-6.

<sup>144</sup> See pp. 155-60.

and the social order which supported them. Protest was not only expressed in crimes in which there was no material gain, such as destruction of turnpikes or fences; such a crime might be called a protest crime since that was its only motive. But why would a protestor object to gaining something materially from his protest? He would not, as Hawker, who made it quite clear he was protesting, did not. For him, the protest was high on his motivation list, for others it may have been lower, but it was implicit in the act.

## **Conclusion**

The 1828 Night Poaching Act and the 1831 Game Reform Act were the statutes most used for the conviction of poachers; methods of apprehension and court process did not differ greatly before this. Day poachers were tried at summary courts and their main way of refuting charges was to claim that they were there but they were not poaching. Up to about a fifth of summary cases were discharged, due to unconvincing evidence or the Magistrates feeling that an informal response was appropriate. Most day poachers coming before summary courts were convicted, but this was a small proportion of the day poaching which was going on. Magistrates had no scale of increasing sanctions which they could apply to repeat offenders, and day poachers were not deterred.

Many night poaching cases were dealt with at summary courts, even when there had been violence. Cases where the violence exceeded a certain degree were sent to Quarter Session or Assize courts as indictable offences; there, they were tried before a jury and sentenced by Magistrates or Judges. The most severe sentences were transportation, or when this had ceased in the mid-1850s, sentences of imprisonment of over two years

and up to seven years. These severe sentences were infrequently given, and most night poachers appearing before juries were given sentences well below the maximum applicable. Night poachers were not deterred and many men had several night poaching convictions.

The courts were aware that the game laws were constantly infringed and that poachers continued to poach after receiving punishment. All over the area poaching continued to be a source of aggravation, and at some times in some places the landed gentry felt that the poachers had the upper hand and could do as they pleased.

Most poachers were not criminal in other respects, though some people who were criminal in other respects also poached. Many poachers conducted themselves confidently in court, sometimes defending themselves, but more often as the century progressed with professional defence lawyers. Many poachers could find the money to pay for lawyers, as well as to pay fines. Poachers had a full awareness of the game laws, and used every strategy they could to avoid conviction.

Poaching was protest, intrinsically so since it challenged the basis on which the game laws were written, which was a class basis. Poachers acted with knowledge of the support of many in their communities, who, even if they did not poach themselves, also believed the game laws were wrong. This collusion can be viewed as evidence of protest in some cases. Some hidden transcripts show that the spirit of protest was active in the minds of many poachers and their supporters. Protest about the game laws was part of poaching for all; for some, it was a primary motivation.

## **Chapter 7            Sport and Poaching**

This chapter draws parallels between legitimate hunting and poaching to show that, for the poacher, the activity fulfilled all the requirements of sport. There were attacks on working class sports and recreations during the later eighteenth century and the first half of the nineteenth, but poaching remained a constant activity during this period. It is suggested that poaching fulfilled a need for recreation in the lives of the working-class poor, and that the decline in poaching towards the end of the century was connected with the growth of other sporting opportunities. Sport was intensely important to many working-class men, and the recreational motive for poaching was significant.

Differences in sporting patterns between Lancashire and the East Midlands contribute to an explanation of the contrast between these two areas with regard to poaching.

### **Working Class Sport and Pastimes**

Many working class recreations and sports were subject to attack over the period from the end of the eighteenth century through the first half of the nineteenth century. Sports such as prize fighting, and various types of animal baiting and fighting which included cock fighting, bear baiting, bull baiting and dog fighting, were opposed by a variety of groups, mainly in middle-class society but by some working-class movements as well. The movement against cruelty to animals, the movement for rational recreation, churches and chapels advocating 'muscular Christianity', and working men's clubs and self-improvement societies, were all antagonistic to sports which were cruel to animals or were perceived as 'blood sports'.

This opposition was not necessarily only, or even at all, for the sake of the animals, but because of the effect such pastimes were felt to have on those who attended and participated. The gathering of crowds, gambling and drinking and the general atmosphere of enjoyment were seen as variously dangerous, immoral, self-indulgent, or likely to give rise to uncontrollable behaviour.<sup>1</sup> The sports of the wealthy which were cruel to animals, fox hunting and shooting game, attracted little opprobrium from most of society, and that only from a minority of campaigners who were truly concerned for animals.<sup>2</sup>

Whilst the attack on the sports and recreation of the poor is not disputed, there is disagreement on how effective it was and whether these activities were significantly reduced or just driven underground. Malcolmson has said that the attempts at control, assisted by the new police forces, were successful, and led to a comparative vacuum in working-class sport and recreation around the middle of the nineteenth century.<sup>3</sup> But a majority of historians have considered that these attempts at controlling the behaviour of the lower orders may have reduced the recreations to some extent, but also contributed to driving them underground, and sometimes to their development into expanded and commercial versions of the sport later in the century.<sup>4</sup>

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<sup>1</sup> J. M. Golby and A. W. Purdue, *The Civilisation of the Crowd: Popular Culture in England*, first pub. 1984 (Stroud, 1999), pp. 49-53, 76-79, 84-87; Hugh Cunningham, *Leisure in the Industrial Revolution* (London, 1980), pp. 44-5, 87-93, 111-13; J. Lowerson and J. Myerscough, *Time to Spare in Victorian England* (Hassocks, 1977), pp. 10-13, 115-19; R. Malcolmson, *Popular Recreations in English Society* (Cambridge, 1973), pp. 89-107, 113, 119-22, 134-151; N. Tranter, *Sport, Economy and Society* (Cambridge, 1988), pp. 5-9, 13-15; Emma Griffin, *Blood Sport: Hunting in Britain since 1066*, paperback (London, 2008), pp.148-150, and *England's Revelry 1660-1830: A History of Popular Sports and Pastimes 1660-1830* (Oxford, 2005), pp. 251-3.

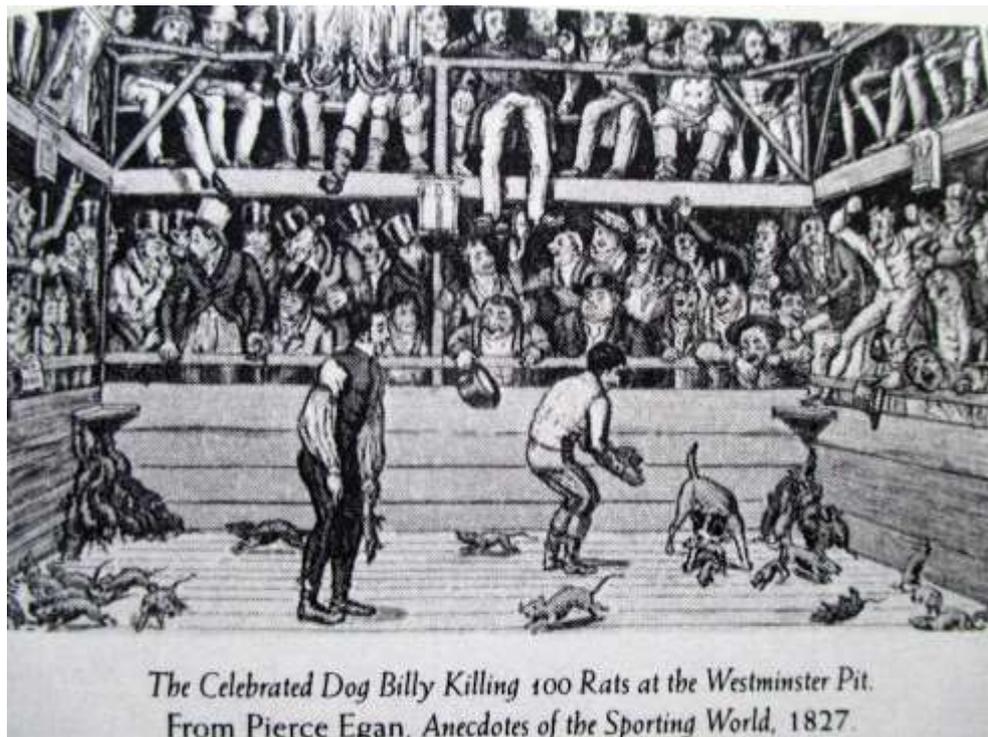
<sup>2</sup> Griffin, *Blood Sport*, pp. 146-9, 171-4,

<sup>3</sup> Malcolmson, *Popular Recreations*, pp. 90, 101, 105, 113, 170-1.

<sup>4</sup> Tranter, *Sport, Economy*, pp. 3-6; Griffin, *Revelry*, pp. 16-18, 243; Cunningham, *Leisure*, pp. 22, 44, 110, 127; Golby and Purdue, *Civilisation*, pp. 77-9.

During this period, poaching continued to increase, and the authorities' attempts to control it continued to be ineffective. The cause of this increase has been largely attributed to the growth in preservation and the market for game, not to any attacks on poor men's sports. Some historians have claimed that the closure of public footpaths and continuing land enclosures reduced land previously available for sport and opportunities to roam.<sup>5</sup> Malcolmson has said that enclosures in Derbyshire led to the loss of traditional playing spaces in some small towns and villages, and that this also occurred at Basford near Nottingham.<sup>6</sup>

Fig. 7.1. 'The Celebrated Dog Billy Killing 100 Rats at the Westminster Pit'. An example of the type of activity that many campaigners wished to prevent.<sup>7</sup>



<sup>5</sup> Cunningham, *Leisure*, p. 81; Malcolmson, *Popular Recreations*, p. 108; Griffin, *Revelry*, p.252,

<sup>6</sup> Malcolmson, *Popular Recreations*, pp. 108, 110.

<sup>7</sup> Harriet Ritvo, *The Animal Estate: The English and Other Creatures in the Victorian Age* (Harvard, 1987), p. 127, from Pierce Egan, *Anecdotes of the Sporting World* (1827).

Poaching was a traditional activity, like cock fighting, animal baiting, pugilism, and the old type of football. As more people lived in towns but retained recent links with the countryside, men who lived and worked in towns became involved in poaching, and the phenomenon of urban based gangs leaving town to poach at night became common.

As with many of these other working-class recreations, poaching was considered, by some, to be linked to undesirable ways of life and habits. Many commentators believed that it led to a life of crime; it was associated with drinking, and was seen as incompatible with a respectable hard working labouring life.<sup>8</sup> Like some popular sports, poaching was dependent upon investment by the upper classes, though with poaching the collusion was unwilling on the part of the rich. Prize fighting (and later, boxing) cock fighting, horse racing, and to some extent cricket, all depended on input from wealthy men in the form of prize money, venues and financial backing.<sup>9</sup> Poaching was dependent on the existence of rich landowners who preserved game, though the preservers were in no way dependent upon the poachers. In this respect the other sports were a willing co-operation between rich and poor; in the case of poaching the poor exploited the rich.

### **Preserving and Hunting**

Sir Ralph Payne-Gallwey published books of advice on all aspects of preserving and country sport.<sup>10</sup> The cost of preserving enough pheasants to provide good sport for one's friends and associates to shoot in large numbers was considerable. Payne-Gallwey said that, for a 3,300 acre estate including a wood of 160 acres, which produced a bag over the 1890-

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<sup>8</sup> *NG*, 27 March 1851, 5 Nov 1866; *LC*, 8 Sept 1866.

<sup>9</sup> Peter Bailey, *Leisure and Class in Victorian England* (London, 1978), pp. 77, 80;

Malcolmson, *Popular Recreations*, p. 56; Tranter, *Sport, Economy*, p. 19.

<sup>10</sup> See p. 50.

91 season of 1,464 pheasants, 427 partridges, 191 hares and 1,100 rabbits, a total expenditure of £485 13s 6d was necessary. The value of the total bag was £302 16s, and thus a loss of £182 17s 6d was made. The most expensive item making up this total was pheasant food at £207 6s 6d, followed by the cost of maintaining three keepers and hiring watchers to assist them at £190 8s 3d. He paid lesser amounts, all under £40, for 'hens bought to incubate', dog food, beaters' wages, and compensation to farmers for the damage caused by the rabbits.<sup>11</sup> Preservers had to be rich and be reconciled to making a hefty loss.

The East Midlands had a wealth of such hunting obsessed gentlemen. The hunting mania of the gentry became extreme from the 1820s and many Victorian gentlemen were obsessed with shooting.<sup>12</sup> For them, 'sport' did not refer to cricket or football, but to hunting, shooting game and fishing. For the gentleman shooter, game might be hunted alone or in a small group of friends, using dogs to find game and to retrieve it when shot; or, increasingly as the century passed, in large groups with the game beaten or driven.

The most popular prey for gentlemen sportsmen was the pheasant. The bags were predominantly birds, but included hares and rabbits. Once the battue had become popular they were shot in large numbers. Strictly speaking, a 'battue' was when the shooters moved forward in a line through the covert and the birds rose up and were shot as they flew away, whereas a 'drive' was when the birds were driven out of their coverts by

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<sup>11</sup> Ralph Payne-Gallwey, *Letters to Young Shooters on the Production, Preservation and Killing of Game* (London, 1892), pp. 149-53.

<sup>12</sup> Joshua Getzler, 'Judges and Hunters: Law and Economic Conflict in the English Countryside 1800-1860', in C. Brooks and M. Lobban (eds.), *Communities and Courts in Britain 1150-1900* (London, 1997), pp. 203, 210.

beaters so that they flew high towards the shooters. But nineteenth century writers referred to both as 'the battue'.<sup>13</sup>

In 1851 at Gedling, just east of Nottingham, a party of noble visitors joined the Earl of Chesterfield and they shot 102 pheasants, 80 hares and 118 rabbits in one day.<sup>14</sup> Later in the year the same Earl, with many of the same visitors but this time on his estates between Saxondale and Shelford (about 10 miles east of Nottingham), shot 95 pheasants, 2 partridges, 327 hares and 17 rabbits – 'besides great numbers which they killed and were not picked up until next day.'<sup>15</sup>

Fig. 7.2. An engraving of two gentlemen out with their dogs, shooting flying game birds, 1807. By Samuel Howitt.<sup>16</sup>



<sup>13</sup> Griffin, *Blood Sport*, p.155.

<sup>14</sup> *NG*, 30 Jan 1851.

<sup>15</sup> *NG*, 18 Dec 1851.

<sup>16</sup> Griffin, *Blood Sport*, p. 120.

Nottinghamshire was named by the Central Farmers Club in London, in 1860, as one of the seven counties in the country most noted for 'over preservation' of game.<sup>17</sup> From Derbyshire, in November 1823, Harriet, Countess Granville, received an express letter from her friend Robert Wilmot Horton (who was shooting at Chatsworth) saying that the following gentlemen had shot the following numbers: 'Palmerston 51, Littleton 45, Wilmot 45, Ponsonby 42, Wortley and Copley 24'. Lady Granville wrote in a letter regarding this feat, 'They are all naturally frantic with delight....'<sup>18</sup> Leicestershire did not have the same number of large aristocratic estates as the other two counties, but shoots are known to have been held at Bradgate, Donington and Belvoir.<sup>19</sup>

Fig. 7.3. Kedleston Hall, one of the great aristocratic seats, which was close to Derby and suffered from the attentions of poachers. Taken c. 1865 by R. Keene.<sup>20</sup>



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<sup>17</sup> *NG*, 15 March 1860.

<sup>18</sup> F. Leveson Gower (ed.), *The Letters of Harriet Countess Granville 1810-1845* (1894), p. 234. I am indebted to Stephen Lamont for supplying me with this reference.

<sup>19</sup> Colin D. B. Ellis, *Leicestershire and the Quorn Hunt* (Leicester, 1951), p. 86.

<sup>20</sup> Maxwell Craven and Michael Stanley, *The Derbyshire Country House* (Derby 1991), p. 119.

Game birds were preserved widely over the three counties. There are references to game birds at Gedling just east of Nottingham, at Saxondale and Shelford approximately 10 miles east of Nottingham, at Langwith Lodge estate 5 miles north of Mansfield, at Clipstone near Warsop, and at Welbeck and Clumber; in Derbyshire, at Shipley Hall near Ilkeston, at Chatsworth, at Scarcliffe Park in the north east, at Calke Abbey and at Markeaton just north west of Derby; and in Leicestershire at Newton Harcourt south of Leicester, Evington close to the south east of Leicester, on an estate about five miles from Lutterworth, at Elkesley on the Nottinghamshire border, on the Belvoir estate in the north east, and in a reserve called Free Wood owned by P. Bennet, Esq. <sup>21</sup>

Fig. 7.4. Clumber House in The Dukeries of Nottinghamshire, before the central part was destroyed by fire in 1879. The seat of the Dukes of Newcastle, this was another of the great aristocratic seats in the three counties, and one which suffered from persistent poaching.<sup>22</sup>



<sup>21</sup> *NG*, 20 Nov 1851, 1 Sept 1853, 1 Dec 1853, 15 March 1872; *LC*, 27 Dec 1828, 21 Jan 1865, 25 Nov 1865.

<sup>22</sup> Philip E. Jones, *Lost Houses of Nottinghamshire* (Nottingham, 2006), p. 19.

Rabbits were shot by gentlemen for pleasure, and were the most frequently poached animal. They were also a particular source of grievance to farmers for the damage done to crops – though game birds also damaged crops. Occasionally, and more often as the century progressed, the landlord might allow the tenant to cull the rabbits – as enshrined in the 1880 Ground Game Act but allowed by some landlords earlier.<sup>23</sup>

Rabbits were ubiquitous throughout the region in any landscape where the soil and surroundings were not unsuitable for them. Only areas where the soil was heavy clay, or where rocks were close to the surface and only a thin layer of topsoil was present, would be likely not to have any rabbits at all. There are no reports of the existence of warrens, or of rabbit poaching, in the Peak District of Derbyshire; but apart from the Peak, a landscape of woods and warrens was regarded as the natural state to which much of the area would revert were it not cultivated or preserved.<sup>24</sup>

Rabbits are not native to Britain. Latest evidence is that they were successfully introduced in the twelfth century – when they were widely reared in Europe – by being brought here by many individual landowners. They soon became naturalised.<sup>25</sup> Many landowners still farmed rabbits in the nineteenth century. It was part of the game keeper's duty to protect the rabbits as well as the game birds, unless a warrener was employed for this purpose. Charnwood Forest was one area where rabbits were farmed in the eighteenth century, and remained present in large numbers in the nineteenth century. Clipstone in Nottinghamshire was another; rabbits

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<sup>23</sup> See pp. 5,9.

<sup>24</sup> *NG*, 13 Feb 1851.

<sup>25</sup> Naomi Sykes and Julie Curl, 'The Rabbit', in Naomi Sykes and Terry O'Connor (eds.), *Extinctions and Invasions: A Social History of British Fauna* (Oxford, 2010), pp.116, 125-6.

were introduced and farmed there in medieval times, the warren being established close to the site of the royal palace, 3 or 4 miles from Mansfield Woodhouse.<sup>26</sup> Henry Sherwood had a warren near Mansfield in 1849.<sup>27</sup> In Derbyshire, Captain Goodwin of Wigwell Grange near Wirksworth preserved rabbits in 1862.<sup>28</sup> Also in Derbyshire, Mr Thomas Swindle had a warren near Idridgehay in 1866.<sup>29</sup>

Rabbits were farmed for their skins and their flesh, and could be a valuable part of the income from an estate. Lord Exeter of Burghley House, whose land extended in Leicestershire, was a farmer of rabbits. He put such value upon them that his agent and steward pursued a haul of 80-90 poached rabbits to the station, where they forcibly retrieved the rabbits from the poachers' receiver, a game dealer. This case went first to Assizes where the game dealer claimed against Lord Exeter and the Judge found for the game dealer; and then to the Court of Common Pleas in Westminster where Lord Exeter challenged this judgement and lost, the Judge saying that there was no law to justify reclaiming the rabbits.<sup>30</sup>

Shooting was a prestigious pastime, but this does not mean that it was viewed with unalloyed approval, or even tolerance, by the rest of society. There were varying attitudes even within the upper class. Even after 1831, when the annoyance of the unqualified gentry at not being allowed to hunt had been removed, it was still not the case that all the upper, middle and land owning classes supported preservation. There was widespread feeling that the whole game preservation business had become too extreme and

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<sup>26</sup> A. Gaunt and J. Wright, 'A Romantic Royal Retreat, and an Idealised Forest in Miniature: The Designated Landscape of Medieval Clipstone, at the Heart of Sherwood Forest', *Transactions of the Thoroton Society*, 117 (2013), p. 47.

<sup>27</sup> *NG*, 25 Oct 1849.

<sup>28</sup> *DG*, 15 Jan 1862.

<sup>29</sup> *DM*, 1 Aug 1866.

<sup>30</sup> *LC*, 20 July 1861; *DM*, 13 Nov 1861.

was having negative consequences. Antagonism to preservation was not just a feature of the later part of the century. In 1827, the *Leicester Chronicle* published this editorial, heavily ironic in tone:

It must be obvious...that it [game] was created exclusively for ladies and gentlemen born, and that an interference on the part of hungry or unemployed paupers, is a disturbance of the order of nature....To be sure country gentlemen would not live in the country were it otherwise, and newspaper people like ourselves would be deprived of ...recording the slaughter of myriads of unoffending animals by the finest of all possible gentlemen with the most perfect of all possible mantons.<sup>31</sup>

In August 1827, the *Derby Mercury* reported that Chief Justice Best's address to the Grand Jury at the summer Assizes had included the statement that he was 'pro gentlemen's sport but anti extreme preservation and battues.'<sup>32</sup> In 1859 the *Nottinghamshire Guardian* printed an article taken from the *Illustrated News* which referred to 'This mania for pheasant preserving – each landlord competing against his neighbour as to who shall make the biggest bag on battue days...'<sup>33</sup>

It was partly the introduction of battues that fuelled the unpopularity of game preserving, and this was increased yet more after the 1862 Poaching Prevention Act, when rate-payers felt that money paid to fund the police was partly supporting game preservation.<sup>34</sup> The *Leicester Chronicle* was against preservation, especially of rabbits, because of the damage caused to farmers.<sup>35</sup> The *Nottinghamshire Guardian* said it was against all excessive preservation, but particularly against that of rabbits, which made

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<sup>31</sup> *LC*, 3 March 1827, 'Mantons' were a type of gun, after the maker, Joseph Manton.

<sup>32</sup> *DM*, 29 Aug 1827.

<sup>33</sup> *NG*, 27 Jan 1859.

<sup>34</sup> See p. 190.

<sup>35</sup> *LC*, 30 Nov 1867.

a profit for the proprietor which the tenant farmer was effectively funding.<sup>36</sup>

In a tirade against the game laws and preservation, a writer styling himself an 'agriculturalist', in Leicestershire, referred to these 'iniquitous laws' which 'benefit the few at the expense of the many'. He spoke out against the gentlemen's life of ease and sport, 'many of them MPs for rural districts and as useless as the benches upon which they have sat [sic]'.<sup>37</sup>

Another source of criticism was the fox hunting fraternity. Game shooting was the preserve of the higher gentry and aristocracy, whereas fox hunting embraced the lower gentry as well; the middle ranks of the countryside were thus able to participate in fox hunting.<sup>38</sup> The clash of interest between fox hunters and preservers was over the wellbeing of the fox. Foxes were not protected by law, but the expectation and hope of the Masters of the Hunt was that farmers and landowners with foxes on their land would cooperate; they encouraged this to the point of maintaining contact, and offering amounts up to £300 a year to keepers and farmers for fox litters maintained on their land.<sup>39</sup> Game preservers regarded foxes as vermin and wanted them destroyed, as they preyed on game birds.

Leicestershire was an important county for the growth of foxhunting in the eighteenth century, much of the development in breeding faster hounds being credited to the Leicestershire squire, Hugo Meynell, who founded the Quorn hunt.<sup>40</sup> Leicestershire remained a prime foxhunting county in the nineteenth century, more famous for this sport than for preserving and

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<sup>36</sup> *NG*, 15 June 1866.

<sup>37</sup> *LC*, 24 March 1877.

<sup>38</sup> Golby and Purdue, *Civilisation*, pp. 74-5; Griffin, *Blood Sport*, pp. 131-3.

<sup>39</sup> Griffin, *Blood Sport*, pp. 136-7, 168.

<sup>40</sup> Griffin, *Blood Sport*, pp. 126-7.

shooting game. The Quorn, the Fernie, the Belvoir, the Cottesmore, the Pytchley and the Atherston hunts, covered the county, and in the season (from November to March) there were about 20 hunts every week. Their 'country' – that is, the area of the countryside over which they habitually hunted - extended into Nottinghamshire and Derbyshire.<sup>41</sup>

Nottinghamshire, though it had a reputation for preservation and shooting, was also known as a foxhunting county, 'one of the most ancient and active in the kingdom'. Some of the game preserving aristocrats and gentry were also foxhunting families: the Musters, Foljambes, Earls of Scarborough, Lord Henry Bentinck, Mr Rolleston and others.<sup>42</sup> Eight different foxhunting packs hunted from one to six times a week in Nottinghamshire in the 1850 season.<sup>43</sup>

Derbyshire too, though not with as many hunts as in the other two counties, was foxhunting country. The Meynell hunt was based 10 miles north west of Derby. There was a pack of harriers (hare hunting dogs) at Radborne, a few miles west of Derby, which also hunted foxes. The Derby Hounds and the Calke Harriers, from 1802, hunted fox and hare. There were also foxhunting packs in Staffordshire whose 'country', extended into Derbyshire; from 1812 the Meynell hunt was based just over the county border near Burton-on-Trent, and hunted over Derbyshire. From 1810 the Barlow Hunt's 'country' extended from Chesterfield up into the Yorkshire moors.<sup>44</sup>

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<sup>41</sup> W. G. Hoskins and R. A. McKinley (eds.), *Victoria County History of Leicestershire*, Vol. 3, (London, 1955), pp. 269-71.

<sup>42</sup> William Page (ed.), *Victoria County History of Nottinghamshire*, vol. 2, (London, 1910), pp. 383, 398.

<sup>43</sup> *LC*, 22 Nov 1828; *NG*, 28 Feb 1850.

<sup>44</sup> William Page (ed.), *Victoria County History of Derbyshire*, vol. 2, first pub. 1907 (London, 1970), pp. 283-7.

In the 1820s the term 'vulpicides' was coined to refer to people who killed foxes for practical rather than sporting reasons. In the absence of a law against anyone killing a fox, a social convention emerged that killing a fox other than on a hunt was despicable.<sup>45</sup> The 3<sup>rd</sup> Duke of Rutland, Master of the Belvoir Hounds, had a physical tussle with a farmer who had shot a fox that he was hunting in 1863; the Duke demanded the carcass for his hounds, the farmer refused and the Duke retrieved it by force. There was no legal recourse against the farmer; the Duke had to be satisfied with the support of other farmers and gentry who united in calling the act 'unsportsmanlike conduct'.<sup>46</sup>

The death of several hounds from the Rufford pack caused an exchange of letters in the pages of the *Nottinghamshire Guardian* in 1851. The pack was maintained by combined gentry of the county; Earl Manvers, the Earl of Scarborough and Mr Denison were the most influential supporters. Seven out of ten hounds who imbibed some poisoned bait died from strychnine poisoning. It was claimed that the hounds picked up the poison on the Newstead Abbey estate, but Colonel Wildman of Newstead wrote that the hounds had not entered Papplewick parish at all and must have picked it up elsewhere. A letter was published from an anonymous gentleman saying that the poison was not picked up at Newstead, but on his preserves, and that he was very sorry – he had no idea that the hunt would come there. This gentleman's keeper may have been using poison to control vermin, or even deliberately targeting foxes.<sup>47</sup>

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<sup>45</sup> Griffin, *Blood Sport*, pp. 138-9.

<sup>46</sup> Griffin, *Blood Sport*, pp. 169-70.

<sup>47</sup> *NG*, 27.3.1851.

It is significant that foxhunting was popular in the East Midlands because this was not the case in Lancashire. In 1908 not a single pack of foxhounds had its kennels in Lancashire, and this lack of foxhunting had been the case throughout the nineteenth century and earlier. The county was not a good one for foxes, but was a 'wonderful county for hares', and there were eight packs of harriers, which confined themselves to hare hunting. There were also three packs of staghounds – something not found in the East Midlands.<sup>48</sup>

In Lancashire, Archer has reported that preservation of game was supported by the farmers.<sup>49</sup> In the East Midlands, many of those who participated in or supported foxhunting (including some farmers), must have had a more ambivalent attitude towards preservation, even though there were preservers who also hunted fox. Gamekeepers' attempts to eliminate foxes from coverts near game preserves were opposed to foxhunters' attempts to encourage foxes. Because there was criticism of preservation in the East Midlands, this may have lessened feelings of antagonism towards poachers; there may have been some relish on the part of some observers at seeing game preservers suffering.

### **Poaching as a Sport**

The changes which occurred from the middle of the eighteenth century involved some types of poachers for whom the sporting aspect was less significant. Well organised gangs with networks for disposing of their catch, especially those simply descending upon game preserves at night and

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<sup>48</sup> William Farrer (ed.), *Victoria County History of Lancashire*, vol. 2, first pub. 1908 (London, 1966), pp. 467-9.

<sup>49</sup> See p. 205; John E. Archer, 'A Reckless Spirit of Enterprise: Game Preserving and Poaching in Nineteenth-Century Lancashire', in David W. Howell and Kenneth O. Morgan (eds.), *Crime, Protest, and Police in Modern British Society* (Cardiff, 1999), p. 153.

shooting their way through the roosting pheasants, may have had little sporting or recreational enjoyment. But, for many poachers, a large part of the appeal was recreational. It is for these poachers, operating singly and in groups, with their nets, traps, ferrets, guns and dogs, that a degree of enjoyment and fulfilment was part of the exercise. For men who spent their working hours down mines, at framework knitting machines or at other low skilled jobs, this opportunity to plan, roam and hunt animals was a refreshing change.

The instinct to hunt and kill animals is part of human nature; man is an omnivore and meat was always part of the human diet. Such inborn tendencies affected both the legitimate hunter and the poacher. However, though some gentlemen may have gone out to shoot prey some of which was later consumed at their dinner table, and the value of game sold was used to defray the cost of preservation, the gentleman nevertheless was expending money to obtain pleasure. Conversely, the poacher profited by his activity; he obtained money/food and sport.

Poaching and legitimate shooting had much else in common. Physical exercise is part of sport and many gentlemen enjoyed miles of walking and shooting with their dogs. Poachers also walked, often long distances.<sup>50</sup> The athleticism required for poaching could become extreme on occasion. The Norfolk poacher, Rolfe, described chases involving running in and out of rivers and ditches, dropping and hiding guns and game on the way.<sup>51</sup> Hawker also described long chases with keepers or policemen pursuing him, and there is an element of pride embodied in his descriptions of how he outran and evaded them:

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<sup>50</sup> See pp. 178-81.

<sup>51</sup> Haggard, *I Walked*, p. 69.

Down the lane I ran at a Rate I could have kept up any Length of time. I just put on a spurt to get clear, then I slackened to a nice steady pace. The Bobby was a long way Behind. He was pulling his coat off. In fact he had shot his bolt. The keeper was about 30 yards behind. He was running above Upright, not a good sign for an athlete....I found myself by a brook and a Bridge crossed the road. I put my hand on the Fog-stone and over I went in a moment and along the side of the brook....After running 300 yards I came to a large spinney....Keeper and Bobby had all disappeared.<sup>52</sup>

In Nottinghamshire, in 1884, three poachers caught in the act by a keeper at Ratcliffe-on-Soar were chased along the track of the Midland railway, across the river Trent on the railway bridge near Trent Lock and through Beeston. They then swam across the canal at Lenton and ran on to Nottingham Meadows where they separated, as a result of which only one of them was caught. In the course of this chase, which covered at least 9 miles, the keeper was initially assisted by a nearby shepherd, in Beeston two bystanders joined in, and in the Meadows several more.<sup>53</sup> Poachers not infrequently plunged into rivers to evade pursuit – fatally in the case of John Hayes of Loughborough who drowned in the river Trent trying to escape; he had been poaching at Thrumpton Hall with others, two of whom were captured.<sup>54</sup>

In any sport the acquisition of specialist skills and knowledge is part of the appeal. Just as hunting could be done in different ways – over a dog, in the battue or drive, so could poaching, and the poacher used different skills depending on the method of catching the animal. But whatever the method

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<sup>52</sup> Christian, *James Hawker*, pp.33-4.

<sup>53</sup> *NG*, 13 June 1884.

<sup>54</sup> *NG*, 27 May 1862.

employed, for the poacher it always required subterfuge as well as skill. The poacher had to be aware of the habits and whereabouts of the gamekeeper and the police, hide his equipment, and find ways of getting his haul home or to another destination without being detected. This element of danger could be a powerful attraction.

Gangs of night poachers armed with guns to shoot pheasants needed only a modicum of ability and information, but other types of poachers had a wealth of esoteric countryman's skills and knowledge. Jefferies lauded the skill of the snare setting poacher: 'The poacher re-visits his snares very early in the morning... Long practice and delicate skill are essential to successful snaring'.<sup>55</sup> The gamekeeper who caught and gave evidence against Hannah Rushton from Marston-on Dove in Derbyshire, praised her great skill; he said that she was the best snare setter he had ever come across.<sup>56</sup>

Hawker explained the various skills which he had to acquire in order to be a successful lifelong poacher: 'I have helped to net every wood worth going to within 10 miles of Northampton....Around Daventry I know every inch of the ground from my boyhood days.'<sup>57</sup> He had the skill of 'calling' hares and knew where and how to secrete himself at night to be undetected by the game he was hunting. Referring to the poacher who works alone Hawker says, 'he knows the weather, all the signs of wood craft, the calls of birds, all the night sounds, the wind and stars are his guide.'<sup>58</sup>

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<sup>55</sup> Jefferies, *Poacher and Gamekeeper*, p.117.

<sup>56</sup> *DM*, 27.3.1861.

<sup>57</sup> Christian, *James Hawker*, p. 48.

<sup>58</sup> Christian, *James Hawker*, p. 36.

Firearms were at a critical stage in development during the nineteenth century, and over the period developed from unreliable and very dangerous items, to sophisticated weapons which could bring down birds in flight with some accuracy, and were less likely to go off unintentionally.<sup>59</sup> The ownership of the latest firearms from the best manufacturers, informed discussion of the pros and cons of different models, and the giving of advice and hints on how to improve one's marksmanship, were part of the enjoyment for the gentleman hunter.<sup>60</sup>

Like gentlemen, poachers chose their guns with care and took pride in them, adapting them to the special use they made of them, which entailed being able to carry them unseen if possible. Hawker (who was said to have walked with a slight limp because a sawn-off rifle was often carried down his trouser leg)<sup>61</sup> said:

One of the Finest Shots I Have ever made in my Life was out of a 21 inch Martini Henry Barrell. These Barrells you could purchase from Birmingham for five shillings Each and cutting the Heavy End to two Feet, makes a useful Bit of kit for a Poacher.<sup>62</sup>

With this gun Hawker used a bullet, but shot was frequently used in poaching and in hunting. Varying amounts of powder were necessary depending on distance, prey and conditions; the knowledge of all of this was part of the art of poaching and guns were highly valued equipment. When eight poachers were found by keepers on the Woodland Moors in Derbyshire, in 1860, with bags full of grouse and were ordered off the land,

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<sup>59</sup> Harry Hopkins, *The Long Affray: The Poaching Wars in Britain* (London, 1986), pp. 68-9, 213, 269-70.

<sup>60</sup> See p. 169 for reference to 'the most perfect of all possible mantons'.

<sup>61</sup> Garth Christian (ed.), *James Hawker's Journal: A Victorian Poacher* (Oxford, 1978), p. xv.

<sup>62</sup> Christian, *James Hawker*, p.38.

they were only willing to leave when their guns, which the keepers had confiscated, were returned to them; the grouse they abandoned willingly.<sup>63</sup>

Other equipment used by poachers included nets of various types, the materials for traps and snares, as well as dogs and ferrets. Hawker related that when he started poaching, as a lad from a very poor family, 'Having no Gun, no net, no Dog, I was content for a time to Poach Fish with a Ball of String Hooks and Small Baits'.<sup>64</sup> Over time, as he bettered himself, he was able to afford nets, guns and ferrets. Hawker was a cordwainer (a shoemaker and repairer) and he worked at this trade, so his increase in wealth was not solely down to poaching.

Sporting dogs were viewed by their noble owners as being endowed with qualities which, as well as being of practical use in the hunt, mimicked traits which would be admirable in men. Payne-Gallwey listed some of the qualities frequently attributed by sportsmen to their dogs: 'the exquisite powers of scent', 'the companionable qualities', 'the determined courage', 'the noble sagacity', and of course 'the friend of man'.<sup>65</sup> Training sporting dogs was a process involving expenditure of much time and effort over a period of months or even years, and gentlemen placed great value on their dogs.<sup>66</sup> In a poaching affray in 1851, Sir Arthur Clifton's dog, Lion, referred to in the news report as 'a faithful mastiff' that was his personal dog and much valued by him, was killed by poachers.<sup>67</sup> In 1853 it was reported that preserver Mr Mundy of Shipley Hall in Derbyshire had lost 'one of his best pointers and a valuable retriever dog' from poisoning.<sup>68</sup>

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<sup>63</sup> *DM*, 9 Jan 1861.

<sup>64</sup> Christian, *James Hawker*, p. 3.

<sup>65</sup> Payne-Gallwey, *Letters*, pp. 473-4.

<sup>66</sup> Payne-Gallwey, *Letters*, pp. 472-509.

<sup>67</sup> *NG*, 13 Dec 1851.

<sup>68</sup> *NG*, 1 Dec 1853.

Poor men also placed great value on their dogs and took pride in them. In 1865 at Leicester Crown Court a boatman whose dog had been shot by keepers on the preserves of Sir H. Halford claimed for the cost; the jury found for him, with the Judge ruling that the keeper had the right to seize the dog but not to shoot it, and the claimant was awarded £2 10s as the value of the dog.<sup>69</sup>

Groups of poachers were often accompanied by at least one dog. A night poaching expedition on the Earl of Chesterfield's estates at Melbourne in Derbyshire in 1866, involved 11 poachers who had five dogs with them.<sup>70</sup> These animals were valuable due to the years of training and experience invested in them. Rolfe explained, much as Payne-Gallwey, how he trained his dogs, which were usually greyhound crossed to produce lurchers.<sup>71</sup> There was one 'very clever' lurcher he had; with this dog and a seven yard net he had obtained hundreds of hares and rabbits.<sup>72</sup>

Dogs were used to assist with poaching in a variety of ways. Some were trained to beat the field and drive game towards nets or, if daytime and guns were being used, to cause birds to fly up to be shot - as legitimate hunters did. Other types of dog, referred to as 'snap dogs' would actually catch and kill ground game. A Leicestershire poacher was convicted in 1861 of 'using two snap dogs for the purpose of destroying game'.<sup>73</sup>

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<sup>69</sup> LC, 21 Jan 1865.

<sup>70</sup> NG, 5 Oct 1866.

<sup>71</sup> Lilius Rider Haggard (ed.), *I Walked by Night: Being the Life and History of the King of the Norfolk Poachers* (Ipswich, 1974), pp.54, 57, 155-7.

<sup>72</sup> Haggard, *I Walked*, p.67.

<sup>73</sup> LC, 11 Jan 1861.

Poachers' dogs often became well known to gamekeepers. At Barton in Nottinghamshire in 1861, a group of seven poachers had two dogs with them, and one of these was recognised as 'Price's dog', and described as 'a white snap dog'.<sup>74</sup> At the Assize trial of a group of night poachers near Staunton Harold in Leicestershire, there was a query as to the ownership of a particular dog, with a view to the identification of the poachers. It remained uncertain to whom the dog belonged, and the Judge gave it as his opinion that 'where there was a village addicted to poaching, there might be a community of dogs – the same as there used to be a community of goods among the early Christians.' The village from which several of these poachers came was Castle Donington.<sup>75</sup> At Walesby on the Clumber estate in Nottinghamshire, seven night poachers were seen with a dog which was identified as Charles Marsh's dog.<sup>76</sup> At Rufford, Mr Savile's seven keepers and watchers came into conflict with 18 night poachers who had with them a dog which was identified as belonging to George Woodcock.<sup>77</sup>

Before the 1831 Game Reform Act, only those qualified to hunt were allowed to own dogs of a type which could be used in hunting. Game returns from before the reform act show examples of unqualified people being imprisoned for using such dogs.<sup>78</sup> After the Game Reform Act anyone could become qualified to hunt by the purchase of a game certificate, so it was no longer possible to claim that working people should not have hunting dogs. Nevertheless, it remained the case that anyone whose dog was caught poaching with him could have it confiscated. The ownership of dogs by the rural poor was a subject of complaint on the part of the better

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<sup>74</sup> *NG*, 24 Jan 1861.

<sup>75</sup> *LC*, 22 June 1861, 20 July 1861.

<sup>76</sup> *NG*, 29 Nov 1861, 13 Dec 1861.

<sup>77</sup> *NG*, 16 Nov 1877.

<sup>78</sup> *Game Laws Returns 1831-32(65)*.

off.<sup>79</sup> The dogs of the lower classes were regarded with suspicion. Poaching dogs – ‘the cur and the lurcher’ – were identified (incorrectly) in the country, and fighting dogs in the towns, as the main propagators of rabies.<sup>80</sup>

Poachers frequently used ferrets to catch rabbits. Jefferies observed, ‘Ferrets differ remarkably in disposition and the poacher chooses his with care....Part of the secret is to feed him properly’.<sup>81</sup> Hawker’s best ferret was ‘a very powerful Creature with only one eye. If a rabbit would not bolt he would pull it out backwards.’<sup>82</sup> An experienced ferret was a valuable asset. Poacher Arthur Brockley of Mountsorrel in Leicestershire risked prosecution by refusing to leave promptly, when warned off land by the gamekeeper, until he had been able to retrieve his ferret.<sup>83</sup> Also in Leicestershire, a poacher took civil action against a keeper who had taken his nets and his ferret when he had been caught poaching; the Judge said that the net was forfeit because it was an instrument, but that the ferret was not an instrument and should not have been taken. He ordered the ferret, or its value, to be returned.<sup>84</sup>

There was great competition between gentlemen sportsmen. The bags were reported by the press, and the best shots lauded. Having given the size of the bags taken at Gedling in Nottinghamshire in 1851, the newspaper report went on to say, ‘The shots of Earl Stanhope were considered first rate’.<sup>85</sup> Lord Stamford was known to entertain large parties for shooting at Bradgate, Leicestershire; the kudos of these affairs was

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<sup>79</sup> Munsche, *Gentleman and Poachers*, pp. 82-3.

<sup>80</sup> Ritvo, *Animal Estate*, p. 177.

<sup>81</sup> Richard Jefferies, *The Gamekeeper at Home and The Amateur Poacher* (Oxford, 1978), p.119.

<sup>82</sup> Christian, *James Hawker*, p. 110.

<sup>83</sup> *LC*, 6 Jan 1866.

<sup>84</sup> *LC*, 26 April 1862.

<sup>85</sup> *NG*, 30 Jan 1851.

heightened by the fact that 'many first class shots and the Prince of Wales', were frequently present.<sup>86</sup> For poachers also, status was achieved by prowess. Whilst a gentleman was a 'famous shot', a well-known poacher was 'a notorious poacher'.

Teamwork is a feature of many sports. The battue, or even a smaller shoot, required a degree of organisation, though this work may have been done largely by servants of various types. Gentleman had to be aware of the activities of the other guns, and act according to strict protocols. Group poaching was also a co-operative activity. Though there were solitary poachers, many poached in groups or gangs. This required organisation; everyone had to be aware of the other participants and play their role. A note was passed to the Wanlip keeper in Leicester in 1836 which gave information that some men were intending to poach. It attested to the organisation required because it listed the roles and gave the name of the person assigned to each role: ganger, second ganger, netman, lurcher, gateman, and setter.<sup>87</sup>

Hawker described how to work with five others using the long net; it was quite complicated and each person had to do the right thing at the right moment:

When six men are going out with a net 75 yards long, number one poacher pegs his net Down at the Start with a Short iron peg. Then away you all go in Front of the wood or spinney. When number one has run his net out 75 yards, Pull it rather tight and Stick another iron peg in the ground to keep it so....Now you begin to peg it up. As you do this the other five men go and Do the same.....[a lot more

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<sup>86</sup> Colin D. B. Ellis, *Leicestershire and the Quorn Hunt* (Leicester 1951), p. 86.

<sup>87</sup> *LC*, 1 Oct 1836.

instructions]...Number six signals to number five who tells four who signals to number three and so on. Number one lets the dog go....<sup>88</sup>

The appeal of a sporting outlet is clear for men whose work was tedious or physically restricting, whilst still hard work; such as miners and framework knitters – occupations followed by many poachers.<sup>89</sup>

### **The Rise of Working-Class Sports**

Poaching was at least partly recreational or sporting for most of its practitioners. It supplied them with enjoyment and a sense of achievement aside from the acquisition of food or money. It is not being contended here that attempts to limit some of the sports of the poor were responsible for the increase in poaching up to the 1870s. But it is being argued that, since poaching had a sporting element for many actors, the increase of new or expanded recreational and sporting activity towards the end of the century was a contributory factor in the decline of poaching after the 1870s.

Osborne and Winstanley have supported this:

Two activities in particular stand out as providing the most direct competition to the 'sporting' or 'recreational' appeal of poaching. First, there was the growth of alternative outdoor activities, team and individual sports, which offered contact with the natural world and countryside: rambling, cycling, running, dog-racing, angling and competitive shooting clubs....Second, the late nineteenth century witnessed the growth of ...rearing 'fancy' fowl (poultry), rabbits, cage birds and racing pigeons.<sup>90</sup>

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<sup>88</sup> Christian, *James Hawker*, pp. 50-1.

<sup>89</sup> See p. 175.

<sup>90</sup> Harvey Osborne and Michael Winstanley, 'Rural and Urban Poaching in Victorian England', *Rural History*, 17(2006), p. 203.

They additionally pointed to the fact that decreased poaching in the North and the Midlands, which occurred earlier than it did in the South and East, could be associated with the earlier development of alternative recreational activities in these areas.<sup>91</sup>

Tranter has supported the theory that there were more and earlier opportunities for new and modernised sports in the Midlands and the North:

As a general rule, the more industrial and commercial the economy the greater the extent of organised sport and the earlier its inception.<sup>92</sup>

Tranter has argued that the chronology of the diffusion of the new sporting culture was from the more prosperous middle class around the mid-nineteenth century, to the skilled and semi-skilled workers in the third quarter of the century, and to unskilled workers in the late 1880s and 1890s; this reflects, though crudely, the variations in the dates when shorter working hours and the Saturday half day were achieved.<sup>93</sup>

Cunningham, though not so specific on the chronology, has said that after the 1870s cycling became a sport popular for all classes, and that the expansion of many recreations and sports was boosted by decreased working hours and rising standards of working-class living towards the end of the nineteenth century.<sup>94</sup>

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<sup>91</sup> Osborne and Winstanley, 'Rural and Urban', pp. 203,207.

<sup>92</sup> Tranter, *Sport, Economy*, pp.29, 35.

<sup>93</sup> Tranter, *Sport, Economy*, pp. 29, 35.

<sup>94</sup> Cunningham, *Leisure*, pp. 136-7, 177.

By the end of the nineteenth century, the sporting and leisure culture of England had undergone a considerable change from the situation fifty years earlier. This coincided with the industrial revolution and societal and cultural changes engendered by it. There might be some variation of opinion as to precisely when these changes took place – revisionist opinion being that the industrial revolution was not as early or as uniform as at first thought.<sup>95</sup> Talking about popular culture more generally, but including sport, Griffin has said that the changes in recreation were the product of economic forces as well as people's tastes and preferences. Culture and economy are linked, but since the industrial revolution is now seen as 'limited, multifarious and regionally confined', the changes in popular sport and recreation associated with it were equally variable by time and place; local economic factors were key in determining the nature of popular culture and sport.<sup>96</sup> According to Tranter, the fundamental characteristics of late Victorian sport were very different from the early Victorian period, though in some regions the adoption of new standardised sports and club structures happened much later and was still not complete by the end of the nineteenth century.<sup>97</sup>

Although the industrial revolution is now believed to have come later in the East Midlands than in some other parts of the Midlands and the North, during the second half of the nineteenth century the major regional industries of coal mining, iron and steel, hosiery and lace, footwear and engineering, became powered and organised on an industrial scale. By the last quarter of the nineteenth century the East Midlands was an industrial area.<sup>98</sup> The development of new or expanded and commercialised sport

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<sup>95</sup> Bailey, *Leisure*, p.170-71; Lowerson and Myerscough, *Time to Spare*, pp. 9, 13, 123-8; Malcolmson, *Popular Recreations*, pp.151, 170-1.

<sup>96</sup> Griffin, *Revelry*, pp. 17, 18, 252.

<sup>97</sup> Tranter, *Sport, Economy*, p.15.

<sup>98</sup> Beckett, *East Midlands*, pp. 275.

was well under way. Hawker stopped poaching altogether for a period in the 1880s when he got heavily involved in cycling in Leicester. This is an example of one poacher, at least, for whom a sport displaced poaching in his life - though only for a while - because when his involvement in cycling reduced, he returned to poaching.<sup>99</sup>

Fig. 7.5. Leicester Cycle Club returning from their picnic outing in 1896, outside *The Red Lion Inn*, Costock, Nottinghamshire.<sup>100</sup>



Football grew from the traditional sport of the early nineteenth century into the codified and immensely popular modern game. By 1888 there were 1000 clubs affiliated to the Football Association and it was the most popular sport of all, both for playing – with chapels, churches, firms and clubs having their own teams - and as a spectator sport.<sup>101</sup> Cricket attracted growing numbers of participants from the mid-century, in local teams, and

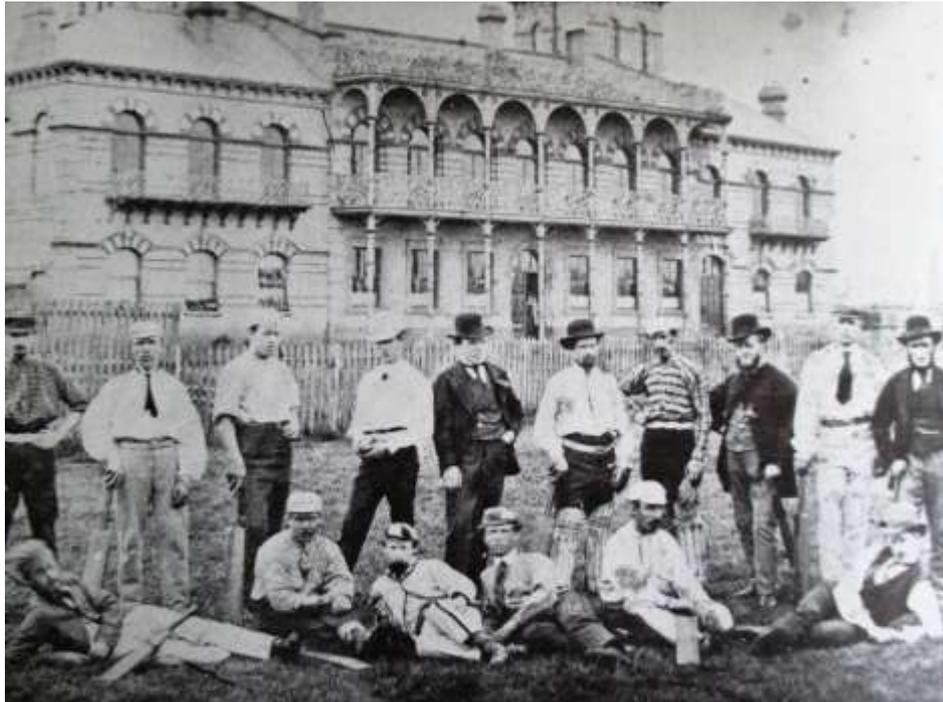
<sup>99</sup> Christian, *James Hawker*, pp.26-7.

<sup>100</sup> Iona Cruickshank and Allen Chinnery, *Victorian and Edwardian Leicestershire from Old Photographs* (London, 1977), plate 91.

<sup>101</sup> Bailey, *Leisure*, p.165

spectators for teams at all levels. It was promoted by publicans and owners of estates, and many villages had their own teams, attracting up to 1000 spectators to their matches.<sup>102</sup>

Fig. 7.6. Leicester County Cricket Club team, some time between 1860 and 1878 when they played on the racecourse, which is now Victoria Park, where they are shown in this picture.<sup>103</sup>



As well as football, cycling and cricket there was boxing, horse racing, rowing, foot races, rifle shooting at butts, athletics, rugby, angling; these were all sports which involved increasing numbers of working class participants and spectators in the last quarter of the century.<sup>104</sup> The number of anglers increased from 50,000 in 1878 to over 250,000 in 1914.<sup>105</sup> By 1890, there were 15 sports which had a following such that

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<sup>102</sup> Tranter, *Sport, Economy*, p.17.

<sup>103</sup> Cruickshank and Chinnery, *Leicestershire*, plate 102.

<sup>104</sup> Golby and Purdue, *Civilisation*, p. 77; Bailey, *Leisure*, p. 171; Cunningham, *Leisure*, p.118-20, 134; Tranter, *Sport, Economy*, p.16.

<sup>105</sup> Tranter, *Sport, Economy*, pp. 16-17.

they could be organised on a national scale; in 1840 this had only applied to horse racing and cricket, in England.<sup>106</sup>

Poachers were working class and overwhelmingly men, for many of whom sport was an important part of their lives. Bailey has argued that, for many of working class men, 'sport was more important, after survival, than any other aspect of life.'<sup>107</sup> In this they were no different from many middle and upper-class men. Rolfe said:

Some do it [poaching] for the sake of sport, and the excitement of the game....Poaching is something like drug taking – once begun there is going back, it gets hold of you....it is exciting at times.<sup>108</sup>

It is this excitement, adrenaline rush, and habituation, which was part of the attraction of poaching for many, and for increasing numbers of them by the end of the century the same satisfaction could be found in new and legitimate areas of sport.

There are many ballads about poaching, and to research them would be a suitable subject for a thesis in itself. But the most famous is 'The Lincolnshire Poacher'. The verses narrate the escapades the poachers got up to, and how the speaker became addicted to poaching, to the detriment of his employment. The chorus sums up the appeal, 'Oh, 'tis my delight on a shining night in the season of the year.'

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<sup>106</sup> Bailey, *Leisure*, p. 165

<sup>107</sup> Bailey, *Leisure*, p. 168.

<sup>108</sup> Haggard, *I Walked*, pp. 68-9.

Fig. 7.7. 'The Lincolnshire Poacher'.<sup>109</sup>

108

## THE LINCOLNSHIRE POACHER

Arr. ARCHIBALD JACOB

Heartily

PIANO

SOLO

When I was bound ap - pren - tice, in fam - ous Lin - coln - shire, Full  
 As the and my com - pan - ions were set - ting of a snare, 'Twas  
 As the and my com - pan - ions were set - ting four or five, And  
 I threw him on my shoul - der, and then we trudg - ed home, We  
 Sun - cess to ev - 'ry gen - tle - man that lives in Lin - coln - shire, Sur -

well I serv'd my mas - ter for more than sev - eral year, Till  
 then we spoil the game - keep - er, for him we did not care, For  
 tak - ing on a gain, we caught a hare, a live, We  
 took him to a neigh - bour's house, and sold him for a crew, We  
 cess to ev - 'ry poach - er that wants to sell a hare, Had

CHORUS

I look up to you - th - ing, as you shall quick - ly hear;  
 we can wrestle and fight, my boys, and jump o'er an - y - where, Oh, 'tis  
 took the hare a - live, my boys, and through the woods did steer,  
 sold him for a crown, my boys, but I did not tell you where,  
 luck to ev - 'ry game - keep - er that will not sell his deer.

my de - light on a shin - ing night in the sea - son of the year.

There are many possible reasons why poaching declined at the end of the century; the changing moral climate, higher wages, more availability of cheap meat and a greater variety of food, better education, greater sobriety and changes in the industrial labour market, have all been cited as

<sup>109</sup> *Daily Express Community Song Book* (London, 1927), p. 108.

likely causes.<sup>110</sup> But the fact that poaching declined as other sporting opportunities arose and became more popular, supports the contention that a large part of the appeal of poaching was that it was a sport.

## **Conclusion**

The gentleman's sport of shooting game was popular throughout the three counties in the nineteenth century. Preservation was extremely expensive, and the gentry paid for their enjoyment, with Nottinghamshire and Derbyshire having a greater share of the biggest aristocratic estates and the most prestigious shooting parties. However, preservation and shooting, especially once the battue had become prevalent, were disapproved of by many in all classes of society.

Foxhunting was popular in the East Midlands, and the interests of foxhunters and game preservers collided and were a source of friction. The popularity of foxhunting may have been one of the reasons why game preservation was viewed more critically in the East Midlands than it was in Lancashire, where there was no fox hunting. This in turn may have been a contributory factor in the greater antagonism towards poaching in Lancashire.

As a sport, the gentlemanly activity shared much with the plebeian one; skill, esoteric knowledge, specialist equipment, and physical exercise in the countryside were involved in both. A degree of social interaction and co-operation, as well as status elevation, was common to both, as was pride

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<sup>110</sup> Jones, *Crime, Protest*, p.84; Archer, 'Flash and Scare', p.170; Emsley, *Crime and Society*, p.81; Osborne and Winstanley, *Rural and Urban*, p.207.

and pleasure in the ownership and use of equipment and of trained animals. Gentry and poachers made financial investment in their equipment and their animals, of an amount that was significant for their different pockets. But whilst the gentleman suffered a financial loss, the poacher profited at the gentleman's expense. Like some other sports, poaching required input from both the rich and the poor to flourish, but in the case of poaching the co-operation of the rich was unwilling, and the poacher took total advantage of his social superior.

Poaching was, for most participants, partly a sport and a recreation. This is consistent with the fact that, as new opportunities for sport and recreation developed towards the end of the century, poaching declined. Whilst these new opportunities were not the only change that influenced the decline in poaching, they were a contributory factor.

Whilst the argument that poaching was a sport may seem less contentious than the case made for poverty and protest as motivations for poaching, it is possible that the sporting motive was the most widespread and significant of the causes of poaching. Though a few poachers, driven by poverty, may have found no pleasure in it, for the majority the sporting and recreational element was a strong motive.

## Chapter 8 Conclusion

A substantial study of poaching in the East Midlands has been undertaken for this thesis. The patterns and impacts of poaching have been investigated and considered in the context of what is known about poaching in other areas of the country. The results of the research have revealed more about poaching in this region than historians have been aware of in the past. Partly by using source materials which have not been fully utilised before, and by looking at a region which has not previously been studied in any detail, it has been possible to reassess what we know about poaching in the light of new evidence. This means we can rethink what we know about the causes of poaching and its patterns, and ask other questions which can now be seen to be significant. This conclusion sets out the key findings of the thesis and suggests how these will impact on future studies of the subject, particularly in nineteenth-century midland and northern industrial areas.

Poaching took place all over the country and was not just a feature of eastern and southern agricultural counties. Statistics gathered for this thesis support the contention that, on the basis of convictions, poaching was widespread across the country, including in the counties of the Midlands and the North.<sup>1</sup>

When statistics on poaching convictions per county are recalculated taking the population of each county into account, it is possible to see which

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<sup>1</sup> P. 78-9; John E. Archer, ' " A Reckless Spirit of Enterprise": Game Preserving and Poaching in Nineteenth-Century Lancashire', in David W. Howell and Kenneth O. Morgan (eds.), *Crime, Protest and Police in Modern Britain* (Cardiff, 1999), pp. 149-171; Harvey Osborne and Michael Winstanley, 'Rural and Urban Poaching in Victorian England', *Rural History*, 17 (2006), pp. 187-212.

counties had the highest levels of poaching per head of population. This has not been done before, and it reveals the counties in which poaching was most prevalent. A new perspective emerges on the relative frequency of poaching. When calculated per 100,000 head of population, the figures show that there were significant numbers of poaching convictions in the East Midlands counties, even when compared with major poaching areas in the South and East, such as Hampshire and Suffolk. Compared to other counties in the Midlands and North, the frequency of poaching in the East Midlands is roughly equal to Northamptonshire, generally exceeding Staffordshire, and with relatively more poaching than Yorkshire or Lancashire.<sup>2</sup>

Further research needs to be done in order to establish a true picture of poaching throughout the country. Poaching statistics from all counties have been examined by Osborne and Winstanley, and show that poaching was widespread in the Midlands and North as well as in the South and East.<sup>3</sup> However, to show where poaching was most common, the data must be viewed per head of population. Taking figures per 100,000 head of population gives numbers which are easily compared. When this has been done for all counties over the period, it will be possible to have a full understanding of levels of poaching in Victorian England and how they fluctuated, a subject of which there is only patchy knowledge at the moment. Comparisons based solely on gross numbers can be misleading.<sup>4</sup>

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<sup>2</sup> Pp. 79-83.

<sup>3</sup> Harvey Osborne and Michael Winstanley, 'Rural and Urban Poaching in Victorian England', *Rural History*, 17 (2006), pp. 187-212.

<sup>4</sup> For example, see pp. 87-8.

Archer found that poaching increased where preserves were close to urban areas,<sup>5</sup> and research for this thesis supports this. In Derbyshire and Nottinghamshire there were many convictions on the preserves close to the major towns and the urban industrial areas. The tendency is less marked in Leicestershire, but the growing industrial town of Loughborough was on the edge of the Charnwood Forest area, where there was most poaching.<sup>6</sup>

However, it is also noticeable that large estates with plentiful game suffered from extensive poaching, even when they were not located close to urban areas. Poaching was widespread in the forest area of Nottinghamshire and the central northern part of Derbyshire. In eastern Leicestershire there were many convictions in the area round Stapleford Park.<sup>7</sup>

Most poaching was for ground game, that is, rabbits and hares. Pheasant preserves suffered from poaching, but became more heavily guarded as the period progressed, and this increased protection resulted in reduced pheasant poaching. Grouse were only poached on the Derbyshire moors and by day.<sup>8</sup>

The predominance of ground game as the prey for poachers in the East Midlands points to a need for further research to see if this was the case in other counties. The methods used to capture a particular prey can have significance for conduct in affrays. Men poaching for rabbits and hares with nets were not armed with firearms and fought with missiles and sticks.<sup>9</sup>

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<sup>5</sup> Archer, 'Reckless Spirit', p. 170.

<sup>6</sup> Pp. 91-102.

<sup>7</sup> Pp. 94-5, 97, 99, 101-2, 108.

<sup>8</sup> Pp. 109-15.

<sup>9</sup> Pp. 109-14, 193-4.

Men night poaching pheasants were shooting the birds with guns. They were more easily detected, due to the noise of firearms, and were more likely to use guns in any affrays with keepers. In areas where night poaching was predominantly of pheasants, it may be the case that the nature of affrays was different just because of the equipment used in the poaching.<sup>10</sup>

Many historians have argued that poverty was sometimes the cause of poaching, and some have said that, in an area which they have researched, poverty was the main motive.<sup>11</sup> Munsche, however, has argued that it was rare that poaching was caused by poverty.<sup>12</sup>

Poverty was defined by Rowntree as having insufficient earnings to obtain the minimum food necessary for the maintenance of mere physical efficiency.<sup>13</sup> Many working people in the East Midlands were in this situation at least some of the time, some of them much of the time.<sup>14</sup>

Nutrition in labourers' families was poor throughout the period.<sup>15</sup>

Framework knitters were at risk since the trade cycle fluctuated and could

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<sup>10</sup> Pp. 109-10, 193-4,

<sup>11</sup> Pp. 127-9; John E. Archer, *'By a Flash and a Scare': Arson, animal Maiming and Poaching In East Anglia 1815-1879*, first pub. 1990 (London, 2010), pp. 154-5; David Jones, 'The Poacher: A Study in Victorian Crime and Protest', *Historical Journal*, 22(1979), p. 836; Harvey Osborne, 'The Seasonality of Nineteenth-Century Poaching', *Agricultural History Review*, 48:1 (2000), pp. 27-8; Alun Howkins, 'Economic Crime and Class War: Poaching and the Game Laws 1840-1880', in S. E. Burman and B. H. Bond (eds.), *The Imposition of Law* (New York, 1979), pp. 274, 283; Timothy Shakesheff, *Rural Conflict, Crime and Protest: Herefordshire 1800-1860* (Woodbridge, 2003), pp. 142, 151-2.

<sup>12</sup> P. B. Munsche, *Gentlemen and Poachers: The English Game Laws 1671-1831* (Cambridge, 1981), pp. 62-3.

<sup>13</sup> P. 135; John Burnett, *Plenty and Want: A Social History of Diet in England from 1815 to the Present Day*, first pub. 1966 (Harmondsworth, 1968), p. 126.

<sup>14</sup> Pp. 131-143.

<sup>15</sup> P. 135-6.

fail to provide an adequate income.<sup>16</sup> Other evidence, such as the inability of many day poachers to pay fines, demonstrates their poverty.<sup>17</sup>

Even when poachers and their families were not underfed or suffering from inadequate nutrition they were still poor. Their food was limited in variety compared to those a little further up the social scale, and this was sufficient to provide a motive for poaching. A rabbit or a hare, occasionally or on a regular basis, would have made a great improvement to a frugal family meal.<sup>18</sup>

Undoubtedly some of those in the gangs, and some of those who poached regularly by day, were not just poaching for their own immediate needs. Most poachers who obtained more than the odd rabbit probably sold some of their haul. This does not negate the argument that poverty was their motive. Man cannot live by rabbit alone, and selling some of the catch to obtain money with which to buy bread, other food, fuel and clothing, was necessary to alleviate their situation.

There were those who, operating regularly by day or in gangs by night, were not necessarily amongst the poorest. However it is clear that, in the East Midlands, at least some of these night poachers were in need. The fact that the workhouse rule was waived and out-relief provided at times when serious affrays occurred supports the contention that even organised night poachers may have poached from necessity. Ten of those apprehended for the most notorious Rufford affray in 1851 were framework knitters; the following month the Mansfield Board of Guardians (where most of them

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<sup>16</sup> P. 136-7, 139-40.

<sup>17</sup> Pp. 143-4.

<sup>18</sup> Pp. 136-7.

lived) waived the workhouse rule in recognition of the hard times.<sup>19</sup> As late as 1886, half of a gang of night poachers in Derbyshire were labourers, at a time when conditions were acknowledged to be very hard for farm workers over the winter, and charity was being appealed for to help their families.<sup>20</sup> So being involved in poaching on what may be called a commercial scale, does not necessarily invalidate poverty as a motive. Of course, some of those involved on a commercial scale were not poor. This is demonstrated by the fact that some poachers could pay fines of several pounds, occasionally even £5.<sup>21</sup> But the argument of this thesis is that poverty was a motive for the great majority of poachers; the fall in poaching convictions at the same time as the rise in wages is a strong factor in support of this.<sup>22</sup>

The need for sport and recreation has been accepted by historians as being a primary motive for some poachers, and to be part of the motivation for many of them. What may not have been appreciated is exactly what was involved in poaching, and why it was so important as a recreation for many poachers. When what is physically and mentally involved in poaching is compared to legitimate hunting, it is clear that it satisfied the same needs.<sup>23</sup> Many of the gentry were hunting mad, their involvement amounting to obsession.<sup>24</sup> Poaching was similarly addictive, and was as important to many poachers: 'Poaching is like drug taking – once begun there is no going back, it gets hold of you....'<sup>25</sup>

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<sup>19</sup> P. 139.

<sup>20</sup> P. 150-1.

<sup>21</sup> Pp. 143-4.

<sup>22</sup> Pp. 129-131.

<sup>23</sup> Pp. 275-85.

<sup>24</sup> Joshua Getzler, 'Judges and Hunters: Law and Economic Conflict in the English Countryside 1800-1860', in Christopher Brooks and Michael Lobban (eds.), *Communities and Courts in Britain 1150-1900* (London, 1997), pp. 203, 210.

<sup>25</sup> This was said by the Norfolk poacher, Rolfe, p. 290; Haggard, *I Walked by Night*, pp. 68-9.

For many working-class men, sport was the most important thing in their lives after survival and feeding their families. The exercise, the relative freedom to roam, the element of competition, the specialist knowledge, pride in the tools, equipment and trained animals, were all part of the experience.<sup>26</sup> Thompson has said that insufficient priority has been given, when considering the cause of behaviour, to the need for respect, identity and status.<sup>27</sup> Some poachers were artisans, and may have had working skills which gave them some pride and status, but many were not. Being a good poacher, and known as such, gave identity and status to working men who were unlikely to gain it from any other aspect of their lives. The fact that the poacher benefitted materially from his recreation does not negate the sporting aspect; why would anyone object to having a recreation from which he also made money?

Poaching convictions went down, in the last quarter of the century, which tallies with the rise of new and reformed sporting and recreational activities for the working class, supporting the contention that some of the motivation for poaching was sporting.<sup>28</sup> The recreational and sporting element was perhaps the most widespread motivation. There may have been some poachers who poached out of desperate need, for whom the recreational element may have been entirely absent, but they were few.

In future research, having now recognised the importance of the need for respect, identity and status, due consideration of these factors needs to be given. The existence of alternative recreational activity for working-class

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<sup>26</sup> Pp. 275-85.

<sup>27</sup> P. 18; E. P. Thompson, *Persons and Polemics: Historical Essays* (London, 1994), p. 364.

<sup>28</sup> Pp. 130, 285-90.

people needs to be considered alongside the level of poaching in each area. In a general way, some historians have already suggested that the fall in poaching was linked to the rise of other sports, and that this happened earlier in industrial areas.<sup>29</sup> It may be that on a local level, where there were alternative sports, poaching fell. It is also possible that people who had occupations which required some skill and offered some status were less likely to poach. The poachers of the East Midlands were predominantly miners, labourers and framework knitters. It is questionable if these were all occupations which gave people any status or satisfaction in their work.<sup>30</sup>

Of all the motivations for poaching, it is the most difficult to demonstrate that protest was present, because it is impossible to see inside the heads of poachers and read their thoughts, and few poachers wrote their thoughts down in a form which is there for us as evidence. However, this thesis claims that protest was a motive in virtually all poaching. Two arguments are put forward for this. One is that an element of protest was implicit in poaching. No-one poached without knowing that it was against the law, and no-one who poached did so without being aware that the group of people who owned the land and hunted legitimately were a class apart from them, the poachers. Poaching fits with the idea that an act of protest had to be part of a collective act,<sup>31</sup> in that there were many poachers and they were aware of each other's existence; there was collective solidarity in the connivance between them, and in their communities, in keeping their activities below the radar. They had in common their status as poor working people and their economic need.

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<sup>29</sup> Pp. 285-7.

<sup>30</sup> P. 175.

<sup>31</sup> P. 23.

There is some support for protest as a motive, from Archer, who has argued that an element of protest was probably present in the minds of most poachers, but that it was not a primary motive.<sup>32</sup> Porter has also argued that in Victorian Devon poaching was protest against the game laws and against reduced customary rights; and Shakesheff found a continuance of the traditions of protest amongst colliers who were cross-dressing whilst poaching.<sup>33</sup> Jones has said that although the extent of class hostility amongst poachers is impossible to quantify, there is no doubt that some were waging social war in every way they knew.<sup>34</sup>

The second argument for protest by poachers utilises the concept of hidden transcripts.<sup>35</sup> Looking at poachers' behaviour and what they said in some reported incidents, there is evidence of antagonism and protest. Poachers demonstrated that they would not be beaten by their recidivism.<sup>36</sup> By their confident demeanour in court they demonstrated their knowledge of the law and lack of deference.<sup>37</sup> By their language and behaviour towards their 'betters' they showed their lack of submission and their resistance to the game laws.<sup>38</sup> The most striking illustrations of this are the episodes reported by Colonels Coke and Wildman. Poachers were sitting around their fire on the gentleman magistrate's land, and when confronted by him and his keepers, they were unperturbed and got out their knives and whittled sticks. In other incidents poachers told Wildman that they would rather

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<sup>32</sup> Pp. 23; Archer, *Flash and Scare*, p.161.

<sup>33</sup> P. 24; J. H. Porter, 'Poaching and Social Conflict in Late Victorian Devon', in A. Charlesworth (ed.), *Rural Social Change and Conflicts since 1500* (Humberside, 1982), pp. 96-108; Shakesheff, *Rural Conflict*, pp. 169, 203.

<sup>34</sup> David Jones, *Crime, Protest, Community and Police in Nineteenth-century Britain* (London, 1982), p.82.

<sup>35</sup> Pp. 245; James C. Scott, *Domination and the Arts of Resistance: Hidden Transcripts* (London, 1990).

<sup>36</sup> Pp. 237-9.

<sup>37</sup> Pp. 246-8.

<sup>38</sup> Pp. 246-56.

have £10 worth of his rabbits than one of his sheep, and called Coke a 'spoony magistrate'.<sup>39</sup>

Rudé's definition of protest encompasses poaching, but his definition of protest crime involves the primacy of protest as the motive for the crime.<sup>40</sup> It is not possible to know, for the poachers figuring in this study, which of their motives was the strongest. But what is being argued here is that poaching was protest, though it may not necessarily be classified as a 'protest crime' because protest may not have been the prime motive. The fact that poachers benefitted materially from their actions does not invalidate protest as a motive. Would a turnpike-gate wrecker (a prime example of a protest criminal) who stood to gain materially by the destruction of turnpikes, perhaps being in the business of making new turnpike-gates, feel that he could not take part in the protest? It seems unlikely.

Most poachers were motivated by more than one factor, but not necessarily all three factors of poverty, protest and sport. Hawker was originally motivated to start poaching by poverty and was angry about his family's inability to provide for themselves legally. So, at this early stage in his poaching career, he was motivated by poverty and protest.<sup>41</sup> Later in his life he was no longer poor; he enjoyed poaching, it was a sport for him. But he was always motivated by his anger against 'the class' and his protest at the game laws. Thus, later in life his motivations were sport and protest.<sup>42</sup> For some their poverty may have been the only reason for their

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<sup>39</sup> Pp. 252-4; 'Spoonies': a simpleton, or a silly or foolish person (COD, 1982).

<sup>40</sup> P. 23; George Rudé, *Criminal and Victim: Crime and Society in Early Nineteenth-Century England* (Oxford, 1985), p. 86, *Protest and Punishment* (Oxford, 1978), pp. 2-4.

<sup>41</sup> P. 138; Garth Christian (ed.), *James Hawker's Journal: A Victorian Poacher*, first pub. 1961 (Oxford, 1978), p. 3.

<sup>42</sup> P. 287-8; Christian, *James Hawker*, pp. 20, 23, 49, 62.

protest; others may have had social/political awareness which also fed their protest, as was the case with Hawker.

The type of radical populism as identified by Joyce, a resentment of privilege which was connected to religious notions of the rights of a protestant people, is said to have been evident in some parts of provincial and industrial England. Working people had a sense of being excluded, and refused to take their 'proper' place in the scheme of things.<sup>43</sup> Poaching fits well into this paradigm; poachers believed they had a right to game and they were refusing to take their allocated place in the hierarchy. Some historians of poaching have suggested that poachers in the more industrial parts of the country may have had a different attitude to those in authority compared to poachers in agrarian areas.<sup>44</sup> Munsche suggested that 'north of the Trent', poachers may have harboured antagonism towards the wealthy which found its expression in the battles between poachers and keepers, and that there may have been a connection between class antagonism and resistance to the game laws in industrial areas.<sup>45</sup>

The question as to whether there was greater class antagonism, or whether poachers were more motivated by protest, in midland and northern areas, is one for further research. Jones has said that in some northern or midland areas attitudes and behaviour were different; Hopkins has said that the poachers of the North and Midlands were more aggressive and brazen, with more sense of fighting a war against injustice.<sup>46</sup> Certainly, in

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<sup>43</sup> Pp. 257; Patrick Joyce, *Visions of the People: Industrial England and the Question of Class 1848-1914* (Cambridge, 1994), pp. 329-332.

<sup>44</sup> Harry Hopkins, *The Long Affray: The Poaching Wars in Britain* (London, 1986), p. 204; Jones, 'The Poacher', p.830.

<sup>45</sup> Munsche, *Gentleman and Poachers*, pp. 149-50.

<sup>46</sup> Hopkins, *Long Affray*, pp. 202-5; David Jones, *Crime, Protest, Community and Police in Nineteenth-Century Britain* (London, 1982), pp. 66.

the industrialising area of the East Midlands there were few poor men who were in any way beholden to the gentlemen of the bench, and it may be that in areas outside the Midlands and the North this was not the case. Provided east midlands poachers were not intimidated by their surroundings in the court room, and by the evident signifiers of class and status in the dress, language and formality of the Magistrates and Judges, there was no reason for them to be submissive. Poachers cited in this research have shown antagonism to the ruling class by impertinence, refusal to obey, and ridicule.<sup>47</sup> There clearly were poachers in the East Midlands who showed their protest overtly by their behaviour, in addition to the protest implicitly involved in the act of poaching.

Some poachers may have had a strong sense of class awareness and have been quite clear in their own minds exactly what they were challenging. But even without this, to poach was to protest. It embodied anger which was not generally overtly expressed, but which sometimes bubbled over in affrays. As such it was part of the realm designated 'infra-politics' by Scott, in which by low profile resistance the status quo was challenged, and anger and aggression were present but usually submerged.<sup>48</sup>

There may have been a very few poachers for whom no element of protest was present. Possibly men who were not very poor, were content with their lot, and who did it purely for sport. Or even some who made a good living from doing it full time and were just grateful that the game preserves were there and the gentlemen stocked them with game. However, such poachers, if they existed, should be regarded as the exception. For the overwhelming majority of poachers, the act was one of protest, though

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<sup>47</sup> Pp. 248-9, 251-5.

<sup>48</sup> Pp. 256; Scott, *Domination*, pp. 198-205.

with varying degrees of political or social awareness. Hawker will not have been the only poacher at the most politically aware end of this spectrum, he was just the only one who wrote it down:

We had no voice in making the Game Laws.  
....I am not going to be a Serf. They not only  
stole the land from the People, but they Stocked  
it with Game for Sport, employed Policemen to  
look after it....and we Toilers have to pay the  
Piper.<sup>49</sup>

The suggestion has been made that poaching in midland and northern industrial counties may have been, in some ways, different from the rest of the country.<sup>50</sup> Archer has provided the only known study of poaching in a nineteenth-century northern industrial county.<sup>51</sup> This gives detailed information on the patterns and impacts of poaching, particularly gang poaching, in Lancashire, which begs comparison with other midland or northern counties. Archer has called for 'counties such as Derbyshire, Cheshire, Lancashire and Yorkshire', to be examined to determine if game preserving and poaching had the same impact as in Lancashire.<sup>52</sup> For this reason, this study has made a point of comparing the situation in Lancashire with that in the East Midlands counties of Derbyshire, Leicestershire and Nottinghamshire.

Examination of descriptions of night poaching affrays in the East Midlands has revealed a striking contrast with the situation in Lancashire as

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<sup>49</sup> Christian, *James Hawker*, pp. 62.

<sup>50</sup> Archer, 'Reckless', pp. 149-51, 170-1; Hopkins, *Long Affray*, p. 204; Jones, *Crime, Protest*, p. 66.

<sup>51</sup> John E. Archer, 'Poaching Gangs and Violence: The Rural-Urban Divide in Nineteenth-Century Lancashire', *British Journal of Criminology*, 39 (1999), pp. 25-39; Archer, 'Reckless Spirit'.

<sup>52</sup> Archer, 'Reckless Spirit', p. 149.

described by Archer.<sup>53</sup> There were poaching affrays all over England, and violence, serious injury and occasional deaths were a feature in many areas. But Archer has painted the picture in Lancashire as one of extreme violence which also had a wider impact in the county. Firearms were routinely used in fights by both poachers and keepers, and both sides easily resorted to violence. The police and authorities portrayed the activity of the poaching gangs as a threat to law and order and the fabric of society.<sup>54</sup>

In the East Midlands, there were more affrays which were serious, per head of population, than in Lancashire - as might be expected because there was more poaching.<sup>55</sup> In these fights, men were often severely injured and sometimes died. However, it is clear that the East Midlands poachers were less disposed to fight than the Lancashire poachers, and generally just tried to get away; they turned and fought the keepers only in order to effect their escape or to rescue comrades who had been caught. Their weapons were stones and types of sticks, not guns; keepers did not use firearms against poachers either.<sup>56</sup> There were many trials of night poachers at Assize courts, which aroused public interest and were reported at length in the local newspapers. But the authorities did not suggest that the problem of night poaching gangs was a threat to law and order generally. Night poaching, affrays, and poaching in general, were perceived as problems only for the game preservers and the authorities who were trying to uphold the game laws.<sup>57</sup>

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<sup>53</sup> Pp. 167-77.

<sup>54</sup> Pp. 168-70, 175-8, 202-6; Archer, 'Reckless Spirit', pp. 154-62, 164-71.

<sup>55</sup> Pp. 167-70.

<sup>56</sup> Pp. 192-6, 201-2.

<sup>57</sup> Pp. 201-6.

Both the East Midlands and Lancashire were industrial or industrialising areas, though industrialisation was earlier in Lancashire. The age profile of the East Midlands poachers was similar to that of the Lancashire poachers, and, like them, most will have been of an age to have families.<sup>58</sup> Yet despite these similarities, the impact of poaching was very different. This thesis suggests several factors which go some way towards explaining the causes of these differences.

Police in Nottinghamshire and Leicestershire were involved against poaching by going onto land with keepers to watch for poachers. This gave rise to protests about rate-payers' money being used to do the work of keepers and support preservers.<sup>59</sup> In Nottinghamshire and Leicestershire, intensive preserving was not supported by many in the middle and upper classes, not only because of the police activity but also because of the damage done to crops by game. Conversely, in Lancashire, Archer has not reported that the police assisted keepers on the land, and has said that intensive game preservation was welcomed by the farming community.<sup>60</sup>

Another factor was fox hunting. Leicestershire was the cradle of fox hunting and Nottinghamshire was known as a fox-hunting county. There were several hunts in Derbyshire as well, though the sport was not as popular as in the other two counties. Lancashire was not a fox-hunting county at all – hare hunting was popular there.<sup>61</sup> Fox hunters included the middle orders of the countryside and many farmers in the East Midlands will have been fox hunters themselves. Even if they were not, hunt masters put pressure on farmers to support the fox population, whereas

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<sup>58</sup> Pp. 176-8.

<sup>59</sup> Pp. 188-90, 270-2.

<sup>60</sup> Archer, 'Reckless Spirit', p. 153.

<sup>61</sup> Pp. 272-5.

gamekeepers destroyed foxes. There was a clash of interest between the fox-hunting and the game-preserving communities.

These three factors, the involvement of the police in watching on the land, the popularity of fox hunting and criticism of game for causing damage to farmers, point to there being reasons for antagonism towards game preservation in the East Midlands which was not present in Lancashire.

There was no general outcry against poaching in the East Midlands because people were less upset (many of them not upset at all) about the tribulations of the game-preserving landlords, and the general public did not feel threatened.

Finally, part of the answer to these differences between Lancashire and the East Midlands, may have been that the Lancashire poachers and their gangs simply were different from those of the East Midlands in some significant ways. There were differences in the composition of the poaching gangs of the two areas. The poachers of the East Midlands were men who lived in rural as well as urban locations. Full industrialisation occurred, in the East Midlands, in the middle to late nineteenth century; rural villages became industrialised over this period. Many gangs consisted of a mixture of men from the larger towns and men from such villages, or just men from villages.<sup>62</sup> Although these groups of night poachers were referred to by the authorities as 'gangs', there is no evidence that they were generally occupied in other criminal activity. Rather, they seem to have been groups of men who got together regularly but only for the purpose of night poaching. As has been found by many historians of poaching, they were predominantly men who offended only against the game laws. The East

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<sup>62</sup> Pp. 173-4.

Midlands poaching gangs did not have strong links to mainstream criminal offending, whereas in Lancashire Archer found the poaching gangs were well known as criminal gangs and were dominated by men from the large towns.<sup>63</sup> The Lancashire poachers may simply have been more violent men, and the reasons for this are outside the purview of this study. Many of the gangs had links with Liverpool which had a reputation for violent crime. In talking up the risks to the general public, and suggesting there was a threat to law and order in the county, the Lancashire authorities may have had a basis of truth to their claim.<sup>64</sup>

These differences between the East Midlands and Lancashire raise questions as to whether similar patterns, and contrasts, can be found in other areas of the country. Further research is required into the degree of violence, conduct of affrays, composition of poaching gangs and their links to other criminality, in other counties. The prey and the methods used to catch it, exactly how the police were deployed against night poachers, and whether or not the area was a fox-hunting one, are questions which have now been revealed to be significant. Is it possible that, in other areas where fox hunting was popular, this resulted in more criticism of game preservation and less antagonism to poaching? Were there other counties where police were active in assisting gamekeepers on the land, and did this give rise to criticism which also reduced support for game preservers?

The three counties of the East Midlands have been treated together in this study. But although the conclusions which have been argued here apply to

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<sup>63</sup> Archer, 'Reckless Spirit', pp. 163-4.

<sup>64</sup> Pp. 205-6; Archer, 'Reckless Spirit', pp. 155-8, 170; John E. Archer, *The Monster Evil: Policing and Violence in Victorian Liverpool* (Liverpool, 2010), pp. 5, 13-14, 65.

the region as a whole, there are some differences between the counties which are sufficiently significant to warrant mention.

The antagonism towards preservation noted in Leicestershire and Nottinghamshire was not demonstrated in any evidence from Derbyshire. Several other pointers suggest that in a few respects Derbyshire may have been a little different. In the years 1833-36 and 1857-62 there was a greater proportion of night poaching convictions in Derbyshire than in the other two counties.<sup>65</sup> The problem with the Derby night poachers and the police did not occur in the same way in either Leicester or Nottingham.<sup>66</sup> When the age profiles of the poachers of the counties were examined, Derbyshire had an age profile closest to that of Lancashire.<sup>67</sup> These differences do not add up to any coherent conclusion, but prompt the suspicion that Derbyshire, which had borders with Lancashire and Yorkshire, may have been affected by this proximity. Poaching around the north and west county borders of Derbyshire would be worth further research, taking in events just over into the neighbouring counties. The parameters having been set for this research to the counties of Derbyshire, Leicestershire and Nottinghamshire, it has not been possible to do this in this study.

With regard to Leicestershire, though the statistics suggest that poaching was on a par with that of the other two counties per head of population,<sup>68</sup> the map of poaching convictions showing few in the southern half of the county,<sup>69</sup> the lower number of affrays in Leicestershire,<sup>70</sup> and the fewer

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<sup>65</sup> P. 105.

<sup>66</sup> Pp. 93, 108.

<sup>67</sup> Pp. 177-8.

<sup>68</sup> Pp. 79, 81-2.

<sup>69</sup> P. 101.

<sup>70</sup> P. 168.

large gangs,<sup>71</sup> all suggest that the poaching situation in this county was not as severe as in the other two. However, the authorities clearly thought it was serious, as the Leicestershire Chief Constable signed the Memorial to parliament.<sup>72</sup>

The East Midlands was an area where poaching was endemic and widespread and persisted to the end of the nineteenth century. Night gang poaching, and the affrays associated with it, continued into the 1890s. The causes of poaching were poverty, which continued to afflict the working-class population at severe or relative levels; the need for sport and recreation which was essential for working people's enjoyment, self-esteem and status; and protest, which was intrinsic in the act of poaching to some extent, and was manifested in the behaviour of some poachers to a greater extent.

The Hammonds' verdict on the cause of poaching emerges as still having some relevance in the light of further investigation and evidence over the intervening 100 years of historiography.<sup>73</sup> It is clear that poverty was a major cause of poaching, that affrays continued to be common and poachers were frequently injured in the process, and that, even towards the end of the nineteenth century, some people felt driven by necessity to poach. This is, essentially, what the Hammonds said, only less dramatically expressed. The blood of the men and the boys was still being spilt for the pleasures of the rich.<sup>74</sup> Modern historians eschew emotion and, as Thompson has said, the Hammonds moralised and expressed themselves

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<sup>71</sup> P. 116.

<sup>72</sup> P. 107.

<sup>73</sup> Pp. 15-16; J. L. Hammond and Barbara Hammond, *The Village Labourer* (London 1978), pp. 131-140.

<sup>74</sup> Hammonds, *Village Labourer*, p. 131.

in terms of outraged emotion, but they always displayed an understanding of the political context.<sup>75</sup>

The law gave some men the legal right to rule over others, but the effectiveness of this was, as Malcolmson has argued about the eighteenth century, sometimes tenuous, uncertain and ineffectual.<sup>76</sup> This was still the case in the nineteenth-century East Midlands with regard to poaching. Forests and wastelands, industrial towns and villages, and miners, have been noted as being frequently involved where this limitation of authority can be found, and these factors feature in the East Midlands. Miners were not amongst the poorest of the poor, but they were frequent poachers.<sup>77</sup>

Whilst the East Midlands was a fox-hunting area, there was also extensive game preserving on the aristocratic estates and extensive poaching to go with it. The poaching war between the preservers and the poachers was pursued on the land and in the courts, and despite action in both arenas the authorities were unable to prevent or deter the offenders. Jones has argued that the battle against poaching was effectively won in some places by the mid-Victorian years, for example in Worcestershire.<sup>78</sup> This was not the case in the East Midlands. Poaching statistics show a decline in prosecutions by the end of the nineteenth century, which may reflect rising real incomes and participation in alternative sporting activities, but does not seem to have been as a result of the efforts of the authorities.

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<sup>75</sup> E. P. Thompson, *The Making of the English Working Class*, first pub. 1963 (London, 1980), p. 215.

<sup>76</sup> Robert Malcolmson, '“A Set of Ungovernable People”: The Kingswood Colliers in the Eighteenth Century', in John Brewer and John Styles (eds.), *An Ungovernable People: The English and their Law in the Seventeenth and Eighteenth Centuries* (New Jersey, 1980), pp. 85-7.

<sup>77</sup> Pp. 175.

<sup>78</sup> Jones, 'The Poacher', p. 834.

It has been possible to compare poaching in two midland or northern industrial areas, Lancashire and the East Midlands. The contrast in the impact of poaching in these two areas is marked, despite there being many factors in common. There is now a need for research into other counties – Cheshire and Yorkshire as called for by Archer – but also counties further north and other midland counties. Hopkins cites the poachers of the North and Midlands, particularly from the Pennines, Staffordshire and Warwickshire as a different breed from those of the South.<sup>79</sup> No easy assumptions can be made about possible differences; the suggestion that poachers from midland and northern industrial areas had different attitudes and practices from those of the South and East needs careful testing.

The most pressing question, in view of the paucity of studies of poaching in the Midlands and North, is to establish to what extent the midland and northern counties had anything in common in the causes, patterns and impacts of poaching. Were the elements of poverty, protest and sport greater or lesser motivations in other areas? Was poaching as predominantly for ground game as it was in the East Midlands? In areas which industrialised early and wages and employment opportunities were increased, did this result in local reductions in poaching; where new sporting activities were present did this affect poaching; and was foxhunting a factor in attitudes to poaching which affected the impact on the area? There is a large amount of research that needs to be done, and poaching is not currently a popular area of investigation. It is hoped that more historians will come to feel interest in this under researched area of social history.

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<sup>79</sup> Hopkins, *Long Affray*, pp. 202-5.

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