Introduction

The game laws are both familiar and obscure. Most students of English history have come across them at one time or another, usually in discussions of ‘life under the squirearchy’ in the eighteenth and nineteenth centuries. From these brief summaries, they learn that the game laws, by imposing a property qualification on sportsmen, effectively gave the landed gentry the exclusive right to hunt game in England.¹ They also learn that this monopoly was enforced by the gentry themselves in their capacity as justices of the peace by means of summary trials and severe punishments. As a consequence, the game laws were bitterly resented and, in many cases, violently resisted, but it was not until the dawn of the age of reform that their repeal was finally achieved. Given these facts, it is hardly surprising that historians have unanimously condemned the game laws as harsh, unjust and generally indefensible. To the Webbs, the game code was ‘an instrument of terrible severity, leading, not infrequently, to cruel oppression’. The Hammonds also denounced the code, charging that it spilt ‘the blood of men and boys . . . for the pleasures of the rich’. More recently, B.A. Holderness has pointed to the game laws as a ‘classic example . . . of class selfishness’.² Even historians sympathetic to the gentry have judged the game laws harshly. J.D. Chambers, for example, thought their enforcement was ‘tyrannical’ and went on to assert that ‘it was largely owing to the universal indignation which the Game Laws aroused that the squirearchy were so ruthlessly stripped of their powers’ in the early nineteenth century.³ Yet, despite the confidence with which these judgements have been rendered and repeated, we actually know very little about the game laws. Why, for example, were the gentry awarded this privilege? Was it strictly enforced? Who violated the game laws, and why? If the game laws were so damaging to the gentry’s authority, why did it take so long to secure their repeal? These rather elementary questions have never, in fact, been satisfactorily answered. Until they are, judgements about the iniquity of the game laws would seem to be premature.

To be fair, these questions probably could not have been satisfactorily
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answered before 1945. Until that time historians interested in the game laws were almost entirely dependent on printed sources: parliamentary papers and debates, pamphlets and periodicals. While extensive, these sources had important defects. They were, on the whole, dominated by the opponents of the game laws and were therefore apt to concentrate on the negative aspects of the laws’ operation. In addition, the bulk of this material dates from the early nineteenth century; thus, it is of limited use in studying the enforcement of the game laws in earlier periods. For a picture of the laws’ enforcement in the eighteenth century, the Hammonds were forced to rely on works of fiction, notably the novels of Henry Fielding. Whatever the virtues of the latter, they certainly were no substitute for documentary evidence of the day-to-day operation of the game laws. Fortunately, that evidence began to become available after the end of World War II with the development of the county record offices. In these offices the judicial records of local government were consolidated and, in some cases, dusted off and calendared. Equally helpful was the increasing use of the county record offices as depositories for family and estate papers. Once the gentry’s own archives were made available to historians, it became possible to test the charges against the historical record, and thus move a little closer to the truth about the game laws.

Historians, it must be noted, have not exactly jumped at this opportunity. There are probably several reasons for this, but one of the most important, no doubt, is simply the difficulty of such an undertaking. There is no central body of manuscript material for the history of the game laws. Evidence is scattered throughout the holdings of several dozen county record offices, as well as in collections still in private hands. This evidence, moreover, consists of a wide variety of documents. While it might be expected that the centre-piece of any modern study of the game laws would be a table of statistics revealing conviction rates and the like, no such table can in fact be compiled. The surviving judicial records permit, at best, only an estimate of the number of persons convicted under the game laws before the nineteenth century; in most counties even that is not possible. This lack of a statistical core increases the historian’s dependence on other sources of information: estate correspondence and account books, personal correspondence and diaries, provincial newspapers and gaol calendars. The interpretation of these sources leads, in turn, to other areas of historical research, such as the impression of seamen, the economics of the poultry trade and the operation of the poor law. To write a history of the game laws, then, is a formidable task; in order to prevent it from becoming an impossible one, I have found it necessary to impose certain limitations on the subject.

The first limitation is temporal: the following pages will concentrate on the years between 1671 and 1831. The reason for this is fairly straight-
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forward. Although there were game laws in force before 1671, they did not make hunting the exclusive privilege of the landed gentry. The Game Act of 1671 did, and thus marked the beginning of a new era for both the gentry and the game. Similarly, the passage of the Game Reform Act in 1831 brought that era to an end; thus, that seemed to be an appropriate point to conclude this study. The second limitation is geographic: the game laws under examination in the following pages are ‘English’ rather than ‘British’. In our period, the British Isles consisted of three kingdoms, and while they had all been assimilated into a single realm by 1801, each continued to have its own legal code, including its own set of game laws. The English, Scottish and Irish game codes were similar – all, for example, imposed a property qualification on sportsmen – but each had its peculiarities and, more importantly, its own separate development. While a comparison of these codes would have been interesting, I have decided to confine the present study to England, primarily because the game laws appear to have had a more profound impact there than in the other two kingdoms.

There is one final limitation on the scope of this study – one which, at first glance, might seem curious. It concerns the definition of ‘game’. Generally speaking, game might be defined as all animals which are pursued for sport. In the period 1671–1831 this would include a wide variety of animals: deer, rabbits, hares, partridges, pheasants, moor fowl (grouse, black game, etc.), wild ducks, foxes, otters and badgers. In the following pages, however, the term ‘game’ will refer only to hares, partridges, pheasants and moor fowl. The simple explanation for this is that only these animals were accorded protection under what eighteenth-century Englishmen called ‘the game laws’. There was no operative property qualification for hunters of deer or rabbits, and there was no property qualification at all for hunters of wild ducks, foxes, otters or badgers. Thus, the definition of game adopted for this study is the one used by Parliament when it passed laws ‘for the preservation of the game’. If that is the simple explanation, however, it is not an entirely satisfying one. There were, for example, statutes in force during this period which made the taking of deer or rabbits in certain circumstances a crime. Were not these ‘game laws’ also? And why was there a distinction between one type of sportsman’s prey and another? Why, in particular, should there have been one set of laws for taking rabbits and another for taking hares? Indeed, the closer one looks at the multitude of statutes governing the pursuit of animals for sport in this period, the more confusing they become. Some further explanation, therefore, is obviously necessary.

One might begin by considering those animals which were not protected by any statute: badgers, otters and foxes. Although often pursued for sport, they were classified as ‘vermin’ rather than game. They
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tended to prey upon domestic fowl and, as a result, their destruction – by anyone, at any time – was considered to be a service to the community. That, at least, was the attitude of the common law. Some sportsmen, not surprisingly, took a different view and sought to preserve these animals, despite the threat which the latter posed to the chickens, geese and ducks in the neighbourhood. This was particularly true of foxes, the pursuit of which became an increasingly popular sport in the eighteenth and nineteenth centuries. Nevertheless, whatever protection these animals received was effected without legal sanction, and thus can reasonably be considered outside the scope of a study of the game laws. The preservation of wild ducks can also be excluded from the following study, albeit for a slightly different reason. Mallard, teal, widgeon and the like were accorded some protection under the law in the form of a defined ‘season’, outside of which no person was permitted to kill them. In 1711, Parliament forbade anyone to take wild ducks except in the period between September and June, under pain of a five-shilling fine or one month in prison at hard labour; in 1737, the ‘season’ was reduced to October through May. The law, however, was rarely enforced. Much more effective, it seems, were the duck ‘decoys’ – preserves specially created to attract wild ducks to an area – which could be found all along the English coast in the eighteenth century. Decoys were private property and, if need be, trespassers on them could be prosecuted in the courts. In practice, then, wild ducks, like foxes, badgers and otters, were preserved without resort to the criminal code; for this reason, they do not come within the scope of this study.

The same argument, however, cannot be made with regard to deer and rabbits. Parliament did pass a number of laws for the preservation of these animals, and these laws were enforced. Nevertheless, neither deer nor rabbits in our period were ‘game’ in the same sense that hares, partridges, pheasants and moor fowl were. The explanation for this rests on a concept which will be referred to repeatedly in the following pages: ‘enclosure’. In essence, enclosure was a process by which wild animals were confined to a specific area where they were bred and nourished until the landowner permitted them to be hunted and killed. While such animals were never fully domesticated, they did cease to be wild – and that altered the approach of the law to their protection. A wild animal, by definition, had no owner; thus, if it was captured or killed, no person suffered a loss. An intruder who took a wild animal on another man’s land could, of course, be sued for trespass, but restitution could not be claimed for the destruction of the animal itself since it was not the plaintiff’s property. After enclosure, however, the animal ceased to be wild and acquired, in at least a limited sense, an owner. If the latter was deprived of his property, he could under common law seek restitution in the courts. If, moreover, that property was specifically protected by a provision of the criminal code,
then the owner – or anyone else, for that matter – had the right to demand that the offender suffer the penalty prescribed by statute. In order to understand the eighteenth century’s definition of game, therefore, it is necessary to ask not only whether an animal was protected by law but also whether it was enclosed.

Nothing, perhaps, illustrates this point more clearly than the changing status of deer and rabbits in the seventeenth century. Ever since the Middle Ages, there had been a property qualification for hunting these animals, and early in the seventeenth century Parliament moved to reassert it. Under the Game Act of 1605, no person was permitted to take deer or rabbits unless he had at least £40 a year from land or goods worth at least £200. By that time, however, deer and rabbits were no longer as free to roam about the countryside as they once had been. On an increasing number of estates, there were fenced-in parks where deer were kept and hunted, in some cases for sport, in others for venison which was then sold in market towns or in London. There were also a growing number of warrens in which rabbits were bred, both for their meat and their skins. The enclosure of deer and rabbits continued throughout the century and gradually the law began to reflect this fact, confirming Lord Chief Justice Willes’ observation that ‘when the nature of things changes, the rules of the law must change too’. In 1671, Parliament passed a new Game Act redefining the property qualification for sportsmen, but this time deer were omitted from the list of animals which came under the Act’s protection. Rabbits were still included, but in 1692 they too were dropped from the list. Thereafter, deer and rabbits were protected by statutes which forbade anyone, qualified or not, to hunt or take these animals without the permission of the person on whose land they were found. Deer and rabbits might still be pursued for sport, but they were no longer ‘game’ in the eyes of the law. As a result of enclosure, they had become a type of private property and were entitled to legal protection as such. While the property qualification for taking deer and rabbits remained on the statute books for another century, it was no longer enforced. Instead, those who unlawfully took these animals were treated as thieves, which is to say very harshly indeed. A ‘game poacher’ in the eighteenth century usually risked no more than a £5 fine or three months in prison; a ‘deer stealer’, on the other hand, risked transportation for seven years.

The concept of enclosure is central not only to the definition of game but also to the development of the game laws in the eighteenth century. Hares, partridges, pheasants and moor fowl were still wild animals in 1671, but over the course of the next century and a half they (with the exception of moor fowl) also became enclosed. As they did, the tendency to view game as property – and poachers as thieves – became increasingly
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apparent. In contrast with the experience in the seventeenth century, however, the law did not reflect this change in perception. Far from falling into disuse, in fact, the property qualification for sportsmen was enforced with increasing vigour in the late eighteenth and early nineteenth centuries. The reasons for this arrested development of the game laws will be examined in detail in the following pages. What is important to note here is that the attempt to ignore the legal implications of the enclosure of the game was ultimately unsuccessful. In 1831, Parliament repealed the property qualification and declared game to be the property of the person on whose land it was found. Thus, with the passage of the Game Reform Act, the legal distinction between various types of animals pursued for sport disappeared and a general designation of all such creatures as ‘game’ became possible.

As the character of these limitations of time, place and subject matter should indicate, the primary concern of this study is to examine the game laws, not poaching. The latter, of course, cannot be completely ignored, but it must be admitted that no great effort has been made in the following pages to detail either the backgrounds or the methods of poachers. Instead, I have chosen to focus on the poachers’ antagonists, the landed gentry, for it is through them, I believe, that the true significance of the game laws can be discovered. The gentry’s identification with the game laws was complete. They wrote the game laws, benefited from them, defended them, enforced them – and they led the fight for their repeal. An investigation of the game laws, therefore, is likely to reveal a great deal about the men who ruled England between the Glorious Revolution and the Great Reform Bill. This by itself is sufficient justification for taking a new look at the game laws. Considering the gentry’s dominant position in eighteenth-century society, we know very little about the character of their rule, particularly in their own neighbourhoods. The Webbs and others have outlined the structure of local government in our period, but there are few works which examine how it worked in practice. We know it was a system which gave enormous discretionary power to country gentlemen, both individually and collectively, but how effectively did they use this power? What were the practical limitations on its use? Did discretionary power lead inevitably to arbitrary and unjust rule?

The following pages will give the reader an opportunity to watch the gentry at work in their own communities. It is, however, more than a simple case study, for the game laws operated in a very sensitive area of the law: at the point where legislative will ran into direct conflict with popular belief. The vast majority of Englishmen did not believe that poaching was a crime. The game laws, in their view, were patently unjust because hares, partridges, pheasants and moor fowl were, as one Bedfordshire farmer put it, ‘ordained from the beginning free for anyone who could over take
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Needless to say, the gentry disagreed, and this divergence of views greatly complicated the task of law enforcement. Public hostility toward the game laws was important for another reason as well. Country gentlemen believed that the game laws were concerned with more than just securing adequate sport for themselves and their friends. Society, they argued, was the true beneficiary of the laws since the latter kept the poor from developing habits of idleness, while at the same time rewarding men who gave freely of their time and fortunes in the service of the community. In other words, the game laws were measures designed to preserve a stable society, one which was rural-based, hierarchical and paternalist. Accordingly, country gentlemen tended to regard any opposition to the game laws with alarm. The question, in their view, was less the preservation of game than the preservation of the social order, and on the latter they were unwilling to compromise. Indeed, it was only when the gentry were finally convinced that the game laws themselves were endangering the social order that they agreed to some measure of reform.

What follows, then, is really a study of the values of the landed gentry and the manner in which they tried to impose these on eighteenth-century society. We shall begin by surveying the game laws themselves and the environment in which they were enforced. We shall then turn to poaching and how the law dealt with those who challenged the gentry’s monopoly on game. Finally, we shall examine the long campaign against the game laws and the circumstances which finally forced the passage of the Game Reform Act of 1831. Inevitably, the game laws’ reputation as an instrument of oppression will never be far in the background, but the real subjects of this study are the men who defended and enforced these laws. From them we should be able to gain a deeper insight into the world of eighteenth-century England – and what made it so different from our own.
1

The game laws

‘The statutes for preserving the game,’ Blackstone noted in his *Commentaries*, ‘are many and various, and not a little obscure and intricate.’ Their number was indeed prodigious. Between 1671 and 1831, Parliament passed no fewer than two dozen acts designed to regulate the hunting of game. Since Parliament was reluctant to repeal these even when they were superseded and since the laws were often poorly worded in the first place, the game laws soon became a legal thicket in which it was very easy to get lost. Sir Roger de Coverley might have been able to explain ‘a passage in the Game Act’, but others were less gifted. When, for example, Sir William Ashhurst of the Court of King’s Bench was asked in 1782 to perform a similar feat, he could only reply that ‘the act, as it stands, is nonsense’. Historians have also experienced some difficulty in comprehending the game laws. However understandable their confusion, it has contributed greatly to the game laws’ reputation for ‘savagery’. The Hammonds, for example, noted that an act passed in 1770 made hunting at night an offence punishable by three to six months in prison and a public whipping. They apparently overlooked the fact that this statute was replaced by a milder one only three years later. Another historian has written that ‘the game laws provided punishments of seven years’ transportation for unarmed poaching, even for a first offence’. He seems to have been unaware that the act which permitted this was repealed within a year of its passage. Yet another historian has claimed that ‘illegal shooting’ was a capital crime in the eighteenth century, although in fact no offence under the game laws was ever punishable by death.

If, however, the exact meaning of the game laws is sometimes difficult to establish, their intent is not. The purpose of the game laws was to ensure that the hunting of game – particularly hares, partridges and pheasants – was the exclusive privilege of the landed gentry. Initially, the device employed to achieve this was a property qualification: those who did not possess enough property to meet the requirements of the law were forbidden to hunt, even on their own land. The first such qualification was
The game laws enacted in the fourteenth century, but it was the Game Act of 1671 which was the cornerstone of the eighteenth-century game laws. With a few exceptions, the Game Act forbade all persons to hunt game unless they had freeholds worth £100 a year or leaseholds worth £150 a year. This qualification remained unchanged for the next 160 years. During the same period, however, the game laws grew in number and complexity. New legal devices – civil prosecution, sporting licences, Night Poaching Acts – were grafted onto the game code in order to help protect the gentry's privilege. In the process they caused a great deal of confusion. It is the purpose of this chapter to unravel the game laws and make them understandable, and perhaps the best place to start is with the Game Act itself.

The restriction of field sports to a small minority of the population was not a seventeenth-century innovation. Aside from previous qualification laws, there were three other types of sporting privilege in existence in 1671. The most ancient of these was embodied in the forest laws. Following the Norman invasion, William the Conqueror had set aside vast tracts of land in England as sporting preserves, within which no person might hunt without his permission. His successors expanded these ‘forests’ and established a code of laws to protect the trees and wild animals within their boundaries. Administered by royal officials and enforced in prerogative courts, the forest laws were harsh and unpopular. Their scope and severity were first checked by the Forest Charter of 1217, and as the power of the monarchy declined in the later Middle Ages the effectiveness of the forest laws was weakened even further. Forest offices grew into sinecures and the sittings of the forest courts became ever less frequent. This process of decay was not halted by the resurgence of the monarchy under the Tudors. By the end of the sixteenth century, in fact, the forest laws had almost ceased to be enforced at all.3 Charles I attempted to revive the forest laws in the 1630s as a source of revenue, but his efforts were cut short by the Long Parliament and the outbreak of the Civil War.4 In 1660, the forest laws were restored along with the other institutions of monarchy, but by then, after centuries of neglect and two decades of virtually uninterrupted plundering, the royal forests were no longer the impressive preserves of timber and deer that the Normans had created. Nevertheless, the forest laws remained – as a valuable source of Crown patronage and a reminder of the power which the monarchy had once wielded in the field of game preservation.

Another reminder of that power could be found in the rights of park, chase and free warren claimed by landowners in every part of the country in the late seventeenth century. Granted by monarchs since the Middle Ages, these were franchises to hunt deer and game within certain areas. Parks and chases were, respectively, enclosed and unenclosed sanctuaries
The game laws

for deer, while free warrens protected hares, rabbits, parridges, pheasants
and other types of wild fowl.\(^9\) No one was permitted to hunt in these areas
without the permission of the holder of the franchise, and the similarity
between franchises and royal forests did not end there. A franchise could
be inherited and its privileges retained even if some of the land within its
boundaries was sold.\(^10\) Unlike the king, however, the holder of a franchise
could not punish offences against his privilege on his own authority: he
had to seek redress from the common law courts.

Similar to franchises were appointments as royal gamekeepers. First
awarded by James I, these were warrants ‘to preserve the King’s game’
within a given area. Royal gamekeepers were permitted to hunt – and to
prevent others from hunting – within this area, but their privilege differed
from that of the franchise-holder in several important respects. Unlike a
franchise, a royal gamekeepership could not be inherited. Even within the
royal gamekeeper’s own lifetime, retention of his privilege was not
guaranteed. In the warrant granting them their office, royal gamekeepers
were admonished to prevent ‘persons of meane qualitie’ from taking the
king’s game; such persons were to be relieved of their guns, dogs and nets
and their names were to be reported to the Privy Council. Non-
performance of these duties – or, more likely, loss of royal favour because
of political opposition – could result in the loss of the right to hunt. Even if
retained, the royal gamekeeper’s privilege was not as exclusive as that of
the franchise-holder. The area assigned to him was usually the neighbour-
hood around his country seat. Some noblemen, however, were made
gamekeepers for entire counties; where this happened, the right to hunt
obviously had to be shared. Another complication was the existence of
franchises, which the Stuarts still continued to grant. It was unclear
whether a royal gamekeeper could forbid someone with the right of free
warren from hunting within its boundaries.\(^11\) Compensating for these
limitations, however, was the fact that, unlike a franchise-holder, a royal
gamekeeper was not restricted to his own land, but could hunt over a
much wider area confident in the knowledge that he had the king’s warrant
to do so.

It was, indeed, the king’s warrant which was the common element in all
three of these types of sporting privilege: forest law, franchises and royal
gamekeeperships. The reason for this was that the Crown claimed that all
the game in England was the property of the king. The forests were great
monuments to this claim, but the granting of franchises was, if anything,
more audacious, since it implied that royal hunting rights were not
confined to specific areas however large, but rather extended into every
corner of the kingdom.\(^12\) It was, typically, the Stuarts who made this claim
explicit. James I and his successors referred to hares, parridges and
pheasants as ‘the king’s game’ and, as the appointment of royal game-