



RESEARCH ARTICLE

Poachers, politicians, and the police: The Poaching Prevention Act of 1862*

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Abstract

The period after 1850 is often assumed to have witnessed some amelioration in the operation of the game code. This article highlights the origins of a little-researched statute, the 1862 Poaching Prevention Act, which conversely augmented the existing game laws and, most significantly, bestowed new responsibilities and powers on the police to tackle poachers at a critical point in the development of the new county constabularies. This controversial measure owed much to the particular circumstances of the 1850s and early 1860s when the violence and criminality associated with the activities of poaching gangs in Midland and northern counties threatened both game preservation and the authority of the new police. In these circumstances, an alliance of magistrates, police leaders and parliamentary advocates successfully lobbied for new measures to deal with this specific class of offenders who were increasingly held as representative of a wider urban criminal class.

Introduction

In the summer of 1862, following only five weeks of debate, Parliament passed a law, the Poaching Prevention Act, which the government neither supported nor considered necessary.¹ The Act gave the police the power to stop and search, on any highway, street or other public place, anyone suspected of coming from game preserves. It also empowered constables to search carts or any

*John Archer was a pioneering historian of crime, protest, and violence. A modest, kind, and generous man, John was also an exceptionally able and insightful scholar. His first book, *By a Flash and a Scare: Arson, Animal Maiming, and Poaching in East Anglia, 1815–70* (Oxford, 1990), remains one of the finest, systematic regional studies of the resort to protest and crime in the English countryside. In many ways, the book represented the high watermark of the ‘history from below’ school of rural working-class history, but, at the same time, it was sensitive to the effects of the tools of rural terror on farmers and keenly alert to the interplay between the exercise of authority and the responsibility of rural elites to the poor. His follow-up book, *Social Unrest and Popular Protest in England, 1780–1840* (Cambridge, 2000), offered, for the first time, an overview of protest history, drawing together work on the city and the countryside alike in a wonderfully pithy study. Typically, John underplayed his own contribution, his analyses of the field were careful and courteous, balanced, and even-handed. By then the focus of John’s archival research had extended to embrace the study of violence, initially in terms of that meted out by poaching gangs – and the violence gamekeepers and the police subjected poachers to. Indeed, if his final book, *The Monster Evil: Policing and Violence in Victorian Liverpool* (Liverpool, 2011), was dedicated to the city, this publication, John’s final paper, shows his abiding interest in the rural and in that archetypal rural crime, poaching. John died suddenly on 24 February 2018, and the manuscript for this paper was unfinished. At the request of his friend and colleague, Andrew Davies, and John’s widow, Helen, the paper was submitted to *Rural History* and subjected to the normal process of peer review. Thereafter, we – Harvey Osborne, the leading scholar of rural poaching, and Carl Griffin, a scholar of rural resistance and co-editor of *Rural History* – have completed and revised John’s manuscript true, we hope, to his vision. Any errors and infelicities are ours, not John’s. We hope the publication of this paper serves as a fitting tribute to someone who helped both of us enormously and whose work continues to inspire and guide us.

conveyance where there was a suspicion that illegally obtained game was being carried. Thus, whilst the County Constabularies of England and Wales could enact earlier anti-poaching legislation,² the dedicated powers legislated for in the 1862 Act emphatically brought the County Constabularies of England and Wales into the 'poaching war'. It was, in effect, a rural 'sus law' – a law which gave the police stop and search powers against anyone believed to be acting suspiciously – which became profoundly unpopular with labouring people in both town and country. The passing of this law, said Joseph Arch, the President of the National Agricultural Labourers' Union, 'was as if so many Jacks-in-the-Box had been set free to spring out on the labourer from hedge or ditch'.³ Nor was the new Act popular with ratepayers, with tenant farmers in particular aggrieved by the prospect of 'further taxation in order to pay policemen to protect vermin (game)'. There had been, as one put it, 'no measure passed through Parliament during the past fifteen years that was so thoroughly condemned by the middle classes as the New Poaching Prevention Act'.⁴

Historians have frequently overlooked the origins and implementation of this law, preferring instead to concentrate on the broader history of the game conflict and its impact on rural society.⁵ David Jones identified the Poaching Prevention Act as contributing to further resentments between the police and labouring communities, but where the 1862 legislation is commented on or alluded to, it is usually explored to identify statistical trends in poaching prosecutions over the last four decades of the nineteenth-century.⁶ Harry Hopkins, who has presented the most detailed assessment of the 1862 Act, argued that the new law, rather than 'stamping out the poaching war, re-fuelled it'.⁷ If the analysis of the practice and politics of poaching has undergone a recent reinvigoration, it is telling that this interpretation of the 1862 Act remains unchallenged.⁸

This article examines how the Poaching Prevention Act came into being, the context and debates surrounding the game laws, and the state of rural policing and crime in the late 1850s and early 1860s, which informed the passing of the new law. It will demonstrate that the Poaching Prevention Act emerged out of a combination of forces then affecting the late 1850s and early 1860s, not least a perceived increase in night-time poaching by organised and sometimes violent gangs, the passivity and powerlessness of the police in such instances, and the mounting challenge to, and the questioning of the game laws.

Policing and the game laws prior to 1862

The role and powers of the police in rural England and Wales were still being formulated, negotiated, and regulated in the 1850s and 1860s. Although many counties had formed rural constabularies in 1839 and 1840, other counties had waited until the passing of the Rural Constabulary Act of 1856.⁹ Consequently, the idea of a policed countryside nationwide was relatively recent.¹⁰ The new police forces were established during a decade of anxiety, even though Great Britain was the world leader industrially, geo-politically and militarily. The nation's economic and imperial power, perhaps, exaggerated its worries and brought them into starker relief. Fears revolved around the partial ending of transportation and its replacement, the ticket-of-leave, which reintegrated serious criminals back into the motherland. The Crimean War of 1853–1856 brought back memories of the ending of the Napoleonic Wars and the demobilised soldiers who were abandoned and thrown back into society. Such fears proved to be misplaced but they contributed to the growing discourse on the dangerous presence of the 'criminal classes', a discourse which contrasted strongly with the nation's imperial ambition of projecting itself as a land of stability, civility, and superior moral rectitude.¹¹

The existence of a 'criminal class' was very real to many Victorians. 'Anybody who has attended the criminal courts', reported the *Leeds Mercury* in 1861:

[M]ust be aware of the existence of this class. It is as distinct and clearly marked a class as the aristocracy of England, and like the aristocracy of England it is perpetually recruited with

fresh blood. So clearly is this class marked off from the honest and industrious classes amidst which it lives, - so well is each member of the race known to the police, and so certain is it that each one has committed many thefts and deserved many imprisonments, - that a learned judge, the RECORDER OF BIRMINGHAM, actually proposed to give the police the power of arresting and imprisoning them without evidence of any particular act of theft.¹²

That poachers belonged to this 'class' was self-evident to many commentators. By mid-century, poaching had, according to the *Morning Chronicle*, 'ceased to possess either a political or a sentimental character. The crime is now recognized in its true light, as mere robbery'. Poachers were increasingly characterised as averring honest paid employment, preferring the company of beer shops, walking into the night with their guns, nets and dogs and returning at first light with their illegally gained booty, which they sold on to fund yet more drinking. This lifestyle was thought to be both transgressive and attractive to young men in search of excitement and money and potentially contagious if the authorities did not control this group.¹³ Poachers, so the argument went, 'spend their days in drunkenness and debauchery, contaminating all those with whom they come in contact; thus the crime of poaching is increased, and its consequent and still more serious vices are propagated to an unparalleled extent'.¹⁴ One 'solicitor' claimed that the larders of Lord Scarsdale's Derbyshire estate, four miles from Derby, had been raided two or three times, and other gentry, near Matlock, had had their game, provisions and other items stolen. Local opinion among the landed was that these attacks and the 'almost nightly' sheep stealing were the work of poachers.¹⁵ It is in this fevered context that the Poaching Prevention Act of 1862 is best understood. The fear of gangs of immoral and professional criminals wandering the lanes at night, and yet unregulated and untouched by a now nationwide network of police, seemed to game preservers, at least, objectionable, and inexplicable. Why have police forces if they could not stop and search suspicious persons and tackle such flagrant criminality?

Responses to this question varied from one county to another. In Norfolk, for example, Colonel Black, the Chief Constable, explicitly ordered his men not to interfere with poachers for fear of being accused of helping game preservers at the rate payers' expense.¹⁶ Many other rural constabularies pursued a similar policy, cognisant of the need to secure public acceptance and support. As Captain Boulton, the Chief Constable of Bedfordshire, explained to the 1846 Select Committee on the Game Laws, 'it is the opinion of the ratepayers, that the police, whom they pay for, should not be employed to preserve gentlemen's game' and thus his constables were given instructions 'not to interfere with poachers at all'.¹⁷ Likewise, in Worcestershire, Chief Constable Harris ordered that his men 'should not interfere in any way whatever in reference to game'.¹⁸

Even where police forces were more proactive, there were significant legal obstacles to prosecuting offenders encountered on the public highway in possession of hunting equipment or dead game. Proving that a poaching offence had been committed under existing legislation required offenders to be caught in the act on private ground. Once poachers were away and on the public highway, it was hard to substantiate the offence of poaching, even if offenders were in possession of recently killed game. The impossibility of establishing the precise origin and ownership of wild game birds and animals compounded the legal difficulty. As one veteran offender put it, 'Of course, I am not going to tell them where I got the game . . . who can say it is theirs?'.¹⁹ The chief constable of the West Riding of Yorkshire, Col. Cobbe, also highlighted the weakness of the existing game laws, claiming they were,

insufficient since police can only give notice to keepers when they see poachers going out. Poachers know they cannot be legally apprehended when they are returning from places where they have committed their crime even if they have nets and game etc. Poachers have often been stopped and examined but no further proceedings can be taken against them - yet if they had pigeons or fowl they would be arrested immediately.²⁰

However, the interpretation of the laws differed even before 1862. In the instructions set out for the Blackburn Borough Constabulary, for example:

[A] constable may arrest for felony without a warrant in the following cases . . . where he has reasonable cause to suspect that the party is about to commit a felony or is armed with any gun, pistol, hanger, cutlass, bludgeon, or other offensive weapon, or has upon him any weapon, under circumstances which denote an intention to commit a felony.

An arrest could also be made, 'For the purposes of seeing whether his suspicions are well founded, he may, particularly after sunset and before sunrise, stop any person carrying a parcel containing goods, when he suspects it to have been stolen, and he may also examine the person and detain him'.²¹ Whether game could be included within the definition of a 'parcel' under this second clause is not made clear. However, on paper, the local borough police in Blackburn had considerable powers of arrest, but only within their town boundary.

While towns and cities had, by the mid-1850s, large police forces, even after the full introduction of county constabularies after 1856, the countryside proved much more of a patchwork quilt in terms of the physical presence of constables.²² Consequently, fears concerning the criminal class were often amplified in rural areas and anxiety was further stoked by the burgeoning railway network which, it was thought, aided criminal mobility. The fear of the wandering, urban criminal had long haunted nineteenth-century lawmakers; they had figured as 'the other' in the 1839 commission on Rural Policing.²³ The county newspapers likewise fed on these fears since they quickly discovered that crime was an important and popular staple of newsprint. The repeal of various duties and taxes on newspapers in the 1850s led directly to the expansion of the news industry around the nation; moreover, existing newspapers began to report more news.²⁴ Thus the coincidence of newspaper expansion, the formation of rural constabularies throughout England and Wales and a rising concern with all matters related to crime and punishment led to a 'perfect storm' when the perennial problem of poaching, particularly that conducted by gangs at night, came under the scrutiny of the police, game preservers and county news editors.

Popular perceptions of increasing violence in the countryside had been rising in the second half of the 1850s. This was reinforced by the reportage of 'nightly' bloody poaching affrays in which game watchers and keepers were sometimes outfought by large gangs of poachers. The 'poaching war' was not a new phenomenon, it had been waged since the early 1800s, but what made these latest outbreaks noteworthy was that they were now being played out under the eyes of police forces who often appeared powerless or unwilling to intervene. As game preserving and, consequently, poaching, took place on private land, making poaching a civil case of trespass, the detection of poaching was not therefore *prima facie* within the police's jurisdiction.²⁵ Only when poachers posed a serious threat of violence, or when someone was injured or killed, did they become involved.

Night-time affrays, the set-piece fights between gangs of poachers and gangs of keepers and game-watchers were frequently reported in the late 1850s. They regularly resulted in serious injuries and deaths were not uncommon. In 1856, two gamekeepers were murdered by poachers in separate incidents at Boreham (Essex) and Staffield (Cumberland) and two others suffered life-changing injuries from gunshot wounds at Lartington (Durham) and Stanway (Gloucestershire).²⁶ Three more keepers were killed in 1857 at Tilstone (Cheshire), Annesley (Nottinghamshire) and Adderley (Shropshire).²⁷ Further fatalities among keepers and game-watchers followed in 1858. During a particularly brutal affray at Bishop Burton (Yorkshire), the head keeper was bludgeoned to death with the butt of a shotgun and his two assistants were seriously injured, one suffering a shot to the abdomen.²⁸ Within weeks, another keeper was shot dead at Newark (Nottinghamshire), two game-watchers were killed at Doddington (Cheshire) and another at Whalley (Lancashire).²⁹ Nor was the death toll restricted only to those guarding the preserves.

Poachers died in encounters with gamekeepers at Hanbury (Worcestershire) in 1856, Newark (Nottinghamshire) in 1858 and Shelford (Nottinghamshire) in 1859.³⁰ Whilst the roll call of death became an increasing concern to preservers and police alike, those wounded, often seriously – shot, beaten, or bitten by dogs – numbered many more.³¹

The apparent anomaly – the civil offence of the theft of wild game on private property, and the violence incurred in its protection – had, in the opinion of landowners and game preservers, to be addressed by allowing the police to play a more active role in the policing of the game conflict. If poachers knew they were going to be stopped and searched, and have their hunting equipment, guns, nets, traps, and their haul confiscated, it was argued, then there would be less incentive for them to go out in the first place. As the counties mentioned thus far suggest, the poaching war affected a broad swathe of England and North Wales but by mid-century, there was a palpable pattern to the most violent episodes. Counties characterised by extensive urbanisation and industrial employment were prone to greater levels of poaching-related bloodshed. Whereas counties traditionally considered as leading game-preserving and poaching areas, Norfolk and Suffolk, for example, generally experienced lower levels of reported violence. A closer inspection of the nature of poaching in different regions provides a possible explanation for this. In East Anglia, where agriculture was overwhelmingly the main provider of employment, and where towns and cities were small or non-existent, poaching remained largely the work of local offenders. There was a strong element of subsistence poaching still present where farm labour and low wages characterised the local economy. Professional poachers certainly operated in these areas, often focused on procuring game for the London market, but such men were skilled in their craft and often sought to avoid confrontation with keepers. Most poached alone or with a small team of established and trusted confederates.³²

In more heavily populated counties such as Nottinghamshire, Derbyshire, Staffordshire, Cheshire, Lancashire, and Yorkshire, rural game preservers often lay a short distance from expanding towns and industrial communities. Those caught or suspected of poaching in the more northerly counties were overwhelmingly industrial or urban workers.³³ These offenders were widely perceived as poaching purely for commercial gain rather than the pot. They were also outsiders, often without residency, occupational, or family connections within the rural parishes through which they roamed. Moreover, they were increasingly viewed by contemporaries as criminals, who often took whatever they could find during their nocturnal sorties into the neighbouring under-policed countryside.³⁴

For a combination of cultural and practical reasons, offenders from industrial and urban backgrounds were more likely to poach in large groups when they travelled into the surrounding countryside and placed more emphasis on the size of the gang to avoid arrest and capture.³⁵ This feature, above all else, contributed to the greater violence often associated with poaching in industrial areas. Security lay in the strength of numbers, the larger the gang the less likely that keepers would take them on, or so they hoped. In response, however, keeping strength on estates close to industrial centres was often significantly augmented during the winter months by the recruitment of additional part-time game watchers, often local estate workers, to specifically counter this threat. On the night that George Norton was fatally stabbed in the abdomen with a poacher's purpose-built spear during an affray in north Shropshire, he was part of a keeping force of 16 men.³⁶

In such circumstances, gamekeepers and their assistants were even more likely to physically engage even the largest poaching gangs which in turn increased the likelihood of violence. In 1859, 12 watchers and keepers were injured, but in 1861, a total of 89 incidents involving serious assaults on keepers and police were recorded. This apparent increase was partly the result of increased reportage as Parliament collected data on the 'number of murders, or murderous attacks on servants legally appointed to prevent a violation of the Game Laws' since 1 September 1859. While the return collected data from only 28 counties in England and Wales, and in any case still suffered from serious underreporting, it does provide a fuller picture of what was occurring around the country.³⁷

Night-time encounters between poachers and keepers often took on the character of highly stylised and ritualised confrontations, but with the addition of serious male-on-male violence. When the two opposing parties met there would follow, perhaps, a standoff, keepers shouting out the identities of those they thought they were challenging, swearing from both sides and threats from the poachers as they lined up to fight. Often, fists, boots, sticks, stones, bludgeons, and dogs were the main choice of weaponry. Guns were usually not automatically deployed in the first instance, indeed in some cases, poachers used the butts of their weapons rather than pulling the trigger. As a rule, there appeared to be a reluctance to kill unless there was an element of revenge in the confrontation, although the circumstances of these armed nocturnal affrays axiomatically led to frequent serious injury and death, however inadvertent.

The Derby police

In terms of violent poaching episodes, mid-century Derbyshire was not particularly noteworthy or notorious, although in 1857 the county had experienced a widely publicised bloody affray on the estate of Sir John Harpur Crewe, at Pistern Hill. Shortly after midnight, seven keepers spotted two men setting snares whom they immediately collared. To their surprise, another band of poachers, thought to be colliers and labourers, numbering between 15 and 20, attacked them. Fortunately, neither side carried firearms but that did not prevent the poachers from inflicting serious injuries on the keepers who were beaten, kicked, and stoned. The poachers were likewise wounded and bitten by the keepers' dog, 'a prompt and resolute animal' who occupied the attention of six poachers during the hand-to-hand fighting.³⁸ Nonetheless, in the years shortly after, the county found itself in the national spotlight when the Derby borough police adopted a more assertive stance to stopping and searching suspected poachers. Their efforts soon highlighted the difficulties that law enforcement experienced in attempting to use existing laws to tackle urban offenders who travelled out of towns into the surrounding countryside to poach, and the associated debate ultimately contributed to the emergence of the Poaching Prevention Act.

The 'crusade against poachers' that began in Derby in early October 1860 seems to have been largely instigated by magistrates associated with the borough police court.³⁹ The first reports of the Derby police stopping and searching suspected offenders as they re-entered the town emerged in the press on 10 and 12 October 1860.⁴⁰ It is clear from these reports that members of the magistracy who were also game preservers were behind the new initiative. The *Derby Mercury* reported that 'Acting under the instructions of a number of gentlemen who have suffered from the depredations of poachers for years, Mr Hilton (Chief Constable), Inspector Fearn, and several of the superior members of the borough police force, have during the last fortnight, at early hours, met at the edge of the borough the nocturnal sportsmen laden with their spoil. Hares, rabbits, and all appliances have been taken from them . . .'.⁴¹ Not surprisingly, the poaching fraternity of Derby was incensed and there were threats of violence to the police, but getting nowhere, the poachers turned to the law and sought the services of a solicitor. However, every solicitor in Derby reportedly refused to represent them, so they sought legal assistance in Nottingham where a Mr Lees agreed to act on their behalf and test the legality of the police's actions and reclaim their confiscated property.

The case was heard in Derby on 9 October 1860, with several interested poachers present in the public gallery. Mr Lees opened proceedings with the claim that the 'advice' given to the borough police to stop and search suspected poachers had come from two magistrates, William Cox, the Mayor of Derby, and Sir Henry Wilmot, 4th Baronet of Chaddesden, and also a keen sportsman.⁴² Chief Constable Hilton, on the other hand, denied having taken any instructions from either Wilmot or Cox, but added mysteriously that the force was 'acting under the advice of certain persons, whom he did not choose to name'.⁴³ The poachers lost the case and their nets and game remained in police hands. The 'novel' approach taken by the Derby Police to disrupt poaching

attracted enormous interest from around the country. A report on the case, published in the *Derby Mercury* on 10 October 1860, was reprinted in the *Field* as well as in other county newspapers.⁴⁴ Many approved not only of the police action but the fact that the poachers were unable to secure legal assistance from within Derby.

What the Derby newspapers now regularly described as the ‘crusade against the poachers’ by the borough police, ‘under the conduct of Mr Hilton . . .’, continued. On 11 October, Chief Constable Hilton handed a list of 30 names and addresses of suspected poachers living in Derby to the borough police court ‘and remarked that he should be able to double the list of names in a very short time’.⁴⁵ The next day, however, the police encountered determined resistance from the poaching fraternity. Having initially evaded the police on the Nottingham Road, a group of poachers returning to the town on 12 October had managed to get to the Plough Inn for an early morning drinking session where they were surprised by constables. In a separate room, the officers found bags of hares and rabbits and a struggle ensued between the two factions. Animals were torn ‘limb from limb’ but the police eventually won and took away some of the booty, together with Robert Merry, ‘long wanted’ for a night poaching offence committed at Willington in 1859. In the subsequent magistrate’s hearings arising out of the police action, one man was found guilty of threatening to kill Detective Vessey, while another promised legal action to restore his confiscated nets.⁴⁶

On 16 October, Sir Henry Wilmot presented a list, presumably that further enumerated by Hilton, ‘put into his hand containing the names and addresses of 55 men who supported themselves and their families by poaching unmolested by the police’ to the Michaelmas assembly of Derbyshire Quarter Sessions. ‘They go out in the face of day’, Wilmot railed, and yet ‘no notice had been taken of them’ by the county police. Warming to his subject, Wilmot further contended that it ‘was high time’ for the law to be changed to allow the police to stop such characters. Poaching was, he claimed, ‘the first commencement of crime’ and was being allowed to flourish by the county police who claimed the law did not allow them to interfere.⁴⁷ Wilmot’s intervention was applauded by fellow magistrates, although the Chairman cautioned that ‘there was a question whether constables were justified in taking from them (poachers) their game, nets, etc’. He hoped that Sir Henry would, ‘at the next quarter sessions, move the adoption of a memorial to government, asking them to remedy the defective state of the law in reference to poachers’.⁴⁸

Wilmot’s address clearly sought to rouse wider police action to stop and search suspected poachers. Within the boundaries of Derby, the borough force needed no further encouragement and continued their novel campaign. The morning after Wilmot’s address to Quarter Sessions, constables laid in wait for a group of suspected poachers witnessed leaving the town the night before. A man named Bacon was arrested first, returning with a brace of hares and a large new net. His confederates seem to have slipped back into Derby undetected, but later an ‘Irish’ labourer was intercepted carrying a basket full of game to Charlie Sladin, a licensed game dealer in the town. Sladin, also described as ‘a notorious poacher and prize fighter’, was summoned and threatened by Chief Constable Hilton with the loss of his game licence if he continued to buy from Bacon and his associates. Hours later, Bacon applied to the borough police court for the return of his hares and net. His claim was rejected by the Bench.⁴⁹

It would seem there was a full-on assault on poaching and the illegal trade in game in Derby. A similar approach was copied in Birmingham where four ‘rough-looking fellows’ were charged with possession of 33 rabbits and four nets. Although the case was dismissed, the police refused to return the rabbits or the nets, daring the men to take them to court for the restoration of their goods.⁵⁰ Moreover, other borough and county forces, in Derbyshire, Staffordshire, and Warwickshire, were now also following Derby’s example.⁵¹ For the Derby Borough Police to be effective, it required the cooperation of neighbouring forces, not least those in the adjacent county areas of Staffordshire, Derbyshire, and Nottinghamshire. The rail service connecting all these areas was already being used extensively by poachers. Indeed, it seems that some of Derby’s regular offenders, to evade the new stratagem of Chief Constable Hilton, had begun to sell their

game in neighbouring counties, before returning by rail directly to Derby station where they had ‘clinked’ their money in front of the waiting police.⁵² However, some forces were initially more circumspect about following the example set in Derby. The powers of the police to stop and arrest ‘suspected poachers’ were discussed at the Cheshire Adjourned Quarter Sessions in December 1860. The Chairman, L. P. Townshend, said he ‘was not aware of any law which allowed the police to interfere’. He entreated his fellow justices to ‘wait the result of the poaching case at Derby’ where a poacher had brought an action for the return of seized nets, adding further that, ‘the only course open to magistrates was to petition the House of Commons on the matter’.⁵³

Poaching was, for game preservers, eliding into other serious crimes and any extension of the powers of the police to prevent and detect malcontents was considered long overdue. The sportsman and arch-supporter of the game code, Grantley F. Berkeley, wrote to the *Field*,

Every landed proprietor who has stock of any kind on his lands is anxiously watching the proceedings in the Derby Borough Police Court, and every man desirous of putting down theft, violence, and murder, cannot but wish that persons found in the possession of game, for which they can give no satisfactory account at night and on the highways, should be apprehended by the police, and punished under the Vagrancy Act.⁵⁴

Berkeley was a long-time advocate of extending the remit of the law to allow police to stop and search poachers on the public highway.⁵⁵ Nonetheless, his observations about poaching violence appeared to be prescient when on 5 November, within a fortnight of the publication of his letter, news of a ‘desperate affray’ at Barton Park reached Derby’s police station. A gang of nine had outnumbered and outfought three keepers, none of whom was badly injured although the head keeper’s dog had its throat slit. When Inspector Fearn received news of the affray, he and his constables decided to visit the lodgings of known suspects within Derby. All were absent, although three of those suspected of involvement returned to town later that morning and were immediately arrested. Among them was James Bacon, who had poaching convictions going back to 1842, and who, a fortnight earlier, had taken out an unsuccessful action against the police for the illegal seizure of his nets.⁵⁶ Despite representation from Mr Lees as his defence solicitor, Bacon was sentenced on 6 November to six months with hard labour for his part in the Barton Park affray.⁵⁷

The Derby police were clearly involved in a campaign against a group of poachers that they had identified as a significant criminal element within the town even though their poaching crimes were committed in rural parts of neighbouring counties. Their homes, their local pubs, and their movements in and out of town were known and carefully watched.⁵⁸ Whether the police actions were strictly legal or not was debated in the press at the time as well as the courts. One letter to the *Derby Advertiser* from a solicitor claimed he ‘was fully alive to the impropriety of “infringing upon the liberty of the subject”’, and that the police’s right to stop and search suspected persons was ‘unsettled’. However, he concluded that a Midlands’ Recorder’s decision, that police were justified in arresting persons who created ‘a well-founded suspicion that they have committed a crime’, was correct. He cited the fact that some towns had a clause in their Local Improvement Acts which allowed police to arrest people who had in their possession ‘anything which may be reasonably suspected of being unlawfully obtained’. This, he felt, warranted police surveillance of suspected persons leaving a town by night ‘empty handed’ and returning to town the next morning ‘laden with spoil’. In such circumstances, the police would be justified in detaining both the men and their possessions until they gave a satisfactory account of how such spoils were obtained.⁵⁹

The ‘vexed’ question of whether the Derby police had the right to stop, search, and confiscate property on the highway came before Chief Justice Cockburn at the Spring Nisi Prius Court, Derby, in March 1861. The plaintiff, poacher John Wilmot, had a strong team with Liberal connections supporting his case: Mr John Mellor QC and MP for Nottingham, and Messrs Merewether and Jessel, and for the police defendants Fearn and Vessey, the eminent Mr Serjeant

Hayes and Mr Field.⁶⁰ In what was described as a 'most trumpery and impudent action', Wilmot and his legal team put forward a claim for assault, damages, and injuries to his reputation, and credit. During the case, Wilmot explained that he and his brother William, and a friend William Jowett, were stopped by three policemen (Fearn and Vessey being two of them) at six in the morning on 4 October 1860 on Traffic Street in Derby. Between them, the three men were carrying game bags loaded with nets, nine hares, and four rabbits. Fearn had demanded to know what was in the bags and seized that in Wilmot's possession while ordering the two other constables to take the others. Although Wilmot claimed he was willing to show them what was in the bags if they went to his house, Fearn replied that if they wanted the contents returned, they would have to go before the borough police court at 11.00 that morning at the town hall.⁶¹

Wilmot had attended the court where the mayor and Sir Henry Wilmot (no relation) presided, and they refused to interfere or have anything to do with the case. Fearn told the police court that Wilmot could have his nets and bags back, but *not* the game. Upon learning this, Wilmot held out and demanded that 'his rights' should also be returned to him, the 'rights' being the game, but Fearn refused to hand the hares and rabbits back. Thus, the dispute between Wilmot and Fearn ended up before Lord Chief Justice Cockburn in March 1861. This action suggests not only a good deal of awareness of the existing state of the law by the poacher Wilmot but also an understanding of the inflammatory politics that arose from the game laws.

Sergeant Hayes, for the defence, proceeded to mock Wilmot and questioned his apparent 'good character' by highlighting the poacher's outstanding court case and his numerous previous convictions; at least six of which had resulted in short prison terms. Wilmot pointedly told the barrister that he had 'not come here to answer that, I have suffered for that'. He then proceeded to correct the barrister on the dates and places of his previous convictions as they were being read out to the court. Hayes argued that it could not be right that Wilmot, who made his living from poaching, owned no land himself, and yet was found with game in his possession when searched by the police, had come to court demanding damages for the nets and game taken from him. The barrister continued, much to everyone's amusement, to argue that burglars would soon be coming to court to demand the return of their house-breaking implements and damages for loss of reputation.

Crucially, Wilmot continued to refuse to disclose where the hares and rabbits came from, and though doubtless he had obtained them illegally, there was no proof. As the Lord Chief Justice reflected in his summing up, game was wild, and it was difficult for the owners of land from which it was taken to prove that a trespass had taken place on their land and that the game belonged to them without specific evidence to this effect. The game, therefore, 'had to be considered as belonging to the plaintiff (Wilmot) no matter how unlawfully it came into his possession'.⁶² If an action against poachers was to be successful, poachers would have to be watched closely and their trespass proven. In consequence, the Chief Justice reluctantly advised the jury to find in favour of the poacher Wilmot who was allowed damages for the two rabbits and two hares, but at black market values only. He was awarded 4s. 6d. but no costs.⁶³

The case, however vexatious and 'impudent', had highlighted the limits of the existing powers that the police enjoyed in terms of stopping, searching, and confiscating game from poachers. To make the situation more confused, over a month later, five Nottingham poachers followed the example set by the Derby poachers and brought a retrospective action against Inspector Vaux of the Nottinghamshire County Police. Again, the action was for damages. In this case, about six to eight policemen had stopped a group of poachers on 11 November 1860, at the toll bar at Arnold and searched their cart. Fifty rabbits and nets were discovered. It transpired that Vaux and his squad had received prior intelligence that a group of 'well-known thieves' had passed through the tollgate, so he and his team waited for their return. Under cross-examination, Vaux told the court that he had not received any specific orders to apprehend poachers, but on finding the rabbits in the cart, his suspicions were aroused and he had asked the poachers to return with him to the police station for questioning, bringing the rabbits, which they readily did.⁶⁴ In contrast to the

Derby case, the Judge decided that it was immaterial that the poachers had refused to provide details of how they came by the rabbits, in effect, the game should be considered poached. However, in a very careful summation, the Judge also argued that since the poachers had voluntarily accompanied the constables and readily handed over their haul, the rabbits could not be regarded as having been seized. Had the poachers been 'sufficient lawyers' at the time and had refused to cooperate, he continued, 'then the case would have worn a very different aspect'.⁶⁵ The judge found in favour of Vaux, who he said was only doing his duty in stopping the cart. He also ruled out the poachers' claim against the Inspector for 50s. compensation for the lost rabbits. Within the space of two months, therefore, and within neighbouring jurisdictions, there had been two contradictory and confusing court judgements regarding the powers of the police to stop and search poachers and to confiscate game, nets, and other paraphernalia.

Memorials and petitions

The confusion now surrounding the rights of poachers and the rights of the police coincided with a plethora of petitions to the House of Commons. The first followed a meeting of Derbyshire Spring Quarter Sessions on 9 April 1861, where Sir Henry Wilmot, in moving the petition, reminded his fellow magistrates not only of the commitment he had made to develop such a measure six months earlier but of the importance of stating the case to Parliament given the ruling against the Derby Police by Justice Cockburn a month before.⁶⁶ The petition was approved and two weeks later presented to the House of Commons by Lord George Cavendish, the Member for North Derbyshire. In it, the Justices of the Peace prayed 'that powers may be given to the police and others to apprehend persons with dogs, nets, &, in their possession, of which they cannot give a satisfactory account'.⁶⁷

One of the first counties to petition the Home Office directly for increased police powers was the East Riding of Yorkshire. In his letter, 6 June 1861, Colonel Glanville Layard asked that a clause be included in the forthcoming Police Bill which would give the county police forces the same powers of search and detention of suspected persons as the Metropolitan Police. He directly related this request to poachers, in so far as the police should also be given powers to seize 'all game' found in the possession of such individuals during the hours of darkness, and that they should be taken before a magistrate. This proposal appeared to address the problems encountered in earlier cases when poachers refused to divulge how game came into their possession. The proposed clause included the following: '... if such persons cannot satisfactorily account for the same (game), showing whence it came and to whom it belongs ...' they should be taken before the magistrate and committed to a house of correction.⁶⁸

This was echoed in the first memorial from a group of chief constables, which began: 'having heard that a Bill is to be introduced during the present Session of Parliament for the Amendment of former Police Acts, desire respectfully to represent:

That the want of a power by law to stop, search, and detain persons who may reasonably be suspected of having in their possession, or conveying in any manner, property stolen or unlawfully obtained, tends greatly to the escape of offenders, and the consequent injury of the public at large, and that a provision such as that contained in the Metropolitan Police Act, 2 & 3 Vic., cap.47, sec. 66, would in our opinion materially further the ends of justice, and aid the County Police in the detection of Criminals and the prevention of Crime'.

This memorial was signed by 42 county chief constables of England and Wales. While this memorial was less explicitly tied to poachers, the requested powers of stop and search clearly had such people in mind.⁶⁹

The most influential memorial was submitted towards the end of 1861 and appears to have been organised by Cheshire's Chief Constable, T. J. Smith. It was later published by Parliament. It is included below. Interestingly, there were some notable absent counties from the list of signatories, including Derbyshire and Nottinghamshire, although their nonappearance did not necessarily indicate a lack of support for the sentiments expressed in the memorial. However, some counties did not sign because they did not want their forces actively involved in the policing of the game laws, which would have made them even more unpopular with the public and ratepayers.

Copy of a Memorial 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.

9 December 1861.

Sir,

We, the undersigned, chief constables, although most anxious that the services of the constabulary should not in any way be directly or indirectly employed in the preservation of game, are, nevertheless, so deeply impressed with the very serious evils resulting from the present anomaly of the game laws, that we feel it imperative on us respectfully to submit to your serious consideration these evils, as briefly detailed below, with a view earnestly to pray for a remedy in such manner as may be thought advisable by her Majesty's Government.

1. 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.
2. The murder of or murderous attacks on the servants legally appointed to carry out these laws is now of almost monthly occurrence.
3. The desperate assaults committed on these servants thus appointed legally to prevent misdemeanour, 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.
4. Poachers form a numerous class, who, by their training, local knowledge, and mode of life, when game fails, are habituated with comparative success to commit other offences, both against person and property.
5. Poachers generally pass the days in idleness, drinking, and debauchery, with money freely to spend without work, 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.

We have, &c. (signed)

D. W. Griffith - Chief Constable of Anglesey, E. M. Boulton - Chief Constable of Bedford,
 W. H. Carter - Chief Constable of Bucks., E. R. Gwynne - Chief Constable of Brecon,
 W. C. Freeman - Chief Constable of Cardigan, F. P. W. Ellis - Chief Constable of Carnarvon,
 T. J. Smith - Chief Constable of Cheshire, W. R. Gilbert - Chief Constable of Cornwall,
 John Dunne - Chief Constable of Cumberland, John Denman - Chief Constable of Denbigh,
 Geo. White - Chief Constable of Durham, Peter Browne - Chief Constable of Flint,
 Anthony Thos. Lefroy - Chief Constable of Gloucester, J. H. Forrest - Chief Constable of
 Hampshire,
 J. H. H. Ruxton - Chief Constable of Kent, W. P. Elgee - Chief Constable of Lancashire,

Frederick Goodyear - Chief Constable of Leicester, H. H. Lloyd Clough - Chief Constable of Merioneth,

W. Bard - Chief Constable of Montgomery, A. B. O. Stokes - Chief Constable of Pembroke, R. F. Mitchell - Chief Constable of Rutland, Philip Hy. Crampton - Chief Constable of Salop, Gilbert Hogg - Chief Constable of Stafford, James Isaac - Chief Constable of Warwick, Samuel Meredith - Chief Constable of Wiltshire, R. Harris - Chief Constable of Worcester, B. Granville - Chief Constable of York, East Riding.

*To The Right Hon. The Secretary of State, Home Department, Whitehall.*⁷⁰

This is a curious and, in some ways, contradictory document. In the opening paragraph, the signatories stated that they did not wish to be involved in the policing of the Game Laws and yet, on the surface, the petition appeared to be precisely about that. However, while requesting that the government consider this set of laws and their consequences, the signatories failed to offer any kind of solution or remedy. The question remained, what did they really want? This is clearly what George Grey thought. On the envelope sent by the Chief Constable of Cheshire, which contained this memorial, Grey scrawled, 'There is nothing new in this Petition, which seems to be entirely without end or aim, unless it is intended to repeal the Laws against Poaching'. He peevishly asked whether any remedy 'has suggested itself' to the petitioners for the evil which they have identified and 'inform me what it is'.⁷¹

The signatories clearly did not like the game laws, points one and two make this abundantly clear. The reference in the first clause to the 'only law of the land openly set at defiance' thereby inflicting 'moral injury' on the rule of law was, in effect, a reference to what historians now term 'social crime'. And yet, this defiance was, the chief constables argued, perpetrated by armed and violent gangs of poachers who subjected keepers to 'murder or murderous attacks . . . almost on a monthly basis'. The inclusion of 'almost' seems carefully chosen so as not to over-exaggerate the violence. Clauses three to five attempted to locate poachers within a broader criminal class. They were, in short, dangerous criminals and formed an almost untouchable subgroup of the criminal class found in most towns and cities and, as such, they were the group of most concern not only to the police but also to politicians, newspapers, and game preservers.

The reference to 'the murder of, or murderous attacks on . . . almost monthly occurrence' clearly irritated Grey, and he asked his secretary to request the chief constables to send details of such attacks, including dates and the size of groups of assailants. In addition, he requested details of assaults on police officers when arresting people at night. The returns were, when they came back to the Home Office, unimpressive and vague. In a rough scrawl, Grey noted that quite a few of the counties were unable to report any kind of violence to their police during arrests at night. Seven listed 'none', four returned 'one', the remainder ranged from 'few' to 'bad' and 'many'. The hyperbole of the Lindsey (Lincs.) magistrates who reported 'fearful assaults now made nightly on those authorised to protect property' did not impress the Home Secretary.⁷²

The Chief Constable of Norfolk, Colonel Black, who had refrained from signing the memorial, sent one of his own in late December 1861. In it, Black explicitly requested that county police forces be given the same powers as the Metropolitan Police enjoyed because:

Professional thieves - many of whom are also poachers - are wont to congregate in Towns, and from thence they issue forth to commit depredations in the surrounding Country. It is not possible to keep a strict watch on these men, for they reside ostensibly within the bounds of one police jurisdiction and they commit offences in another. One police body has an interest in their going forth to plunder, and the other has but insufficient means of following them up to their hiding places. This difficulty would be in great part overcome if the County constables had authority in the words of the Act to 'take into custody all loose idle and disorderly persons whom they shall find disturbing the public peace, or whom they shall have good cause to suspect of having or being about to commit any felony, misdemeanour or

breach of the peace' and also 'to stop search and detain any vessel, boat, cart or carriage in or upon which there shall be reason to suspect that anything stolen or unlawfully obtained may be found, and also any person who may be reasonably suspected of having or conveying in any manner anything stolen or unlawfully obtained'.

By this means, a large class of habitual plunderers would be effectually checked and night poaching, an offence so productive of murderous assaults and social disquietude, would be very much diminished.⁷³

Unlike other petitioners, Norfolk's Chief Constable had explicitly identified several problems, not least that concerning police jurisdiction. This had also been a problem between the Lancashire and Liverpool police forces back in the 1850s when it suited the urban force to have 'their' criminals commit crimes in neighbouring jurisdictions.⁷⁴ In addition, Black was keen to broaden the memorial away from poachers as he was mindful of the fact that in Norfolk most farming ratepayers did not want the police to be, in effect, paid gamekeepers, hence the positioning of the poachers with towns and professional thievery.

Some counties which presented separate petitions chose not to mention the game laws or poachers, preferring instead to request increased police powers to stop suspects at night. This may have been a tactical decision on the petitioners' part, believing that reference to the game laws was counterproductive. However, the memorial from the Chairman of Otley Quarter Sessions, in the West Riding of Yorkshire, was very much focused on the need for greater police powers to suppress poaching. In their submission, the chair explicitly referred to the murder of Timothy Horsfall's keeper and of a gang 'infesting this neighbourhood'.⁷⁵ Worcestershire, too, tied their memorial to poaching by claiming it led to 'an organization of desperate men', numbering, it was estimated, 815 men, 'independently of women', 'who live by poaching, fowl stealing and general plunder'.⁷⁶

Only one Chief Constable, that of Huntingdonshire and Cambridgeshire, wrote to the Home Office to suggest that the memorial sent round by Cheshire was, in part, irrelevant, to them. He added by way of conclusion, 'the less the Police in this County have to do with Game cases, otherwise than as witnesses . . . the better for the general interests of the County in general'. A sentiment Grey clearly endorsed, for on the envelope by his initials is the observation, 'a sensible man'.⁷⁷ The Home Department received a more specific expression of unease the following month in a hyperbolic missive written by Sir Walter Riddell, a north-Staffordshire County court judge. He had sat through a case in which poachers successfully brought actions against the local constabulary. Not only had individual constables, who were acting under orders from their superior officers, been liable for damages for their illegal actions, but they had subsequently been summoned for non-payment. However, it had come to the notice of Justice Riddell that there was an association of Staffordshire game preservers who had not only paid the fine but had 'influence(d)' the Police Committee to make illegal searches of poachers at night. This would lead, in his opinion, to the possibility of the murder of a policeman being regarded as 'no murder' by the people in general, because the police had been so heavily implicated in the policing of the game laws. 'Lynch Law', would be, he said, the ultimate result of 'attempting to put down lawless Poachers by lawless proceedings'.⁷⁸ A month later, Staffordshire's chief constable responded to the Home Department confirming that, since the judge's ruling against the police, they had stopped such searches. However, by way of attempting to justify their previous behaviour, he observed that the two plaintiffs referred to in the judge's letter were returned transportees, one of whom was in prison for larceny.⁷⁹

The passing of the Poaching Prevention Act of 1862

By the time the House of Lords came to debate the issue of poaching in the summer of 1862, the law pertaining to the stopping and searching of poachers was evidently unclear, contradictory, and controversial. In the lead-up to the parliamentary debates, the national press aired many differing opinions on the game laws. At one end of the spectrum, there was a strong movement to end all laws protecting game, while at the other, the game-preserving lobby did their utmost to present a new game Bill as a crime prevention issue. The Memorial from the 28 Chief Constables came to the attention of *The Times* in May 1862 and the publication of the numbers of ‘murderous attacks’ on gamekeepers and assaults on police between 1859 and 1861 followed soon after.⁸⁰ In an analysis of the 99 cases of ‘murderous attacks’ apparently contained therein, the *Bury and Norwich Post* caustically observed that ‘not half-a-dozen’ met the legal definition of an attempt to kill. ‘We are not endeavouring to palliate the outrages committed by these gangs of marauders . . .’ the newspaper continued, ‘but it is too bad to attempt to carry away the judgement of the country by exaggerated statements of murderous attacks by hundreds, perpetrated in the unlawful pursuit of game’.⁸¹

Nevertheless, with these returns as evidence of unrestrained and unpoliced rural lawlessness, Lord Berners, on 24 June, in the upper house, asked the government if they were prepared to introduce legislation to suppress night poaching.⁸² Berners’ question was hardly a disinterested enquiry, six months prior, he had been the driving force behind the resolution adopted by Leicestershire Quarter Sessions to petition Parliament.⁸³ Earl Greville, for the government, argued the laws then in existence were sufficient to deal with murder and assaults and that, second, the police were not to become involved in game law confrontations. Lancashire’s foremost game preserver, the Earl of Derby, replied that the problem was not about the game laws, but that poaching was now carried on by organised and armed gangs. Both he and Berners chose to emphasise the organised criminality inherent in night poaching. ‘Colliers and labourers’, said the Earl of Derby, ‘not driven to poaching by necessity’, grouped themselves into ‘well-organized’ ‘gangs from six up to twenty men’.⁸⁴ Berners, on the other hand, chose to enumerate the sheer size of the problem in Leicestershire where he claimed 927 poachers lived, of whom 144 had convictions for felonies and 525 had previous convictions for poaching.⁸⁵ Derby was at pains to emphasise that the police were ‘not to be mixed up with game preservation’. As matters stood: ‘the highway is the poacher’s sanctuary, where he may display, not only without fear, but with boasting, the implements of his illegal calling and the produce of his night depredations, and the police dare not ask what he has and where he has been . . .’.⁸⁶ At the conclusion of this discussion, Berners introduced his ‘Bill further to amend the laws in England relative to Game’ for its first reading. The second reading soon followed on 30 June 1862, but the Bill was withdrawn after objections from the Lord Chancellor. However, a revised replacement followed on 3 July. Following some amendment, its leading provision, that of allowing the police the power to stop and search persons suspected of the unlawful possession of game, ‘between sunset and eight o’clock in the morning’, ensured that the Bill received its second reading and progressed to committee stage.⁸⁷ By the time it passed its third reading in the Upper House on 10 July, the measure proposed by the Lords had become the Night Poaching Prevention Bill.⁸⁸

The question was whether the Bill would be able to pass smoothly through the House of Commons and onto the statute books before the summer recess. The *Norfolk News* had no such doubts, describing the ‘present House of Commons . . . the most reactionary assembly of this generation . . .’.⁸⁹ This view perhaps minimised the sustained criticism directed at the Bill, not least by George Grey on behalf of the government who urged members to defer the question to a later session and allow it to be fully investigated by a Select Committee.⁹⁰ Grey’s assessment that the Bill presented before the Commons bore the ‘marks of haste and want of consideration’ was indisputable, but, in practice, a focus on this aspect of the proposal entangled its opponents in what one supporter of the measure described as ‘minute criticism on certain provisions of the Bill’

rather than substantive challenges to 'the principle which it involved'. Indeed, one inadvertent consequence of efforts to highlight legal incongruities in the measure was that resulting ad hoc amendments acted to stiffen certain aspects; notably, the remit granted to police to stop, and search suspected persons was extended to the daylight hours, rather than just the night.⁹¹

On 16 June, the Commons voted by a large majority to pass the second reading of the Bill, now sponsored by Shropshire landowner, Sir Baldwin Leighton.⁹² Newspapers hostile to the game laws claimed that the 'sporting party had whipped up smartly'.⁹³ Looking at the voting figures for the final reading, it would appear that many MPs had already gone down for the summer, thus leaving the shooting lobby considerable power despite the government's lack of support for the Bill.⁹⁴ The now-titled Poaching Prevention Bill not only 'gave arbitrary and monstrous powers to policemen' to stop, search, and detain those suspected of poaching, fumed the *Norfolk News*, but it allowed for the taxation of entire nation by way of paying for the police 'to become watchers and keepers for the gentry'.⁹⁵ Despite many government objections to the Bill, both in principle and to the actual wording of it, they lost the vote by over 50. The final debates, it should be noted, occurred in the aftermath of the 'garrotting' of the MP, Hugh Pilkington.⁹⁶ Thus, the final stages of the passing of the Poaching Prevention Act were played out amidst further press-fuelled fears about the state of the country. On 4 August 1862, the Lords gave Royal Assent to the Bill described as 'one of the most confused and bungling pieces of legislation that had ever passed through Parliament'.⁹⁷ It was, as one anti-game newspaper observed, a 'law for the protection of its own amusements'.⁹⁸

Conclusion

Although the Bill moved onto the statute books very rapidly, not everyone involved in the administration of the criminal justice system had complete confidence in the new act. At Blackburn in August, three unemployed men caught by keepers setting nets on private ground in the early hours of the morning asked to be dealt with 'under the Old Night Poaching Act and not that known as Lord Berners Bill'. The Bench, who appeared equally confused about the relative severity of each, agreed, arguing that this option meant that rather than committing them for trial, 'they should only send them to the House of Correction'.⁹⁹ In September at Lancaster, where poachers were seen returning to the city with hauls of game, the police appeared not to have interfered.¹⁰⁰ However, the new act was deployed successfully at Preston in the same month against unemployed cotton workers and also at Birmingham, where it was decided that the prosecution did not have to identify the land from which the game was taken.¹⁰¹ In short, if a working man was stopped, searched, and found to have game upon him that was sufficient proof for a conviction.

The new act was not entirely a 'dead letter', since, with the passing of time, the police and the local magistracy resorted to it with more confidence.¹⁰² During the year ending September 1865, there were 930 prosecutions under the new legislation, of which 720 resulted in successful convictions.¹⁰³ However, despite claims during the debates in Parliament that the new law would see the end to night poaching, bloody affrays continued to be reported.¹⁰⁴ An initial glance at the newspapers for the second half of 1862 and for 1863 provides many examples of violent affrays in the same counties which had been troublesome prior to July 1862.¹⁰⁵ Cheshire, Derbyshire, Lancashire, Nottinghamshire, and Yorkshire remained the counties most likely to experience violent poaching affrays involving large groups of offenders, during which keepers and poachers were shot and injured.

The momentum behind the development of the Poaching Prevention Act of 1862 originated in part from the actions of Derby's police, in particular its Chief Constable, Hilton, who tested the limits of existing legislation by intercepting known poachers as they came back into town. This pattern of poaching, namely offenders based in urban areas going out into the surrounding countryside at night and returning openly at dawn carrying back game, had become common in

industrialised Midland and northern counties by the mid-nineteenth century. The relative immunity with which such offenders appeared to operate, often across different police jurisdictions, increasingly represented both a legal anomaly and a challenge to the authority of the new police forces. The new Act embodied these concerns, and chiefly, perhaps, a growing preoccupation on the part of the authorities with violent poaching gangs, who were often perceived as involved in wider criminality and as part of a distinct and dangerous urban criminal class. The influence that game preservers enjoyed as magistrates and their consequent close links to chief constables, allied often to direct parliamentary influence, provided the circumstances through which an effective lobby was mobilised for stronger measures to tackle what preservers had long regarded as the night poaching menace.

Ultimately, the Poaching Prevention Act was regarded as indefensible by its opponents and unsatisfactory even by some who had urged tougher measures to combat violent night poachers, but, despite several attempts at repeal, it remained durable.¹⁰⁶ In practice, its greatest impact was partly inadvertent and felt most keenly away from the industrial centres of the north and Midlands. An early indication came at the annual dinner of the Ludlow Agricultural Society on the 27 September 1862, when Sir Baldwin Leighton, sponsor of the Poaching Prevention Bill in the Commons and Member for South Shropshire, was received by the gathering of tenant farmers with 'groans and hisses'. When a drink to the 'health of the County Members' was proposed, those present 'drank the health of Lord Newport separately, refusing to drink that of Sir Baldwin Leighton'. During later toasts from the floor, one speaker advised that if, 'Sir Baldwin had devoted his attention to a Tenant Right Bill... he would have done the farmer a service (Great cheering)... instead he had succeeded in passing an Act, the effect of which would be to fill the gaols, and at their (the farmer's) expense'.¹⁰⁷ The new law certainly aggravated the fissure between game-preserving landlords and rate-conscious farmers, frustrated by the damage done to their crops by pheasants, hares, and rabbits, but it was the rural agricultural worker who suffered most by the Poaching Prevention Act of 1862. Ten years after its passage, Parliament heard that among all the objections that the poor had against the game laws, the most particular was 'being subject at any time to being assailed by a police officer and searched'. In testimony to the 1873 Select Committee on Game Laws, witnesses recounted examples of the resentment caused by unjustified searches of both men and women returning from work along country lanes where there was 'no ground for suspicion' and of arrests and prosecutions based on the discovery of what the poor regarded as perquisites, 'a basket of wood... two or three turnips... two or three sticks blown into the road'. Those who indignantly resisted constables who 'laid hold' of their coat or collar or refused to be searched risked further punishment and humiliation.¹⁰⁸ Farmer Robert Hayward recounted the sight of two such men conducted to court along the streets of a Suffolk market town, 'coming down with a policeman on each side of them, the men handcuffed together, and if they had been convicted of the very greatest crime, they could not have been treated with more indignity'.¹⁰⁹ As Arch later reflected, the passage of Lord Berners Bill marked 'a black day for the labourer'.¹¹⁰

Notes

1 The Poaching Prevention Act 1862 (25 & 26 Vic., c. 114).

2 The Night Poaching Act 1828 (9 Geo. 4, c. 69).

3 J. Arch, *The Story of his Life Told by Himself* (London, 1898), pp. 148–150. See also Arch's evidence to BPP, 1873, 285, Report from the Select Committee on Game Laws, pp. 318–321.

4 'Farmers and the New Poaching Act', *Bury and Norwich Press*, 28 October 1862.

5 D. J. V. Jones, 'The poacher: a study in Victorian crime and protest', *Historical Journal*, 22 (1979), 825–60; J. E. Archer, 'Poachers abroad', in G. E. Mingay, ed., *The Unquiet Countryside* (London, 1989), pp. 52–64; J. E. Archer, *'By a Flash and a Scare': Arson, Animal Maiming and Poaching in East Anglia, 1815–1870*, (Oxford, 1990); J. E. Archer, 'A reckless spirit of enterprise': game preserving and poaching in nineteenth-century Lancashire', in D. Howell and K. O. Morgan, ed., *Crime*.

Protest and Police in Modern British Society (Cardiff, 1999), p. 170; T. Shakesheff, *Rural Conflict, Crime and Protest: Herefordshire, 1800–1860* (Woodbridge, 2003).

6 Jones, 'The poacher', p. 851; H. Osborne and M. Winstanley, 'Rural and urban poaching in Victorian England', *Rural History*, 17:2 (2006), 187–212; D. J. V. Jones, *Crime, Protest, Community, and Police in Nineteenth-Century Britain* (London, 1982), p. 22 and p. 78.

7 H. Hopkins, *The Long Affray: The Poaching Wars in Britain* (London, 1985), p. 237.

8 C. Griffin and I. Robertson, 'Elvers and salmon: moral ecologies and conflict on the nineteenth-century Severn', in D. Worthington, ed., *The New Coastal History: Cultural and Environmental Perspectives from Scotland and Beyond* (Basingstoke, 2017), pp. 99–116; H. Osborne, 'Unwomanly practices': poaching crime, gender and the Female offender in nineteenth-century Britain', *Rural History*, 27:2 (2016), 149–68; *Idem.*, 'John Bright's poacher: poaching, politics and the illicit trade in live game in early Victorian England', *Agricultural History Review*, 66:2 (2018), 215–37; *Idem.*, 'Poaching and its representation in Edwardian England, c. 1901–14', *Rural History*, 31:1 (2020), 35–51; *Idem.*, '"K is for Keeper": the roles and representations of the English gamekeeper, c. 1880–1914', *Rural History*, 33:1 (2022), 1–22; J. Bailey, 'Exploring changes in gamekeeper numbers in England (1851–1921)', *Rural History*, 35:1 (2024), 91–110; *Idem.*, 'The distribution and numbers of gamekeepers in Norfolk: 1851 to 1921', *Rural History*, 36:1 (2025), 112–32; Tom Wilkinson, 'Rural Conflict and Resistance in Late Eighteenth and Early Nineteenth Century Gloucestershire' (unpublished PhD thesis, University of Gloucestershire, 2025).

9 Even by the early 1850s, a surprisingly high number of English and Welsh counties (22) had not fully adopted the Rural Constabulary Act of 1839 and County Police Act of 1840: see BPP, 1853–55, 186, Return of Number of Rural Police in each County in England and Wales, pp. 1–15.

10 D. Philips and R. D. Storch, *Policing Provincial England 1829–1856: The Politics of Reform* (London, 1999); C. Steedman, *Policing and the Victorian Community: The Formation English Provincial Police Forces 1856–80* (London, 1984).

11 The concept of a criminal class is discussed in, C. Emsley, *Crime and Society in England 1750–1900* (London, 1996, 2nd ed.), pp. 168–177; M. J. Weiner, *Reconstructing the Criminal: Culture, Law, and Policy in England, 1830–1914* (Cambridge, 1990), pp. 14–45; J. J. Tobias, *Crime and Industrial Society in the Nineteenth Century* (Harmondsworth, 1967), pp. 59–175.

12 *Leeds Mercury*, 5 December 1861. Such a scheme was 'considered contrary to justice'.

13 *Morning Chronicle*, 6 April 1859. John Clay collected the oral testimony of poachers in Preston gaol and their testimonies followed the familiar narrative of poaching and drink being the ruin of many a young man, see Rev. Walter Lowe Clay, *The Prison Chaplain: A Memoir of the Rev. John Clay, BD. Late Chaplain of Preston Gaol*, (London, 1861), pp. 566–7.

14 *Derbyshire Advertiser and Journal*, 7 December 1860.

15 *Derbyshire Advertiser and Journal*, 7 December 1860.

16 For details of Norfolk's chief constable's approach see Archer, 'By a Flash and a Scare', p. 241.

17 BPP, 1846 463-II, Select Committee on the Game Laws, Part II, Minutes of Evidence, (E. M. Boulton), p. 307.

18 BPP, 1846, 463-II, Select Committee on the Game Laws, Part II, Minutes of Evidence, (R. R. Harris), p. 321.

19 BPP, 1845, 463-I, Select Committee on the Game Laws, Part I, Minutes of Evidence, (Frederick Gowing), p. 637; Osborne, 'John Bright's Poacher', p. 224.

20 Col. Cobbe's comment is taken from the *Manchester Guardian*, 7 April 1842.

21 R32/4307, *Instructions for the Blackburn Constabulary Force*, Blackburn Public Library.

22 For details of the formation of county constabularies see Steedman, *Policing and the Victorian Community*; and Philips and Storch, *Policing Provincial England 1829–1856*.

23 The vagrant and the migrating urban criminal had haunted lawmakers since the 1830s, see BPP, 1839, 169, First Report of The Commissioners Appointed to Inquire as to the Best Means of Establishing an Efficient Constabulary Force, pp. 13–16; Osborne and Winstanley, 'Rural and Urban Poaching', pp. 187–212.

24 J. E. Archer and J. Jones, 'Headlines from History: Violence in the Press, 1850–1914', in E. A. Stanko, ed., *The Meaning of Violence*, (London, 2003), pp. 18–20.

25 F. M. L. Thompson, 'Landowners and the rural community', in G. E. Mingay, ed., *The Unquiet Countryside*, (London, 1989), p. 83.

26 For these affrays see, Boreham, *Chelmsford Chronicle*, 22 February 1856; Stafffield Hall, *Carlisle Journal*, 28 November 1856; Lartington, *Durham County Advertiser*, 19 December 1856.

27 Annesley, *Nottinghamshire Guardian*, 18 March 1858; Tilstone, *York Herald*, 25 April 1857; Adderley, *Shrewsbury Chronicle*, 18 December 1857.

28 Bishop Burton, *Leeds Intelligencer*, 27 November 1858.

29 Newark, *York Herald*, 27 November 1858; Doddington, *Times*, 30 November 1858; Whalley, *Preston Guardian*, 24 December 1858.

30 Hanbury, *Worcestershire Chronicle*, 17 December 1856; Newark, *Grantham Journal*, 16 October 1858; Shelford, *Nottinghamshire Guardian* 10 February 1859.

31 For example, Joseph Nixon, a game-watcher was shot and seriously injured at Wooller (Northumberland), *London Evening Standard*, 1 December 1858. Poachers William Markham and Woodthorpe Marshall received shotgun wounds in the fatal affray at Bishop Burton, (Yorkshire), *York Herald*, 27 November 1858. Hundreds were reported to have visited the 'scene

of the battlefield' the morning after the affray between approximately 16 keepers and 40 poachers at Adderley (Shropshire) *Hereford Times*, 19 December 1857.

32 Osborne, 'John Bright's poacher'; Archer, *By a Flash*, pp. 237–8.

33 Osborne and Winstanley, 'Rural and urban poaching', pp. 189–193; J. E. Archer, 'A reckless spirit of enterprise: game preserving and poaching in nineteenth century Lancashire', in D. W. Howell and K. O. Morgan, eds., *Crime, Protest and Police in Modern British Society* (Cardiff, 1999), pp. 149–72.

34 J. E. Archer, 'Poaching gangs and violence: the urban-rural divide in nineteenth century Lancashire', *British Journal of Criminology*, 39:1 (1999), 25–38.

35 Archer, 'A reckless spirit of enterprise', p. 161. Osborne and Winstanley, 'Rural and urban poaching', p. 196.

36 *Hereford Times*, 19 December 1857 and *Wellington Journal*, December 1857.

37 BPP, 1862, 201, Return of Number of Murders of Servants appointed to prevent Violation of Game Laws, 1859–61 and Return of Number of Assaults on Police when apprehending Offenders at Night for Felonies, 1860–61, pp. 4–11; Osborne and Winstanley, 'Rural and urban poaching', pp. 205–6.

38 *Derby Mercury*, 11 and 14 January 1857.

39 *Derbyshire Advertiser*, 19 October 1860.

40 *Derby Mercury*, 10 October 1860; *Derby Advertiser*, 12 October 1860.

41 *Derby Mercury*, 10 October 1860.

42 William Thomas Cox, Mayor of Derby 1860–1 and 1861–2, J.P. for the Borough and County of Derby and High Sherriff of the County of Derby 1861. *Debrett's Illustrated House of Commons, and the Judicial Bench*, (London, 1867), p. 52. Sir Henry Sacheverel Wilmot, J.P. for the Borough and County of Derby and High Sherriff of the County of Derby 1852. *Derby Mercury*, 17 April 1872.

43 *Derby Mercury*, 10 October 1860. Lees had good reason to suppose that Cox and Wilmot were the main instigators of the stop-and-search policy. In response to a written request made prior to the hearing, asking for the identity of those who had sanctioned the new initiative, he was referred to these two gentlemen by the solicitor representing the Derby police.

44 *Chester Chronicle*, 27 October 1860; *Derby Mercury*, 17 October 1860; *Preston Chronicle*, 27 October 1860; *Staffordshire Advertiser*, 13 and 27 October 1860.

45 *Derby Mercury*, 17 October 1860.

46 *Derbyshire Advertiser*, 19 October 1860.

47 *Derby Mercury*, 17 October 1860.

48 *Derbyshire Advertiser*, 19 October 1860.

49 *Derbyshire Advertiser*, 19 October 1860 and 6 February 1861.

50 *Derby Advertiser*, 19 October 1860.

51 Reports of 'great consternation' among the poach fraternity who were now coming under the interfering attention of police came from Ashbourne and Burton, *Derby Mercury*, 24 October 1860. See also *Derbyshire Advertiser*, 26 October 1860.

52 *Derby Mercury*, 24 October 1860.

53 *Chester Chronicle*, 1 December 1860.

54 Reprinted in the *Derby Advertiser*, 26 October 1860. Berkeley, a keen sportsman, was one of England's leading advocates for strict game laws during the 19th century. He had successfully opposed John Bright over reform of the game laws as a member of the 1845 Select Committee on the Game Laws.

55 BPP, 1846, 463-II, Select Committee on the Game Laws, Part II, Minutes of Evidence, pp. 318–319.

56 *Derby Mercury*, 7 and 9 November 1860.

57 *Derby Advertiser*, 9 November 1860.

58 *Derby Advertiser*, 19 October, 7 November and 5 December 1860.

59 *Derby Advertiser*, 7 December 1860. The correspondent also conceded the general benefit to the community of suppressing a lifestyle characterised by 'drunkenness' and 'debauchery' which had a contaminating effect.

60 John Mellor, Q.C., Liberal MP for Nottingham 1859–1861. George Jessel, Liberal MP for Dover 1868–73, appointed Q.C., in 1865. Henry Allworth Merewether, Q.C., (1812–1857).

61 *Derby Mercury*, 27 March 1861; *The Times*, 21 March 1861.

62 *Derby Mercury*, 27 March 1861.

63 *Derby Mercury*, 27 March 1861; *Times*, 21 March 1861. Wilmot, the 'notorious poacher', was shortly afterwards caught poaching again and sentenced to 6 months: *Derby Mercury* 1 May 1861. Berkeley wrote another letter to *The Field* informing its readers that Sir Henry Wilmot was collecting subscriptions for head constable Hilton to prevent him from being 'out of pocket' from 'every rogue-association' claiming for damages, *Derby Mercury* 12 June 1861. Other poachers threatened to sue individual policemen, *Derby Mercury* 24 July 1861. This case involved two men from Leicester and Loughborough who had, among other items, a flail-style weapon taken off them and confiscated.

64 *Derby Mercury*, 24 April 1861. Inspector Vaux told the court 'I dare say I have a pleasant way of asking people to go to the police station' obviating the need for arrest and seizure of property, as in this case.

65 *Nottinghamshire Guardian*, 18 April 1861.

66 *Derby Mercury*, 10 April 1861.

- 67 *Derbyshire Times*, 27 April 1861; *Derby Mercury*, 1 May 1861. Lord George Cavendish (1810–1880) (Ashford Hall) MP for North Derbyshire 1834–1880.
- 68 The Metropolitan Police had the power to search and detain under the Metropolitan Police Act 1839 (2 & 3 Victoria, cap. 47, sec. 66). Some boroughs had also provided for police powers to stop and search under municipal acts. TNA, HO 45/7210/1, 6 June 1861, Petition of Col. Glanville Layard of West Yorkshire to Home Secretary.
- 69 TNA, HO 45/7210/1, undated.
- 70 PP, 1862, 201, Memorial in 1861 by Chief Constables of Twenty-Eight Counties in England and Wales on Game Laws. The same memorial can be found at TNA, HO 45/7210/3, 9 December 1861.
- 71 TNA, HO 45/7210/3, Grey's annotations are dated 28 December 1861.
- 72 TNA, HO 45/7210/3 undated and HO 45/7210/5, Lincolnshire County, from magistrates at the Quarter Sessions for parts of Lindsey, 13 January 1861.
- 73 TNA, HO 45/7210/4, 30 December 1861. The emphasis was made by the chief constable.
- 74 Archer, 'Poaching in nineteenth-century Lancashire', pp. 169–170.
- 75 For Nottinghamshire: TNA, HO 45/7210/6, 1 February 1862. For the West Riding: TNA, HO 45/7210/7, 8 March 1862. For details of the murder of William Smith, one of the keepers of Timothy Horsfall, see: *Yorkshire Gazette*, 9 November 1861.
- 76 TNA, HO 45/7210/7, 8 March 1862. George Grey noted in his reply to the Chair of the Quarter Sessions that only 29 chief constables out of 56 had signed the memorial. Captain Holden, the Chief Constable of Nottinghamshire had called for a petition when addressing quarter sessions. 'Gangs of 20 and 30 men', he claimed were found in all parts of the county, and in one village close to Nottingham 'there were more than 30 poachers who did not work'. He feared a fatality would 'erelong occur', *Heywood Advertiser*, 4 January 1862.
- 77 TNA, HO 45/7210/9, 11 April 1862. On which dynamics see: Osborne, 'Unwomanly practices'.
- 78 TNA HO 45/7210/12, 16 May 1862.
- 79 TNA HO 45/7210/13, 13 June 1862.
- 80 *The Times*, 10 May and 25 June 1862; BPP, 1862, 201, Return of Number of Murders of Servants appointed to prevent Violation of Game Laws, 1859–61 and Return of Number of Assaults on Police when apprehending Offenders at Night for Felonies, 1860–61, pp. 4–11.
- 81 *Bury and Norwich Post*, 29 July 1862.
- 82 Henry William Wilson, 11th Lord Berners, (1797–1871), J.P. for the County of Leicestershire, Rutland and Norfolk and D.L.L. Leicestershire, (Keythorpe Hall, Leicestershire, Ashwellthorpe Hall, Norfolk).
- 83 *Leicester Chronicle*, 4 January 1862.
- 84 Lords Sitting of 24 June 1862, *Hansard*, Third Series, Vol. 167, pp. 977–8: Derby had recently taken a personal interest in prosecuting poachers involved in an affray on his Lancashire estate, with a view to putting an 'end to the very dangerous system of persons going out armed by night', *Liverpool Daily Post*, 22 December 1860.
- 85 Lords Sitting of 24 June 1862, *Hansard*, Third Series, Vol. 167, p. 976.
- 86 Lords Sitting of 24 June 1862, *Hansard*, Third Series, Vol. 167, p. 977. *The Times*, 25 June 1862; *Blackburn Standard*, 2 July 1862 *Standard* 2 July 1862. The Cheshire authorities claimed to know of 798 poachers who were either living within the county or in adjoining counties but poached within Cheshire. Some of them had a total of 272 felonies against their names, *Derby Mercury* 21 May 1862.
- 87 Lords Sitting of 3 July 1862, *Hansard*, Third Series, Vol. 167, pp. 1325–1326.
- 88 Lords Sitting of 8 July 1862, *Hansard*, Third Series, Vol. 167, p. 16; Lords Sitting of 10 July 1862, *Hansard*, Third Series, Vol. 167, p. 130.
- 89 *Norfolk News*, 19 July 1862.
- 90 For 'strenuous opposition' to the measure, see *Manchester Times*, 2 August 1862. Grey had earlier stated his preference for an inquiry before any change in the game laws, Commons Sitting of 30 June 1862, *Hansard*, Third Series, Vol. 167, p. 1212.
- 91 Commons Sitting of 16 July 1862, *Hansard*, Third Series, Vol. 168, pp. 376–402; *Nottinghamshire Guardian*, 1 August 1862.
- 92 Commons Sitting of 16 July 1862, *Hansard*, Third Series, Vol. 168, pp. 376–402. Sir Baldwin Leighton, 7th Bt. (1805–1871), M.P. South Shropshire 1859–65, J.P. Shropshire (Loton Park, Shropshire). Leighton was Chairman of Shropshire Q.S. which had sent a petition to parliament to strengthen the game laws in December 1861. *Eddowes's Shrewsbury Journal*, 1 January 1862.
- 93 *Norfolk News*, 19 July 1862.
- 94 Commons Sitting of 16 July 1862, *Hansard*, Third Series, Vol. 168, pp. 1149–1155; *Manchester Times*, 2 August 1862.
- 95 *Norfolk News*, 19 July 1862.
- 96 *The Times*, 18 July 1862.
- 97 The Lords passed the Bill on 4 August with Royal Assent granted on 7 August 1862. Lords Sitting of 4 August 1862, 1862, *Hansard*, Third Series, Vol. 168, pp. 1176–78.
- 98 *Bury and Norwich Post*, 29 July 1862. The prolonged debates in both Houses can be found in *The Times*, 24 June to 5 August 1862 and *Hansard's Parliamentary Debates*, 3rd Series, 167–168, 24 June to 7 August 1862.
- 99 *Preston Chronicle*, 20 August 1862.

- 100 *Lancaster Gazette*, 6 September 1862.
- 101 *Preston Chronicle*, Saturday 20 September 1862. *Birmingham Daily Post*, 3 September 1862.
- 102 *Dundee Advertiser*, 8 December 1862.
- 103 BPP, 1865, 205, Return of Number of Cases under Poaching Prevention Act reported by Constabulary of England and Wales and Ireland, and Number of Convictions, 1863–64.
- 104 Commons Sitting of 23 July 1862, Hansard, Third Series, Vol. 168, pp. 714–715.
- 105 *Nottingham Journal*, 15 October 1862; *Malton Gazette*, 4 October 1862; *Preston Chronicle*, 8 November 1862 *East Kent Times*, 6 December 1862; *Carlisle Examiner*, 13 January 1863; *Hull Advertiser*, 11 February 1863; *Nottingham Guardian*, 16 February 1863.
- 106 BPP, 1870, 93, Poaching Prevention Act repeal. A bill to repeal the act of the twenty-fifth and twenty-sixth years of Her Majesty, chapter one hundred and fourteen, intituled ‘An Act for the Prevention of Poaching’; BPP, 1893–94, 478, Poaching Prevention Act (1862) repeal. A bill to repeal the Poaching Prevention Act, 1862. At the time of writing the Poaching Prevention Act 1862 is still operative in England and Wales subject to minor amendments, although it has been repealed in Scotland by the Wildlife and Natural Environment (Scotland) Act 2011. For a recent example see, *Lancashire Telegraph*, 22 October 2022.
- 107 *Shrewsbury Chronicle*, 3 October 1862; *Herts Guardian*, 4 October 1862.
- 108 BPP, 1873, 285, Report from the Select Committee on Game Laws, Minutes of Evidence (Joseph Arch), pp. 318–322.
- 109 BPP, 1873, 285, Report from the Select Committee on Game Laws, Minutes of Evidence (Robert Hayward), p. 381.
- 110 J. Arch, *The Story of His Life Told by Himself* (London, 1898), p. 381.