Mansfield Park Reconsidered: Pheasants, Game Laws, and the Hidden Critique of Slavery

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The title *Mansfield Park*, with its forthright, even over-deterministic reminder of Lord Mansfield, the man who as Lord Chief Justice presided over some of the most famous slavery cases to come before the English courts, appears to urge the reader towards a contextualization that is never fully realized. In what follows I argue that, reinforcing the novel's title and the handful of allusions to Antigua, Austen fully intended that the issue of slavery should be repeatedly brought to mind by her referencing of game and game laws. Rather surprisingly, perhaps, pheasants are mentioned in the novel more often than Lady Bertram's pugs. There are eight references to the lapdogs, whereas the word "pheasant," "pheasants," or "pheasant's" appears nine times, in the form, variously, of eggs, young birds, sport for the Bertram men, and dinner for the gourmandizing Dr. Grant. Initially this may seem to be little more than background detailing of rural life as lived by certain social classes. Austen after all writes fairly often in her letters about the shooting expeditions undertaken by her brothers and nephews and of the gifts of game that enliven the table at Chawton (for example, 15-16 September 1796; 7-9 October 1808; 15-16 September 1813). Pheasants, though, along with other types of game animal, were a fraught subject during Austen's lifetime, implicated in discussions about the nature of property and ownership. Occupying as it did the peculiar legal status of *ferae naturae*, but legal prey only for those who

owned land of a certain value, game presented a complex and ambiguous challenge to the established property paradigms that were already under threat from the successes of the abolitionist movement.

Once one starts looking for game, it seems to crop up everywhere. One possible inspiration for *Mansfield Park* is Charlotte Smith's 1796 novel *The Old Manor House*, which features as its somewhat insipid heroine Monimia, a poor and exploited young woman forced to make a home with her aunt, who is housekeeper at the manor house of the title. There are, as Jacqueline Labbe has pointed out in her introduction to the novel, a number of correspondences between *The Old Manor House* and *Mansfield Park*. We first encounter the hero and heroine of *The Old Manor House* as children as, in a departure from Austen's previously published work, we do Fanny and Edmund in *Mansfield Park*. The titles of both books were unusual at a time when novels more often bore the name of a hero or heroine, and they point to a shared concern with the morality of changing or improving the estate. Like Fanny, Smith's heroine is made to live in an attic where she is deprived of candles, just as Fanny is denied a fire; like Fanny she is treated like a servant and often reduced to tears by her vituperative aunt. One echo that Labbe does not remark, though, is the subject of game. The early chapters of *The Old Manor House* are dotted with references to "preserved grounds," to "partridges," and to "pheasants." Indeed, much of the plot of the first two volumes is driven by a disagreement over game. One of the central scenes in *Das Kind der Liebe*, the play adapted by Elizabeth Inchbald as *Lovers' Vows*, finds Frederick, the natural child of the title, attempting to rob his father, who is out shooting game. The father's name is Baron Wildenhaim, a name nearly homonymous with the German verb "wildern," which means "to poach," or, more properly, "to hunt while walking around in the countryside." In Inchbald's version of the play the stage directions intimate that she perceives this scene as an English shoot, with beaters: "At a distance is heard the firing of a gun, then the cry of Halloo, Halloo—Gamekeepers and Sportsmen run across the stage" (3.1.33).

Few people ever have occasion to wonder why poaching should still be an offense distinct from theft. The answer is a simple, albeit a technical one—game, which is to say hares and game birds such as partridges and pheasants, is not property, and only property can be stolen. Game is, by definition, animals that are *ferae naturae*, a phrase that means more than the simple translation of an "animal living in a state of nature" or an "undomesticated animal." It describes an animal that cannot be owned, that is legally incapable of being considered or held as property. In addition to this essential peculiarity, there

were other legal oddities clustered around game. Before the Norman Conquest, only deer were reserved solely to the use of the monarch. All other game creatures were freely available to whoever could catch them. After the Conquest all game was deemed to vest in the king: those of his subjects to whom he had awarded grants of chases, warrens, or free fisheries might hunt game animals, but no one else could. A number of statutes controlling the taking of game were passed through the succeeding centuries, and from the 1750s or thereabouts there was a marked increase in the number of game laws that were passed. Chevenix Trench, writing in the early twentieth century, put the number of game law statutes passed between the 1750s and 1810s at thirty-three, or more than one every two years (124). Munsche puts the figure a little lower but still reckons it to be "more than two dozen" (8). To add to the complication, the old laws were not repealed or superseded, with the result that by the end of the eighteenth century there were literally dozens of statutes dealing with licenses, sporting seasons, ownership of guns and dogs, night hunting, the requirements for gamekeepers, and the financial and other penalties to be exacted against those who failed to maneuver through the quagmire of legislation. Many of the acts are explanatory or seek to close legal loopholes opened in earlier statutes, and others pay testament to Pitt's ever more ingenious ways of raising revenue, in particular his development of the lucrative concept of hunting licenses that were to be renewed for an annual fee. Historians of the game laws agree, though, that the purpose of and motivation behind the new game laws remained the same as it had been: to ensure that the landed gentry retained their monopoly on hunting game.

In theory, according to statute, that was the case. There were strict controls on who could hunt, and they amounted to sumptuary laws. According to statute, the requirements for a sportsman were, as the Poet Laureate Henry James Pye explained in his *Sportsman's Dictionary*, "Having a freehold estate of 100*l. per annum*" or "having a leasehold estate, for 90 years, of 150*l. per annum*" or being either "the eldest son or heir-apparent to an esquire, or person of superior degree" or "the owner or keeper of a forest, park, chase, or warren" (197). As Sir William Blackstone, author of the seminal legal text of the period, the *Commentaries on the Laws of England*, pointed out, these requirements meant that "fifty times the property" was "required to enable a man to kill a partridge, as to vote for a knight of the shire" (4.174). Chevenix Trench estimates that "excluding gamekeepers there were probably no more than twenty or thirty thousand qualified persons in a population of about five million," but he points out that many "unqualified persons" hunted game "with

the knowledge and approval of country gentlemen" (28). No one, we recall, remarks on the fact that the illegitimate foundling Tom Jones has been hunting game in flat defiance of the law (see Stevenson). Nor, strictly speaking, should Edmund Bertram be shooting game with his brother, at least before he has taken orders and come into possession of his parsonage house. Both, however, are young gentlemen, and their technical criminality is looked on tolerantly.

By the end of the eighteenth century, the implications of discussing this area of the law were becoming more obvious. Both the peculiar status of game and the fact that the "qualification" was based on the ownership of property meant that the game law debate was a convenient cloak for highly politicized discussion. While the requirement for legally killing a partridge was based on property, on the ownership of land, those landowners whose estates were worth less than the required amount had to watch as their crops were eaten by game birds and game animals, and they could do nothing whatever to prevent it. It was an evident, glaring, wrong, one of the many against which Mary Wollstonecraft inveighed in *A Vindication ofthe Rights ofMen*:

> In this land of liberty what is to secure the property of the poor farmer when his noble lord chooses to plant a decoy field near his little property? Game devour the fruit of his labour; but fines and imprisonment await him if he dare to kill any—or lift up his hand to interrupt the pleasure of his lord. How many families have been plunged, in the sporting countries, into misery and vice for some paltry transgression of these coercive laws, by the natural consequence of that anger which a man feels when he sees the reward of his industry laid waste by unfeeling luxury?—when his children's bread is given to dogs! (16)

The London *Times* called the laws "arbitrary" and "opposite to justice" (27 Sept. 1790, 3), opining that "at present any farmer, according to the idea of the Law, must be a Poacher. Partridges, pheasants, hare and quail, become a tax upon his corn, . . . and . . . he is denied the public right of putting these marauders to death" (12 Sept. 1791, 3). One reason for the rising intensity of the debate may have been awareness that it was displeasure with and disagreement over the French game laws that might be said to have marked the first stirrings of revolutionary fervor. In 1791 Lord Milton can be found writing to Lord Kenyon in the following alarmist terms: "the Republican party has made the Game Laws the object of their abuse and detestation; in France, the instant they began to overturn the Constitution and level all distinctions, these were the first they pulled down. It therefore seems to me that they should at all

times be most respectfully guarded" (Kenyon 266). Nevertheless, in March 1796 the reforming Member of Parliament John Christian Curwen brought forward a bill to entirely remodel the game laws, which, though it was eventually defeated, did not lack for supporters.

Perhaps one reason for the contradictory and confusing nature of the game laws was the fact that they were based on property at a time when the meaning of property was undergoing a semantic shift. According to the Oxford English Dictionary, property is "the right to the possession, use, or disposal of anything" and also "that which one owns; a thing or things belonging to or owned by some person or persons; a possession." The latter meaning of the word "property" is understood to be the predominant one in modern English usage while the former, the right *to* or *over* something, is considered as a mere technical term, part of lawyerly idiolect. The law retains this interpretation of "property," but the rest of the world has moved on semantically. Murphy and Roberts claim that "the term 'property' is for the most part used by non-lawyers with 'unselfconscious ambiguity,' its meaning slipping backwards and forwards between 'the thing itself' and the 'rights' a person has to the enjoyment of the thing" (43), but, as MacPherson makes clear when outlining the confusions that agglomerate around the various meanings of the word, non-lawyers seldom if ever consider the term in its more technical, abstract sense: "in current common usage, property is *things*; in law and in the writers, property is not things, but *rights*, rights in or to things" (*Property* 2). This confusion, however, is a question of modern usage. Samuel Johnson's *Dictionary*, first published in 1755, offers the following definitions for "property":

> *n. s.* peculiar quality. *Hooker.* Quality; disposition. *South.* Right of possession. *Locke.* Possession held in one's own right. *Dryden.* The thing possessed. Nearness or right. *Shakespeare.* Some article required in a play for the actors; something appropriate to the character played. *Ibid.* Property for propriety. Anything peculiarly adapted. *Camden.*

The difference in layout means that—the obvious implications of ordering and the reputations of the authors cited aside—no one meaning is privileged above the others. To Johnson, then, the meaning of property remained entirely open and fluid. Within twenty years, however, the "proper" definition of property was to become the central axis about which a court case and the legal status of slavery in the United Kingdom shifted.

That case was the Somerset case, properly *Somerset v. Stewart* (the latter

name also being spelled variously as Stuart or Steuart). James Somerset was a black man who had been brought to Britain, to Cheapside, by his master in 1769. After three years in England, in September 1771, Somerset decamped. Two months later, while walking through Covent Garden, he was abducted by men working at the instigation of his *quondam* master Charles Stewart and taken in irons to the *Ann and Mary*, a ship that was about to set sail for Virginia under the command of a man called John Knowles. Knowles had instructions to sell Somerset on their arrival in Virginia. Alerted to the case, abolitionists obtained a writ of *habeas corpus* requiring Knowles to produce James Somerset in court and justify his detention. The case was heard early in Hilary Term in the court of the King's Bench before Lord Mansfield (see Schama 61-76).

From Hargrave's record of the Somerset judgment, it becomes apparent that when Lord Mansfield uses the word "property" he means it in the sense of a *right*. The phrase "property in the said James Somersett" is iterated and reiterated in an attempt to stamp judicial meaning on the word. The thrust of the judgment is that a person cannot *be* property; it is a deliberate rejection of Knowles's and Stewart's claims to the body of James Somerset. The arguments adduced by Knowles—his "cause of detainder," his justification for seizing the body of Somerset—can be condensed to the single claim that "property" means material objects, the things themselves, and that "negro slaves" are no different from other "goods and chattels," that "negro slaves, brought in the course of the said trade from Africa to Virginia and Jamaica aforesaid and the said other colonies and plantations in America . . . have been, and are saleable and sold as goods and chattels . . . and are the slaves and property of the purchasers" (Hargrave 5). MacPherson attributes the shift in meaning to changes consequent on the advent of capitalism:

> whereas in pre-capitalist society property was understood to comprise common as well as private property, with the rise of capitalism the idea of common property drops virtually out of sight and property is equated with private property—the right of a natural or artificial person to exclude others from some use or benefit of something. . . . [W]hereas in pre-capitalist society a man's property had generally been seen as a right to revenue, with capitalism property comes to be seen as a right in or to material things, or even as the things themselves. (*Capitalism* 105)

The "thing" in this case is the body of "the said James Sommersett," who "being and continuing such negro slave, was sold in Virginia aforesaid to one Charles Steuart Esquire, who then was an inhabitant of Virginia aforesaid,"

and "thereupon then and there became, and was the negro slave and property of the said Charles Steuart, and hath not at any time since been manumitted, enfranchised, set free, or discharged" (Hargrave 6). It is precisely this meaning, this definition that Mansfield is at such pains, such dry, legalistic, repetitious pains to reject: "Contract for sale of a slave is good here; the sale is a matter to which the law properly and readily attaches, and will maintain the price according to the agreement. But here the person of the slave himself is immediately the object of inquiry; which makes a very material difference" (qtd. in Blaustein and Zangrando 38).

There were, naturally, objections to this narrow definition of what constituted property and in what property consisted. In his *Candid Reflections*, Long engages in legal debate over the correctness of the verdict in the Somerset case, detailing the contrary judgments given by other members of the judiciary with careers as illustrious as Mansfield: especial prominence is accorded that of Attorney General York, who declared that "[a] Negroe slave, coming from the West Indies to *Great Britain* with his master, does not become *Free*. His master's property and right in him are not thereby determined or varied; and his master may *legally* compel him to return again to the plantations" (56). Parliament, too, Long points out, has passed laws that recognize the existence of slavery, some of which "declare to the subject, that he holds a right of property in the Negroes he buys; others tell him, that Negroes are chattels, saleable and convertable like any other goods, for payment of dues to the revenue, or other debts; that they are to be held as *money* in the hands of a planter debtor, and received as *money* by his creditor" (39). Long eventually rejects semantics altogether in an appeal to practicalities. How, he asks, does it make sense to say that the master has a right to perpetual service but not to do as he wishes with the body of the slave: "I cannot well comprehend . . . how the master can exercise a right of perpetual service, without restraining the Negroe of his personal liberty, his power of locomotion, or of removing his person wheresoever his inclination may direct" (34).

Another writer who attempts to establish a different meaning of "property" is Hannah More, in *Black Giles the Poacher*, published in 1790 as one of her moralizing Cheap Repository Tracts: "many I am certain, who would not dare to steal a goose or a turkey, make no scruple of knocking down a hare or a partridge [i.e., game animals]. . . . [D]o not then deceive yourselves with these false distinctions. All property is sacred, and . . . the laws of the land are intended to fence in that property" (14). More is, of course, quite wrong. According to the law of England, even "if a man hath pheasants or partridges

and keepeth them in a place inclosed, and clips their wings, and from their eggs they hatch, and bring up young pheasants and partridges, . . . they are not reclaimed, but continue ferae naturae" (Shaw 182). If they escaped, the law would not return them, any more than it would return a slave.

Charlotte Smith, whose *The Old Manor House* may, as was suggested above, be a source for *Mansfield Park*, had, in 1794, published an epistolary novel entitled *Desmond*, in which the hero travels to post-revolutionary France and which Lew suggests as another "model" for *Mansfield Park*. As Lew notes, "Smith asks her reader to make explicit comparisons between West Indian slavery, marriage, and other types of property" (276). The first letter Desmond writes from France records a conversation between several gentlemen that he overhears before taking ship for the Continent, a discussion that switches seamlessly from the lamentable change in the French game laws—"I understand, that one of the things these fellows have done since they have got the notion of liberty into their heads, has been, to let loose all the taylors and tinkers and frisseurs in their country, to destroy as much game as they please. Now, Sir, what a pity it is, that a country where there is so much, is not ours, and our game laws in force there"—to the culinary skills of one gentleman's "negro fellow," who is a "very excellent hand" at dressing food. His master cheerfully talks of having lent him "more than once to perform for some great people at the other end of town" and invites his new acquaintance to partake of a "chicken-turtle which promises well—the first I've received this season, from what I call my West-Indian farm; a little patch of property I purchased, a few years since, in Jamaica" (80-81). Austen would not be the first author to encourage her readers to trace the correspondences between game and slaves.

Mansfield Park was published in 1814, when the results of the 1807 abolition of the slave trade were beginning to become evident. It remained legal to keep slaves in the West Indies, but their cost had already doubled between the 1750s and 1790s (Curtin 115), and the Royal Navy blockades of the slaving routes sharply reduced supply, making the purchase of new slaves prohibitively expensive. This change in the law presented a huge problem to West Indian planters—such as Sir Thomas Bertram—because, as Curtin explains, "the population was not self-sustaining. Neither the European managerial staff nor the African work force produced an excess of births over deaths. Both groups had to be sustained by a constant stream of new population just to maintain their numbers—still more if their populations were to grow. . . . [I]t is uncertain how widespread this excess of deaths over births was in the American tropics; but it was undoubted in the key islands and colonies of the

plantation complex" (11). It is never stated what crisis in Sir Thomas's affairs takes him to Antigua, but the answer most likely to occur to a contemporary reader was that he needed to institute measures for preserving his population of slaves.

In Sir Thomas's absence, Mansfield Park is left under the supervision of Mrs. Norris, a character whose name, as Jordan points out, connects her to "the worst anti-abolitionist described by Austen's beloved Thomas Clarkson, John Norris, who had been employed in plantation management" (40). Adept as Mrs. Norris is at managing, she is apparently willing to pick up hints. On the occasion of the visit to Sotherton, her interest is immediately caught by the "'curious pheasants'" to which Mrs. Rushworth directs the attention of her visitors (90). The young people soon wander off to the wilderness, but Mrs. Norris remains in conversation with the housekeeper and the gardener. Unlike her charges, she finds, "a morning of complete enjoyment," and on leaving she obtains, in addition to a cream cheese, "a few pheasant's eggs" (104), to which the conversation in the carriage turns:

> "What else have you been spunging?" said Maria. . . .
>
> "Spunging, my dear! It is nothing but four of those beautiful pheasant's eggs, which Mrs. Whitaker [the housekeeper at Sotherton] would quite force upon me; she would not take a denial. She said it must be such an amusement to me, as she understood I lived quite alone, to have a few living creatures of that sort; and so to be sure it will. I shall get the dairy-maid to set them under the first spare hen, and if they come to good I can have them moved to my own house and borrow a coop; and it will be a great delight to me in my lonely hours to attend to them. And if I have good luck, your mother shall have some." (106)

The references to dairymaids and hens make this process sound far more homely and comfortable than it would have been. Game birds, it should be recalled, are not property even when domesticated, and Josiah Ringstead, in his 1785 book *The Farmer*, explains the usual way of ensuring that they do not stray:

> about the end of August your early broods of pheasants (and partridges) will be strong enough to pinion, which will secure them effectually; and the method of doing it is as follows: pick the feathers clean all round the first joint of one wing, and then take a strong thread and knit hard enough round the place, a little below the joint, to stop the bleeding when you cut off the pinion, which

> must be done with a very sharp knife. . . . [T]urn them loose; but watch them for an hour to observe whether they do . . . bleed. . . . [I]f that do happen, sear the wound with a red hot tobacco pipe. (108)

It is, presumably, by following instructions like these and by taking measures to encourage the breeding of captive pheasants that the Mansfield preserves, where Tom and Edmund shoot, have been made so productive. On Sir Thomas's unexpected return, his eldest son cheerfully prattles about "sport" and the stock of game:

> "I have hardly taken out a gun out since the 3d. Tolerable sport the first three days, but there has been no attempting any thing since. The first day I went over Mansfield Wood, and Edmund took the copses beyond Easton, and we brought home six brace between us, and might each have killed six times as many; but we respect your pheasants, sir, I assure you, as much as you could desire. I do not think you will find your woods by any means worse stocked than they were. *I* never saw Mansfield Wood so full of pheasants in my life as this year. I hope you will take a day's sport there yourself, sir, soon." (181)

Given that Tom has not that long returned from Antigua, where, as was the case in the rest of West Indies, slaves were in short supply, it seems entirely possible that this reference is intended to compel contemporary readers to make a comparison of game and slaves, two forms of property that were not property and that had to be bred up and prevented from straying.

Once one accepts the shared connotations of slavery and game, it becomes clear that *Mansfield Park* in fact engages thoroughly with subject of the slave trade, and promising lines of enquiry open up into the novel's interconnected themes of marriage, of consumption, of empire, of different ways of owning people or claiming their labor. The novel does not preserve "'a dead silence'" (198) on the subject; instead Austen foregrounds questions of property and ownership through the fraught issue of game. *Mansfield Park* performs the promise of its title—slavery is a central concern, if only we look for it in the right place.

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