FROM GAME LAWS TO FAUNA PROTECTION ACTS IN SOUTH AUSTRALIA

The evolution of an attitude

An Address delivered to the Royal Society of South Australia, July, 1960, by B. C. Newland.

The title of this paper needs no explanation; the attitude referred to in the sub-title is the attitude of the community towards the native fauna as it is revealed by the various Bills and Acts of Parliament that have been designed to regulate or prevent the destruction of wildlife. It is proposed to discuss, first, the legislation for the control of the relationships between the human and feral communities, and to examine the evolution of the attitude that prompted the legislation; then to draw some conclusions from that evolution; and, lastly, to try to decide what it should be at the present day.

Before examining the South Australian laws, it is necessary to glance at game laws in general, in so far as they are grounded on the English common law. The law of property being based on physical possession, it follows that wild animals, *ferae naturae*, can not become the subject of private property until they are reduced into possession by killing or capture. A bird in the hand is owned; a bird in the bush is not. Things in which no one can claim any property belong to the Crown, and animals *ferae naturae* belong to the Crown and not to the individual.

The right to take game, however, came to be regarded in England as incidental to occupation of land; and although it did not amount to ownership of the wild animals, it did confer on the landholder the right to protect them against poaching or trespass.

At the beginning of the second half of the eighteenth century, the game laws in England consisted of the Night Poaching Acts of 1824 and 1844, the Game Act of 1831, and the Poaching Prevention Act of 1862. The net effect of the game laws and the common law was to give the occupier of lands and the owner of sporting rights various remedies to prevent others from encroaching on them. The stranger who entered the land of another was liable for trespass, and criminally liable as well if he was seeking game. The maximum penalty for a daylight offence, even if aggravated by violence, was a fine of £10. The same offences committed at night entailed severer punishment, with imprisonment for three months for a first offence and up to seven years' penal servitude for a third, and still heavier penalties, up to fourteen years, if the offender were a member of an armed gang. It will be seen that the penalties for minor offences were by no means draconic, and in assessing the strictures passed in Adelaide on the iniquities of the English game laws it is hard to avoid the suspicion that there was a hangover from something much more mediaeval, or even Gothic. An obnoxious feature was the fact that enforcement was left in the hands of the landholders(1); and it is not hard to believe that a defendant, however innocent—or guilty—would stand poorly in the eyes of the law when the complainant was not only the injured party, but also the arresting officer and chief Crown witness; and, in the circumstances, he was often likely to be all three. These considerations, combined with the hardness of the times, no doubt gave the game laws their evil repute in the minds of the landless classes, who had no illusions about their purpose. The poor could not be expected to applaud laws that restricted the right of destroying animals and birds to the rich.

Even the word "game" is ambiguous: in the above Acts it is limited to a few birds. In Australia, it has often meant anything that runs or flies, or is killed for food or fun, or shot at with anything from a small cannon to a shanghai.

The purpose of any fauna law should be to deal with three separate but related matters: the control of game, the regulation of the use of firearms, and the protection of

harmless or useful birds and animals. While most of the South Australian Acts are concerned to a greater or less extent with each aspect, the arguments for or against their individual clauses were often a compound of all three, reflecting the conflict of motives in the minds of the legislators, who wished to curb the destruction of fauna without incurring the odium of introducing restrictive laws. Often they appeared to wish to make their omelette without breaking eggs, and I am going to suggest later that the only really valid reason for preserving fauna was either not recognised or deliberately avoided in the first seventy-five years of the State's history.

The first record that I have been able to find of official interest in wildlife relates to a resolution moved in the Legislative Council in 1853 by Mr. Hare, who drew attention to regulations in other parts of the world for the protection of insectivorous birds and also to the value of the fowl themselves as food(2). He was in advance of his time, for he urged not only the protection of useful birds but also the conservation of the economically valuable. The confusion of motive referred to above is evident here, as so often in the future; for if the same bird is both valuable as food and useful in the live state, the proper attitude towards it is not easy to determine on these criteria alone. The outcome of Mr. Hare's resolution was a request to the Lieutenant-Governor that the Law officers prepare

"i. A Bill for the purpose of preventing the destruction of wildfowl during the breeding season, particularly by prohibiting the sale thereof during the months September, October, November, December—more particularly as regards teal, duck, cranes, plover, pigeons, and larks.

"ii. And also to enact some punishment or penalty against trespassers on private property, in pursuit of wildfowl/or other *ferae naturae.*

"iii. And also to enact some penalty for persons, when using firearms, employing wadding capable of igntion during the months November . . . (to) . . . May."

The comment of the Advocate-General appears on the outside: ". . . it would require very careful consideration to frame a law which would accomplish the object sought by the Council without unduly interfering with individual rights . . ."

This 1853 address(3) clearly shows the three functions of a comprehensive fauna law, although the protection aspect is confined to gamekeeping, but nothing reached the Statute Book.

Eleven years later the State's first game law was passed, Act No. 23 of 1864, titled "An Act to prevent wanton Destruction of certain Wild and Acclimatized Animals." Anyone caught wilfully killing, during the close season, any bird or beast mentioned in the schedule became liable to a penalty. The schedule gives a glimpse that is truly wonderful at this distance. The first part contains "Imported or acclimatized animals":

> Pheasants, Partridges, Grouse, Swans, Sparrows, Thrushes, Linnets, Deer, Antelopes, Rabbits, Finches, Blackbirds, Starlings. Close season, 1st August to 31st December.

The second part is devoted to native birds, and for them the close season is three to four months. The longest close season (and the heaviest penalties) are reserved for the exotics, including sparrows, starlings, and, wonder of wonders, the rabbit.

This was a game law, for all the native birds listed were game species except the magpie and the jackass, whose obvious beneficence earned them a crumb of protection. How many prosecutions were launched under this Act would be interesting to know, but scarcely worth the labor of ascertaining.

Ten years later it was repealed in favor of Act No. 21 of 1874. The new Act, "An Act to Prevent Destruction of certain Birds and Animals," was in fact a game act in the old sense of the phrase; indeed, its short title was "The Game Act, 1874"; and although amended in 1885 and repealed in 1886, it set the pattern for South Australian game acts until they were superseded by the Birds Protection Act of 1900. It therefore deserves our attention. Its main points were as follows:—Game is divided into three categories, each in a separate schedule according to its definition as "Game," "Native Game," or "Special Game," and each with a close season. The essential and characteristic clauses of this Act are clauses 6 and 8. Clause 6 goes on as follows:—

"If any person shall kill wound or destroy, catch or take, or shall buy, sell, or knowingly

have in his possession, house, or control, any game, native game, or special game . . . taken during . . . time . . . such game . . . shall . . . be protected, every person so offending shall . . . pay a penalty not exceeding . . . £5 for every head of game, and . . . not exceeding £2 for every head of native game, and . . . not exceeding £5 for every head of special game . . . in addition to the value of such game . . . which value shall, in the case of game, be the sum set opposite the name of such bird or animal in the first schedule hereto, and in the case of native game, the sum of 5/- and . . . special game, . . . £2; and proof that such game . . . has been lawfully killed . . . shall lie on the defendant."

This is fair enough, except perhaps for the sting in the tail. It might be awfully hard to prove that your tame budgie or galah was lawfully taken.

Clause 7 provides a penalty for out-of-season egg-collecting.

Clause 8, in the spirit of the old game laws, makes it lawful for the landholder to do as he likes on his own land, all the year round, without having to concern himself with the rigors of Clause 6, from which he is specifically granted dispensation which indeed appears to go beyond the rules of common law. It would seem to assert that the landholder owns the bird in the bush as well as the bird in the hand, and woe betide the landless person who takes so much as a mouse (see below).

The schedules are at the end, and the First is a list of forfeits for infringing the close season in the case of "Game":

Pheasants	£2	Partridges	£2
Grouse	£2	Swans	£2
Hares	£2	Deer	£10
Antelopes	£10		

The Second Schedule is "Native game," which may be shot for the cut-rate forfeit of 5/-, and comprises all indigenous birds and animals, apart from a number of exceptions which may be destroyed at any time. One of the exceptions is "Rats," *but not mice.*

The Third Schedule, Special Game, embraces only Pheasants and Partridges; as they are already in the First Schedule it is not clear why they re-appear here. But at least rabbits have been dropped from the protected list.

It will be at once evident that again the main force is directed towards the preservation of imported game species. The involved motives of the men who passed this Act may be examined in Hansard. As mentioned before, the South Australian Acts have three aspects in so far as they are game laws, gun laws, or protection laws; and it is my purpose to show that with the gradual evolution of the community's attitude to wildlife the emphasis shifted from game laws to protection laws. The three ingredients were always present, even if in unequal proportions, as in the 1864 Act which extended at least some protection to non-game birds like the magpie, the jackass, and the starling; and all three are to be seen in the debate on the 1874 Bill. The Commissioner of Crown Lands (W. Everard), in moving the second reading, said he believed that all were agreed upon the necessity of some legislation to prevent the destruction of birds and animals, which had been carried almost to the point of extermination in the suburban districts. The Hon. J. Fisher, in support, said "any member who had gone into the suburbs on public holidays must have been pained to see the wanton destruction of birds that went on." So far the protection aspect has held the floor. But then he continued, "On such occasions there was the greatest danger in travelling in the neighborhood of Adelaide through the number of small boys using firearms. As he drove along last Easter Monday it was painful to hear the rattling of shot at every turn of the road . . ." The Hon. P. Santo supported the two preceding speakers, "although the introduction of the gun licence clause in another place was objectionable." (Up to this time four attempts had been made to impose a gun licence fee, but without success.) "The Hon. J. Dunn thought it would be far better to name the animals that were to be preserved. Certainly he should not be prevented from destroying rats and mice." Then, in a notable flash of clairvoyance, he said he "believed in some part of the country rabbits were quite as troublesome." Mr. Fisher went on to say that "he was opposed to game laws; but if they wished to have partridges, grouse, and other birds acclimatized here there must be a law to protect the gentlemen who went to the trouble and expense of introducing these birds." Another member expressed the interesting opinion that "there would always be a dearth of birds so long as there were so many ants

in the colony. It was not shooting, but ants, that killed birds."

Mice also 'got the treatment'. "Mr. Ward pointed out that according to . . . (Clause 8) . . . anyone trapping a mouse . . . would render himself liable to a penalty, the clause setting forth that the . . . Act should not extend to any person killing . . . game . . . in any garden, vineyard, or field . . . whereof he is the owner . . . In the Second Schedule, rats were excepted, but mice were not included." The Minister of Justice (Mr. Bundey) explained that "mice were included in rats," and anyhow, he had no objection to mice, and wombats, too, being included in the schedule of animals excepted from protection. The subject of wombats led to marsupials, and Mr. Ward said that all marsupials should be protected and "excepted from the operation of the game laws." The implied antithesis between protection and game laws could hardly be made clearer.

Game laws specified what might be shot, and when, and even by whom, and imposed penalties for shooting out of season or on someone else's land; and despite several references to protection and despite the prejudice against game acts, Act No. 21 of 1874 was passed by Parliament as a game act. Before leaving it, a remark made by Mr. Fisher deserves repeating because it had a sequel which will appear in its due place. Discussing the shortness of the close season for ducks —it was four months, he said, "If there were any fledglings at the expiration of the four months he did not think there were many cockneys who would fire at birds little bigger than a duck's egg"(4).

In the next year, the State's first Act for the regulation of the Use of Guns and Firearms became law(5). It introduced gun licences, fee £1.

The Game Acts of 1874 and 1875 seem to have satisfied the community until the news reached Adelaide that a person from Victoria was bagging an undue share of the game by using a swivel-gun. He had it mounted in his boat, and it fired "about 3 lbs. of shot and one charge had been known to kill 150 to 200 pelicans which were valued for their skins and plumage"(6). Such was the indignation in the city at the efficiency of this weapon that the Act was amended to make illegal the use of any gun that could not be fired from the shoulder(7).

It would appear that Authority was powerless to control the use of guns, even of the monstrous type outlawed by the 1886 amendment. As to licences, only the conscientious or the over-fearful seem to have bothered to buy them. According to Mr. J. H. Angas, "The majority of persons who went about with guns did not at present pay anything . . . and if the fee were reduced . . . many persons would sooner pay than run any risk . . ."(8). An Act was therefore passed in 1891 reducing the fee from £1 to 2/6.

In the same year, the Game Act of 1886 was amended to provide a close season for kangaroos, and in 1892 another amending Bill was introduced. It had two important clauses. The first sought to add quail and shell parrots to the schedule of birds excepted from the close season. In the case of shell parrots, it was urged that the health of trade with England was endangered; Mr. Rounsevell quoted the case of a bird-catcher who "went to England once or twice a year with parrots and generally brought back about £2,000"(9). Perhaps he noticed that his hearer's pockets began to water, for he quickly added, "of course, only a small percentage . . . was profit." The second made another attempt to control the size of guns used by market gunners. Despite the specific prohibition of the ad hoc 1885 amendment of the 1874 Act, punt guns were widely used, as were shoulder guns of calibres up to No. 4.

The attempt to regulate the size of guns caused the rejection of the Bill. Prolonged wrangling over calibres along with the inevitable but irrelevant references to the English game laws showed the impossibility of agreement and the Bill was voted down.

In 1893, Mr. J. L. Stirling, who in 1891 had said he "had for years viewed with regret that not only kangaroos, but many other fauna, were becoming extinct," himself moved a Bill for further amendment of the Game Act of 1886. The chief interest of this Bill is that it was prepared by the Society for the Protection of Fauna and Flora. Mr. Stirling deplored the threatened extinction of "the valuable and interesting birds and animals," but he seemed to imply that the value was more important than the interest by arguing "the market price for (kangaroo) skins was sufficient justification . . . in favor of protecting the animals . . ."(10) He ran into heavy going when the old but still effective bogey of the English game laws was revived, and his Bill was discharged.

But the wind of change was beginning to blow. The skin dealers and feather traders, the bird catchers and market gunners, who had thriven for so long on public demand for their wares and public indifference to their methods, began to lose ground to the determined assaults of the enlightened people who deplored the devastation of the animal kingdom for the gratification of profit, fashion, sport, and the pleasures of the belly. The battle was to be long, and it is not ended yet, but as far as South Australia is concerned, it began in 1899 with a Bill for an Act for the Protection of Birds, introduced by the Hon. T. Playford.

This Bill had been drafted by members of the Society for the Protection of Birds at their own cost. The South Australian Branch of this distinguished British society existed in Adelaide certainly from 1896 to 1912, and some important names adorned its membership list, Sir Samuel Way being the local vice-president at this time.

The Bill, obviously the work of enthusiasts who wanted no compromise with what they regarded as the forces of evil, was predictably doomed from the start by its all-or-nothing approach to a sore problem. No one before had dared to tread on so many corns so hard and at the same time; Parliament was not used to this sort of thing in game laws. So this Bill failed. But in failing, it prepared the way for the Birds Protection Act of 1900, and therefore its importance is much greater than its fate would suggest, and its form became the model for subsequent legislation. It allotted all birds to one of three schedules. The First (and by far the largest) Schedule contained the names of birds which were *totally protected.* The Second Schedule specifically named Emus, Swans, Geese, Ducks, and Bustards, which, together with all birds *not* included in the First and Third Schedules, were to enjoy a close season of not less than *five months.* The Third Schedule listed the unprotected birds—eight only: Crows, Wattlebirds, Snipe, English starlings, chaffinches, and sparrows. Those darlings of the 1864 Game Act, the sparrow and the starling, had evidently lost their charm.

As this Bill illustrates an important stage in the evolution of the attitude which is the subject of this paper, and as it is also the foundation of the Act now in force, it deserves attention in some detail.

It consists of twelve clauses, only six of which are significant for our purpose, the others being purely administrative. Clause 3 sets out the conditions governing the schedules and empowers the Governor to proclaim Crown Lands, public reserves, and seashores, as bird protection districts in which all birds except those in the Third Schedule are totally protected. Clause 4 empowers the Commissioner of Crown Lands to declare any land a bird protection reserve at the request of the owner. Clause 5 authorises any special magistrate to grant a permit for keeping or domesticating any specified bird to any applicant except—and here it begins to hurt—to "any bird catcher, bird dealer, or seller of birds." Clause 6 sets out the various offences against birds, and—here salt is rubbed into the wounds inflicted by the last clause—if any offender be a "bird catcher, bird seller, bird dealer, he shall be guilty of an aggravated offence." The clause then goes on "Any person who shall be or enter upon any land for the purpose of committing an offence against this Act . . . shall be guilty of an offence . . ." That seems to be making certain doubly sure. Clause 7 re-affirms the ban on swivel and punt guns, and makes illegal the use of any shoulder gun of excessive size. Clause 8 prescribes the penalties for offences. Without going into detail, it may be said that the maximum penalty for a *second* offence is £5; but a third offence is classified as an "aggravated" offence, with a minimum fine of £5, rising to a maximum of £25 *and* six months' imprisonment for the third or subsequent aggravated offence; and it must be remembered that for bird catchers, etc., their first offence is automatically in the aggravated class. The Bird Protection Society must have been really determined to discourage the profit motive, for these penalties are stiff, even by to-day's standards.

The reaction was violent. The Bill's sponsor in the House of Assembly, the Hon. T. Playford, conceded that he did not feel quite happy about it; he was even a little apologetic. He kept emphasising the fact that the protection of insectivorous birds formed the main purpose of the Bill. He had gone scarcely half-way through his second reading speech when an interjector raised the cry of "game laws". Mr. Playford went to some trouble to explain that the schedules were the work of the Birds Protection Society, and that he was prepared to agree to alterations.

The views of other members ranged from damnation by faint praise to just damnation. Mr. Archibald and Mr. Batchelor between them castigated practically every part of the main provisions of the Bill: it "put bird catchers under a ban," . . . "the web and warp of the Bill were the game laws," . . . "the protection of birds was only put in to practically delude Parliament," the close season would interfere with the Christmas holiday shooting, the regulation of guns would deprive men of their livelihood, "a man would be prevented from earning a living by bird catching or slaying." Nor did Mr. Playford escape. Mr. Archibald, while claiming that "there was no warmer supporter of the protection of birds than himself," fired a final blast from the swivel-gun of invective by saying "he believed that Mr. Playford had been got at".

Never the less, the second reading passed, though members avowed the intention of cutting the Bill to a shape more to their taste at the committee stage. It never went so far. The Government changed, and the Bill lapsed.

Perhaps it was as well. That it would have been emasculated there is little doubt; and if it had ultimately reached the Statute Book its impotence would have ill-served its original purpose while standing in the way of a more practical measure. Although it failed, the Birds Protection Bill of 1899 deserves an honored place in South Australian legislation for the defence of wildlife. The debate it provoked exhausted the arguments of those who opposed it. Its very extremism proved that influential people believed that birds should be protected *for their own sake;* and this in turn had its effect on the general attitude, so that Mr. Playford felt strong enough to introduce another Bill in the next session.

The new Bill was essentially the same, although several of the exceptionable clauses were omitted. The "ban on bird catchers"—as Mr. Peake had described the "aggravated offence" provision of the lapsed Bill—had been left out, and so had the provision to empower the Commissioner of Crown Lands to direct that land should be a bird protection area at the occupier's request. The scale of fines remained nearly the same, but imprisonment could not be imposed. As Mr. Playford himself said, "a number of amendments had been embodied in the new Bill; it did not . . . give effect to the wishes of the Bird Protection Society, but it did to his own . . . certainly purely insectivorous birds should be protected all the year round . . ." Game birds, in the Second Schedule, "were protected during the mating season," and in the Third Schedule were those not protected at all. "There were some birds that persons might wish to protect on sentimental grounds . . . yet on practical grounds it was of no consequence to the community whether they were dead or alive."

These are verbatim quotations from Mr. Playford's speech(11), and it can be seen that he carefully avoided namby-pamby appeals to sentimental or humanitarian arguments. If he hoped thereby to disarm his opponents he must have been disappointed, for all the old objections were wheeled out against him, as well as some rather curious reasoning. One member considered the protection of birds by the Bill was questionable, for, he said, "the fear of man was put into animals for a certain purpose, and if that fear were removed from birds it would expose the creatures to other enemies . . . The greatest enemies of birds were not men, nor boys, but cats and dogs and foxes. If they took away the fear of the boy from birds they soon became so quiet as to be an easy prey to dogs and cats . . ."(12). One is tempted to feel a certain sympathy with Mr. Solomon in this debate. When a member complained of the difficulty of identifying the birds in the schedules—for example, how could boys know what thickheads were?—Mr. Solomon unkindly interjected, "Send them into Parliament, and they will soon find out"(13).

In the Legislative Council the debate tasted less of gall, wormwood and sour grapes, and was sweetened by some knowledge of the subject. The Hon. J. L. Stirling moved the second reading, and then proposed the insertion of the clause from the 1899 Bill which would empower the Commissioner of Crown Lands to direct that land be a protection area if the occupier requested it, and then added the unheard-of provision that the occupier of the land should be just as much bound by the consequent restrictions as the stranger(14). Here was a shrewd blow at the black heart of the game laws which had been the target of everybody's vituperation for almost forty years. Here was the most advanced and liberal thinking that the present Bill had brought to light. One would like to record that it was greeted with dignified acclaim or

at least a discreet "Hear, hear." But it would not be the truth. Indignant surprise was expressed to find Mr. Stirling prepared to deprive a man of the right to kill birds on his own property, and the new clause was lost. It did not re-appear for 19 years. It was not to become law until the attitude towards wildlife had evolved a good deal further. That the attitude had evolved substantially since 1893, when an alleged injustice to a Scotch miner could be regarded as a sound argument against a South Australian game bill, is demonstrated by the fact that the Bill of 1900 eventually passed both Houses as Act No. 745 of 1900. It was South Australia's first Birds Protection Act.

The title is important: "The Birds Protection Act,"—not just another game act. The difference finds expression in Clause 3 of the new Act: "Birds in the First Schedule shall be protected during the whole of every year," not just for a few breeding months so that the supply of game could be replenished, but for the whole of every year. The difference is of kind, not degree; the principle is established that certain birds deserve protection for their own sake. But why? Because they were of service to man. Had they been merely harmless, it would have made no difference to the community whether they were alive or dead. They had to earn their place on the First Schedule by their usefulness to man; and man, at this stage of the evolution of his attitude to wildlife, was prepared to concede the right to life in exchange.

I do not want to exaggerate the enlightenment of the community's attitude to birds in 1900—the tastier species found themselves in the Second Schedule—but it should be recorded to the community's credit that the Act made no provision for the granting of permits to kill or capture protected birds except for scientific purposes. The Act in force to-day is not so uncompromising. This state of affairs could scarcely be expected to last, and in 1903 an amendment to licence bird-catchers was embodied in the Act. Mr. Price, in the House of Assembly, seems to have summed up the point of view of those who supported the amendment when he said "he was afraid they were going in for too much restrictive legislation . . . he hoped it would not be doing an injury to those who made a living by catching birds . . . or at the occupation of duck shooting . . ." and backed his argument with the usual tired reminder of the iniquities of game laws(15).

No step appears to have been taken for the protection of animals, as distinct from birds, from 1891 until 1912, when the Animals Protection Act became law(16). Similar in form to the Birds Protection Act, though somewhat more detailed in content, it made rules for the capture, killing, and disposal of animals and their skins, and also for trespass. Much of it was later incorporated in the Birds Protection Act, but in the present context it shows two points of interest: not once was the weary ghost of the English game laws invoked as a substitute for logic; and, for the first time, an appeal was made to humanitarian feeling unmixed with any considerations of use or profit. Mr. Jackson spoke of people "who loved the indigenous birds and animals . . . their preservation ought not to be left . . . to . . . a few enthusiasts, but the Government should take it up on behalf of the whole people . . . it was a crying shame that steps had not been taken earlier to guard some of the beautiful fauna that had practically ceased to exist . . ."(17). This visionary did not even mention their value as targets for sportsmen, nor as articles of food or trade. He seems to have been thinking only of the welfare of the fauna, and had the courage to use that as an argument for their protection.

It is not necessary to examine the Acts in detail from this stage up to the present. Amendment followed amendment as loopholes appeared and had to be plugged; but the transition from game acts to protection acts had been made, and the interesting points in the evolution of the attitude to wildlife are better seen in the debates. The Acts themselves can be treated in the barest outline.

In 1919 all the separate legislation for the protection of animals and birds and for the regulation of the use of firearms for sport was repealed and replaced by a single Act, "The Animals and Birds Protection Act," No. 1365 of 1919. Although most of the old bones of contention now lay in forgotten corners, the argument about the size of guns was chewed over again; and the clause for the declaration of private land as a closed area, first proposed in 1912, was accepted at last.

Between 1919 and 1958 the Act was amended eight times, until it attained its present form as the "Animals and Birds Protection Act, 1919-1859." This one Act combines all three functions undertaken by the earlier Acts, i.e., protection of fauna, regulation of firearms, and control of game. Sufficient

power for the enforcement of all three is vested in the relevant authorities, who are given, however, a good deal of discretion as to the emphasis to be placed on the different functions and the degree of their enforcement. But so many clauses are devoted to game-keeping and trading aspects that one is at liberty to wonder if this Act is so truly a fauna protection act as its predecessor of 1900, but perhaps one should be thankful that these aspects are so carefully regulated.

The long list of amending Acts incorporated with it is chiefly interesting because they are the end-result of debates that illustrate the evolution of the attitude to wildlife. The humanitarian argument, first used by Mr. Jackson in 1912, steadily gained force as the depletion of the fauna became more evident. Mr. Shepherd explained to the House of Assembly in 1927 that "on the average something like 40 tons of wild duck were exported (annually)"(18); and, of course, legally, for bags were not limited until 1938. If this is good business, and profitable, what can be held against it, except the humanitarian argument?

Speaking against the destruction of wildlife, the Hon. T. McCallum frequently used it. For, despite all the legislation, swivel-guns were still in 1928 augmenting the slaughter, which he called "cruel and inhuman"(19), and Mr. Laffer adopted the same attitude in the debate on the 1932 amendment(20) which he introduced for the regulation of the close season. He went so far as to say "this is not a question that should be dealt with . . . from the point of view of the sportsman who desires to shoot birds . . . but . . . of the birds themselves . . . which have feelings the same as human beings."(21). In fact, it could be said that the supporters of the 1932 amendment not only founded their case but won it, too, on the humanitarian argument, which was a notable step in the evolution of the attitude to wildlife. An appeal was made to members' softer feelings, and because it supplies the sequel to an earlier part of this paper it is worth quoting. It will be remembered that in 1874 Mr. Fisher hopefully remarked that "he did not think there were many cockneys who would fire at birds little bigger than a duck's egg." Mr. Laffer described, on the authority of a letter from Mr. Brooks, the opening of the duck season at Buckland Park in the summer of 1931-32.(22) "First of all there was a number of ducks on the lagoon. At the first shot most of them flew away and left the mother birds with their young. The mother birds would fly up and down the water, and every time they went away they called out and the little ones scattered . . . When the mother birds were shot and fell into the water the little ones gathered around them seeking the protection they had a right to expect. In the end they shot not only the mother birds, but the young ones as well."(23)

An outrage of this kind is the logical application of the anthropocentric attitude that tends to guide our dealings with wildlife unless superseded by some form of the humanitarian attitude. Although the ordinary stomach turns over at the slaughter of small and defenceless creatures, what possible objection can be raised against it, *except on humanitarian grounds?* The two points of view met face to face in the debate on the 1938 amendment. Messrs. Melrose and Shannon were urging the protection of Kangaroo Rats *(Bettongia* sp.) on humanitarian grounds, when another member neatly, and perhaps unwittingly, exposed the heart of the opposing attitude by asking "Are they any use?" Mr. Shannon pressed the House to "err on the side of the animal rather than that of the person who may suffer some slight loss." The majority agreed with him, and Kangaroo Rats became totally protected.

The most recent amendment to the existing principal Act was made in 1958 for the purpose of protecting the breeding grounds of the ibis. It passed both Houses with scarcely a dissentient comment. Particularly as far as the Legislative Council was concerned, the humanitarian argument was implicit in almost everything that was said. That it could be so taken for granted is a measure of the evolution of the attitude to wildlife.

In the hundred years covered by this paper, that attitude has become more civilised, at least among the more civilised members of the community. It could be said that a good beginning has been made; for, although it took a hundred years, it is only a beginning. The critical stage for much of our wildlife has been reached, and it is up to us to see that the beginning is not just the beginning of the end. On the occasion of the debate just quoted, the Hon. A. J. Melrose, whose practical knowledge and enlightened point of view have entitled him to take the lead in these matters, described the problem

in these words: "The change in land settlement has resulted in conditions inimical to the protection of fauna . . . time is not on our side . . . already many species . . . that were reasonably common a few years ago are now either extinct or very rare . . ."(24)

That, I think, is a fair and succinct statement of the position to-day. I have tried to show how, over a century of South Australian history, the attitude to our fauna has changed. Game laws have been left behind in the past, and fauna protection laws have taken their place. Conservation is now, of necessity, the eleventh-hour fashion, and is greatly to be preferred to exploitation, its opposite in this context. Of course, like most other practices in a materialistic civilisation, conservation has to justify itself by preserving that which is useful, and it is just this obligation that raises the suspicion that the word has some slightly sinister connection with the Latin "servus,"—a slave.

Other countries have had the same problems, and still have them—Africa, for example. Black Africans apparently regard the animals as vermin, to be used for sport or food or profit while they last, in much the same way as we ourselves were once apt to do. Their attitude is said to be typified by the retort made to a reproachful Englishman: "You have no wolves in England. Why should we be expected to keep ours?" Never the less, something is being done, and control is exercised through issue of game licences. The scale of fees should give food for thought in this State where a gun licence costs 10/- and a game licence £2. In Kenya, a full year's licence costs £50, and a special licence to shoot one elephant £75. While this policy may fill the departmental coffers, it cannot prevent the ultimate extinction of wildlife. At best, it can only slow the pace of destruction. Even so, a high cost for licences has a good deal to recommend it—but only if the inevitable poaching can be prevented, and to do that we are led full circle back to game laws.

Sooner or later we are forced to decide why fauna should be protected at all. Why should not all creatures, except *Homo sapiens*, be allowed or even assisted to become extinct?

Of course, it is axiomatic that self-justifying animals like the sheep and the other domestic beasts that help man to maintain not only his existence but also his pre-eminence should be preserved. The same logic must obviously allow the useless to die out—for example, the draught horse, now quite superseded by the internal combustion engine and artificial fertiliser.

Farmyard and barndoor animals are one thing; their existence in any case depends on man, whose right to deprive them according to his needs of either birth or life no reasonable person will deny. The farmer has a good case for regarding himself as the prime cause in their life. With wildlife it is quite different, and an anthropocentric attitude is hard to sustain. One may believe that one is the centre of the universe, but proof is not easy; and if there is any doubt about it, there is also doubt about the extent of one's rights over wildlife. The extent of these rights lies at the heart of any theory of conservation or protection, and is the starting point of all laws that put that theory into practice, whether they are called protection laws or game laws.

I have referred to the humanitarian attitude as the most advanced stage so far in our approach to wildlife, and I have tried to show that other attitudes, some of which still command a degree of support, prevailed for a long time. We saw the anti-game law argument—it died of exhaustion almost fifty years ago; and there was the business argument—honest men should not be deprived of a living catching and slaying birds; and there was the sporting argument—it was a shame not to end the close season in time for the Christmas holiday shooting; and, lastly, there was the useful-to-agriculture argument.

Nowadays, no one seriously considers his livelihood imperilled by the banning of swivel-guns, nor the imposition of the bag limit unduly restrictive. The business argument persists, but with diminished force: it is not quite so respectable as it was, and those who catch birds for a living prefer to have it believed that they chiefly operate on species that are in plague numbers. Even the aid-to-agriculture argument in favor of insectivorous birds is not what it was since the introduction of modern insecticides. The only argument left with any validity is the humanitarian argument, and I suggest it is the only proper basis for future action.

It is curious how slowly the humanitarian attitude developed in the Parliamentary debates, although it was adopted in the press as early as 1889(25). Humane and moral

grounds were not advanced as an argument for the protection of wildlife until 1912, and not used with either confidence or effectiveness until 1928. Appeals for sparing animals or birds were usually supported by the arguments of profit or use, on what some would call sound practical grounds as opposed to mere sentiment.

It is sad that the humanitarian attitude, whatever its application, is so often found in the last ditch; its force is not usually recognised until the so-called practical measures have proved inadequate and the case is desperate. On purely practical grounds, there is little to be said in favor of the preservation of wildlife; what loss that can be weighed or measured or valued in money is represented by the extinction of the dodo, the bandicoot, or the wild duck. Yet it is just on the practical and financial fields that any department charged with the conservation of wildlife must operate. The fauna must be "managed"; bargain counter arguments(26) are sometimes used: people who enjoy destroying fauna with guns must be persuaded that higher licence fees mean better shooting, which implies that the aim of conservation is a better supply of game.

In any conflict between humanitarian ideals and the interests of a *large* section of the community, humanitarian ideals risk defeat. But in cases where the interests of the community are not involved, one would expect humanitarian ideals to win every time. Yet when the life of something harmless is at stake, there comes the question "Is it any use?" The humanitarian attitude does not demand that a creature should prove its claim to life by being useful to man. Everyone knows the old story which tells how Michael Faraday answered the lady who asked what was the use of his newly-invented electromagnetic generator: "Madam, of what use is a new-born child?"

I am not suggesting that the case for sparing the useless animal rests on the possibility that it might evolve into one of the lords of creation, or even into a mountain of meat or wool. But there is a piquancy in the thought that if the useless creature had been the lemur-like ancestor of the primates and the time a million years ago, the sabre-toothed tiger (or whatever else was about to annihilate it) could have sunk his fangs into the worthless thing with the complacent reflection, "But is it any use?"

Usefulness can be a poor criterion of worth, and it is usually taken for granted that the arbiter is man. This is the anthropocentric attitude, and faith in it has given man an unenviable position in his relationship with the animal kingdom, and W. R. Inge described it thus: "It is an unproved assumption that the domination of the planet by our own species is a desirable thing, which must give satisfaction to its creator. We have devastated the loveliness of the world; we have exterminated several species more beautiful and less vicious than ourselves; we have enslaved the rest of the animal creation, and have treated our distant cousins in fur and feathers so badly that beyond doubt, if they were able to formulate a religion, they would depict the Devil in human form."(27)

An entirely new light was thrown on man's relationship with the animals by Darwin's theory of the origin of man. Instead of being a unique and superior creation, man found himself to be merely the most successful member of one big family, and to his credit it must be said that, with the sense of kinship, there has at last begun to grow a sense of responsibility towards his poor relations. It seems to me that this is a highly civilised point of view which is worthy of universal adoption.

While our relationship may be a distant one, and we may not be proud of such lowly ancestors, at least we can feel that we are creditable descendants; whereas if we prefer to claim descent from gods and heroes we cannot deny our degeneracy, for none of us is a god, and few are heroes. And if we are indeed creditable descendants, we owe at least something to our distant kin, if only a recognition of their right to life. I do not want to load this thought with more than it can bear, but, assuming that we are in fact endowed with souls, as we are told by our spiritual pastors and masters, we must ask ourselves if our animal relations have them, too; and if not, where along the line we acquired ours. The possibility that animals, even of the more repulsive sort, have souls cannot be altogether fantastic if millions of human beings, from Pythagoreans to Buddhists, have been prepared to accept it. We would be less inclined to kill for fun if we thought that thereby a soul was being separated from its body. Even if we are not prepared to go so far, we could perhaps give a little thought to the sacredness of animal

life that Walter de la Mare had in mind when he wrote the little verse that goes as follows:

Hi! handsome hunting man
Fire your little gun.
Bang! Now the animal
Is dead and dumb and done,
Nevermore to peep again, creep again, leap again,
Eat, or drink, or sleep again, oh, what fun!

Pure sentimentality, says the hard-boiled realist. He may be right. But just as yesterday's marvel is to-day's commonplace, so to-day's sentimentality *may* become tomorrow's realism. Not so very long ago, it would seem to have been pure sentimentality to believe that the barbarous Chinese, for example, had feelings like civilised men, if we are to take seriously an on-the-spot description of an execution by slicing as reported in "The Register" for November 14, 1900: "This is borne by the average Chinaman . . . with what . . . would be called fortitude, but what in this case is apathy due to the fact that Celestials are destitute of nerves as we understand them." To-day we are not only prepared to believe that in the battle for survival the Chinese may prove to be our equals, we also hope not our superiors.

Our views on these things *do* change; and just as hell is said to be paved with good intentions, so the path of our own development is littered with the ideas that we have discarded. We can congratulate ourselves on the growth of our humanitarianism while making allowance for the numerous lapses, which at least we have the grace to notice sometimes. The recent fashion for giving animals unsolicited rides in space vehicles caused the following letter to be written to "The Times" of London:

To the Editor,

Sir,—I hope I am not a vindictive Christian, but I could wish that in the next era of "civilization" the monkeys may get on top and begin shooting scientists into space.—Yours faithfully,

J. E. E. Tunstall.

But to come back to earth, here in South Australia we have our problems; we are in a better position to cope with them than our forebears, which is as well, because time is running out. Most people now are prepared to accept the theory that wildlife belongs to the whole community, but there are practical difficulties. If A wants to shoot a duck, and B just wants to enjoy looking at it, and A legally shoots it, it is hard to see how B gets his share. A reasonable and humane compromise would be to confine A's shooting *rigidly and absolutely* to biological surpluses.

As to unregulated shooting, its only supporters are those who indulge in it, while the more intelligent agree with the view expressed in the Legislative Council by Mr. A. J. Melrose that wildlife must be protected from the "insane attacks of armed human beings." Until effective selectivity is exercised in the issue of gun licences, it is hard to see how the insanity can be checked. To the same end, those in authority might consider the banning of shooting from motor vehicles and the banning of shooting at night. Enforcement would be difficult, no doubt, but in other countries it is believed to be worth the effort.

Another and very difficult problem is presented by the widespread fashion for keeping birds in cages. This practice, if it involves serious restriction of a bird's natural characteristic of flight, is barbarous by humane standards, and if the keeping of cage birds depends in any way on the trapping of wild birds it is worse.

The closest scrutiny should be turned unblinkingly on the trapping of birds for sale, for the monetary rewards are enough to tempt the virtue of the virtuous. For example, the average price of birds exported in 1955-56 to Japan, which apparently buys the cheaper sorts, was £4 each; while those sold to the U.S.A., at the opposite end of the price scale, averaged £47 each.

So long as the trading and sporting aspects of the anthropocentric attitude persist in large areas of public opinion, some concession must, I suppose, be made to it. These problems would be much easier to solve, it seems to me, if the paramount consideration in every case were the good of the fauna, not the interest of any special group who may want to eat it or shoot it or cage it or sell it. Nothing short of complete application of humane principles has any chance of permanent success, for the humane way is also the practical way.

And if we do take it, the evolution of our attitude to wildlife will be complete, and our fauna protection laws, supported by a

humane public opinion, would succeed in saving our wildlife from the destruction that now threatens it.

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