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Colonists and Colonials;  
Animals' Protection Legislation in New Zealand,  
1861-1910.

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## Abstract.

The protection of animals in New Zealand may be aptly described as a rapid transition. In less than fifty years, the emphasis of the animals' protection policy completely transformed. The forty-nine years between 1861 and 1910 were, therefore, the busiest and most turbulent period in animals' protection policy's complicated and engaging history. In 1861, the animals' protection policy firmly emphasised the protection of *particular* imported species. The vast majority of indigenous birds were, therefore, unprotected. Underpinning the protection of animals at that stage was the predominant colonist national sentiment, and their vision of the Britain of the South. By 1910, however, every indigenous bird was protected absolutely in New Zealand unless it was exempted by Order in Council. The reasons for the change in the animals' protection policy were many and varied, but underlying all of them was the colonial adoption of an indigenous national sentiment. Rather than the philosophy that underpinned the protection of animals for policy makers, therefore, it was the national sentiment of colonist and colonial society that was reconstructed. In that respect, the nineteenth-century emphasis that was placed upon the protection of imported species was no different to the development of a twentieth-century native bird conservation ethic.

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### **Abbreviations:**

*AJHR*                      *Appendices of the Journals of the House of Representatives.*

IA                          Internal Affairs.

LE                          Legislative Department.

M                           Marine Department.

*NZPD*                      *New Zealand Parliamentary Debates.*

## INTRODUCTION:

In 1861, the first statute aimed at the protection of animals was enacted in New Zealand. The Protection of Certain Animals Act 1861 was then 'continually and almost constantly' amended between 1862 and 1920.<sup>1</sup> This had the effect of creating a complicated and often confusing system of game laws. By 1907, the extent to which the public were able to interpret the animals' protection policy was questioned, and the laws were described as being 'almost as complicated as those in relation to Native matters'.<sup>2</sup> The two most significant causes of confusion were constant amendment and the conflicting interests of different factions in parliament. Between 1861 and 1910, colonisers, farmers, acclimatisers, game hunters, conservationists, and Maori all attempted to influence the animals' protection policy at different stages. Complication and confusion was, therefore, inevitable.

In less than fifty years, the emphasis of the animals' protection policy was completely transformed. In 1861, the animals' protection policy firmly emphasised the protection of imported species. The goal was to promote the introduction and acclimatisation of *particular* animals and birds to the colony. The vast majority of native birds were, therefore, unprotected; in 1878, a single person was recorded as having shot over 2000 kiwi.<sup>3</sup> Although the species is protected absolutely today, and that statistic may seem abhorrent to many of the present generation, there existed no statutory restriction upon hunting kiwi in 1878. And although a number of species provided food for some settlers, the quality of New Zealand's indigenous birds was often lamented (and sometimes ridiculed) by many nineteenth-century writers. The kiwi was described as being the 'ugliest bird one can well imagine' and 'a cross between a snipe and a monkey'.<sup>4</sup>

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<sup>1</sup> R M McDowall, *Gamekeepers for the Nation: the story of New Zealand's acclimatisation societies 1861-1990*, Canterbury University Press, Christchurch, 1994, p.57.

<sup>2</sup> *New Zealand Parliamentary Debates (NZPD)*, vol 142(1907), p.788. [Wilford]

<sup>3</sup> T H Potts, 'National Domains', (1878), in T H Potts (Ed), *Out in the Open: A Budget of Scraps of Natural History Gathered in New Zealand*, Lyttelton Times Company, Christchurch, 1882, p35.

<sup>4</sup> W Tyrone Power, *Sketches in New Zealand*, Longman, Brown, Green, and Longmans, London, 1849, p.73.

By 1910, however, every indigenous bird was protected absolutely in New Zealand unless it was exempted by Order in Council.<sup>5</sup> The enactment of this provision marked the establishment of a native bird conservation movement in parliament, and signaled the beginning of its complete appropriation of the animals' protection policy in New Zealand. The story of the animals' protection policy, however, was not one of gradual transition. Nor was the period between 1861 and 1910 dominated by acclimatisation of imported species or native bird conservation. Rather, the policy was captured by a number of parliamentarians who represented a third interest; game hunters, or sportsmen as they preferred to be known, controlled the formulation of animals' protection legislation throughout the vast majority of the interim period. The native bird conservation movement in parliament, therefore, established its influence in a remarkably short period of time.

The reasons for the change in the animals' protection policy are many and varied, but underlying all of them is the non-Maori adoption of an *indigenous* national sentiment. The way we see ourselves as New Zealanders is what differentiates us from the rest of the world. Our peculiarity has, therefore, engendered intense pride and is guarded jealously. And while contemporary conservationists may rue the previous legislative neglect of our native birds, it merely reflected the national sentiment of the time; New Zealand was known as the 'Britain of the South', and the majority of non-Maori society identified as Englishmen or Britons. When that national sentiment changed at the end of the nineteenth century, however, so too did the level of protection that was afforded to our native birds. In that respect, the mid-nineteenth-century emphasis that was placed upon the protection of imported species was no different to the development of a twentieth-century native bird conservation ethic.

Very little academic study of the animals' protection policy has been attempted by historians in the past. G M Thomson's detailed study of the introduction of plants and animals to New Zealand briefly examined the role of the animals' protection policy in that process. He concluded that the primary objective of the animals' protection

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<sup>5</sup> Animals Protection Amendment Act 1910, s10.

policy between 1861 and 1907 was the preservation of game hunting.<sup>6</sup> Others have also commented briefly on the implications of the policy. R M McDowall's history of the acclimatisation society movement noted the assistance which the animals' protection policy's afforded to the country's many acclimatisation societies. James Feldman's recently completed report for the Waitangi Tribunal focused upon the animals' protection policy inasmuch as it effected Maori access to the kereru.<sup>7</sup> The animals' protection policy, therefore, has only ever *contributed* to academic study rather than provided the primary focus; these studies focused on particular provisions or acts rather than the animals' protection policy as a whole.

The study of national identity has been covered more extensively in the past. Keith Sinclair has discussed the emergence of the *kiwi* identity, but he chose to focus on how that was reflected in popular literature. James Belich has also published material on what he coined 'Making Pakeha'. But neither has identified the relationship between national identity and the animals' protection policy. Paul Hamer did this in his 1992 masters thesis. He believed that the primary objective of the animals' protection policy was the preservation of nature, and that the definition of nature depended largely upon the definition of national identity. The emphasis that the Protection of Certain Animals' Act 1861 put upon protecting imported species was, therefore, no different to the protection of native birds in the 1890s.<sup>8</sup> Like Belich and Sinclair, however, Hamer's thesis focused on other aspects of national identity. It did not analyse the animals' protection policy in any great detail.

This thesis will attempt to go some way to redressing the hole that historians have left, and will illustrate the relationship between national sentiment and the protection of animals in New Zealand. In doing so, it will chart the development of the animals'

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<sup>6</sup> G M Thomson, *The Naturalisation of plants and animals in New Zealand*, University Press, Cambridge, 1922, p.546.

<sup>7</sup> McDowall, 1994; James Feldman, *Treaty Rights and Pigeon Poaching: Alienation of Maori Access To Kereru*, Waitangi Tribunal Research Series, January 1998.

<sup>8</sup> Keith Sinclair, *A Destiny Apart. New Zealand's Search for National Identity*, Unwin Paperbacks in association with Port Nicholson Press, Wellington, 1986; James Belich, *Making Peoples: A History of the New Zealanders From Polynesian Settlement to the End of the Nineteenth Century*, Allen Lane The Penguin Press, Auckland, 1996; Paul Allan Hamer, 'Nature and natives. Transforming and saving the indigenous in New Zealand', MA Thesis (History), Victoria University of Wellington, 1992, pp.116-117.

protection policy from its emphasis upon the introduction and acclimatisation of particular imported species to the establishment of a native bird conservation movement at the turn of the century. The thesis will, therefore, perform two primary functions. The first is to examine colonist and colonial notions of national identity, and the central role that particular animals and birds played in the proliferation of these national myths. Detailed analyses of every animals' protection act that was passed between 1861 and 1910 will then elucidate the significant correlation between the way we saw ourselves and the animals we protected.

Chapter one will discuss colonist national sentiment in New Zealand during the nineteenth-century. It will examine the characteristics of New Zealand's mid nineteenth-century alter-ego, the 'Britain of the South', and will explain the role that the acclimatisation of particular animals and birds played in the conception and proliferation of that national myth. Chapter two will analyse the animals' protection statutes that were enacted between 1861 and 1866. It will demonstrate how the animals' protection statutes that were enacted in 1861 laid the foundation from which the ensuing legislation developed, and how these statutes reflected the national sentiment of the time. The Protection of Animals Act 1867 possessed major implications for the protection of animals in New Zealand. Subsequent to the enactment of this statute, the country's sportsmen were able to seize control of the animals' protection policy. Consequently, the policy became very much the antipodean equivalent of England's dreaded game laws. Chapter three will, therefore, analyse this 1867 Act and the amendments that were enacted prior to 1881.

Part two of the thesis is entitled 'The Plight of the Natives'; it will focus upon the protection of native birds, and how the emergence of a native bird conservation movement merely reflected the creation of an indigenous national sentiment. Chapter four will begin by summarising the protection of native birds between 1861 and 1881. It will also explain why the vast majority of native bird species had been largely disregarded in that period. But the primary role of the fourth chapter is to explore the roots of New Zealanders' identity as *kiwis* and the reasons why that developed. The final task of chapter four is to explain why the Maori members of the House of

Representatives (MHRs), who had been thus far silent in regard to the protection of animals, suddenly involved themselves in the formulation of animals' protection legislation. The final chapter of this thesis will demonstrate how this new national sentiment was reflected in the animals' protection statutes, and will trace the establishment of native bird conservation in New Zealand. It will also document the repeated representations of Maori MHRs, and will highlight the regularity with which Maori concerns about the preservation of native fauna were overlooked.

In terms of sources, an in-depth study of the animals' protection policy was made difficult by a distinct lack of resources. The majority of what secondary material existed offered little insight into the motivation of the animals' protection policy. It also needed to be taken in context; McDowall's study, for example, was partially funded by a number of the country's various fish and game councils, which are the 'bureaucratic descendants of the acclimatisation societies'. Consequently, the impartiality of his study has been questioned.<sup>9</sup> Moreover, the shortage of secondary resources was not off-set by an abundance of primary records. The most obvious sources for this study were the minute books of each select committee to which successive animals' protection bills were referred. The Legislative Department, however, kept very uninformative records of each committee's proceedings; many minute books merely presented facsimiles of the bill, and did not explain their recommendations. The reasons why a number of critical amendments were introduced, therefore, remained unexplained.

But careful analysis of those resources that *were* available rendered the study of most statutes possible. Much information relating to the intention of particular animals' protection statutes was gleaned from speeches published in the *New Zealand Parliamentary Debates*. To a large extent, *NZPD* provided the only insight into both the successful and unsuccessful parties who attempted to exert their influence upon the various animals' protection bills. Parliamentary debates have, therefore, provided ample evidence and explanation of MHRs' and Legislative Councillors' motives in many instances. Particularly during the 1860s and 1870s, however, the passage of

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<sup>9</sup> Feldman, p.8.

animals' protection bills through parliament was conspicuous only by a lack of debate. In such cases, analysis of the acts relied upon interpretation of the statutes themselves and examination of public submissions and petitions that related to the administration and application of the acts. The latter provided a valuable insight into the growing relevance of the animals protection policy to Maori at the turn of the century, and proved to be particularly useful when the response of the government was also available.

A number of names and labels which are used frequently in this thesis require definition. *Colonist* is used to define the first generation of non-Maori New Zealanders who immigrated here from other parts of the world, and of whom many identified as Britons. The term *colonial* refers to the colonists' descendants who were born here and identified as New Zealanders. Central to this thesis also is the differentiation between the many groups in parliament which attempted influence the animals' protection policy. So rather than refer to the Crown and Crown policy, labels have been assigned to each of the major parties for ease of identification. As their motives were very much the same, the terms *acclimatisers* and *sportsmen* have been used interchangeably. This group argued for the implementation of hunting restrictions, which would preserve game for hunting. *Conservationists* argued for the absolute protection of all native birds. And *Maori* sought to secure undisturbed Maori access to native birds for traditional uses. Unless noted otherwise, *farmer* refers to small crop-farmers and sheep farmers as opposed to the large run-holders or pastoral farmers of the South Island. The latter group constituted a significant proportion of acclimatisers and sportsmen.

The evolution of the animals' protection policy has founded an intriguing (albeit complicated) history. Moreover, the development that took place between 1861 and 1910 facilitated the establishment of twentieth-century conservation. The contemporary imperative that has been placed upon the conservation of New Zealand's native birds, however, has not always been the government's (or society's) prerogative. The primary objective of this thesis is to illustrate that the animals' protection policy during this period was shaped by the national identity of non-Maori

colonists and colonials. While this thesis extends only to 1910, today's struggle for control over the conservation of native fauna merely reflects the extent to which New Zealand society has appropriated indigenous fauna as sources of national pride. Maori aspirations have been constantly overlooked and have, therefore, remained largely unaltered over the last century.

## CHAPTER ONE:

### The Britain of the South and the pre-1861 milieu.

Let Englishmen go where they will, they carry with them their instinctive love of sport, and this is very manifest in the extreme anxiety of the colonists to stock their rivers with salmon and trout, to introduce deer and hares, and to fill their waste lands with pheasants, partridges, and other game.<sup>1</sup>

The natural fauna of New Zealand was generally considered inutile by colonists and explorers.<sup>2</sup> In fact, the nineteenth-century acclimatisation movement in New Zealand exceeded the collective efforts of any other country.<sup>3</sup> European colonists, therefore, tackled acclimatisation with fervour. The reasons for this acclimatisation drive were many and varied, but all stemmed from the dramatic contrast between the antipodean colony in the South Pacific and the Old World countries in the northern hemisphere. The establishment of particular animals and birds from around the world furnished settlers with a source of food, and would also provide some relief from homesickness caused by colonists' unfamiliarity with their new home. And while the acclimatisation of animals and birds to New Zealand conditions possessed immediate benefits for colonists, it reflected equally the needs of colonisers; the acclimatisation of predominantly British fauna was central to the Britain of the South ideology which was used in New Zealand and abroad to attract settlement, amongst other things.

This chapter will begin by exploring the Britain of the South myth, and how New Zealand was portrayed in this manner overseas. After doing so, the chapter will demonstrate how the Britain of the South myth, and those who perpetuated it, would benefit from the acclimatisation of game animals and the species reminiscent of England. The last task of the chapter will be to investigate pre-1861 acclimatisation.

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<sup>1</sup>Anglo-New Zealander, 'Sport at the Antipodes', *The Field, the country gentleman's newspaper*, London, 13 July 1872, p.48

<sup>2</sup>For example see: C Hursthouse, *New Zealand or Zealandia? The Britain of the South*, Stanford, London, 1857 and W Tyrone Power, *Sketches in New Zealand*, Longman, Brown, Green, and Longmans, London, 1849.

<sup>3</sup>R M McDowall, *Gamekeepers for the Nation: the story of New Zealand's acclimatisation societies. 1861-1991*, Canterbury University Press, Christchurch, 1994, p.14.

This will show how these efforts were largely fruitless, and explain the perceived need for the animals' protection policy.

When settlers arrived in New Zealand, in many cases finances did not permit them to return to the other side of the world if they did not like it here. So, many in the new wave of Anglo-Saxon New Zealanders were restricted to only two options. One was to adopt the New Zealand way of life that Maori had enjoyed for centuries; the other was to introduce to their adoptive home all of the civilisation that had *blessed* their ancestral homes. It is not difficult to imagine a typical settler response to any suggestion of adopting the 'savage' and 'barbarous' lifestyle of Maori.

Rather than adapting their lifestyle to New Zealand conditions, therefore, settler society attempted to adapt New Zealand conditions to meet their ideal lifestyle. This was a natural part of any colonisation process. New Zealand historian Jeanine Graham believed that the first stage in evolving a uniquely New Zealand way of life was the adaptation of a northern heritage to southern conditions. Only when that foundation was laid, she argued, would the next generation develop its own form of national identity.<sup>4</sup> European ideas and ideals of racial superiority not only demanded that European culture should dominate the indigenous, but considered it an inevitable consequence of colonisation. Rather than adapt to New Zealand conditions, therefore, colonist culture would usurp then replace totally the indigenous in New Zealand. Cultural homogeneity became a hallmark of nineteenth-century settler society.<sup>5</sup>

Great Britain (but more specifically England) was the obvious model for the reinvention of the New Zealand landscape, as a large proportion of New Zealand's non-Maori settlers came directly from there or its dependencies. As it was, New Zealand's natural conditions were constantly compared with Great Britain. Early Canterbury settler Thomas Chalmers wrote of this in 1854:

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<sup>4</sup> Jeanine Graham, 'Settler Society', in W H Oliver with B R Williams (Eds), *The Oxford History of New Zealand*, Wellington, 1981, pp.112-113.

<sup>5</sup> Graham in Oliver (Ed), p.116.

I am also persuaded that the New Zealander will retain more of the Briton, than any other colonist, for the following reasons. We have no other colony which so much resembles England in climate, size, and position.<sup>6</sup>

Such similarities were augmented by selective acclimatisation and immigration, and New Zealand was affectionately dubbed the 'Britain of the South'.

Colonists, however, were not content with a mere replication of the 'Old Country'; the colonist dream was not a Britain of the South *per se*. Rather, these idealists were interested only in appropriating the best of British for their new home. In the age of urbanisation, industrial development, and major population growth, New Zealand colonists sought to reproduce the rustic charm of rural England - 'an Arcadian, romanticised, English country side of myth'.<sup>7</sup> The term Britain of the South, therefore, meant an Arcadian garden state based on an English model. Deficiencies in the British model were identified, and the policy makers made conscious efforts to avoid them in New Zealand. In terms of the animals' protection policy, the inequalities augmented by the game laws in England were to be eschewed by the provision of access to game animals for all.

There existed a number of reasons to acclimatise many of the useful, ornamental, or nostalgic animals of the old world to New Zealand. Some were ideological, some were practical, others were financial. All of these reflected the fundamental elements of the Britain of the South.

As an Arcadian state based on the rustic English countryside, the introduction of the animals and birds reminiscent of the Old Country was central to creating the Britain of the South. Although sentiment was a significant incentive to acclimatise a number of species which McDowall described as not 'especially beautiful or of any culinary or other particularly useful character', the introduction of nostalgic species had another

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<sup>6</sup> Cholmondley cited in Keith Sinclair, *A Destiny Apart. New Zealand's Search for National Identity*, Unwin Paperbacks in Association with the Port Nicholson Press, Wellington, 1986, p.15.

<sup>7</sup> Paul Hamer, 'Nature and natives. Transforming and saving the indigenous in New Zealand', MA Thesis (History), Victoria University of Wellington, 1992, p.39.

perhaps more significant role related to the nation making of New Zealand.<sup>8</sup> The eventual goal was to replace the indigenous terrain with a contrived, predominantly British, landscape. The indigenous had no part in the Britain of the South myth; the fantail was to be replaced by the sparrow.

The need for the large scale acclimatisation of British flora and fauna was, therefore, emphasised. The thrush and blackbird are examples of avifauna protected from 1861 that illustrate this point. The sparrow was not protected in 1861 as were the thrush and blackbird. However, the introduction of the sparrow reflected equally the nostalgic face of acclimatisation. In comparison to game birds such as pheasant, the sparrow offered little to the sportsman or those in search of dinner. Nor is it renowned as a particularly beautiful species of bird. The sparrow was, however, a notably British bird which would enhance the supposedly British disposition of New Zealand. In 1877, Alfred Simmons wrote of the delights the sparrow might offer Englishmen in New Zealand:

The smoky little sparrow is so common an institution at home that English people may be apt to smile at the idea of transporting a boatload of the dirty little “chows”, for the behoof of Englishmen at the other extremity of the world. Yet, we can assure such that there are few things that a Britisher so much misses in a foreign land [as the sparrow]. The roadways seem dull and the town streets so peculiarly quiet in some countries that, at first sight, one cannot imagine how it cometh to pass, or what it is that is palpably missing there is no chirping, quarrelling, frowsy little “chows”.<sup>9</sup>

While creating a uniquely British ambience, the proliferation of the sparrow in New Zealand would return to haunt the horticulture and agriculture industries as is reflected in the enactment of the Small Birds Nuisance legislation in the late nineteenth and early twentieth century.

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<sup>8</sup> McDowall, 1994, p.9.

<sup>9</sup> Alfred Simmons, *Old England and New Zealand*, Stanford, London, 1879, p.72.

The garden paradise that was New Zealand was to be shared by all New Zealanders. Indeed, the Britain of the South was to be an egalitarian society. Station in society would not be dependent upon ancestry or title. A prime example was Edward Gibbon Wakefield who after three years imprisonment at Newgate, exerted his major influence upon the colonisation of New Zealand. Figurehead of the New Zealand Company, he went on to become a member of the Wellington Provincial Council and MHR for the Hutt. Indeed, the only requisite was hard work. Colonist society sought to secure for themselves in New Zealand the lifestyles that were denied to many in England. Charles Hursthouse very neatly summed up this aspect of the Britain of the South. His vision was of a country where ‘peasants are farmers’ and ‘peasant poaching would be an offense unknown’.<sup>10</sup>

Access to game became one of the keys to achieving settler intent. English society was such that access to game, whether for food or sport, was restricted to the privileged few. Those who dared to help themselves were often mercilessly punished. William Colenso warned of this in 1861, and illustrated his point by reporting the regret with which he read of a poor man in Victoria mercilessly fined for his first offence.<sup>11</sup> In New Zealand, this paradigm was to be reversed. So it was, and every person enjoyed the right to shoot. The only problem was that, in its natural condition, New Zealand offered very little to the sportsman. These sentiments were recorded often by nineteenth-century writers such as Charles Hursthouse. With the exception of pigeons and wild fowl, Hursthouse lamented the hunters’ lot in the colony. New Zealand, he claimed, was undoubtedly the worst country in the world for shooting.<sup>12</sup> The need to introduce England’s game animals and birds was, therefore, highlighted.

Obviously, the establishment of a sustainable game population able to service the majority of society would not in itself create an egalitarian society. It could be argued that any country, be it an Old World country like England or a New World country like New Zealand, will have its share of rich and poor. The provision of game for

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<sup>10</sup> Hursthouse, 1857, i, p.128.

<sup>11</sup> *New Zealand Parliamentary Debates (NZPD)*, 1861, p.290.

<sup>12</sup> Charles Hursthouse, *An Account of the Settlement of New Plymouth in New Zealand*, Smith, Elder, and Co, London, 1849.

everybody, however, would provide a superficial but nevertheless significant step towards overcoming the inequalities of the Old Country.

Indeed, a New Zealand swarming with game *alone* might not enhance a reputation as a classless society. More than a symbolic move towards the egalitarian goal, however, a large sustainable game population would also produce one of the greatest sporting fields in the world - and the financial benefits that accompany such a label. These sentiments were echoed in the words of William Fox, who believed that the promotion of field sports was ample reason to introduce legislation to protect game species. In an 1877 article entitled 'Sport at the Antipodes', the author known only as the Anglo-New Zealander stated excitedly:

and with rapidly increasing facilities of travel, we may expect at no very distant date to find some of our keen sportsmen including a month's shooting in New Zealand among their season's engagements! . . . we may look forward to some good shooting on the other side of the globe.<sup>13</sup>

When the game animals were not being exploited by hunters, pheasants, quail, red deer, and partridge would contribute greatly to the Arcadian imagery associated with New Zealand.

The Britain of the South was to be a garden paradise and an egalitarian society. While work still needed to be done to secure the characteristics of the Britain of the South described above, the country provided the best possible basis upon which the Britain of the South could be built. This was at least the image portrayed in the nineteenth-century, where New Zealand was described as a country:

teeming with milk and honey; a fertile soil, unequalled climate, plenty of wood, water, copper, coal, lime, stone; everything, in fact, except a population to enjoy the bounteous gifts offered by Providence with so lavish a hand.<sup>14</sup>

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<sup>13</sup> Anglo-New Zealander, 'Sport at the Antipodes', p.48.

<sup>14</sup> Power, p.194.

The successful establishment of the Britain of the South would see New Zealanders appropriate and exemplify all that was good in the British empire. Augmented by their strong similarities, New Zealand would be her strongest son. Before long, a new Great Britain would emerge in the South Pacific. This dream was reflected in the literature of the time:

A new England would spring up in the Southern Ocean, a source of wealth in time of peace, and in war a strong son to assist. The cool breezes, invigorating climate, and the agricultural pursuits of the children of the soil will produce a race more resembling their progenitors than any of our colonies.<sup>15</sup>

To this day, some of New Zealand's older towns and cities maintain a strikingly English feel about them. Such similarities were reflected by Alfred Simmons who described New Zealand towns as 'essentially English in appearance'. He postulated that the average Englishman would struggle to differentiate between the English towns and 'nine out of ten' New Zealand towns, so convinced was Simmons of the two countries' similarities.<sup>16</sup> Cambridge and Christchurch stand testament to this, and have maintained a particularly English disposition throughout the nineteenth and into twentieth-century New Zealand.

Before the first organised settlers arrived, Christchurch was destined to epitomize the English colonisation of New Zealand. In 1850, the Society of Canterbury Colonists was formed in Britain with the purpose of facilitating British settlement. In that same year, the Canterbury Association declared its intention to 'plant a Church of England colony on lines similar to the Presbyterian settlement at Dunedin'.<sup>17</sup> No mention of the indigenous was made. Modern day commentators have reflected upon the degree of success with which Canterbury colonists aspired to create their Arcadian dream. New Zealand novelist Maurice Shadbolt noted:

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<sup>15</sup> Power, pp.193-194.

<sup>16</sup> Simmons, p.52.

<sup>17</sup> Cited in E S Dollimore, *The New Zealand Guide*, Wise, Dunedin, 1962, p.138.

It [Christchurch] was a garden - perhaps *the* garden, where Adam walked with Eve - that the pioneers most wanted. A garden was made. The city seems to be in bloom . . . Even the factories pride themselves in immaculate floral settings.<sup>18</sup>

The English character was enhanced by natural conditions; the river Avon that flowed through the city imparted a 'charming old-world atmosphere'.<sup>19</sup> Christchurch was 'more English than England'. According to Shadbolt, Christchurch:

Is far more than an antipodean facsimile of an English market town. No English city was ever quite so coherent - or contrived - in character. No English city was ever so manicured.<sup>20</sup>

This was the ultimate complement to Canterbury colonists. What is more, it reflected powerfully the New Zealand colonists' Arcadian dream.

The reality, however, might have been quite different; others were less convinced of the colony's similarity to England. In 1838, the London *Times* warned its readers against the Arcadian visions of the New Zealand Association which it described as the 'gorgeous fancy' of Edward Gibbon Wakefield.<sup>21</sup> In 1872, the garden paradise that was Christchurch was offset by less pleasant accounts of Auckland. The former capital was described as the 'worst smelling city in the Australasian colonies'. In comparison to England, living conditions were similarly rejected:

The rooms in every case . . . have less finish about their internal fittings than a housekeeper's cupboard in England. Even the best houses are much smaller than the average of English houses.<sup>22</sup>

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<sup>18</sup> Maurice Shadbolt and Brian Brake, *Readers Digest Guide to New Zealand*, Readers Digest, Sydney, 1988, p.274.

<sup>19</sup> Dollimore, p.138.

<sup>20</sup> Shadbolt, p.275.

<sup>21</sup> Cited in James Belich, *Making Peoples. A History of the New Zealanders from Polynesian Settlement to the End of the Nineteenth Century*, Allen Lane The Penguin Press, Auckland, 1996, p.299.

<sup>22</sup> Pakeha, 'New Zealand', *The Field, the country gentlemen's newspaper*, London, 10 August 1872, p.55

The writer, known only as 'Pakeha', estimated that only a dozen houses would be regarded as habitable in England.<sup>23</sup> But clear from this account was that even in rejection, colonists' dependence upon England remained.

Plutocracy, and so-called high society, was a rudimentary element of life in Great Britain. Writing for an English audience in 1851, William Fox commented upon the state of New Zealand *society*. Fox believed the habits of all classes in New Zealand were at least as moral and respectable as those of the same grade in the Old Country. In some respects he suggested New Zealanders were perhaps more so.<sup>24</sup> Fox's view, however, was not shared by all colonists. In his scathing account of living in Auckland, 'Pakeha' lamented the lack of 'good society' in the colony. The correspondent believed that Auckland could claim perhaps half a dozen families who even knew the meaning of the word, and these few exceptions were described as the few righteous in the city of the plain.<sup>25</sup> The reason for this, according to Pakeha, was rooted in the foundation of the city. A large proportion of Auckland's original European inhabitants were 'runaway sailors and convicts'. From questionable roots it perhaps stood to reason that Auckland would suffer from being 'one of the most unsociable towns in the colony'. To all this, Pakeha concluded:

If people could be induced to work half as hard in England as they do in the colonies, they would do much better by staying at home, and they would not have to forsake the unspeakable comforts of England and civilisation.<sup>26</sup>

The determination of which account of New Zealand (if either) was the more accurate is beside the point. Regardless of apparent successes and dismal failures, the Britain of the South ideology was little more than a myth. Yet it was in that way that New Zealand was represented to the rest of the world. While a myth, the Britain of the South was an untruth quite intentionally perpetuated. And, as pointed out by James

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<sup>23</sup> *ibid.*

<sup>24</sup> William Fox, *The Six Colonies Of New Zealand*, John Parker and Son, London, 1851, p.19.

<sup>25</sup> Pakeha, 'New Zealand', 10 August 1872, p.55.

<sup>26</sup> *ibid.*

Belich, the myth could not be dismissed merely because it was not true. Rather, the Britain of the South played a critical role in the colonisation in New Zealand:

Yet for all the puffery, change and renegotiation, there is, I think, good reason to believe that the formal myths of settlement, the progressive British paradise, really did bite deep into the minds of the founding Pakeha.<sup>27</sup>

The reason for the proliferation of these tributes, half-truths, and unashamed lies was clear. The nineteenth century was the period during which New Zealand, and many other colonies, were colonised by the European Old World countries. The Britain of the South myth and all that it entailed, whether accurate or not, was merely a marketing weapon used in the race for British immigrants. In New Zealand, the role of nation-maker changed regularly. The 1830s and 1840s were largely shaped by the New Zealand Company and other colonising agents. During the 1850s and 1860s, provincial governments took charge. The 1870s and beyond witnessed the colonial government assume the mantle of nation maker in New Zealand. Regardless of time or station, however, the general purpose remained. Belich summed up this common goal succinctly. He believed the purpose was swiftly and thickly to seed New Zealand with British people and money, meeting the 'one great overriding want of *getting peopled*'.<sup>28</sup> Australia and the Americas were also in the market for British immigrants. These places were all larger, more established and familiar, and were closer. New Zealand needed something that would set it apart from the competition. That is where the Britain of the South myth, and all it entailed, obliged.

Whether fact or fiction, nineteenth-century literature appears to accentuate the commonalities between England and New Zealand rather than the differences. No writer did this more so than Alfred Simmons.

There is a stupidly foundationless idea abroad among Englishmen at home that New Zealand is essentially a foreign country - foreign in appearance, in habits,

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<sup>27</sup> Belich, p.310.

<sup>28</sup> Belich, p.279.

and customs - and . . . overrun with blacks. The notion must fall - it is fallacy.<sup>29</sup>

While Simmons concentrated on the similarities between New Zealand and England, others accentuated more the Arcadian paradise that *could* be New Zealand. Usually, these accounts contained several of the same elements.

First was a general dismissal of the indigenous in New Zealand; Hursthouse was most critical of New Zealand's indigenous flora and fauna. 'Flora and Pomona had dealt "most niggardly" with New Zealand. There is no indigenous flower equal to England's rose; no indigenous fruit equal to Scotland's cranberry'.<sup>30</sup> Hursthouse, and many like him, tempered the unsatisfactory natural state of New Zealand with the unmistakable potential of the colony. Belich described the colonist understanding of New Zealand as a 'latent paradise'.<sup>31</sup> Nineteenth-century literature reflected clearly this perception. New Zealand was described as a land of greenwood, where vegetation ran riot. 'The teeming growth, perpetual verdure, and vigorous freshness of her forests, have been the admiration of every visitor since the days Cook'.<sup>32</sup> A habitat such as this highlighted the opportunities on offer to (British) colonists.

Despite the deficiencies of New Zealand's indigenous flora and fauna, the tone of Hursthouse and his peers suggested that New Zealand was eagerly awaiting British colonisation - ripe for the picking. After lamenting the state of the indigenous, and celebrating the genial climate, the last role of the publicist-coloniser was to highlight the burgeoning of European crops and animals in New Zealand conditions. It was in this respect that the marketing of New Zealand went into over-drive. English flowers reportedly grew larger, blossomed more profusely, and lost none of their beauty or fragrance when grown at the antipodes.<sup>33</sup> In terms of a perfect habitat for sheep, Hursthouse knew of no country in either hemisphere superior to New Zealand:

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<sup>29</sup> Simmons, p.51

<sup>30</sup> Hursthouse, 1857, i, p.136.

<sup>31</sup> Belich, p.301.

<sup>32</sup> Hursthouse, 1857, i, p.133.

<sup>33</sup> Hursthouse, 1857, ii, p.365.

The soil is light, percolative, and freely impregnated with all congenial oxides, sulphates and phosphates; the climate is the happy mean of temperature and moisture; no destructive animal exists; and there is a perpetual natural pasturage with a profusion of the finest water: - a rare combination of natural gifts, creating marked exemption from disease, great prolificness, fat and early mutton, fine wool, and heavy fleece.<sup>34</sup>

In these few sentences, Hursthouse encapsulated the essence of the Arcadian dream - the Britain of the South.

The accuracy of the above descriptions are arguable. Hursthouse, after all, was a colonist and a coloniser. Other accounts of New Zealand bordered on the fanciful. Banana and a number of other fruits of oriental origins were reported to have formed immense orchards in New Zealand.<sup>35</sup> However, the extent to which Victorian England was taken in by such fiction is questionable. Certainly, Hursthouse did not buy into what he coined 'horticultural hallucinations'.<sup>36</sup> Belich doubts that many Britons were duped by the more fantastic accounts of the colony. However, he does not discount the effect of such crass advertisements upon the immigrant market. Belich maintained that colonisers such as Hursthouse out-published their critics.<sup>37</sup> Consequently, comparisons of New Zealand with both paradise and Britain were accepted (though not necessarily believed) despite the reality.

The final element of these nineteenth-century accounts was their conclusion, which would invariably declare the country's readiness for British colonisation:

The rapid prosperity of New Zealand as a British Colony seems assured. The country certainly possesses every natural capability for a series of rich and flourishing settlements. Of the singular excellence of the climate - of the

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<sup>34</sup> Hursthouse, 1857, ii, p.368.

<sup>35</sup> *Chambers' Papers for the People*, cited in Hursthouse, 1857, ii, p.363.

<sup>36</sup> Hursthouse, 1857, ii, p.361.

<sup>37</sup> Belich, 1996, p299.

richness of the soil - of the great fecundity of animal life - of the abundance and variety of the resources of the islands, not a doubt is entertained by those whose opinions rest on experience.<sup>38</sup>

In the light of many nineteenth-century writers being both publicists and colonisers, it stands to reason that their accounts of New Zealand would conclude in this way. A collective picture of New Zealand was painted that augmented the European perception of New Zealand as the Arcadian paradise or the Britain of the South.

Although the Britain of the South may well have been a myth, that fact did not affect the reality. While the acclimatisation of northern hemisphere flora and fauna was central to the creation the Britain of the South, the need to acclimatise the same flora and fauna was perhaps more pressing for those immigrants already in New Zealand. They too shared in the Arcadian dreams of the Britain of the South. However, coupled with the reasons outlined above, settlers had other incentives to acclimatise animals and plants to their new home. Probably most important to settler society, in terms of the importation of exotic species to New Zealand, was the establishment of species that might provide a staple diet. Necessity facilitated the introduction of beasts of burden such as horses. But it was the isolation felt by many New Zealand settlers, and the differences between their new home and their old, that contributed greatly to the introduction of seemingly useless but nostalgic bird species to the colony. New Zealand was so unfamiliar to the settlers in so many ways that just a few familiar animals and plants meant a great deal in coping with hunger, deprivation, and often homesickness.<sup>39</sup> After dismissing those who derided any proposal to introduce game into New Zealand, Hursthouse wrote of the social and pecuniary benefits that might be achieved by successfully doing so:

We do not go to New Zealand with pick and pan, to snatch dear-won nuggets, gulp gallons of rum, and then rich or ragged hurry home. We go to the

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<sup>38</sup> H.W. Petrie, *An Account of The Settlements of the New Zealand Company*, Smith, Elder and Co, London, 1842, p.93.

<sup>39</sup> McDowall, 1994, p.6.

“Britain of the South” to create an estate, raise a home wherein to anchor fast and plant our household goods.<sup>40</sup>

It was clear that colonists acclimatised British flora and fauna for a number of reasons that were quite different to those of New Zealand’s European colonisers. As many colonisers were in fact settlers themselves, the two interests did not necessarily conflict. Rather, they complemented each other, and reflected the immediate needs of settler society.

The scene was set then for large-scale acclimatisation of predominantly British species to New Zealand. The dreams of settlers were captured in two short sentences by Charles Hursthouse:

New Zealand should swarm with game. . . Indeed, there can be no reason why emigrant enthusiasts in Birds should not introduce *all* their feathered favourites.<sup>41</sup>

To this Hursthouse added that New Zealand’s climate was even more suited to the acclimatisation of larger game animals such as deer. Acclimatisation, Hursthouse believed, was a project of national importance, to which all New Zealand settlers should contribute:

Might we not reasonably say, then, that families of the “estate-creating” capitalist order, who may now contemplate planting new homes in “Austral-Britain,” would deserve well of the land of their adoption if each would devote £5 or £10, and a little trouble, to the gradual work of stocking its fields and forests with our common birds and game?<sup>42</sup>

All the factors pointed in the direction of acclimatisation. Settlers desired it, the climate was ideal for it, and the country appeared to need it. And although

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<sup>40</sup> Hursthouse, 1857, i, pp.128-131.

<sup>41</sup> Hursthouse, 1857, i, pp.128-129.

<sup>42</sup> Hursthouse, 1857, i, p.129-130.

Hursthouse's vision of course did not eventuate, parliamentary assistance was forthcoming.

In 1846, the acclimatisation movement was undoubtedly influenced and encouraged when the Legislative Council introduced the Duties of Customs Ordinance 1846. This measure represented the first statutory recognition of the importance to the European settler society of acclimatising the many useful, ornamental, and nostalgic animals of the Old World to New Zealand. The Duties of Customs Ordinance facilitated the duty-free importation of all live stock and live animals, seeds, bulbs, and plants into the colony.<sup>43</sup> On the surface, an attempt to promote the introduction of animals and birds to New Zealand seems commendable. However, the implications of the Ordinance were less meritorious. The Ordinance did not implement any system of inspection to ensure that pests were not introduced with livestock. In 1922, and with the benefit of hindsight, scientist and MHR G M Thomson credited the prevalence of serious animal diseases such as scab in nineteenth-century New Zealand to the unrestricted importation of livestock. Similarly, Thomson was critical of some of the more unusual imports, such as foxes and bears, that 'some cranks' were permitted to import under the Ordinance.<sup>44</sup> Nineteenth-century reactions to the Ordinance were unable to be ascertained. In the 1990s, however, McDowall believed there remained no deterrents to acclimatisers subsequent to the enactment of the Duties of Customs Ordinance 1846.<sup>45</sup> Consequently, early colonial New Zealand embraced acclimatisation.

In fact, nineteenth-century New Zealand colonists displayed a passion for acclimatisation unprecedented anywhere in the world. The acclimatisation movement in New Zealand far exceeded that of any other nation. Of the 42 acclimatisation societies recorded as having been formed after 1863, 27 (64%) were in New

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<sup>43</sup> An Ordinance to alter certain Duties of Customs 1846, Table of Duties of Customs.

<sup>44</sup> G M Thomson, *The Naturalisation of Plants and Animals in New Zealand*, University Press, Cambridge, 1922, pp.541-542. The extent of the damage done by scab was reflected in the number of nineteenth century statutes passed that attempted to address the problem.

<sup>45</sup> McDowall, 1994, p.54.

Zealand.<sup>46</sup> Similarly, it was reported that something like £10,000 had been expended on acclimatisation in New Zealand by 1872. This, it was believed, would be accepted as sufficient evidence of New Zealand's commitment to acclimatisation.<sup>47</sup> Writing to an English audience, the author known as the Anglo-New Zealander added that the rage for acclimatising the game of the Old Country would continue in New Zealand with 'unabated zeal so long as Englishmen have a voice in the matter'.<sup>48</sup> Such attitudes were reflected in the formation of the Society of Canterbury Colonists. This organisation was formed by prospective immigrants prior to their leaving Great Britain for Canterbury. The Society's main function was to assist acclimatisation by setting aside funds for the importation of bird species.<sup>49</sup>

In 1922, Thomson delivered a slightly romanticised description of early acclimatisation in New Zealand:

Here [in New Zealand], in a land of plenty, with few wild animals, few flowers apparently, and no associations with shy songbirds and few game birds, and certainly no quadrupeds but lizards, it seemed to them [early settlers] that it only wanted the best of the plants and animals associated with these earlier memories to make it a terrestrial paradise. So with zeal unfettered by scientific knowledge, they proceeded to endeavor to reproduce - as far as possible - the best-remembered and most cherished features of the country from which they came.<sup>50</sup>

Central to Thomson's interpretation of settler ambition was the establishment of game species and the nostalgic birds of England. However, the lack of scientific responsibility displayed by these early acclimatisers would become the source of heavy criticism by future generations.

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<sup>46</sup> C Lever, *They dined on eland: the story of the Acclimatisation Societies*, Quiller, London, 1992, p.224 cited in McDowall, 1994, p.14.

<sup>47</sup> Anglo-New Zealander, 'Sport at the Antipodes', p.48.

<sup>48</sup> Anglo-New Zealander, 'Sport at the Antipodes', p.48.

<sup>49</sup> McDowall, 1994, p.6.

<sup>50</sup> Thomson, 1922, pp.21-22.

Despite these efforts, even unprecedented fervor did not automatically translate into success. On the contrary, the majority of the earlier attempts to acclimatise exotic species into New Zealand were mostly unsuccessful. This is reflected in an 1861 newspaper editorial:

From the day when the first emigrant ships left English shores to the present time, Canterbury has carried on an endeavor, desultory indeed, and unsuccessful, but never wholly relinquished, to naturalize in our new home many of the birds and other animals of England: deer, rabbits, hares, pheasant, partridges and multitudes of smaller birds from the English hedgerows have been shifted at great cost, and, with the one exception of rabbits, we believe wholly without result.<sup>51</sup>

In the context of the late twentieth century (the rabbit scourge and the outbreak of the calicivirus), the success of rabbits must surely represent a bitter irony to South Island farmers in particular.

Twentieth-century writers appear united in their criticism of early acclimatisation efforts. Thomson described the history of the acclimatisation movement as ‘abounding in bungles and blunders’.<sup>52</sup> Lamb branded the work of the Canterbury Acclimatisation Society in the 1850s as haphazard.<sup>53</sup> However, perhaps the most scathing critic of early acclimatisation is R M McDowall. McDowall described the importation of living animals in early nineteenth-century New Zealand as a ‘rather haphazard and disorganised affair’:

Lists of some of the “baggage animals” that accompanied settlers of the 1840s and 1850s are really laughable (or perhaps pathetic), especially when it was

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<sup>51</sup> Editorial, *The Press*, 17 August 1861. Cited in R C Lamb, *Birds, beasts, and fishes: the first hundred years of the North Canterbury Acclimatisation Society*, North Canterbury Acclimatisation Society, 1964, p.14.

<sup>52</sup> Thomson, p.3.

<sup>53</sup> Lamb, p. 12.

seen that not infrequently only one kind of animal actually arrived here - one peacock, one fox, one goat.<sup>54</sup>

What settlers hoped to accomplish in such instances is hard to imagine.

There existed a number of reasons why such attempts at acclimatisation were unsuccessful. The journey from England to New Zealand was arduous to say the least. Due to the poor conditions often endured at sea, many prospective settlers died prior to their arrival in New Zealand. The chances of survival for many animals were reduced further as they were often stored in exposed cages on the deck of the ship. Consequently, a large proportion of animals died in transit to New Zealand. Many of the animals that survived the journey were in such poor condition that they would die shortly after arrival.<sup>55</sup>

Even for those that made it in good condition, there remained no guarantee that they would not fall victim to the gun of the hunter almost immediately upon release. William Fox, in 1861, commented upon the success of the acclimatisation of the wild pig in New Zealand. This he credited to the system of tapu that Maori employed which enabled the multiplication of the species.<sup>56</sup> Non-Maori New Zealand in the 1840s and 1850s, however, had no tapu or equivalent measures to allow animal species the time to multiply. Consequently, many efforts aimed at acclimatisation of species ended in disaster; more frequently the case was the wholesale slaughter of introduced species very shortly after release into the wild. That exact scenario took place in 1853 when William Guise Brittan raised the first partridges in Canterbury. These birds were hatched from eggs and set under a common hen in the grounds of his residence. Unfortunately, all of the young partridges were destroyed by poachers. Brittan's work ended in vain, and the work of introducing the species had to be started over.<sup>57</sup> In 1861, the House was alerted to such problems. Colonial Premier Edward Stafford warned:

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<sup>54</sup> McDowall, 1994, p.16.

<sup>55</sup> McDowall, 1994, p.17.

<sup>56</sup> *NZPD*, 1861, p.290.

<sup>57</sup> Lamb, 1964, p.12.

But if these birds and animals [imported into New Zealand] were not protected for some years they would be speedily extirpated, and all the expense of the enterprising importers would be in vain.<sup>58</sup>

The need for further assistance was, therefore, highlighted. In this regard, the non-Maori equivalent for tapu was law. In 1861, the first statutes aimed at encouraging the importation of desirable species, by affording protection to particular imported species, were enacted. These statutes, and the ensuing pieces of legislation, will be explored and examined in the following chapter.

In conclusion, the needs of nineteenth-century New Zealand colonists provided the impetus behind the large-scale acclimatisation of predominantly British animals. Although the immediate needs of those already settled at the antipodes were paramount, the role of desirable animals in the overall scheme of conceptualising the settlement of New Zealand, however, remained a significant contributor. The overall mission was to modify New Zealand's natural conditions to something more akin to where they had come from - only enhanced. This would be achieved by replacing the indigenous terrain with a predominantly British panorama; an Arcadian, romanticised, English country-side of myth or the Britain of the South.

The first step toward realising the Britain of the South was the acclimatisation to New Zealand conditions of those species that would 'help keep up those associations with the Old Country which it was desirable should be maintained'.<sup>59</sup> Many colonists, who possessed the financial wherewithal, responded admirably; the concentration of acclimatisation efforts in nineteenth-century New Zealand exceeded that of any other nation. Such early efforts, however, often failed. For a number of reasons, the fervour with which many New Zealanders approached acclimatisation did not, by itself, ensure any significant success. The scene was then set for increased

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<sup>58</sup> *NZPD*, 1861, p.290.

<sup>59</sup> *NZPD*, 1861, p.290.

government intervention in the acclimatisation process. In 1861, the first animals' protection statutes were enacted.

## **CHAPTER TWO:**

### **The foundation of the animals' protection policy, 1861-1866.**

The protection of animals in New Zealand, both before and directly after the enactment of the first animals' protection statute, took no account of indigenous species. It simply meant the acclimatisation to New Zealand conditions of 'desirable' species. More precisely, the acclimatisation movement in nineteenth-century New Zealand was aimed specifically at the importation and then establishment of game animals and small birds reminiscent of England. It was believed that these species would enhance New Zealand's reputation as the Britain of the South. But as the previous chapter demonstrated, early acclimatisation was largely unsuccessful. New Zealand's climate was ideal for the acclimatisation of many northern hemisphere animal species. However, the lack of statutory recognition of the importance of acclimatisation resulted in the wholesale slaughter of introduced species. This, led to the animals' protection legislation being enacted.

The need for some form of animals' protection legislation was given official recognition for the first time in early 1861. This was manifest in the form of the Province of Nelson Protection of Animals Act 1861. Later that year, essentially the same principles that underpinned the Nelson Act were applied to the entire colony; the Protection of Certain Animals Act 1861 was passed by the colonial parliament. Together, these statutes laid the foundation for animals' protection in New Zealand upon which the ensuing policy developed.

This chapter will explore the first phase of New Zealand's animals' protection policy, i.e. 1861-1866. This stage is characterised by the emphasis that was placed on encouraging the importation of desirable birds and animals by protecting those species which, it was thought, would facilitate the realisation of the Britain of the South myth. It will discuss the two animals' protection statutes enacted in 1861, and highlight the principles established by these laws which came to characterise animals' protection

legislation. The chapter will then trace the development of animals' protection legislation until 1866, after which the first major policy change took place.

The first to address New Zealand's poor acclimatisation record was the Nelson Provincial Council; in 1861 the Province of Nelson Protection of Animals Act was enacted. The statute was to protect particular species that were imported into the province. In Nelson, the need for such an act was highlighted by *Nelson Examiner* editor and former MHR (Waimea, 1855-1858) Charles Elliot, who proposed that a bill be drafted for the purpose of:

protecting from destruction any animals, birds, and fish introduced into the Province and turned out at large to breed until they respectively shall have sufficiently established themselves.<sup>1</sup>

It is perhaps not surprising that Elliot was responsible for the initial thrust behind the Act. He had recently successfully imported a small number of red deer to Nelson, two of which he donated to the Province. Subsequent to Elliot's initiative, a commission of inquiry into red deer was established in the province and the Act to 'provide for the protection of certain animals, birds, and fishes imported into the Province of Nelson' was passed on 18 June 1861.<sup>2</sup>

The Nelson Act made no reference to the protection of indigenous species. Nor was any reference to the protection of any indigenous species recorded during the Council debates on the Act. In fact, the statute did not protect any *particular* animal species, but the Superintendent of the Province of Nelson could proclaim that *any* animal, bird, or fish could come under its operation. Protected species were not to be destroyed, and any person who offended against the Act could be fined up to £50 per offence. The Act prohibited the destruction of the eggs or spawn of protected species, and prohibited also the sale of protected species. The purpose of the Nelson Act was to

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<sup>1</sup> *Votes and Proceedings of the Nelson Provincial Council*, Session VIII 1861, p.63.

<sup>2</sup> *Votes and Proceedings of the Nelson Provincial Council*, Session VIII 1861, p.21.

encourage the importation of useful species into the province. Such was clear from the preamble:

Whereas certain animals and birds have been imported into the Province of Nelson, and whereas it is expedient to provide for the protection thereof, and of other animals, birds, and fish, which may at any time be imported into the said Province, and the increase arising therefrom: Be it, therefore, enacted . . .<sup>3</sup>

The Nelson Act has received only cursory observation from commentators in the past. Consequently, its role in the development of a national animals' protection policy has been largely overlooked. The Act, however, was an obvious fore-runner to the central government's animals' protection policy, and it established principles upon which the policy developed.

The most pronounced principle established by the Nelson Act was the emphasis that was placed upon the acclimatisation of *particular* imported species. Such an emphasis was reflected in the Act's preamble, and was reflected in the protection it afforded to game species and to birds nostalgic of England which facilitated the desire for acclimatisation explained in the previous chapter.

The other feature of the Nelson Act was the stringent nature of the statute. As demonstrated by the following comparisons, however, penalties accruable under the statute (£5-£50) were neither paltry nor exorbitant in relation to other Provincial Acts enacted in Nelson. The penalty for failing to destroy thistles ranged between ten and forty shillings,<sup>4</sup> the penalty for counterfeiting dog licenses in Nelson ranged between £5 and £20,<sup>5</sup> a person convicted of willfully disturbing any funeral service in a Nelson public cemetery could expect a £5 fine for their trouble,<sup>6</sup> and the maximum fine that could be imposed upon a person convicted under the Cattle Branding

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<sup>3</sup> Province of Nelson Protection of Animals Ordinance 1861. (Provincial Council of Nelson Session VIII. No6.).

<sup>4</sup> Province of Nelson Thistles Ordinance 1859. (Provincial Council Session VI. No3.).

<sup>5</sup> Province of Nelson Dog Nuisance Ordinance 1858. (Provincial Council Session V. No7.).

<sup>6</sup> Province of Nelson Public Cemetery Ordinance 1859. (Provincial Council Session VI. No7.).

Amendment Ordinance 1859 was £100.<sup>7</sup> As will be discussed, the soon to be enacted colonial animals' protection statute enabled the imposition of penalties that ranged between £1 and £40.

The stringent nature of the Nelson Protection of Animals Act, however, was evident in the unwavering stance it took toward protected species; protection was absolute. While his comment was rather cryptic, it was perhaps this measure which Premier Edward Stafford described as *excessive*.<sup>8</sup> As the following chapter will explain, the enactment of strict provisions aimed at facilitating the successful acclimatisation of protected species typified the ensuing animals' protection policy. What is more, the stringent nature of the policy was often subject to criticism.

The effect of these two principles impacted negatively upon the some public perception of the statute and, in later years, the entire animals' protection policy. The stringent provisions that were introduced to ensure the successful acclimatisation of imported species led to the statutes being compared to English game laws. Although his criticism was mild compared to the views that were espoused in future years, Nelson Provincial Superintendent J P Robinson was aware of the Act's potential to emulate English game laws. Concerns that it could be 'perverted into anything like a Game Law' caused him to hesitate before he assented to the Act.<sup>9</sup> These principles were established by the Nelson statute, and its importance was reflected in sections fourteen and sixteen of the Protection of Certain Animals Acts 1861 and 1865 respectively. These clauses stated clearly that nothing in either of the colonial Acts would prevent or interfere with the operation of the Nelson statute.<sup>10</sup> Clearly, the Nelson Act was not superseded by the colonial policy.

By all accounts, the Nelson Act appeared to have enjoyed a measure of success. In 1872, scientist and ornithologist T H Potts celebrated the success of acclimatisation:

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<sup>7</sup> Province of Nelson Cattle Branding Amendment Ordinance 1859. (Provincial Council Session VI. No1).

<sup>8</sup> *New Zealand Parliamentary Debates (NZPD)*, 1861, p.220.

<sup>9</sup> *Nelson Gazette*, Volume IX, 26 June 1861, p.28.

<sup>10</sup> Protection of Certain Animals Act 1861, s14. Protection of Certain Animals Act 1865, s16.

in the province of Nelson especially, acclimatisation has been in many cases most successful. There, the skylark, which in point of song ranks next to the nightingale, is becoming quite common. For miles along the road from Nelson to Christchurch it soars and sings as in England.<sup>11</sup>

Potts did not credit the Nelson Act with the overall success of acclimatisation in the region. His account did, however, suggest the partial realisation of the Britain of the South ideology - the rustic English countryside - if only in Nelson. Moreover, the power to protect species under the Nelson Act, appears to have been used sparingly. As will be shown in the case of the pheasant, the Nelson Ordinance was used to complement the colonial legislation rather than override it.

On 6 September 1861, the Protection of Certain Animals Act 1861 was enacted by the colonial parliament. This Act picked up on some of the provisions of its provincial equivalent, and owed much to the earlier statute. But the two also contained a number of differences. These perhaps reflect the natural development of any policy rather than a different philosophy for the protection of animals. The development is probably best described as a greater particularity; the Protection of Animals' Act 1861 appears to be more specific than the provincial statute. While the Governor or the Superintendent of any Province reserved the right to extend the provisions of the Act to any additional animal or bird species, the Act prescribed which species were protected. (See Appendix I). This did not necessarily render the colonial Act more (or less) *effective* than the Nelson Act. It would have, however, facilitated public interpretation of the colonial Act - hunters would have known from the start which animals were protected and which were not. Both statutes protected pheasant and deer. But in the province of Nelson, hunters were required to read the actual statute and then study the *Nelson Gazette* before they knew what species they could legally shoot. In the rest of the colony, hunters needed only to read the Act.

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<sup>11</sup> T H Potts, 'On Recent Changes in the Fauna of New Zealand', (1872), in T H Potts (Ed), *Out in the Open: A Budget of Scraps of Natural History Gathered in New Zealand*, Lyttelton Times Company Limited, Christchurch, 1882.

The colonial Act also implemented the country's first hunting seasons. The introduction of hunting seasons was not a feature of the Nelson Ordinance, and there are two possible interpretations of this measure. The first was that it may have been to avoid a possible problem with the system employed by the Nelson Act. The protection of species under Nelson's Protection of Animals Act was non-negotiable. Species were afforded either absolute protection or no protection at all. No provision was made for the sustainable harvest of protected species. The Nelson Provincial Council appear to have used this fact rather astutely in their protection of particular species. Under the colonial Act, pheasant were subject to hunting seasons. In September 1862, probably prompted by a decline in the province's pheasant numbers, pheasants were protected under the Nelson Act.<sup>12</sup> By doing this, pheasant in Nelson were protected absolutely. This, however, does not explain the rationale for the different approaches taken by the two different sets of legislation. In consideration of this stringent restriction, and the hefty penalties accruable under the provisions of the Nelson statute, it is perhaps more probable that the move to introduce hunting seasons was in fact a loosening up of some of the provisions of the Nelson Act, which Stafford had described as excessive.<sup>13</sup>

The timing of the seasons, however, was unusual because the Act's hunting seasons for deer, hare, and game birds were not to take effect until 1870. This may have merely reflected the anticipatory nature of the Acts which will be discussed later, but the delay in the implementation of hunting seasons was more likely needed to allow for the establishment of protected species. However, the need to indicate the eventual introduction of hunting seasons may have reflected a need to appease the public at large. There remained little incentive for the public to refrain from hunting protected species, and abide by the law, if there was no sign of them eventually gaining access to the resource.

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<sup>12</sup> *Nelson Gazette*, Volume X, 9 September 1862, p.54.

<sup>13</sup> *NZPD*, 1861, p.290. Similarly, the penalties for breaching the Protection of Animals' Act 1861 ranged between £1 and £40, whereas under the Nelson Ordinance penalties ranged between £5 and £50.

The timing of hunting seasons, and those politicians who attempted (often successfully) to have them moderated, would in future years attract heavy criticism from parties within and outside of parliament. Further to this, the protection afforded to game birds such as pheasant, quail, imported ducks and imported geese represented the major contradiction in the Act. Unlike other game animals and birds nostalgic of England, the Act made no provision for closed seasons for these species. Rather, under ss3 and 4 of the Protection of Certain Animals Act 1861, five month hunting seasons for these species were established. This set up the paradoxical situation where the Act aimed to protect certain species so that they might acclimatise to New Zealand conditions, but also provided access to those species for hunters. Attempts to strike a balance between the establishment of these species while simultaneously hunting them appears to be the source of many of the amendment Acts that were regularly enacted in later years.

Interestingly, the colonial Act did not extend to fish as did the Nelson Act. The colonial government catered for the protection of imported fish species much later in the Salmon and Trout Act 1867. The reason for the central government's preference for two separate policies, like much of the early animals' protection policy, was unclear. It may merely have reflected the later date at which freshwater fish were introduced to the colony. The first Atlantic salmon to be imported to New Zealand were released by Mr. A M Johnson of Opawa, near Christchurch, in 1864.<sup>14</sup> There remains no record of any intention for the Nelson Act extending to the protection of fish species in 1861 and 1862 at least.<sup>15</sup>

Other than these developments, the two statutes were essentially the same. Both statutes offered protection to particular imported species that were valued for reasons outlined in chapter one. Similarly, both statutes prohibited the sale, whether live or dead, of protected species. Moreover, the colonial Act borrowed principles established by the Nelson Act. The emphasis upon imported species and the stringent nature of the legislation were two particular principles which were aggregated into the

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<sup>14</sup> R M McDowall, *New Zealand Freshwater Fishes. A Guide and natural history*, Heinemann, Auckland, 1978, p.180.

<sup>15</sup> *Nelson Gazette*, 1861 and 1862.

colonial Act, and came to characterise animals' protection legislation for the remainder of the century.

Coupled with the Duties of Customs Ordinance 1846, the encouragement offered to acclimatisers was greater than ever. It should be remembered, however, that an emphasis upon the exotic inevitably impacted upon the indigenous. Section 5 of the 1861 Act prohibited absolutely the use of traps and snares for hunting protected species. The implications of the clause possessed the potential to impact heavily upon Maori, and highlighted the legislature's disregard for the effects of the legislation upon one section of the people they supposedly represented. The clause referred only to game, which by virtue of its exotic origins was not a traditional food source. There was, however, no guarantee that a snare set to catch unprotected species would not trap a game animal. In this way, a traditional food gathering technique became threatened (during the game hunting season at least) by the legislation.

Shooting was effectively the only legal means of hunting protected species. Those who did not, or could not for whatever reason, shoot their prey were denied access to the resource; sport for some was more important than the subsistence of many. While not a principle that any MHR openly promoted, ensuing discussions will show that accusations from within parliament that animals' protection Acts were merely a means of preserving an elite sport did in fact characterise the policy into the twentieth century.

The Protection of Certain Animals Bill 1861 was introduced to the House by Premier Edward Stafford. This fact alone is interesting. While there appears to remain no documentary evidence, the Nelson influence upon both statutes remains difficult to ignore. There exists a definite possibility of a link between the Premier, his former Provincial Council, and the enactment of the two pieces of legislation. Stafford was at least familiar with the Nelson Act as he believed the penalty for offending against that statute was too high. Stafford, therefore, intended the maximum fine under the 1861 Act to be £20 and to apply only to pheasants during the breeding season.<sup>16</sup> While the

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<sup>16</sup> *NZPD*, 1861, p.290.

colonial Act was perhaps less stringent than its Nelson predecessor, Stafford's recommendations were not of course entirely adopted.

While before parliament, the 1861 Bill appeared to have attracted little attention from MHRs. Those who did speak on the Bill, however, raised some significant issues that featured often during the formulation of ensuing legislation. According to Stafford, the purpose of the Protection of Animals Act 1861 was:

to encourage the importation of those animals and birds, *not natives* of New Zealand, which would contribute to the pleasure and profit of the inhabitants when they become acclimatized and were spread over the country in sufficient numbers.<sup>17</sup>

This Stafford considered necessary if the settler society wished to see about them in this country those animals and birds to which they had been accustomed in the 'Old Country'. William Fox, then leader of the Opposition, had a similar purpose in mind for the Bill. He considered it a most laudable object to protect those animals and birds brought into this country which would 'contribute in a few years very much to the profit and pleasure of the people as chose to resort to field sports'.<sup>18</sup> The emphasis upon imported species was clear and exclusive. Such quotations illustrate vividly the emphasis upon the importation of exotic species to New Zealand which is perhaps part and parcel of the colonisation process in any nation; the colonists promoted what they knew well. This was illustrated by the lack of stern opposition to the measure and the use of the same words, *pleasure* and *profit*, by both the Premier and his parliamentary opposite. As will be discussed, this emphasis caused some concern.

Although Stafford conceded that the Bill might also extend to the protection of some indigenous species, this did not occur. Whether in fact there existed any real intention of protecting indigenous species in 1861 is questionable. Stafford's solitary reference

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<sup>17</sup> NZPD, 1861, p.290. [Emphasis added].

<sup>18</sup> NZPD, 1861, p.290. [Emphasis added].

to the protection of indigenous species was the only recognition native fauna received in relation to the animals' protection policy until 1864.

Both 1861 animals' protection statutes were concerned with the acclimatisation of imported species, not their long-term or absolute protection. Both pieces of legislation also possessed an anticipatory quality. Without necessarily knowing what species would be imported, or placing any restriction upon animal imports, protection could be afforded to species in an effort to encourage acclimatisation. It seemed nearly any importation was worth the chance to establish itself. The Nelson Act was aimed specifically at protecting certain animals, birds, or fishes '*that may at any time*' be imported into the province.<sup>19</sup> Similarly, Thomson's account of the acclimatisation of animal species to New Zealand stated that most of the species protected under the 1861 colonial Act were in fact introduced into New Zealand at a much later date. Both instances highlight the fact that the 1861 statutes aimed to protect species that, in many cases, were not yet present in the colony. Thomson described this as 'all rather curious'.<sup>20</sup> However, in the light of Stafford's contention that the Bill was aimed at *encouraging* the importation of species, the anticipatory nature of the statutes makes perfect sense.

Despite the ardent support shown for the Bill, apprehension was also displayed. Although they voiced their concern rather than formal opposition, both Fox and William Colenso believed that the Bill appeared to be headed in the same direction as the dreaded game laws of England. These laws effectively denied the right to hunt certain game species to the bulk of society, and reserved this pleasure for the privileged few. Fox believed the game laws empowered certain classes to inflict penalties on others for killing birds and animals, simply because they were not in the same position in life as themselves. William Colenso, the former missionary and member for Napier, described the game laws as 'a state of things that never should be

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<sup>19</sup> An Act to Provide for the Protection of Certain Animals, Birds, and Fishes Imported into the Province of Nelson, 1861, Preamble. [Emphasis added]

<sup>20</sup> G M Thomson, *The Naturalisation of plants and animals in New Zealand*, University Press, Cambridge, 1922, p.544.

brought about in this colony'.<sup>21</sup> Concerns over game laws would resurface frequently during the development of the animals' protection policy in later years. What is more, as the policy developed, the concerns of Fox and Colenso turned into the vehement opposition of an array of MHRs from 1867 and into the twentieth century.

These two statutes laid the foundation, and created the principles adhered to by subsequent animals' protection legislation. The fundamental basis of these early statutes was to promote and encourage the importation of desirable species by offering protection to them. After 1867, the emphasis of the animals' protection policy shifted to the acclimatisation rather than just the introduction of the same species. As the next chapter will illustrate, the essence of the policy was based on protecting the imported species that were of particular significance to colonist society.

The first amendment made to the animals' protection policy was enacted in 1862. The Birds' Protection Act 1862 displayed a trait common to early animals' protection legislation. The lawful hunting season for pheasants and quail, which were not subject to closed seasons under the 1861 Act, was shortened from a maximum of five months to four. In a similar conservation-oriented move, all hunting seasons for imported species of wild duck and geese were closed until March 1870. These clauses illustrated governmental attempts to reconcile conflicting interests. This conundrum was created in the 1861 Act where the legislature tried to provide access for hunters to game species while simultaneously acclimatising the species to New Zealand conditions. In 1862, the pendulum swung in favour of acclimatisation; hunters' access to protected species was reduced.

Another interesting development introduced by the 1862 Act was the prohibition of Sunday shooting. This clause possessed major implications for the majority of the public, and questioned the true motivation of those responsible for the formulation of animals' protection legislation. Prior to the implementation of a forty hour working week in New Zealand, the vast majority of the country's labour force worked for six of the seven days. This left Sunday as the only day of the week in which the working

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<sup>21</sup> *NZPD*, 1861, p.290.

classes were able to enjoy the privilege of hunting. By prohibiting hunting on that only available day, many were effectively denied access to game. A fundamental principle for the acclimatisation of certain species in New Zealand, i.e. an escape from aristocratic oppression, was similarly abandoned. While no opposition was recorded to this particular clause at the time, in the 1990s wildlife historian Ross Galbreath commented upon the general state of the early animals' protection policy:

Despite the egalitarian rhetoric, even in New Zealand deer hunting, pheasant shooting, and trout fishing were still regarded as the sports for the colonial gentry, and within a few years a series of amendments to the Protection of Animals Act built up a system of game law which, while avoiding direct privileges for landowners, began by borrowing much else from the English system.<sup>22</sup>

Initially, the clause seemed innocuous enough. It was, however, important because it foreshadowed the emergence of a major feature of the formulation of ensuing legislation. As following chapters will demonstrate, opposition to the policy developed in parliament that was based on concerns over the motivation of the legislature; while many people undoubtedly strictly observed the Sabbath, many others suspected that the policy was being used to preserve an elite sport for a privileged minority.

Perhaps in an attempt to avoid poaching and incidents such as the destruction of William Guise Britten's partridges discussed earlier, the Wild Birds' Protection Act 1864 prohibited those in pursuit of protected species from trespassing on the land of others. The principal amendment enacted in 1864, however, was the protection of the indigenous wild and paradise duck species and the kereru. But the protection of native birds was not dependent upon the status or condition of the species. Rather, these particular native species were selected for protection on the basis of what they

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<sup>22</sup> Ross Galbreath, *Working for Wildlife: a history of the New Zealand Wildlife Service*, Bridget Williams Books and the Historical Branch of the Department of Internal Affairs, Wellington, 1993, p.113.

offered colonist society. Reasoning such as this was reflected in the writing of Hursthouse in his very early account of New Plymouth:

It should be observed, that with the exception of pigeons and wild fowl, there is nothing for the sportsman. New Zealand is undoubtedly the worst country in the world for shooting.<sup>23</sup>

Indigenous birds were largely worthless to Europeans; as the great majority of indigenous species offered little to the sportsman, they were not highly regarded by the settler society. It should be no surprise, therefore, that the great majority of indigenous species were also omitted from the animals' protection policy; the only indigenous species protected in the early years of the animals' protection policy were those species that possessed qualities similar to the game birds of the rest of the world.

By all accounts, early European settlers and explorers admired the kereru. Like Maori, many settlers enjoyed the 'excellent eating' that the bird provided.<sup>24</sup> However, the value of the bird to the hunting purist was questioned. Pigeon shooting was considered by many as 'mere killing' rather than sport.<sup>25</sup> Power explained:

As for pigeons, they are so tame, that I have fired, with ball, three or four times at the same bird, and there he would continue to sit, with an air of fat, contented, owlish stupidity that was quite provoking, till a better shot has succeeded in knocking him off his perch.<sup>26</sup>

While one nineteenth-century writer believed that eating the wood pigeon undoubtedly repaid the 'dull monotony' of killing it, he conceded that there was no

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<sup>23</sup> Charles Hursthouse, *An Account of the Settlement of New Plymouth in New Zealand*, Smith, Elder, and Co, London, 1849.

<sup>24</sup> Anglo-New Zealander, 'Sport at the Antipodes', *The Field, the country gentleman's newspaper*, London, 13 July 1872, p.48.

<sup>25</sup> Anglo-New Zealander, 'Sport at the Antipodes', p.48.

<sup>26</sup> W Tyrone Power, *Sketches in New Zealand*, Longman, Brown, Green, and Longmans, London, 1849, p.72.

real sport in pigeon shooting.<sup>27</sup> The apparent lack of sporting interest, however, did not reflect the vast numbers of kereru that were shot in the nineteenth century. It was reportedly not uncommon for a single ‘sportsman’ to collect fifty or sixty birds in the course of a morning.<sup>28</sup> Prior to European contact, kereru were abundant and easily withstood the modest cropping of Maori hunters who were equipped only with snares.<sup>29</sup> The devastating effects of the European firearm presented a much greater threat. Although it is unclear whether in fact the kereru was under threat in 1864, the animals’ protection policy may well have provided a timely reprieve for the kereru.

Then in 1865, the first of many Animals’ Protection consolidation Acts was passed. The 1865 Act also provided for a small number of amendments. Added to the section that prescribed the hunting season for deer, hare, and an assortment of predominantly English avifauna was a clause that enabled the Governor, by order in council, to alter in any way the protection afforded to these species.<sup>30</sup> The reason for enacting such a clause was unclear, as there remains no recorded explanation. The amendment was probably intended to enable the law to be altered to suit the experience of each province. The other important measure introduced in 1865 encouraged the importation of desirable species by prohibiting the introduction of undesirable or ‘noxious’ animals. These included the natural enemies of many protected species such as fox, venomous reptile, hawk, vulture, or any other bird of prey.

The last, and probably most significant, amendment act of the 1861-1866 period was the Protection of Certain Animals Act Amendment Act 1866. The Act appears to have been born out of a concern that animals were not sufficiently protected under the law as it stood.<sup>31</sup> The Act introduced a number of pivotal amendments to the

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<sup>27</sup> Pakeha, ‘New Zealand’, *The Field, the country gentleman’s newspaper*, London, 10 August 1872, p.55.

<sup>28</sup> Anglo-New Zealander, ‘Sport at the Antipodes’, p.48.

<sup>29</sup> Carolyn King, *Immigrant Killers. Introduced predators and the conservation of birds in New Zealand*, Oxford University Press, Auckland, 1984, p.77.

<sup>30</sup> See Appendix 1 for detailed description of these species. While this section prescribed the lawful hunting season for such animals, these species were still absolutely protected until 1870.

<sup>31</sup> *NZPD*, 1864-1866, p.789. Unfortunately, there remains today a dearth of documentation relating to this statute. This is particularly frustrating for the researcher as a number of very significant developments were introduced in this statute. For this reason, the analysis of the Act relies heavily on interpretation.

development of animals' protection policy. The first, and probably the most contentious, was the introduction of licence laws for the hunters of protected species. A considerable fine, ranging from £5 to £20, was imposed upon any person prosecuted under this section of the Act.<sup>32</sup> There appears to be no remaining documentary evidence which demonstrated any resistance to this measure. Like many clauses enacted in the formative years of the animals' protection policy, the requirement to purchase hunting licences was criticised heavily in the future. In 1903 hunting licences were seen to be a step towards the replication of the game laws of England, and were therefore derided.<sup>33</sup> From this precursory measure, an intricate (and often confusing) system of licence laws developed in New Zealand.

Section six of the 1866 Act prohibited the sale of any hen pheasant. This is significant in that it illustrates a subtle realignment in the policy. The encouragement to importers was still at the forefront of the legislation. However, prohibiting the sale of the female of a species, and preserving her reproductive qualities, highlighted the government's awareness that measures were also needed to assist the establishment of imported species once they had arrived in New Zealand. This came to a head the following year. One of the primary aims of the Protection of Animals Act 1867 was to aid in the foundation of acclimatisation societies which would specialise in the importation and establishment of desirable species in New Zealand. The acclimatisation of imported species, and how this was reflected in the Animals' Protection Acts, is discussed in detail in the following chapter.

The primary objective of the first animals' protection statute was to encourage the importation of 'desirable' species into New Zealand. It did this by protecting certain species, thereby eradicating the probable scenario where newly imported animals would be slaughtered shortly after liberation in the colony. In terms of New Zealand in the 1850s and 1860s, desirable species meant particular imported species which colonist society believed would augment the Britain of the South ideology. As a consequence, the protection of indigenous species was largely overlooked.

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<sup>32</sup> Protection of Certain Animals Act Amendment Act 1866, s3.

<sup>33</sup> See Herries and Lee Smith in *NZPD*, vol.126(1903), pp.473, 587.

In 1861, the first animals' protection statutes were enacted. The statutes laid the foundation upon which the ensuing legislation developed. Protection was afforded to particular species in an effort to encourage people to import them, and stringent provisions were enacted to ensure success. Before long, however, the seeds were planted that would see the animals' protection policy seemingly promote the antithesis of what it set out to achieve; while one of the primary reasons to acclimatise game animals to New Zealand was to escape from aristocratic oppression, many were struck by supposed similarities between New Zealand's early protection of animals statutes and the dreaded game laws of England.

The early passage of the animals' protection acts shows clearly that the government was supportive of the policy and its emphasis on the importation of species considered to be beneficial to settlement.<sup>34</sup> No other measure reflects this more than the anticipatory nature of the 1861 Act. The fact that the majority of the species protected under the Act were yet to be introduced suggests that the Act was more of an invitation to acclimatisers than a protective measure *per se*.

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<sup>34</sup> McDowall, 1994, p.35.

## CHAPTER THREE:

### **Acclimatisation and game-hunting, 1867-1881.**

Canterbury Acclimatisation Society centennial historian, R Lamb described the government's involvement in New Zealand's acclimatisation movement prior to 1867 as little more than a 'watching brief'. However, he believed that in passing the 1867 Act, the government of the day was claiming acclimatisation work as its prerogative.<sup>1</sup> This was done in a number of ways. Prior to 1867, the primary objective of the animals' protection policy was to encourage importation by protecting particular species. After 1867 this focus was modified slightly. Legal recognition was afforded to acclimatisation societies. Their influence on the animals' protection policy until the 1880s was undeniable. Before long, the societies appropriated the acclimatisation process in New Zealand. Above all, the acclimatisation of imported species took precedence over all other interests. Although agricultural interests and Maori were affected negatively by the legislation, the successful acclimatisation of desirable species was considered more important.

This chapter will investigate and analyse the Protection of Animals Act 1867. That statute provided the framework for the animals' protection policy for the next 15 years. Such analysis will demonstrate how the objective of the animals' protection policy had been adjusted slightly, and will uncover the effects of that development. The chapter will then explore the amendments to the policy until 1881. That discussion will demonstrate how the administration of the policy became a complicated and often confusing affair. Moreover, it will highlight the emphasis that was placed upon the acclimatisation of species that, it was thought, would augment the Britain of the South ideology in New Zealand, and will illustrate the pivotal role that acclimatisation societies played between 1867 and 1881.

Major J L C Richardson, Legislative Councillor from Otago, described the Protection of Animals Bill 1867 as little more than 'an Act to consolidate the existing laws'.

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<sup>1</sup>R C Lamb, *Birds, beasts, and fishes: the first hundred years of the North Canterbury Acclimatisation Society*, North Canterbury Acclimatisation Society, Christchurch, 1964, p.108.

Richardson believed the Bill would protect the *natural* game of the Colony from being swept off the face of the waters by ‘unseasonable and unfair onslaughts’.<sup>2</sup> To a certain extent, this is what the legislation did. The Act consolidated the provisions relating to hunting seasons and licence laws, and prohibited the importation to New Zealand of noxious animals.<sup>3</sup> If a mere consolidation of previous legislation was the only objective of the 1867 Act, however, it could be assumed that the Bill would have passed through parliament with far less ado.

The Protection of Animals Act 1867 signaled the beginning of an increased governmental role in the nineteenth-century acclimatisation movement in New Zealand. As has been established, early acclimatisation work in New Zealand was largely unsuccessful. The initial step in addressing that problem was the enactment of the first animals’ protection statutes in 1861. In 1867, all imported birds that were not deemed game were protected absolutely unless they were specifically exempted from the provision. The enactment of this seemingly innocuous provision possessed major implications for the animals’ protection policy; the protection of nostalgic species, which were acclimatising quickly to New Zealand conditions, was catered for. Consequently, the animals’ protection policy focused almost exclusively upon the acclimatisation and preservation of game species, and signaled the beginning of the complete appropriation of the animals’ protection policy by sportsmen.

Acclimatisation efforts, therefore, focused upon establishing game populations in New Zealand. Yet the solution to the acclimatisation problem was still incomplete. What was required was a means of coordinating what had previously been done in haphazard fashion by a variety of groups and individuals.<sup>4</sup> In 1867, the government obliged; ‘increasing the protection afforded to acclimatisation societies was the number one item on the agenda of the Select Committee on the Protection of Animals

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<sup>2</sup>*New Zealand Parliamentary Debates (NZPD)*, vol 1(1867), p.936. The Acts in force in 1867 were the Protection of Certain Animals Act 1865 and the Protection of Certain Animals Act Amendment Act 1866.

<sup>3</sup> Protection of Animals Act 1867.

<sup>4</sup> R M McDowall, *Gamekeepers for the Nation: the story of New Zealand’s acclimatisation societies, 1861-1990*, Canterbury University Press, Christchurch, 1994, p.36.

Act 1867'.<sup>5</sup> Under the 1867 Act, acclimatisation societies could become duly registered. The 1867 legislation enacted provisions that assisted registered societies with the acclimatisation process. Under section five of the 1867 Act, all animals in the possession or under the control of any registered acclimatisation society were vested in the chairman of that society. Similarly, the Act provided for animals released into the wild (turned out) by any registered acclimatisation society to be vested in the chairman of the particular organisation.<sup>6</sup>

The financial demands of acclimatisation were also, at least partially, addressed by the Act of 1867. In the first instance, any funds that were accrued under the Act were to be applied to defraying the salaries and expenses of rangers and any expenses incurred in the operation of the Act. The balance was to be forwarded to the acclimatisation society operating in the province where the fees and fines were collected. In this way, acclimatisation societies were afforded a degree of financial independence.

The only apparent restriction on the function of acclimatisation societies was covered in section four of the Act. Under that clause, rules registered by acclimatisation societies were 'not to be repugnant' to the Act. What this meant, in practice, was unclear. There appears no record of organisations attempting to register 'repugnant' rules. The Select Committee on the Protection of Animals Act 1867 may have, however, provide an insight into what the clause was intended to mean. The Committee recommended that acclimatisation society rules should not be subject to any revision except by the societies themselves.<sup>7</sup> In effect, the foundation was laid from which acclimatisation societies in New Zealand operated with a degree of independence, autonomy, and statutory authority that was unique to the New Zealand experience.<sup>8</sup>

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<sup>5</sup>Minute Book of the Select Committee on the Protection of Animals Act 1867. LE series file 1/1867/15.

<sup>6</sup>Protection of Animals Act 1867.

<sup>7</sup>Minute book of the Select Committee on the Protection of Animals Act 1867. LE series file 1/1867/15.

<sup>8</sup> McDowall, 1994, p.14.

There remains little doubt that acclimatisation societies operated before 1867. In 1863, the need to establish public organisations charged with acclimatisation work was highlighted in London. The Duke of Newcastle, Secretary of State for the Colonies, sent a dispatch to New Zealand asking if any organisation existed, or could easily be called into existence, ‘capable of undertaking the task of introduction’.<sup>9</sup> A number of New Zealand acclimatisation societies, however, claim to have been in operation even before 1863. In 1861, the New Zealand Acclimatisation Society held its inaugural meeting in Auckland. From 1862, however, there appears to be a dearth of records pertaining to the operation of any acclimatisation societies in Auckland. Then, perhaps prompted by the passing of the Protection of Animals Act 1867, the Auckland Acclimatisation Society re-emerged and was re-established in February 1867.<sup>10</sup> The Auckland Society, however, does not appear to have been duly registered until 1869.<sup>11</sup> A similar sequence of events marked the origins of the Otago, Whanganui, and North Canterbury societies. The fostering effect of the 1867 Act in the establishment of ‘organised’ acclimatisation was clear.

The other significant innovation enacted in 1867 was the creation of a schedule of native game. For the purposes of the Act, imported animals were deemed game and indigenous birds were deemed native game. The schedule of native game, however, did not protect those species that were in the most danger of extinction. Like the 1864 Act, the selection of indigenous species for protection was based purely upon European values. As established, the general consensus was that very little (if any) New Zealand wildlife was valued by colonist society, or at least by the law-making classes. Consequently, the vast majority of indigenous bird species were unprotected in nineteenth-century New Zealand.

Native game was not subject to the same protective clauses as imported species. While the provisions enacted prior to 1867 applied to the protection of imported game, alternative provisions were enacted that related to the protection of native

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<sup>9</sup>*New Zealand Gazette*, Saturday November 7 1863, p.2.

<sup>10</sup>Clifton R. Ashby, *The Centenary History of the Auckland Acclimatisation Society 1867-1967*, Auckland Acclimatisation Society, Auckland, 1967, p.11.

<sup>11</sup>*New Zealand Gazette*, Saturday February 13, 1869, p.61.

game. These, however, were few. The 1867 Act prescribed a four month hunting season for native game, and the period during which it could be sold was restricted to the same four months. Other than these, the 1867 Act provided little else for the protection of native game. And while the first impression might have been that native bird protection was enhanced by the creation of a native game schedule, the reality was clearly different. Those indigenous species which were protected under previous legislation were in fact disadvantaged by the 1867 Act. Under previous legislation, indigenous wild duck, paradise duck, and kereru came under the same stringent provisions as imported species. The protection of native and imported species was also differentiated by section twelve of the Act, which enabled the Governor to exempt parts of the colony from the provisions of the Act that related to native game. A possible interpretation of the clause was that, as no equivalent clause applied to imported game, it may merely have reflected a belief that native game in some districts did not need protection. Evidence has also suggested, however, that the clause might have been enacted to accommodate the interests of Maori. Although the clause was not employed very often, the Opotiki, Maketu, and Tauranga districts were exempted from the provisions of the Act that related to native game in 1868. Significantly, the *New Zealand Gazette* described these areas as 'Native districts'.

Perhaps the most striking difference between the protection of imported and native game was the requirement to purchase hunting licences. The 1867 Act required hunters of imported game to purchase a fifty shilling hunting licence. Hunters of native game were not. This meant that, during the prescribed native game hunting season, hunters were unregulated. While this situation suited the Maori aspirations for undisturbed access to native birds, it exasperated the acclimatisation societies. The societies knew that hunters of native game were also shooting imported game without acquiring the correct licence. In 1887, the Hawke's Bay Acclimatisation Society requested that hunting licences be required for all hunters of native game. Rather than out of concern for the indigenous species, however, the society was motivated by financial opportunities. They planned to use the money raised from selling native

game licences to pay bounties on destroyed hawks.<sup>12</sup> While the initiative was unsuccessful, colonial attitudes to the indigenous were exposed.

The implementation of two sets of rules, one for imported game and one for native game, led to a widespread misunderstanding of the law by the general public. Confusion reigned as long as a distinction between native and imported game persisted.<sup>13</sup> However, the effect of the distinction was clear. The enactment of a schedule of native game provided the legislature with the means of implementing a *secondary* protection for species. The protection of imported game was far more stringent, wide-reaching, and legislated for than the protection of native game. The primary focus was after-all the acclimatisation of *imported* species in New Zealand. The secondary nature of native game protection was highlighted in the 1867 Act. Section fifteen provided for imported birds to be deemed native game if it became established in any district, as was the black swan in 1922. Native game protection, therefore, remained an ancillary measure.

Like much relating to the animals' protection policy, the reason for the distinction between indigenous and introduced species was unexplained. A possible interpretation related to the right of government to restrict access to an *inherited* resource. Because acclimatisation societies spent money on the introduction and establishment of imported game, they could claim a legitimate right to control the species. As indigenous fauna was here prior to European settlement, however, the societies' (and government's) right to control the resource could have been considered more tenuous. This sentiment was echoed in later years by Richard John Seddon. As the acclimatisation societies played no part in bringing native game to the country, Seddon questioned the right of parliament to pass laws restricting access to them.<sup>14</sup> Fewer restrictions upon access to native game might also make the stringent provisions relating to imported game more palatable to settler society. Overriding both of these interpretations, however, was the simple fact that particular imported

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<sup>12</sup> J M Wellwood, *Hawke's Bay Acclimatisation Society centenary 1868-1968*, Hawke's Bay Acclimatisation Society, Hastings, 1968, p.45.

<sup>13</sup> McDowall, 1994, p.295.

<sup>14</sup> *NZPD*, vol 65(1889), p.479.

animals and birds were more critical to colonist national sentiment than indigenous species. Whatever the reason, the differentiation between the two types of game proliferated and was extended over the next fifteen years. And while the 1867 Act afforded particular native bird species some degree of protection, as will be demonstrated in chapter four, that protection was based on preserving sport rather than preserving species.

It was not, however, the registration of acclimatisation societies or the creation of the schedule of native game that Arthur Atkinson opposed. If anything, these two innovations were applauded. Atkinson's opposition stemmed from the characteristics of the animals' protection policy which were established in 1861. These traits, described in the previous chapter, were embodied and were augmented by the 1867 Act. The first of these was the emphasis that was placed upon the acclimatisation of species not indigenous to New Zealand. Under the 1867 Act, the acclimatisation of imported species took precedence over any other interest. No provision was made in the Act for the protection of crops. Consequently, the small crop-farming interests (as opposed to large-scale pastoral farmers) were particularly affected; farmers were powerless to protect their crops from the ravages of protected species.

Pheasant were notorious for the damage they caused when feeding on arable crops such as corn. The Act made no provision for farmers to shoot protected species that caused such damage. Farmers were not exempted from the requirement to purchase a licence to shoot game upon their own lands, and could shoot only during the designated hunting season. Their frustration was augmented by the timing of these seasons. Atkinson in particular was perplexed at this aspect of the Bill:

Suppose the case of a small holder near a man who had a fancy for game; if he took out a licence, he could only shoot three months in a year, when his corn was in the barns and safe, but could not shoot while it was growing or in the ear.<sup>15</sup>

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<sup>15</sup> *NZPD*, vol 1 (1867), p.1230.

Atkinson believed it was monstrous to allow game to run over a man's land whether he liked it or not. The legislature's preference for the acclimatisation of protected species in New Zealand was clear - even at the expense of a significant proportion of their constituents.

The legislature's persistence with putting acclimatisation before crop farmers led Atkinson to only one of two conclusions:

For whose benefit it was that game was to be kept, when it was enacted that a man could not shoot it on his own land? It was either for the sake of the landowner himself, or for the benefit of someone else . . . it was for the sake of the sport, and for the benefit of the sportsmen.<sup>16</sup>

This claim met fierce denials from John Hall (Heathcote) and John Cracroft Wilson (Coleridge).<sup>17</sup> This was significant because the latter was a former vice president of the North Canterbury Acclimatisation Society and chaired the Select Committee on the Protection of Animals Act 1867. By protesting Atkinson's remarks, Hall and Cracroft Wilson denied the animals' protection policy's role as a vehicle for preserving an elite sport as well as preserving animals. The establishment of game species for the purposes of field sports, however, was one of the founding principles of New Zealand's acclimatisation movement. The fact that the preference for field sports originated outside of parliament was insignificant. Many of the most active acclimatisers, including Sir George Grey and Cracroft Wilson himself, were active supporters of the animals' protection policy in parliament.

Others in the House took a more direct approach to the accusations of Arthur Atkinson. Hugh Carleton (Bay of Islands) branded Atkinson's concerns as 'political selfishness'. Carleton attempted to undermine the very foundation of Atkinson's argument. He claimed that Atkinson believed:

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<sup>16</sup> *NZPD*, vol 1(1867), p. 1230.

<sup>17</sup> *NZPD*, vol 1(1867), p.1230.

that if a man could not shoot on his own land without a licence, he was preserving game, not for own but for his neighbour's benefit. But did it not occur to that honourable member that the neighbour's benefit was sufficient reason for law? . . . Again and again he [Carleton] had to inveigh against that political selfishness which exalted the rights of the individual and forgot the advantages to the whole community.<sup>18</sup>

Carleton's message was clear. But whether in fact the legislation was advantageous to the entire community, as he claimed, was questionable. Prohibition of Sunday hunting demonstrated clearly that the entire community could not benefit from individual sacrifices. Moreover, it suggested that those who supported the Bill who were just as 'politically selfish' as the crop-farmers. What is more, Carleton and his allies had more support in the House.

Maori too were largely overlooked by the Act. Colonist and politician C W Richmond attempted to justify the Crown's right to over-ride Maori land and resource rights in 1858. He believed there to be two dimensions to this issue. The first related to the civilisation of the natives. The second was the promotion of European settlement in the colony.<sup>19</sup> The notions of *tino rangatiratanga* and of undisturbed possession of resources does not appear to fit comfortably with Richmond's analysis.

In 1861, the use of traps when hunting protected species was prohibited. The implications of this measure were discussed in the previous chapter. The other area in which Maori interests were overlooked was in the scheduling of indigenous species. In 1867, this had little practical effect upon Maori, but with the increase in the protection afforded to indigenous fauna, this aspect would become more relevant; the creation of a separate schedule for indigenous fauna forecasted the Crown's eventual appropriation of property rights over a customary resource. In this way, the scheduling of these indigenous species may be interpreted as a breach of Article Two of the Treaty of Waitangi. Moreover, the legislature's lack of concern for both Maori

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<sup>18</sup> *NZPD*, vol 1(1867), p. 1231.

<sup>19</sup> C W Richmond cited in Wendy Pond, *The Land with All the Woods and Waters*, Waitangi Tribunal Rangahaua Whanui Series, 1995. (draft), p. 48.

and farmers' interests highlighted the rapidly emerging predominance of sportsmen over the animals' protection policy, and the conflict this caused between a number of parties. While crop-farmers and Maori wanted freedom to shoot game species for food or to protect their crops, sportsmen sought to enforce stringent protection of game birds for the purpose of preserving their chosen pastime.

While the Protection of Animals Bill 1867 was before parliament, unlike the farmers, there was no Maori voice in parliament as there was a farmers voice to defend their interests; at the time there were no Maori members of the House of Representatives.<sup>20</sup> The only recognition of any potential the Bill might have to impact upon Maori came from an unlikely source. Future premier (Sir) Harry Atkinson raised his concern that the prohibition of traps would adversely affect Maori. He advised the House that, in some parts of the country, Maori almost lived on wild ducks which were invariably taken by snares. To prohibit that, he believed, would 'only give rise to much difficulty'.<sup>21</sup> A number of factors, however, could lead the cynic to question the sincerity of Atkinson's concern. The tone of his address and his general history of dealing with Maori (such as his attitude during the wars in the 1860s, his later stance on Parihaka, and his view on perpetual leases and the Land Bill 1882) leads one to question the extent to which Atkinson was defending Maori interests. His speech may also be interpreted as an indirect representation of farmers' interests, or merely as supporting his brother, under the guise of concern for the indigenous people. Despite such speculation the reality was plain. Maori (and crop-farmers') rights were overlooked.

It is prudent to point out at this stage that in both instances the practical effects of the legislation are impossible to measure, and determining the extent to which the Act impacted upon Maori (and farmers) cannot realistically be ascertained. If anything, it has been suggested that scant regard was given to the early legislation in particular.<sup>22</sup>

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<sup>20</sup>The framework for Maori representation in the House, the Maori Representation Act, was enacted in 1867. The first Maori MHRs did not enter the House until 1868.

<sup>21</sup> *NZPD*, vol 1(1867), p.1231.

<sup>22</sup> G M Thomson, *The Naturalisation of plants and animals in New Zealand*, University Press, Cambridge, 1922, p.544.

As illustrated in chapter four, Maori access to native birds appeared to continue despite the law in many areas. For the purposes of this study, however, the exact effect of the legislation is less significant than what it tells us about the legislature and the priorities of the policy.

The government showed that it would go to seemingly any lengths to ensure the acclimatisation of particular species. The Protection of Animals Act 1867, therefore, enacted stringent provisions to ensure success. This caused concern in the House. John Acland (Canterbury) supported the Protection of Animals Bill 1867 because he believed the law as it was, was too lax. However, Acland maintained that the 1867 Bill went to the other extreme and was in fact too stringent.<sup>23</sup> Arthur Atkinson concurred. After assuring the House that he was not so sanguine himself, Atkinson informed the House of an opinion he had heard expressed, according to which 'it would take fully three months before the whole population was in gaol under the Act', such was the nature of the Bill.<sup>24</sup> The rigid nature of the Protection of Animals Act 1867 was manifest in the setting of fines at the previous maximum (£20), the introduction of the protection of game eggs, and the failure to allow for the protection of crops.<sup>25</sup>

As has been demonstrated, disregard for affected interests and the stringent nature of the Act caused concern both in parliament and in society. Many MHRs questioned the direction in which the animals' protection policy was headed. In 1861, both the Government and the Opposition supported the notion of promoting the importation of certain animals to the colony. The only reservation concerned the form and wider implications of these statutes.<sup>26</sup> Prior to 1867, however, such implications created concern rather than opposition. Consequently, the passage through parliament of early animals' protection statutes was conspicuous only by a lack of debate. Later that year, this all changed. It seemed the level of concern increased in proportion to

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<sup>23</sup> *NZPD*, vol 1(1867), p.936.

<sup>24</sup> *NZPD*, vol 1(1867), p.1229.

<sup>25</sup> Under the Protection of Certain Animals Act 1861, the maximum fine that could be imposed was £40. For reasons unexplained, that figure was reduced to £20 under the 1865 consolidation Act.

<sup>26</sup> *NZPD*, 1861, p.290. [Fox and Colenso].

the emphasis that was placed upon acclimatisation and the stringency of the statutes. Parliamentary interest in the formulation of animals' protection legislation was, therefore, heightened.

The increasing severity of the legislation encouraged comparisons with England's game laws. With particular reference to deer, reputed British historian, E P Thomson described how the preservation of certain species took precedence over any other interest.

Not only were deer 'the principal beauty and ornament of the forest', *but the needs of their economy overrode every other need . . .* This function was established in law [and] invoked by the King's officers.<sup>27</sup>

Thus, the game laws in England were enacted for the purpose of protecting the interests of the propertied. The penalty for breaching the English game laws was often death. Therefore, at least in terms of punitive actions, there remains little comparison between the 1867 Act and its English equivalent. The philosophical similarity is, however, striking.

The Bill's detractors did not seriously suggest that the 1867 Act intended to recreate the English model in New Zealand. Rather, a concern was raised that the 'spirit' of the English law was being introduced to the colony. Again it was Arthur Atkinson who led the charge. He believed that 'a great injustice would be done by introducing the spirit of the English game laws in this country'.<sup>28</sup> Menzies agreed. He doubted a measure as stringent as the 1867 Act would in fact have the desired effect. Likewise he questioned whether, in a country as young as New Zealand, it was judicious to make such stringent provisions as those of the 1867 Bill.

Those provisions were of a character to create a strong feeling of opposition, and they should remember how unpopular the Game laws were at home, and

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<sup>27</sup> EP Thomson, *Whigs and Hunters. The Origins of the Black Act*, Penguin Books, London, 1975, p.29. [Emphasis added].

<sup>28</sup> *NZPD*, vol 1(1867), p.1230.

what a deal of crime they caused. He did not think it desirable to induce such crime here, and if a stringent law was passed, a reaction in popular opinion would probably take place such as would destroy all protection.<sup>29</sup>

Such concerns were confirmed in 1868. In April of that year a group of Mangonui farmers (Doubtless Bay) petitioned Governor Bowen to exempt their district from the provisions of the 1867 Act. They believed that ‘the existing Game Laws may be very necessary to other portions of the Islands, but they are of positive injury here, and they cause the breach rather than the observance of them’.<sup>30</sup> In 1922, Menzies’ concern was affirmed by Thomson. He described early settlers as, not only great law makers, but great law breakers also. Nature was often too strong for the settlers and ‘beat them very frequently’. To blame, Thomson argued, was the restrictive character of the statutes.<sup>31</sup>

Despite an unprecedented feeling of opposition to the 1867 Bill, the Protection of Animals Act 1867 was assented to in October 1867. Arthur Atkinson’s criticisms were largely dismissed; the Protection of Animals Act 1867 was enacted with very little amendment to the aspects of the Bill that were criticised before parliament. Thus, the 1867 Act initiated a new era in the development of New Zealand’s animals’ protection policy. The main objective of the Act was the preservation of game birds (both native and more particularly imported). It was characterised by the precedence that the acclimatisation of the species took over any related interests, and was often dominated by a resistance to perceived similarities to English game laws. Despite the frequency of amendments that were passed, the 1867 established the frame work to which the animals’ protection policy adhered throughout the remainder of the 1860s and the 1870s.

One year, almost to the day, after the Protection of Animals Act 1867 was enacted, the first amendment Act was assented to. Rather than the protection of species, however, the primary focus of the 1868 Act was the management of game and native game

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<sup>29</sup> *NZPD*, vol 1(1867), p.936.

<sup>30</sup> Petition of Mangonui settlers, 25 July 1868. IA series file 1/1868/2174.

<sup>31</sup> G M Thomson, pp.543-544.

hunting. Those who opposed the policy's perceived similarities to the English game laws also enjoyed a minor success; section sixteen of the 1867 Act (which prohibited hunting on Sundays) was repealed.

The 1868 legislation also amended peoples right to hunt protected species upon the land they occupied. The Protection of Animals Act Amendment Bill 1868 originally proposed to exempt *landowners* from any licensing requirements to shoot game upon lands they possessed. The enactment of a clause like that would have represented a clear shift towards the English game law model. Dr Daniel Pollen, pioneer advocate for the preservation of flora and fauna in New Zealand and Legislative Councillor from Auckland, believed that the clause was an attempt 'to allow the owners and occupiers of land to have absolute power to do what they pleased with the game on their own property'.<sup>32</sup> The clause, therefore, was opposed and subsequently omitted from the legislation.

Acland opposed any clause that would allow large run-holders to shoot over their lands without purchasing a licence which they 'could afford and ought to pay'. However, he was in favour of permitting 'small' farmers to shoot game over their own free-holds.<sup>33</sup> To a certain extent, the legislature was successful in reaching a compromise between the two interests represented above. The first step was to abolish the differentiation between landowners and occupiers. The fee that was charged to those wanting to shoot exclusively upon the land they *occupied* was then reduced significantly.<sup>34</sup> The licence would not, however, enable the licence holders to shoot out of the lawful season. In this way the interests of small farmers were at least partially recognised, and some small relief was afforded to those who claimed to be suffering from the ravages of game animals. And those who pushed for the absolute power over game on their own property did not get it all their own way.

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<sup>32</sup> NZPD, vol 3(1868), p.44.

<sup>33</sup> NZPD, vol 3(1868), p.44.

<sup>34</sup> Protection of Amendment Act Amendment Act 1868, s5. This fee was reduced from 50 shillings under the 1867 Act to 1 shilling for the special license.

In terms of native game, the 1868 Act possessed some major implications, the first of which related to where in fact native game protection should apply. Under the 1867 Act, the provisions that related to native game applied to the entire colony unless a defined district was exempted by the Governor. In 1868, this structure was amended, and the provisions that related to native game applied only in proclaimed districts. This seemed a trivial clause which made little difference to the practical application of the Act. What is more, the relevant archives do not explain the reason for the amendment. The underlying message, however, was clear. Again the protection of native species depended upon colonial values. While a definite desire to preserve native game species existed, the legislature was reluctant to make native game preservation a mandatory direction. This was reflected in the 1867 Act, where it was stated that no indigenous species could be deemed game for the purposes of the Act.<sup>35</sup>

The native game hunting season was also amended in 1868. The prescribed native game hunting season (1 April - 31 July) was repealed, and was replaced with an unspecified period. Though probably determined by the advice of acclimatisation societies, the native game hunting season was to be set at the Governor's discretion. The proclamation of such seasons could apply to all or any native game species, and apply to the entire colony or particular districts. The Governor could alter, annul, or vary the native game season in any way, with no apparent restriction.

The reason why set seasons were replaced is unclear. While the most obvious interpretation was to allow the native game season in each part of the country to reflect climatic differences (and the effect that these had on wildlife), that was not the case. In 1869, the same native game season was enacted for the provinces of Auckland, Taranaki, Hawke's Bay, Wellington, Marlborough, Southland, and Westland.<sup>36</sup> A more likely rationale for the amendment was to increase access to native game. Under the 1867 Act, the native game season was restricted to a four month period. In 1869, the 1868 amendment facilitated a five month native game hunting season in some districts.<sup>37</sup>

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<sup>35</sup> Protection of Animals Act 1867, s8

<sup>36</sup> *New Zealand Gazette*, 17 April 1869, p.189.

<sup>37</sup> *New Zealand Gazette*, 17 April 1869, p.189.

The final clause of the 1868 Act removed the kereru from the schedule of native game. No explanation for this could be ascertained from surviving documents. Evidence suggests, however, that farmers' crops in some parts of the country were being ravaged by the kereru and other native species. Farmers from Mangonui (Doubtless Bay) were reportedly forced to plant their corn up to three times in one year, such were the depredations of pigeons and other indigenous birds.<sup>38</sup> Environmental historian Jim Feldman, believed that correspondence such as this 'undoubtedly contributed to the removal of pigeons from the list of native game'.<sup>39</sup>

The Protection of Animals Act Amendment Act 1868 facilitated the unregulated hunting of kereru. In 1872, however, the kereru was restored to the schedule of native game. Despite that clause, however, the 1872 Act focused on imported species rather than natives. The Protection of Animals Bill 1872 was prepared and brought forward by the Auckland Acclimatisation Society.<sup>40</sup> It was, therefore, logical that the Act would focus on imported game.

In many ways, the 1872 Bill was another attempt by the Auckland society to exempt the occupiers of land from having to purchase hunting licences to shoot on their own property. The Auckland society was responsible for the creation of a special licence for that purpose, enacted in 1868. Significantly, the group was represented in parliament by James Farmer. The Legislative Councillor from Auckland was the president of the Auckland Acclimatisation Society in 1871. He described the one shilling fee for a special licence as 'obnoxious', and believed the fee merely covered the expense of issuing the licence anyway<sup>41</sup>. Consequently, those who wanted to shoot game upon the land they occupied were no longer required to purchase a licence to do so. The clause did not, however, permit the shooting of game outside of the

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<sup>38</sup> Letter to Governor Bowen, 15 July 1868. IA series file 1/1868/1686.

<sup>39</sup> James Feldman, *Treaty Rights and Pigeon Poaching. Crown conservation and the alienation of Maori access to the kereru*, Waitangi Tribunal Research Series, 1998, p.7 (draft).

<sup>40</sup> NZPD, vol 12(1872), p.114.

<sup>41</sup> Ashby, C R, *The Centenary History of the Auckland Acclimatisation Society 1867-1967*, Auckland Acclimatisation Society, Auckland, 1967, p.12.

prescribed hunting season, and unlicensed shooting was restricted to the land that each person occupied.

The two other significant amendments made in the 1872 Act highlighted the policy's emphasis upon the acclimatisation of imported species. The first prohibited the shooting of imported game in the month of July. This effectively reduced the maximum hunting season from three months to two. The clause was principally intended to preserve pheasants.<sup>42</sup> That probably explained why an equivalent measure was not applied to native game. Unlike the other recommendations, this proposal was opposed. South Island Legislative Councillor John Hall believed that, while a shortened game hunting season might indeed be useful in the north, such a proposal would be received with 'considerable disfavour' in Canterbury. He believed the clause was too stringent and, as did Menzies in 1867, Hall warned that the enactment of too stringent measures might backfire on the legislature. 'This was essentially one of those Bills which might pass . . . but unless they carried with them the feeling of the population, [it] would be absolutely a dead letter'.<sup>43</sup> Hall believed that people were generally in favour of protecting game. However, he thought the protection of game should not be carried to a greater extent than was necessary. Despite this opposition, game shooting in July was prohibited.

The other amendment related to the sale of hen pheasant. This had been prohibited in 1867. In practice, however, the authorities were being duped. The law was evaded by selling cock pheasants for unusually high prices and then giving the hen pheasants, which were hidden away and not exposed for sale, to the purchaser free of charge.<sup>44</sup> On the recommendation of the Auckland society, being in possession of hen pheasant was prohibited. By enacting these last two provisions, the government showed their hand. Acclimatisation (or sports preservation) was favoured, despite earlier remonstrations of farming communities which demonstrated that particular game species had become pests in some areas.

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<sup>42</sup>*NZPD*, vol 12(1872), p.144.

<sup>43</sup>*NZPD*, vol 12(1872), p.144.

<sup>44</sup>*NZPD*, vol 12(1872), p.144.

The wholesale acceptance of acclimatisation society recommendations highlighted the pivotal role of the organisations in the development of the animals' protection policy in the late 1860 and 1870s. This was perhaps best illustrated by Walter Mantell who entreated the House to be content with a second reading of the 1872 Bill and allow a sufficient time to elapse before the Bill was committed. The reason for this was to give other acclimatisation societies an opportunity to comment on the proposals.<sup>45</sup> More than two months expired before the 1872 Act was passed. It is unlikely that two months was sufficient time to consult fully the other acclimatisation societies. However, this might owe more to the influence of the Auckland society rather than to a rejection of Mantell's request. Moreover, the dependence upon acclimatisation societies augmented the policy's focus upon the acclimatisation of imported species.

The following year witnessed the enactment of yet another animals' protection act. The Protection of Animals Act 1873 was the result of a perceived ignorance, on the part of the public, as to the state of the law at the time. Sir John Cracroft Wilson brought this to the attention of the legislature, and highlighted the regularity with which the animals' protection policy had been amended in the past. Because of this regular amendment, Wilson believed, people in general did not really know the position in which the law stood. This would not do. Wilson considered the policy of such 'importance to a large class of the community . . . [that it] ought to be placed on a satisfactory footing'.<sup>46</sup>

While principally a consolidation Act, the Protection of Animals Act 1873 also amended previous legislation. The most significant change concerned the administration of the Act. All powers held previously by the Governor were delegated to the Superintendent of each province. The reason for this is unclear as there does not appear to be any reference made to this significant development in any archival documents. But it is open to interpretation, and may have simply reflected a general dissatisfaction with the central government's handling of the policy. Also, localising the administration of the Act would enable climatic conditions to be

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<sup>45</sup>*NZPD*, vol 14(1873), p.145.

<sup>46</sup>*NZPD*, vol 14(1873), p.183.

reflected in the setting of hunting seasons; those in Auckland and those in Dunedin could set seasons that were most appropriate to their region. The localisation of administration would potentially increase the influence of acclimatisation societies within their respective dependencies. But rather than clarifying the law, by localising the administration of the Act (and the implementation of different regulations throughout the colony), the 1873 legislation possessed the potential to complicate matters further.

In terms of native game, the 1873 Act implemented further change. Rather than proclaiming the provinces in which the Act applied, the Governor was now required to proclaim in which provinces the Act did not apply. This was a reversion to the 1867 clause where the Act applied in every province unless exempted by the Governor. While this amendment may have represented the acknowledgment of a failed experiment, and a willingness to rectify the problem, it did little to abate the growing confusion that surrounded the animals' protection policy.

Like the 1872 Act, the Protection of Animals Act 1873 was initiated by another of the country's more influential acclimatisation societies; the Canterbury Acclimatisation Society could claim considerable credit for the introduction of the 1873 Act. Earlier that year the Canterbury society appointed a committee to 'revise and suggest desired alterations in the existing Act'. Wilson, and other Canterbury Members of Parliament, were then urged by the society to bring about the desired amendments.<sup>47</sup> The influence of the acclimatisation societies was, therefore, highlighted once more.

In 1875 a minor amendment was introduced to the policy. This concerned the protection of seals, and prescribed a seal hunting season. Then in 1880, the need for a consolidation of the animals' protection policy was identified yet again. Very little amendment was made to the policy under the 1880 legislation. Nor was there any debate while it was before parliament. The most significant provision enacted in 1880 related to the administration of the Act, which was returned to the central government. Rather than a preference for centralisation of the policy, however, such a measure may

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<sup>47</sup>Lamb, p.108.

have been necessitated by the enactment of the Abolition of Provinces Act 1875. Under that Act Provincial Councils were disbanded, and all of their former jurisdictions were vested in central government. The Animals Protection Act 1880 would, therefore, facilitate this transition. However, the reason for the five year delay, between the 1880 Act and the Abolition of Provinces Act 1875, is less clear.

In 1881, the financial demands of acclimatisation were again addressed in the protection of Animals Act Amendment Act 1881. Section six of the Act provided for *any* fees acquired under the operation of the animals' protection policy to be forwarded directly to acclimatisation societies. This meant that collectively acclimatisation societies within their respective dependencies had reached a degree of autonomy that saw them appropriate acclimatisation in New Zealand absolutely. By this stage, acclimatisation societies in many ways appeared to be an arm of government.

The primary purpose of the Animals Protection Act Amendment Act 1881, however, was to facilitate the alteration of hunting seasons. Under this legislation, hunting seasons for game and native game could be modified in any way at the discretion of the Governor, and protected species that were deemed *injurious* in a particular district could be destroyed. For the first time since 1861, the acclimatisation of imported species was not the paramount concern of the legislature; and from this point on, the dominance of acclimatisation began to wane. As the second part of this thesis will demonstrate, the void left by the imported species was filled by the indigenous.

The Protection of Animals Act 1867 possessed major implications for the animals' protection policy, and provided the framework for the next 15 years. Section fourteen of the Act protected absolutely all imported birds that were not game unless they were exempted by the Governor in Council. That one clause provided for the protection of birds that were considered to be nostalgic of England. The animals' protection policy, therefore, focused upon the preservation of sports birds and the management of game hunting. As a consequence, the term acclimatisation took on a whole new meaning; the ease with which many nostalgic birds, such as the sparrow, acclimatised to New

Zealand conditions meant the acclimatisation efforts concentrated on establishing game populations in New Zealand.

Complete with its emphasis upon game birds, the 1867 provided further impetus to the acclimatisation movement by affording legal recognition to acclimatisation societies. By 1881, these societies had appropriated entirely the acclimatisation process in New Zealand, and a phantom government department was born. The primary function of the acclimatisation societies was to introduce and establish particular species to New Zealand conditions, but they also provided a wealth of advice on matters relating to the protection of animals. Many of the amendments enacted between 1868 and 1881 were recommended by a number of the country's acclimatisation societies, and the majority were aimed at the management of hunting and the administration of the Act; very little amendment was made to the actual protection of animals.

To assist this process stringent provisions were enacted that, it was thought, would ensure success. Consequently, concerns were raised that the animals' protection policy was emulating the dreaded game laws of England. The English laws were generally accepted as repugnant, and represented the antithesis of what the animals' protection had originally set out to achieve. These concerns persisted throughout the nineteenth century. And when the farmers were appeased in the 1880s, a number of other individual MHRs (who sought access to the resource for reasons other than sport) persevered with this form of opposition to the animals' protection policy. But until the turn of the century, those in parliament who represented the interests of sportsmen simply outnumbered those who did not. The framework for the 1867-1881 period was, therefore, established. Moreover, to a large extent, such accusations were warranted. The vast majority of amendments that were made to the animals' protection policy after 1867 were aimed at the administration and management of game hunting, rather than the protection of animals *per se*; although punitive actions never matched the northern hemisphere country's, the animals' protection policy was fast-becoming a colonial equivalent to England's game laws.

The selection of indigenous species for protection between 1867 and 1881 relied upon European values; the vast majority of indigenous birds remained unprotected during the nineteenth century. That suited Maori, who sought undisturbed access to native bird species upon their own land, but even the survival of those species that *were* protected was far from assured. In comparison to the protection of imported species, native game protection was an ancillary measure. The government's approach to native game protection during this period could be described only as ambivalent. While a definite desire to preserve particular indigenous species existed, the legislature was reluctant to enforce the same stringent provisions that were designed to ensure the survival of imported species. This was, however, to be expected as the policy at that stage focused on the acclimatisation of *imported* species.

## CHAPTER FOUR:

### **The Plight of the Natives and an ‘Indigenous’ National Sentiment.**

The 1890s witnessed a complete reversal of colonial attitudes to the indigenous in New Zealand. Previously described as being of an indifferent quality, the kereru had become ‘one of the most beautiful pigeons in the world’ and ‘our beautiful, harmless kereru’.<sup>1</sup> Up to the 1890s, however, New Zealand’s indigenous birds had been largely disregarded by those responsible for the animals’ protection policy. During the same period, many native bird species were being rapidly extirpated. Nor were the few native species that were protected (as native game) assured of survival. But although the colonial change of heart came too late for some species, it provided a timely reprieve for many others. After demonstrating why native species were largely disregarded prior to the 1890s, this chapter will explore and explain exactly why colonial New Zealand came to treasure the country’s (remaining) native birds.

The nineteenth century witnessed the decimation of many bird species that were indigenous to New Zealand. Nine indigenous land bird species have become extinct since the settlement of New Zealand by Europeans.<sup>2</sup> Amongst these were the bush wren, huia, piopio, laughing owl, and South Island kokako. Despite the extensive efforts of the Department of Conservation, other species such as the takahe and kakapo remain dangerously close to extinction in the present day. In fact, 42% of all remaining indigenous species, and 74% of all remaining endemic species, were threatened with extinction in 1997.<sup>3</sup> The general consensus was that the two main causes for the nineteenth-century decimation of indigenous birds were predation by a number of imported species and loss of habitat caused by deforestation.

Evidence suggested that imported species such as rats, cats, and dogs were largely responsible for the extermination of the North Island’s most vulnerable indigenous

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<sup>1</sup> W Tyrone Power, *Sketches in New Zealand*, Longman, Brown, Green, and Longmans, London, 1849, pp.71-72; Assorted unidentified newspaper clippings from 1943. MS-Papers-0444-231. [Emphasis added]

<sup>2</sup> Rowan Taylor and Ian Smith, *The State of New Zealand’s Environment 1997*, Ministry for the Environment and GP Publications, Wellington, 1997, p.118.

<sup>3</sup> *ibid.*, p.118.

species by the mid 1880s.<sup>4</sup> But, according to Carolyn King, in 1884 the deadliest onslaught began. In that year the first private shipment of ferrets arrived in New Zealand for the purpose of eliminating the country's rabbit nuisance.<sup>5</sup> These were soon followed by two other members of the mustelid family, the weasel and the stoat. Before long, the legislature's error was clear. Despite the presence of their natural enemies, rabbit numbers remained constant, and if anything expanded. Rather than controlling rabbit numbers, the imported mustelids displayed a clear preference for the taste of native bird meat.<sup>6</sup>

The loss of natural habitat also caused the death of many native birds. Although large forest areas were transformed to scrub by Maori in the pre-European era, changes made since European contact were far larger and affected a greater area.<sup>7</sup> By clearing native forest for settlement and cultivation, the natural habitat on which native birds depended for survival was being destroyed at an alarming rate. During the last quarter of the nineteenth century, native forests in New Zealand were reduced to a fifth of their original size.<sup>8</sup> The consequences for native birds, which were so specialised as to be *tied* to their environment, were self-evident.<sup>9</sup>

It was clear that unregulated hunting was in no way a major contributor to the decimation of indigenous species during the nineteenth century. Nor, however, was it insignificant; protection, under animals' protection legislation, would have at least provided some reprieve from the detrimental effects of deforestation and predation. Colonial scientist T H Potts repeatedly warned of the impending doom of indigenous fauna, unless society intervened. He believed the province of natural history in New Zealand became increasingly rare as each day passed.<sup>10</sup> In 1872, Potts lamented the

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<sup>4</sup> Carolyn King, *Immigrant Killers. Introduced predators and the conservation of birds in New Zealand*, Oxford University Press, Auckland, 1984, p.118

<sup>5</sup> King, pp.81-86.

<sup>6</sup> King, pp.88-89.

<sup>7</sup> G R Williams, 'Birds', in G R Williams (Ed), *The Natural History of New Zealand*, A H & A W Reed, Wellington, 1973, p.310.

<sup>8</sup> Williams, 'Birds', in Williams (Ed), 1973, p.310.

<sup>9</sup> Williams, 'Birds', in Williams (Ed), 1973, p.310.

<sup>10</sup> T H Potts, 'National Domains', (1878), in T H Potts (Ed), *Out in the Open: A budget of scraps of natural history gathered in New Zealand*, Lyttelton Times Company Limited, Christchurch, 1882, p.81.

diminutive proportion of indigenous birds that were protected under animals' protection legislation. After advocating the preservation of indigenous birds, Potts warned of the dire consequences if nothing were done:

We shall justly incur the opprobrium of barbarism if we neglect to use strenuous exertions to avert the fate which seems impending over them. No excuse that we could offer for indifference will palliate our destructiveness in the eyes of the scientific world.<sup>11</sup>

These sentiments were echoed also in parliament. In 1872, William Rolleston (member for Avon) spoke of the 'large destruction' of native birds. He reported seeing bundles of tui hanging for sale in shops, and had heard of people dining off kiwi. He believed that this was 'a gross abuse of the present privilege to kill birds'. As a result, he recommended a clause be added to the Protection of Animals Bill 1872 that would prevent 'the loss of birds which were characteristic of the country'.<sup>12</sup> Comments such as those of Rolleston were rarely heard in parliament before the 1870s. In this instance, however, the legislature took heed. In 1872, the sale of dead tui was prohibited.<sup>13</sup> The protests of Rolleston and Potts were, therefore, significant because they ensured that those who were responsible for drafting of animals' protection legislation were (at least partially) aware of the decline of native bird populations.

The reason why indigenous birds were largely unprotected in the nineteenth century, despite the government being aware of their rapid extirpation, was a complex affair; there were a number of contributors to European indifference. Like the acclimatisation of imported species, the reasons were ideological, practical, and financial. While all undoubtedly contributed, none were solely responsible for the government's failure to intervene earlier in the plight of the natives. The first possible explanation related to European notions of native bird conservation. As demonstrated in later discussion, this emphasised scientific study rather than the survival of species.

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<sup>11</sup> T H Potts, 'Recent Changes in the Fauna of New Zealand' (1872) in T H Potts(Ed), p.235.

<sup>12</sup> *New Zealand Parliamentary Debates (NZPD)*, vol. 13(1872), p.204.

<sup>13</sup> Protection of Animals Act 1872, s2.

Many lay people simply put profit before preservation. Farmers were not prepared to suspend the conversion of their land to pasture for the sake of indigenous fauna. King believed that farmers had no regard for native wildlife. Nor did they have any conscience about their destructive management practices.<sup>14</sup> This was by no means exclusive to the New Zealand experience, and can be seen today with the destruction of South American rainforests.

An alternative explanation was that indigenous species were at first not valued by the increasingly dominant European society. Captain James Cook described New Zealand as 'destitute of all sorts of beasts, either wild or tame'.<sup>15</sup> The kuri (indigenous dog) was dismissed as a 'Maori cur'.<sup>16</sup> And, with the exception of lizards and kiore (indigenous rodent), the country's lack of game was lamented by European writers. New Zealand's pre European-contact quadrupeds were described as vermin.<sup>17</sup> But, while devoid of wild animals, the colony possessed a profusion of indigenous birds. Nineteenth-century assessments of these birds, however, were based upon European criteria. These assessments highlighted the game qualities of each species. In this respect, New Zealand's native fauna was found wanting; there was 'no shooting worth speaking of, in either island' of New Zealand.<sup>18</sup> Some felt that the settlement of New Zealand was threatened by its apparent lack of game. After discussing the bounty of other countries, Justice of the Peace for the county of Chester and the colony of New Zealand, John Bradshaw believed:

It is not, therefore, to be supposed that true sons of Great Britain could be found ready to dwell in a country in which there is so little to shoot, and where

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<sup>14</sup> King, p.64.

<sup>15</sup> James Cook cited in John Halkett, *The Native Forests of New Zealand*, GP Publications, Upper Hutt, 1991, p.42.

<sup>16</sup> Charles Hursthouse, *New Zealand or Zealandia? The Britain of the South*, Stanford, London 1857, p.127.

<sup>17</sup> John Savage, *Some Account of New Zealand, particularly the Bay of Islands and surrounding country*, J Murray, Fleet Street, London, 1807, p.10.

<sup>18</sup> W Tyrone Power, *Sketches in New Zealand*, Longman, Brown, Green, and Longmans, London, 1849, pp.71-72.

some half-wild pigs . . . [and] a few ducks - gave the only chance of a fair day's sport.<sup>19</sup>

The need to acclimatise the game animals of the world was, therefore, accentuated. It was little wonder that animals' protection legislation focused on imported species. However, a sports-based evaluation of native birds probably reflected more why particular indigenous birds were protected, rather than why the majority were not.

Just as indigenous game birds were dismissed by many non-Maori, native birds of the insectivorous variety appeared to have been underrated by the nineteenth-century farmers. Many colonist farmers imported a great number of insectivorous birds to New Zealand from Great Britain, Australia, and the Americas. This baffled Potts. He was bemused by those New Zealanders who went to considerable trouble and expense to import these birds, while the country's own insect eaters were being killed off in countless numbers.<sup>20</sup> That fact suggested that inefficacy alone was not the only reason for governmental, and society's, indifference to the plight of native birds.

A third alternative was based on Charles Darwin's theory of evolution and the 'survival of the fittest'. A widespread attitude existed in nineteenth-century New Zealand that the gradual extinction of indigenous species, including the indigenous people, was inevitable. Just as Maori would be replaced by Pakeha, so too would native birds be replaced by stronger northern hemisphere avifauna.<sup>21</sup> The factual basis of this interpretation, however, was flawed. New Zealand's indigenous birds were being extirpated by deforestation and predation, rather than competition for resources. But there can be little doubt that theories of social Darwinism bit deeply into colonial consciousness. Buller himself was a resolute Darwinist. He believed that there was 'no country in the world where the process of natural selection has had so favourable a

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<sup>19</sup> John Bradshaw, *New Zealand as it is*, Sampson Low, Marston, Searle, & Rivington, London, 1883, p.334.

<sup>20</sup> Potts, 'Recent changes in the fauna of New Zealand', (1872), in Potts (Ed), p.234.

<sup>21</sup> McDowall, *Gamekeepers for the Nation: the story of New Zealand's acclimatisation societies. 1861-1990*, Canterbury University Press, Christchurch, 1994, p.294.

field for its operation as New Zealand'.<sup>22</sup> Rather than the effect of introduced fauna, however, Buller was referring to the evolution of New Zealand's indigenous birds over previous centuries.

Rather than Darwinism, the belief that New Zealand's native birds were doomed may have been rooted in a less scientific philosophy. This was based upon the (supposed) inherent superiority of western civilisation over all other forms of life. This attitude was not unique to the New Zealand experience, and it was represented throughout the entire colonist community. In 1872, the *Anglo-New Zealander* documented the changes to the New Zealand landscape that resulted from the extirpation of native birds. That, however, was not considered an unfortunate consequence of colonisation as one might expect:

Not that the change is to be regretted, except from a zoological point of view; for the substitution of real game for these native birds is not less desirable, in this age of progress, than the replacement of a semi-barbarous race by the offshoot of a highly civilized nation.<sup>23</sup>

In parliament also, many held the indigenous in New Zealand in a similar esteem. With particular reference to native forests, the member for Rodney John Sheehan, spoke of his belief that any attempt to preserve the native timber of New Zealand would end in failure:

The same mysterious law which appears to operate when the white and brown races come into contact - and by which the brown race, sooner or later, passes from the face of the earth - applies to native timber . . . The moment civilization and the native forest come into contact, that moment the forest goes to the wall.<sup>24</sup>

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<sup>22</sup> Buller, 'Illustrations of Darwinism', *Transactions and Proceedings of the New Zealand Institute*, 28(1895), p.79.

<sup>23</sup> *Anglo New Zealander*, 'Sport at the Antipodes', *The Field, the country gentleman's newspaper*, 13 July 1872, p.48.

<sup>24</sup> *NZPD*, vol 16(1874), p.351.

There was little doubt that the elements outlined above contributed significantly to colonists' psyche. Similarly, the extent to which they contributed to settler indifference to native birds was undoubtedly considerable. Yet, all of the above interpretations were undermined by one factor. The 1890s witnessed the beginning of a complete reversal of colonial attitudes to New Zealand's native birds. Previously described as vermin, a large proportion of indigenous fauna was treasured by New Zealand society. For such apparently deep-seated beliefs to be disregarded in such a short period, there must have been another reason for settlers' original disregard for indigenous fauna.

The fundamental reason for the general colonist indifference to the plight of the natives was that settler society, at least in this regard, appeared to have been guided by what they desired rather than what they believed. As established in chapter one, what they desired in the period prior to the 1880s was the Britain of the South. Many colonists, therefore, underwent the enormous task of acclimatising the many animals of the world that would augment this ideal in New Zealand.

Consequently the animals' protection policy accentuated the acclimatisation of *desirable* species to New Zealand conditions. The two main varieties of desirable species were game and birds nostalgic of England. Although it seemed that the acclimatisation of nearly any species was attempted, it was these particular types of animals that it was thought would enhance New Zealand's reputation as the Britain of the South. To ensure the success of nineteenth-century acclimatisation, the animals' protection legislation enacted stringent provisions. The legislature was, consequently, often resented by those it seemed were affected the most by the laws. Since the inception of the first animals' protection act, concerns over the nature of the policy have abounded. Many believed that the animals' protection policy was developing into a colonial equivalent of England's game laws. The more stringent the provisions, the more vehement the opposition. To a considerable extent, these accusations were accurate. The foundations of the policy were established in 1861, augmented in 1867, and remained unchanged for the next fifteen to twenty years. Amendments enacted

during the period were aimed at tinkering with the management of game hunting and the administration of the Act. In effect, the animals' protection policy was New Zealand's game laws.

As the vast majority of indigenous birds did not fit comfortably with the Britain of the South ideal, they were not protected by law. Those species that did, such as wild duck and kereru, were protected. Native game protection in the nineteenth century, however, was a largely ancillary measure; even those indigenous species that were protected were not assured of survival. That fact was illustrated by the protection that was afforded to the native quail. Like its northern cousin, the native quail possessed qualities that European *sportsmen* appreciated. And despite the elegies of European writers, who lamented the quality of New Zealand's native game, the native quail provided 'excellent sport for the country's early European colonists'. While the native quail was abundant in 'all the open country', it was not uncommon to 'bag twenty brace in the course of a single afternoon'.<sup>25</sup> The species was, therefore, duly exploited; it stood to reason that the native quail was protected as native game.

The native quail, however, might have been better served if it was protected absolutely. Instead it was hunted to extinction. Native quail were extinct in the North Island by 1869. In the South Island, the species was extinguished by 1870.<sup>26</sup> What is more, those charged with the responsibility of managing native game hunting were, at least partially, aware of the species' precarious situation. In 1869, the hunting season for a species on the very brink of extinction was reduced by one month rather than closed altogether.<sup>27</sup> This measure in no way reflected the plight of the native quail. But it did highlight a consciousness of the situation. Unlike the protection that was afforded to imported species, it seemed that native game protection was not aimed at preserving a sustainable resource. Rather, at least in the case of the native quail, native game protection was about managing the exploitation of a resource until it expired.

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<sup>25</sup> Anglo-New Zealander, 'Sport at the Antipodes', p.48.

<sup>26</sup> King, pp.81-82.

<sup>27</sup> *New Zealand Gazette*, 17 April 1869, p.189.

But, by the turn of the century, colonial attitudes to native birds had changed. So too had native bird protection. In 1910, all indigenous bird species that were not deemed native game were protected absolutely in New Zealand.<sup>28</sup> It seemed that the majority of colonial society had abandoned its previously entrenched values and beliefs relating to the value of New Zealand's indigenous fauna. The belief that nothing could, or should, be done to prevent the extinction of native species survived into the twentieth century. In 1908, Alfred Fraser (member for Napier) believed that native flora and fauna, like the Maori, would inevitably 'pass away'.<sup>29</sup> But by that time, Fraser's view was in the minority. It was generally accepted that something needed to be done to suppress the growing threat of extinction that lingered over many native species.

Consequently, the animals' protection policy from the 1890s onward emphasised the preservation of native fauna. This was caused by a change to the political dynamic that governed the formulation of animals' protection legislation. Prior to the 1890s, this process was characterised by a clash between the interests of acclimatisers and hunters and the interests of farmers. But the 1880s witnessed the enactment of several pest control laws.<sup>30</sup> So, to a large extent, the agriculture industry was appeased. Into the 1890s, two other movements gained momentum, and the formulation of animals' protection laws became a three-way struggle.

Acclimatisation dominated the earlier period. Although this dominance began to wane in the 1880s, and had dissipated completely by the end of the 1890s, the country's sportsmen and acclimatisers maintained a significant input into the animals' protection policy. But as the dominance of acclimatisation waned, the closely affiliate sportsmen gained ascendance. In fact, the sports preservation movement dominated the animals' protection policy between 1880 and 1900. In 1889, their influence was highlighted by Seddon. He believed that the primary interest of many in the House of Representatives, who Seddon described as sportsmen, was to preserve particular

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<sup>28</sup> Animals Protection Amendment Act 1910, s10.

<sup>29</sup> *NZPD*, vol 145(1908), p.66.

<sup>30</sup> Examples include: the Rabbit Nuisance Acts and the Small Birds Nuisance Acts.

species that provided city-folk with another leisure activity. That occurred often at the expense of the agriculture industry.<sup>31</sup>

Another group of parliamentarians who attempted to influence the animals' protection policy from 1889 onward were the Maori MHRs; in the 1890s, the Maori response to the animals' protection policy became more active. As illustrated in chapter two, Maori input into the protection of animals was neither sought nor was it offered prior to the 1880s. There are two possible explanations for this. Maori were never explicitly exempted from the operation of any animals' protection legislation *per se*. But the 1867 Act was never intended to operate in native districts,<sup>32</sup> and evidence suggested that early acts were not enforced in areas populated largely by Maori. Under the 1867 Act, the Governor could proclaim districts in which provisions related to native game did not apply.<sup>33</sup> And as established in chapter three, 'native districts' in Tauranga, Maketu, and Opotiki were exempted from those provisions of the Act.<sup>34</sup> In other regions, it was claimed that Maori continued to shoot protected species (particularly the kereru) regardless of the law.<sup>35</sup> Maori inaction may, therefore, have merely reflected the small extent to which the animals' protection policy affected the majority of the Maori population.

Early Maori inaction may also have resulted from the effectiveness of the elected representatives. This is not to suggest that New Zealand's first Maori MHRs were in any way unqualified or incapable. Rather, they were faced by a number of obstacles that rendered them largely ineffective. In the first instance, Maori representation was not introduced until 1867, and the first Maori MHRs were not elected until 1868. Moreover, Maori representation was not secured indefinitely until 1876.<sup>36</sup> That left them little time to find their feet. To some, it seemed the early Maori MHRs were little more than nominees of Donald McLean.<sup>37</sup> Consequently, the Native Department

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<sup>31</sup> NZPD, vol 65(1889), pp.474-478.

<sup>32</sup> NZPD, vol 1(1867), pp.1231-1232.

<sup>33</sup> Protection of Animals Act 1867, s12.

<sup>34</sup> *New Zealand Gazette*, 17 February 1868, p.81.

<sup>35</sup> Letter to Governor Bowen, 15 July 1868. IA series file 1/1868/1686.

<sup>36</sup> Maori Representation Acts Continuance Act 1876, s2.

<sup>37</sup> M P K Sorrenson, 'Maori and Pakeha', in W H Oliver with Williams B R (Eds), *The Oxford History of New Zealand*, Oxford University Press, Auckland, 1981, p.189.

treated Maori representation as a matter of public relations and goodwill rather than a serious attempt at democratic representation.<sup>38</sup> But, probably the most significant impediment was the deep-seated ethnocentrism of New Zealand's colonial parliament. A popular belief was that Maori representation would lead to 'honorable cannibals' being introduced to the Chamber.<sup>39</sup> It was easy to see, therefore, why early Maori MHRs did not have a larger role in the formation of animals' protection legislation. Their energies may also have been spent on perhaps more pressing issues, such as land acquisition/alienation, which dominated colonial politics.

Despite the questionable impact of early Maori MHRs in parliament, the enthusiasm with which Maori embraced European-style politics was indisputable.<sup>40</sup> And *ineffectual* Maori members were soon replaced by intelligent and determined spokesmen.<sup>41</sup> The enthusiasm of Maori MHRs quickly transferred to the protection of native fauna. By the turn of the century, many Maori MHRs had become outspoken opponents to particular aspects of the animals' protection policy. Their principal concern related to the appropriateness of applying European conservation methods to New Zealand's indigenous wildlife.

The most probable reason for a more intensive Maori involvement in the formulation of animals' protection legislation related to the application of the statutes. Evidence suggested that animals' protection legislation became increasingly relevant to Maori. By 1910, it appeared that Maori in many districts were no longer able to shoot protected species regardless of the law; the law was enforced in Maori districts. Sir Apirana Ngata was repeatedly petitioned by representatives of Te Urewera Maori to have the hunting season for kereru opened in their district.<sup>42</sup> Central North Island Maori also sought access to the kereru in 1910. They were not, however, represented by a European ranger. These Maori were led by, paramount chief of the Tuwharetoa

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<sup>38</sup> Alan Ward, *A Show of Justice. Racial amalgamation in nineteenth century New Zealand*, Auckland University Press, Auckland, 1995, p.209.

<sup>39</sup> NZPD, vol 1(1867), p.815.

<sup>40</sup> Keith Sinclair, *Kinds of Peace. Maori People After the Wars, 1870-85*, Auckland University Press, Auckland, 1991, p.92.

<sup>41</sup> Ward, p.270.

<sup>42</sup> Letter to Apirana Ngata, 24 March 1910. IA Series 1/1910/887. Letter to Apirana Ngata, [no date]. IA Series 1/1911/2882.

iwi, Te Heuheu Tukino. In these instances, the Maori petitioners enjoyed limited success. But that was rare. While the 1895 Act provided for native districts to be exempted from particular provisions of the Animals' Protection Act, such exemptions were proclaimed in 1901 and 1910 only.<sup>43</sup>

The increasing relevance of animals' protection legislation to Maori was also reflected in parliament. In 1889, the member for Northern Maori, Hirini Taiwhanga stated that animals' protection should not apply on native lands. He believed that the time had come when Maori should be 'no longer treated as babies' in relation to the preservation of native birds upon their own land.<sup>44</sup> Others too, resented the imposition of laws upon Maori for the management and preservation of an age-old resource. A recurring theme amongst Maori MHRs was that traditional Maori preservation methods had worked for centuries. If laws were to be passed for the preservation of native birds, the laws should apply only to Europeans, as it were they who were responsible for the destruction of native birds.<sup>45</sup> Except for a number of comparatively minor concessions, however, Maori interests in the animals' protection policy were largely overlooked by the parliamentary majority. This will be highlighted in the following chapter.

The third faction, who contributed significantly to the animals' protection policy after 1890, were the conservationists. There did not exist an organised conservation movement in parliament; the conservation ethic was represented by a number of individual MHRs. Collectively, their voice was strong. By the late 1890s, the overall tone of addresses related to the protection of animals had changed. No longer was the need to acclimatise imported animals accentuated. Rather, many MHRs lamented the rapid extirpation of New Zealand's indigenous birds, and beseeched the government to intervene. In 1908, this was highlighted by James McGowan, Minister for the Roads Department:

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<sup>43</sup> Animals Protection Amendment Act 1895, s7; *New Zealand Gazette*, 16 May 1901, p.1068; 5 April 1910, p.1222; 12 May 1910, p.1418.

<sup>44</sup> *NZPD*, vol 65(1889), p.482.

<sup>45</sup> *NZPD*, vol 65(1889), p.482.

The fact of the matter was that they [kereru] had all been cleaned out, and he [McGowan] thought that there should be further protection placed upon these beautiful birds. If this were not done, he believed there would not be a single bird left alive in the Dominion in a few years.<sup>46</sup>

In 1910, the extent of parliament's attitude reversal was highlighted by a number of MHRs who touted the idea of creating a national 'Bird Day' in New Zealand. A similar measure was already observed in Australia. The objective was to 'instill a love of our [native] bird-life into the minds of the young, and mark it by some special event'.<sup>47</sup>

In 1899, Henry Ell was elected to parliament as representative for Christchurch. There he quickly gained notoriety for his strong interest in the natural history of New Zealand and its endangered species.<sup>48</sup> Ell did not subscribe to the belief that the extinction of many native species was inevitable. With the assistance of strict conservation laws, Ell optimistically maintained that 'there was no need why the native bird life of New Zealand should entirely disappear'. By 1908, he was convinced that the time had arrived when measures should be adopted to ensure the survival of New Zealand's indigenous birds.<sup>49</sup> Ell received overwhelming support in the House. And, with particular reference to the kereru, the 'abominable' rate at which indigenous species were being slaughtered was deplored.<sup>50</sup> Of course, the conservation of native birds also met resistance in the House. By the turn of the century, however, a strong native bird conservation movement was established in parliament which eventually appropriated the animals' protection policy outright. This will be explored in detail in the following chapter.

As established, native bird conservation was not new. T H Potts had highlighted the need to preserve New Zealand's native birds in the early 1870s. But not all in the

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<sup>46</sup> NZPD, vol 145(1908), p64.

<sup>47</sup> NZPD, vol 152(1910), pp.324-325. [Ell and MacKenzie]

<sup>48</sup> Eric Pawson, 'Henry George Ell', *The Dictionary of New Zealand Biography. Volume Three 1901-1920*, Auckland University Press and the Department of Internal Affairs, 1996, p.149.

<sup>49</sup> NZPD, vol 145(1908), pp.62-67.

<sup>50</sup> NZPD, vol 145(1908), p.62.

scientific community at that time advocated the creation of reserves as did Potts.<sup>51</sup> Unlike imported species, the conservation of native birds was not based upon introducing stringent provisions to ensure success. Rather, a number of scientists were convinced that the only way to preserve indigenous animals was mounted in a museum. New Zealand's pre-eminent ornithologist Sir Walter Buller was a prolific collector of native bird *specimens*. His private collection of stuffed birds was confined only by the size of his house. Buller's reaction to the absolute protection of particular native birds was equivocal. Attempts to save native birds, he believed, were admirable. But it was more important that specimens be preserved for future study.<sup>52</sup>

Despite the views of Buller, the colonial approach to native bird preservation appeared to have changed by the turn of the century. The colonial conservation ethic had transformed to emphasise the survival, rather than the study, of native species. In the interim, however, a number of years (and a number of indigenous species) had either expired or declined in numbers. Why the colonial conservation ethic changed is, therefore, critical to understanding the turn-around of the animals' protection policy.

The legislature was undoubtedly influenced by what was happening abroad. This was highlighted with the 'Bird Day' proposal of 1910. In 1889, the member for Ellesmere Arthur Rhodes, suggested that the New Zealand government should learn from the United States of America's approach to the protection of birds. With the exception of destructive birds and game, all wild birds in the United States were protected absolutely. Rhodes believed that the American model should form the foundation of New Zealand's policy<sup>53</sup> These sentiments were reiterated in 1910, and a similar system of native bird protection was employed in New Zealand under the 1910 legislation.

But international developments were not solely responsible for the late nineteenth-century revaluation of indigenous fauna in New Zealand. The fundamental reason for

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<sup>51</sup> Potts, 'National Domains', (1878), in Potts (Ed), p.35.

<sup>52</sup> Ross Galbreath, *Walter Buller. The Reluctant Conservationist*, G P Books, Wellington, 1989, pp.184-185.

<sup>53</sup> *NZPD*, vol 145(1908), p.62.

change was based upon non-Maori notions of nationalism and was manifested in the appropriation of the indigenous as symbols of New Zealand's national identity. In 1869, the first cracks appeared in the colonial relationship with England; colonists responded very bitterly to Britain's decision to withdraw military support. Many thought that settlers had been deserted and left at the mercy of Te Kooti and Titokowaru.<sup>54</sup> T A S Kynnersley (the member for Westland North) believed that the Imperial Government had simply 'failed in its duty to the Colony'. The logical conclusion, he believed, was that New Zealand should separate from England.<sup>55</sup> Similar attitudes abounded in parliament and in the colonial press.<sup>56</sup> But the time was not right. Stafford thought not, and despite his earlier castigation of the Imperial Government, Kynnersley concurred. He considered himself an Englishman, and regardless of whether he lived in England or New Zealand, he 'hoped to continue being an Englishman'. Whether it was a logical conclusion or otherwise, Kynnersley believed the time was not right for New Zealand to separate from England.<sup>57</sup>

In 1871, 36.5% of the non-Maori population was born in New Zealand. Those born in Great Britain and other British colonies made up 59.4%.<sup>58</sup> It was little wonder that New Zealand's alliance with the Mother Country was maintained. As we know, colonist national sentiment during the 1860s and 1870s maintained a principally English disposition. These notions were manifested in the form of the Britain of the South ideology. The animals' protection policy, consequently, emphasised the acclimatisation of predominantly British animals and birds. It was thought that these species would augment the Britain of the South ideology in New Zealand.

With every year that passed, however, the proportion of colonial-born New Zealanders (excluding Maori) increased. In 1886, colonial-born New Zealanders outnumbered those born outside of the colony. By 1901, 66.8% of the non-Maori

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<sup>54</sup> James Belich, *Making Peoples. A History of the New Zealanders From Polynesian Settlement to the End of the Nineteenth Century*, Allen Lane The Penguin Press, Auckland, 1996, p.448

<sup>55</sup> *NZPD*, vol 8(1870), p.130.

<sup>56</sup> Keith Sinclair, *A Destiny Apart. New Zealand's Search for National Identity*, Unwin Paperbacks in Association with the Port Nicholson Press, Wellington, 1986, p.22

<sup>57</sup> *NZPD*, vol 8(1870), pp.130-131.

<sup>58</sup> Office of the Registrar-General, *Results of a Census of the Colony of New Zealand taken for the night of the 31st March 1901*, Government Printer, Wellington, 1902, p.122.

population had been born in New Zealand.<sup>59</sup> During that period, the non-Maori population increased by 301%.<sup>60</sup> Therefore, not only did the proportion increase, but so too did the sheer volume of colonial-born New Zealanders. Many colonials proudly asserted their identity as *New Zealanders*. In parts of the country, these New Zealanders banded together to form societies. One of the earliest examples of these societies was formed in 1892. The objective was to ‘foster a love of their native land [New Zealand] among the young colonials, and inculcate a national and patriotic feeling’.<sup>61</sup> The life-span of the New Zealand Society was short, but the philosophy that unpinned it survived. Before long, a spate of other groups were formed throughout the country. Based upon an Australian equivalent, these groups were known as Natives’ Associations. The first association was established in Auckland in 1894, and was followed by groups in each of the other main centres. The wave of nationalism reached provincial New Zealand also. Associations were established in Hawera, Gisborne, and Masterton, and were proposed for Timaru and Featherston.<sup>62</sup> The specific aim of the natives’ associations of course varied between organisations. But the essence remained largely the same, and was based upon stimulating a feeling of patriotism and nationality amongst (Pakeha) New Zealanders.<sup>63</sup> The story of the country’s various Natives’ Associations, according to Paul Hamer, was the story of the general Pakeha search for a collective and indigenous identity from the 1890s.<sup>64</sup> As the following discussion will demonstrate, indigenous flora and fauna played a central role in the colonial quest.

By the turn of the century, the metamorphosis was complete; the new-found pride in New Zealand of course impacted upon the former dependence upon England. In 1905, feminist reformer and novelist Edith Searle Grossmann documented the diminished colonial dependence upon the Old Country in terms of national identity:

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<sup>59</sup> *ibid.*, p.122.

<sup>60</sup> *ibid.*, p.121.

<sup>61</sup> Sinclair, 1986, p.32.

<sup>62</sup> Sinclair, 1986, pp33-36.

<sup>63</sup> Cited in Sinclair, 1986, p.37.

<sup>64</sup> Paul Hamer, 1992, p.85.

Gradually a great change has come over the national sentiment of colonials. The imaginative dependence on the Old World lingers still, but it is dwindling away. We still keep 'the vision splendid' of Europe, but it no longer occupies the foreground in our minds.<sup>65</sup>

Great Britain was still 'Home' to many New Zealanders - whether they were born there or otherwise. But, the Britain of the South myth was gradually exchanged for a more *indigenous* ideal.

During this same period, the Maori population decreased at an alarming rate; the magnitude of the decline of the Maori population in the last forty years of the nineteenth century cannot be overstated. Although there is no conclusive way of knowing, it is generally accepted that the pre-European contact Maori population was approximately 100,000.<sup>66</sup> By 1896, the recorded Maori population had fallen to 42,113.<sup>67</sup> The main causes of the alarming Maori death rate during this period were viral infections, such as tuberculosis, measles, typhoid, and whooping cough. But the most lethal ailment was influenza. The tokotokorangi, or epidemic, reached pandemic proportions in the latter decades of the nineteenth century. Maori (42/1000) were seven times more likely to die from influenza than non-Maori (5.8/1000).<sup>68</sup> By 1896, it was clear that the colonials overwhelmingly outnumbered their indigenous contemporaries. Similarly, Maori were no longer the powerful force that they had been during the 1860s and 1870s.

According to historian Tom Brooking, most farmable Maori land had passed from Maori hands by the turn of the century.<sup>69</sup> Coupled with the country's new demographic environment, the first phase of the colonisation process was largely completed. Maori appeared to be fulfilling the promise of inevitable extinction, and

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<sup>65</sup> Edith Searle Grossmann cited in Sinclair, 1986, p.7.

<sup>66</sup> Janet Davidson, *The Prehistory of New Zealand*, Longmann Paul, Auckland, 1984, p.56.

<sup>67</sup> Department of Statistics, *Census of Population and Dwellings; Population by Ethnic Group*, Department of Statistics, Wellington, 1993, Table 1.

<sup>68</sup> Mason Durie, *50.202 Aspects of Maori Health. Study Guide*, Massey University, Palmerston North, 1993, p.21.

<sup>69</sup> Tom Brooking, 'Busting Up' The Greatest Estate of All. Liberal Maori Land Policy, 1891-1911', *The New Zealand Journal of History*, 26:1(1992), p.78.

non-Maori had acquired the vast majority of the land. Colonial society then approached the task of becoming *New Zealand* society. An integral component, (perhaps *the* central element), of the colonial search for a new national identity was the colonial appropriation of the indigenous. In a search for a more indigenous national sentiment, the uniqueness of being a New Zealander was expressed through the peculiarity of the country's indigenous landscape - the flora, the fauna, and the people. England was still very much the 'Mother Country'. But, rather than the Britain of the South, the young colonials identified with indigenous symbols. In fact, colonial society assumed complete *ownership* of the indigenous in New Zealand. This was illustrated in 1893 during the parliamentary debate on 'forests and native birds preservation'. The native flora and fauna of New Zealand was repeatedly referred to as *ours* by Pakeha New Zealanders, and the passing of the following motion was proposed:

That in order to conserve *our* beautiful forests and preserve *our* rare native birds in the fiords and lakes country, the Government should without delay appoint reliable local residents to act as Rangers and Conservators.<sup>70</sup>

The motion was rejected. Colonial appropriation of the indigenous, however, was complete. By 1893, according to Hamer, Pakeha New Zealanders were no longer strangers in the land; rather, they had colonised it and now owned it.<sup>71</sup> Colonials were becoming Pakeha.

Pakeha appropriation of the indigenous was illustrated in 1906 and 1908 when two competitions were held for the designing of a national coat of arms. Many entries demonstrated clearly the elevated status of the indigenous in the non-Maori psyche. Various indigenous images had become cultural icons. The kiwi was portrayed in a number of entries. One entrant believed that the kiwi was 'already used as the mark of the Dominion'. Another believed that the kiwi was the emblem of the oldest New Zealanders extant. That meant it was representative of the country.<sup>72</sup> Rather than

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<sup>70</sup> *NZPD*, vol 79(1893), p262. [MacKenzie] [Emphasis added]

<sup>71</sup> Paul Hamer, 1992, p.106.

<sup>72</sup> IA Series 9/31.

identifying a single representative, other entries featured a profusion of indigenous figures. A particular 1908 entry featured all three representatives of indigenous life. It included native flora such as: a cabbage tree, raupo, flax, toetoe, and kauri trees; native fauna such as: tui, fantail, kiwi, huia, and even the moa; and finally images of Maori such as a taiaha and a toki. The previous entry might have been an extreme example, but the sentiment was reflected across the entire non-Maori society.<sup>73</sup>

Colonial literature also celebrated the newfound importance of the indigenous. Neglected by the first generation of settlers, William Pember Reeves believed, native flora was better appreciated by the children of the country's European settlers. They themselves were 'natives of the soil'.<sup>74</sup> Reeves' *The Long White Cloud. Ao Tea Roa*, which was first published in 1898, was a prime example of this type of literature. An author, poet, newspaper editor, and Cabinet Minister, Reeves has also been described as New Zealand's first historian of note. Moreover, Sinclair believed that Reeves played an active role in fostering New Zealand nationalism in the late 1800s.<sup>75</sup> It should come as no surprise, therefore, that Reeves' writing highlighted the value of New Zealand's indigenous flora and fauna. In his 1898 publication, Reeves celebrated the unadulterated beauty of native flora such as the rata. Describing the splendour of the tree in bloom, he wrote of valleys that were ablaze for miles with:

Flowers that with one scarlet gleam  
Cover a hundred leagues, and seem  
To set the hills on fire.<sup>76</sup>

Native fauna was similarly glorified by Reeves. Rather than the rustic English countryside of myth, when describing a typical riverside scene, Reeves used the imagery of New Zealand's native birds to create a more indigenous ideal:

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<sup>73</sup> *ibid.*

<sup>74</sup> William Pember Reeves, *The Long White Cloud. Ao Tea Roa*, Golden Press, Auckland 1973, (first published 1898), pp.37-38.

<sup>75</sup> Sinclair, 1986, pp.31-32.

<sup>76</sup> Reeves, pp.30-31.

Then there are the birds. In the mid-air is to be seen the little fantail, aptly named, zig-zagging to and fro. The dark blue tui, called parson bird, from certain throat feathers like white bands, will sing with a note that out-rivals any blackbird. The kuku, or wild pigeon, will show his purple, copper coloured, white and green plumage as he sails slowly by . . . The olive and brown, hoarse-voiced ka-ka, a large, wild parrot, and green, crimson-headed parakeets, may swell the list. Such is the *papa* river! and there are many such.<sup>77</sup>

By the 1890s, the scientific community had also awakened to the new found value of New Zealand's native birds - both in New Zealand and abroad. In New Zealand, the increasing scarcity of some indigenous species was highlighted by T Kirk. While not as emotive as Potts, Kirk's 1895 paper provided a detailed account of the speed with which the numbers of many native bird species were declining. These included: the kakapo, kaka, saddleback, kereru, North Island robin, weka, and many more.<sup>78</sup> In England, three prominent English zoologists repeatedly urged the importance of conserving native birds. Dr Slater (Zoological Society of London), Professor Flower (British Museum), and Professor Newton (Cambridge University) all warned of the lasting reproach 'if no attempt was made to save some - if only a remnant - of these expiring forms'.<sup>79</sup> Professor Newton had a particularly harsh view on New Zealand's 'misguided efforts in the way of acclimatisation'. He believed that New Zealand's native avifauna possessed features of interest that were 'unsurpassed by any others'. But Newton condemned New Zealand's indifferent approach to the preservation of the species:

It was indeed long before these features were appreciated, and then by but a few ornithologists, yet no sooner was their value recognised than it was found that nearly all of their possessions were rapidly expiring, and the destruction of

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<sup>77</sup> Reeves, p.43.

<sup>78</sup> T Kirk, 'Displacement of Species in New Zealand', *Transactions and Proceedings of the New Zealand Institute*, Volume 28(1895), p.9.

<sup>79</sup> *Appendices of the Journals of the House of Representatives (AJHR)*, 1892, H-6, p.1.

the colonial avifauna, so thriving and so intellectual, is being attended by circumstances of extraordinary atrocity.<sup>80</sup>

These views were published in New Zealand and England. And although international recognition of the need to preserve native birds vindicated T H Potts' earlier pleas for native bird protection, that must surely have been cold comfort for him after witnessing the decimation of many species in the meantime.

By the twentieth century, the widespread veneration of indigenous wildlife had infected the New Zealand public. While many Maori were seeking access to particular native species, a number of their non-Maori contemporaries wanted the same species protected absolutely. In 1914, this was highlighted by the establishment of the Forest and Bird Society. That group disbanded during the First World War, but essentially the same people formed the New Zealand Native Bird Protection Society in 1923. The object of that organisation was to obtain 'unity of control on all matters affecting wildlife and also the advocating of a bird day for our schools'.<sup>81</sup> The Native Bird Protection Society published a number of bulletins between 1923 and 1924, and was an ancestor of the Royal Forest and Bird Society that remains today.

By the Second World War, New Zealand society had unequivocally assumed complete *possession* of the indigenous. In 1943, the Christchurch public emphasised their overwhelming adoration of the indigenous wood pigeon. It was proposed that a limited number of kereru be used as food for members of the Maori Battalion. The proposal's recipient, Mona Gordon, was inundated with letters of opposition. And she expected similar correspondence from other parts of the country.<sup>82</sup> These views were expressed also in the local newspapers. The mood was unanimous condemnation. 'Bird Lover', believed that many other men were fighting and sacrificing their lives in the awful struggle for freedom. But they did not desire the 'extermination of our beautiful, harmless kereru'. Another correspondent wrote under the *nom de plume*

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<sup>80</sup> Unidentified newspaper article from 1943, MS-Papers-20-1840.

<sup>81</sup> Ian Close, 'Forest and Bird; the beginnings', *Forest and Bird*, February 1993, p.17

<sup>82</sup> Letter from Mona Gordon to Captain Sanderson. 14 June 1943. MS-Papers-0444-231.

'Children of Tane'.<sup>83</sup> The overall public reaction was gauged by founder of the Native Bird Protection Society, Captain Val Sanderson. He believed that public opinion was too strong to permit 'indiscriminate poaching of pigeons' to continue.<sup>84</sup> Indiscriminate kereru poaching was not the intent of the proposal, but Sanderson made his point very clear; the Forest and Bird Society's veneration of this particular native bird was unquestionable.

In conclusion, only a small number of indigenous birds were protected by law during the 1860s and 1870s; native game protection prior to the 1890s was, to a large extent, merely an accessory to the protection of imported game species. The nineteenth-century disregard for indigenous fauna was a complex affair, and there were a number of reasons why it occurred. Some were scientifically based, others harboured deep-seated prejudices. These included: the settler concept of native bird protection, the apparent worthlessness of indigenous fauna, and a belief that all indigenous life would inevitably succumb to the superiority of the northern hemisphere and become extinct. All undoubtedly influenced colonist actions, but none were exclusively responsible. Moreover, all of these explanations were undone by the apparent ease with which colonial society abandoned their beliefs to treasure the country's native birds at the turn of the century.

The fundamental reason for settler society's disregard for native birds was based upon notions of national identity. The vast majority of non-Maori society in 1871 were born in the United Kingdom or its dependencies. Many considered themselves Englishmen. As established in part one of this thesis, New Zealand was often referred to as the Britain of the South. The ideal was that New Zealand would represent the best qualities of the British empire. Indigenous animals had no place in this ideal. Rather, the acclimatisation of predominantly British species was accentuated.

Similarly, when colonial attitudes to the country's native birds reversed completely at the end of the nineteenth century, colonial beliefs did not miraculously mutate.

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<sup>83</sup> Assorted newspaper clippings from 1943. MS-Papers-0444-231.

<sup>84</sup> Letter from Captain V Sanderson to Mona Gordon. 23 June 1943. MS-Papers-0444-231.

Rather, the colonial national sentiment changed. The Britain of the South myth was replaced by a more indigenous ideal; colonists took their first step towards becoming Pakeha. Early New Zealand nationalists did not seek complete separation from England as earlier rhetoric had recommended. Rather, they sought to foster a more uniquely New Zealand identity for the children of the country's European settlers.

To achieve their goal, colonial New Zealand appropriated the indigenous as symbols of nationhood. Indigenous flora and fauna were often used to symbolise New Zealand, and quickly became cultural icons. The kiwi and the silver fern are striking examples. By the 1920s, the metamorphosis was complete. With a small number of exceptions, indigenous birds were generally accepted as national treasures. As this chapter has shown, the elevated status of indigenous birds was reflected throughout society. Parliament recognised this also, and the animals' protection policy came to emphasise the preservation of indigenous fauna. This will be discussed in detail in the following chapter.

## **CHAPTER FIVE:**

### **The emergence of native bird conservation 1881-1910.**

By 1910, a distinct native bird conservation movement had emerged in parliament that would eventually appropriate the animals' protection policy completely. Just like the earlier emphasis that was placed upon the protection of imported species, the primary reason for this change was steeped in notions of national sentiment. But native bird conservation could not become established until the dominance of sportsmen in parliament was overcome. And despite a small number of nineteenth-century conservation-oriented amendments, the native bird conservation movement did not gain momentum until the turn of the century. During this period, a number of other parties who attempted to influence the formulation of animals' protection legislation were effected; the considerable influence that acclimatisation societies had enjoyed in the past gradually eroded, and Maori representations were simply ignored in most cases. The first task of this chapter is describe briefly the creation of New Zealand's nineteenth-century pest control statutes, and the effect these had upon the formulation of animals' protection legislation. It will then analyse in detail all of the amendment and consolidation acts related to the protection of animals that were enacted between 1881 and 1910. The objective is to examine those interests who attempted to influence the animals' protection policy, and to trace the emergence of a native bird conservation movement in parliament.

#### **Part One: Pest control.**

Although acclimatisation before 1861 was largely haphazard and disorganised, efforts in the later 1860s and 1870s often proved very successful; undoubtedly assisted by the stringent provisions enacted under animals' protection legislation, many imported species flourished in New Zealand. In 1921, Thomson highlighted the success of nineteenth-century acclimatisation, and the consequences of some successes:

The record of legislation passed by various parliaments in New Zealand is historically of interest, and of value from the point of view of the naturalist, as showing how various animals and plants developing under new conditions in a new country, “run away,” as it were, and become so aggressive and so numerous in individuals as to constitute a serious menace to the well-being of the community.<sup>1</sup>

Although never protected by any animals’ protection act, no other animal illustrated Thomson’s point more than the rabbit. In 1861, with particular reference to game species and smaller birds reminiscent of England, the rabbit was noted as being the only species that was successfully acclimatised to the Canterbury district.<sup>2</sup> By 1876, however, the prolific rabbit population impacted negatively upon the farming industry in the South Island particularly. Because of the protective regulations that he introduced in the Southland district, the Southland Acclimatisation Society appeared to hold former Provincial Superintendent James Menzies at least partially responsible for their rabbit nuisance.<sup>3</sup> This was significant because at the point in time when the Southland society petitioned parliament, Menzies was a member of the Legislative Council representing Otago. Perhaps influenced by the Southland Acclimatisation Society’s plea to help eradicate the rabbit nuisance, New Zealand’s first pest control statute was enacted later in 1876. Ironically, just as early protection of animals statutes enacted stringent provisions to ensure the successful acclimatisation of particular species, the Rabbit Nuisance Act 1876 placed a similar emphasis upon the eradication of an imported pest. Under the 1876 Act, and later amendments, a number of perhaps extreme clauses were enacted.<sup>4</sup> These included: the option to levy an additional rate upon landowners for the explicit purpose of exterminating the rabbit pest, six months imprisonment for any person who imported rabbits without the correct authority, the absolute prohibition of the liberation of rabbits, and the

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<sup>1</sup> G M Thomson, *The Naturalisation of animals and plants in New Zealand*, University Press, Cambridge, 1922, p.554.

<sup>2</sup> Editorial, *The Press*, 17 August 1861. Cited in R C Lamb, *Birds, beasts, and fishes: the first hundred years of the North Canterbury Acclimatisation Society*, North Canterbury Acclimatisation Society, Christchurch, 1964.

<sup>3</sup> Letter from Southland Acclimatisation Society to Julius Vogel. [No date]. LE series file 1/1876/129.

<sup>4</sup> Nineteenth-century amendments to the rabbit nuisance policy were enacted in 1877, 1880, 1881, 1882, 1885, 1886, 1890, and 1891.

prohibition of keeping rabbits in confinement (except for biology teachers). Under rabbit nuisance legislation, the government was able to appropriate the land of any person who did not pay for the destruction of rabbits upon their property. The land in question would then be sold, and the proceeds of the sale used to defray the cost of destroying rabbits in the particular district.<sup>5</sup>

Although rabbits were never protected by any animals' protection statute, other nineteenth-century pests had been. And while many farmers claimed that some protected species had become pests as early as 1868, the detrimental effect of many imported species was not recognised by the legislature until the 1880s; this was given legislative recognition for the first time in 1881. The Animals Protection Act Amendment Act 1881 provided for the destruction of any protected species that was 'calculated to become injurious'.<sup>6</sup> However, it seemed that in the first year of the clause coming into operation, the hare was the only protected species to have its protection rescinded in some districts.<sup>7</sup>

The 1881 Act provided for the destruction of protected species, and in 1882 the legislature took further steps to facilitate the destruction of imported pests. The Small Birds Nuisance Act 1882 was enacted to 'make provision for the abatement of injury caused to crops by the undue increase of sparrows and other birds'.<sup>8</sup> The provisions enacted in 1882, however, did not appear to have been put into practice on a colonial level until 1903. The reason for this delay is unclear and unexplained. A possible explanation was that under the Protection of Animals Act 1867, any imported bird that was not deemed game for the purposes of the Act could have been protected absolutely within any district in New Zealand. The Small Birds Nuisance Act could not be applied to any protected species, so it was possible that the legislature were simply unable to implement the policy at a practical level. This interpretation seems very unlikely, however, and it is difficult to imagine (and there remains no documentary evidence) that the sparrow in particular was ever protected in any

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<sup>5</sup> Rabbit Nuisance Act 1876; *ibid.* 1877; *ibid.* 1882; *ibid.* 1886.

<sup>6</sup> Animals Protection Act Amendment Act 1881, s7.

<sup>7</sup> *New Zealand Gazette*, 19 October 1882, p.1498.

<sup>8</sup> Small Birds Nuisance Act 1882, preamble.

district. A more probable explanation was that prior to 1903, the small birds nuisance policy was administered by local authorities.

The introduction of the Small Birds Nuisance policy clearly illustrated that the economic implications of acclimatisation had outweighed the nostalgic value of some species. In 1903 (when the small birds nuisance policy was practically applied to the colony) the sparrow remained as the primary target of the legislation. The other species that were deemed pests under the Act were the yellowhammer and the greenfinch.<sup>9</sup> None of these species had been protected in the past, but before long parliament was requested to do something about the depredations caused by a number of previously protected species. The small bird nuisance policy was aimed at the South Island in particular, so it was logical that George Witty (the member for Riccarton) was an outspoken advocate of the destruction of injurious birds. In 1903, Witty recommended to his parliamentary colleagues that particular birds be proclaimed a nuisance under the Birds Nuisance Act. These included the previously protected blackbird and thrush.<sup>10</sup> To an extent, Witty gained some success; by the end of 1903, blackbirds and kea were added to the schedule of nuisance birds.<sup>11</sup>

For the purposes of this study, however, a more detailed interpretation of the small birds nuisance policy is less important than the impact it had upon the formulation of animals' protection legislation. That process during the 1860s and 1870s was dominated by acclimatisers and sportsmen (who were often the same people) and farmers. Farmers' opposition to aspects of the animals' protection policy was shrouded in comparisons to English game laws, but at the heart of their concern were the detrimental effects that many imported species had upon the farming industry. To a large extent, the implementation of pest control policies and the enactment of the Animals Protection Amendment Act 1881 appeared to have appeased the farming community. In the past, farmers had only debated those aspects of the animals' protection policy which affected their interests. Once these pest control measures

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<sup>9</sup> *New Zealand Gazette*, 21 May 1903, p.1197.

<sup>10</sup> *New Zealand Parliamentary Debates (NZPD)*, vol 124(1903), pp.150-151.

<sup>11</sup> *New Zealand Gazette*, 10 December 1903, p. 2531.

were enacted, farming input into the formulation of animals' protection legislation abated noticeably.

## **Part Two: Animals Protection Acts, 1881-1910.**

The Animals Protection Act Amendment Act 1884 was enacted for two purposes. The primary purpose of the 1884 Act related to the role of rangers, whose powers were increased. In the past, it seemed that rangers had no tangible authority, their duty was 'to take care that the provisions of this Act are complied with in the district which he or they may be appointed'.<sup>12</sup> Under section two of the 1884 Act, however, all the powers and jurisdictions of police constables were vested in rangers. Similarly rangers could confiscate any net, gun, engine, instrument, or device which was being used, or was intended for any use, in a manner contrary to the provisions of the Act. Rangers were also empowered to 'do all such other acts and things as may be necessary' to ensure that the law was adhered to in their jurisdiction.<sup>13</sup> The second function of the Act was to amend the form of game hunting licences. Little information regarding the conception and implementation of this Act remains today, and it drew little comment in either House of Parliament. The intent, however, was clear. By vesting increased powers in rangers, the legislature unequivocally stated its intention to more rigorously police the animals protection policy.

The next amendment to the animals' protection policy was enacted in 1886. Parliamentary debates appear to suggest that the principal function of this Act was to correct a technical glitch in the operation of the 1880 Act. For the purposes of the 1880 Act, the term 'imported' was defined as any bird or animal 'imported into any *district* and turned at large and includes the offspring of such bird or animal and every bird or animal of like species at large in the district'.<sup>14</sup> This became problematic when a man was acquitted of shooting a hare out of season; the interpretation of the 1880 Act was called into question. In the case of *John Burt v. John Kedzlie*, Kedzlie was accused of shooting a hare out of season. Although he did not deny doing so, he was

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<sup>12</sup> Animals Protection Act 1880, s31.

<sup>13</sup> Animals Protection Act 1880 Amendment Act 1884, s2.

<sup>14</sup> Animals Protection Act 1880, s2. [Emphasis added]

acquitted because the judge ruled that the plaintiff could not prove that the hare in question was in fact imported to the district in which it was shot. Patrick Buckley, Legislative Councillor from Wellington, believed that this technicality needed to be addressed if 'the Act of 1880 was to be of any use whatever'.<sup>15</sup>

The other role of the 1886 Act was to provide for the protection of indigenous birds; section three of the 1886 Act enabled the Governor to protect absolutely any indigenous bird. No reference was made to this clause while the 1886 Bill was before parliament, but the implications for native bird protection were immense. The clause represented the first tentative steps towards the absolute protection of New Zealand's indigenous birds, and the development of a distinct conservation movement in parliament. The clause also reflected the emergence of a new national sentiment. Rather than the exclusive protection of game species (native or imported) and birds reminiscent of England, the 1886 Act provided for the protection of birds that were unique to (or even reminiscent of) New Zealand. The provision, however, was not applied generously; protection was extended to few native birds prior to the 1890s, and it sometimes took place in stages. In 1887, the kaka was protected absolutely in Southland. By August 1888, it was protected absolutely throughout the colony.<sup>16</sup> The most probable explanation for the paucity with which the clause was applied related to the primary purpose of the Act. At that time, the animals' protection policy still emphasised the preservation of sport rather than of endangered birds. Many in parliament may have been reluctant to limit the number of species available to sportsmen at a time when targets were becoming increasingly scarce. Rather, the legislature preferred to protect a species as native game, and then impose regular closed seasons so that it might reestablish itself. In 1889, Seddon described any effort to restrict access to native birds as reprehensible.<sup>17</sup> But as the years passed, and colonial penchant for the indigenous developed, the move to preserve the country's indigenous fauna intensified.

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<sup>15</sup> *NZPD*, vol 54(1886), p.483.

<sup>16</sup> *New Zealand Gazette*, 7 April 1887, p.447; 23 August 1888, p.903.

<sup>17</sup> *NZPD*, vol 65(1889), p.478

While the 1884 and 1886 animals' protection statutes were enacted with little ado, the Animals Protection Act 1889 proved to be very controversial while it was before parliament - perhaps the most controversial measure related to the protection of animals since 1867. Moreover, the 1889 Act had a major bearing upon the political dynamic that governed the formulation of ensuing animals' protection statutes. The passage through parliament of the 1889 Bill facilitated the emergence of new influences upon the formulation of legislation, and the gradual dissipation of another.

As demonstrated in chapter three, acclimatisation societies had appropriated the management, and to a large extent the formulation, of animals' protection legislation since gaining legal recognition in 1867; within each dependency, they had become the unofficial *Department of Acclimatisation*. Under the 1889 Act, however, their activities were bound; every registered acclimatisation society was required to submit an annual statement of accounts and an audited balance sheet to the Colonial Treasurer. Any society that failed to do so, forfeited its right to receive any funding from the operation of the Act. The need to further regulate the use of public money by acclimatisation societies was highlighted for the first time in 1886 by, the MHR for Lincoln, Arthur O'Callaghan. He believed that the societies should operate under fixed regulations, 'and not in an altogether irresponsible manner, as they are doing at present'.<sup>18</sup> Financial accountability was also a fundamental requirement of any government department. As recipients of public money, it was logical that acclimatisation societies were required to be as accountable as any *official* government department.

Underlying the enactment of the clause, however, was a growing resentment of the organisations; acclimatisation societies were held largely responsible for the depredations caused by imported pests, and the need for pest control statutes. In 1889, acclimatisation societies came under further scrutiny from Seddon who thought that they were also to blame for the increasing scarcity of native game. In particular, Seddon criticised the role that acclimatisation societies played in the introduction of stoats and weasels, and their use of poison to eradicate pests that they themselves had

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<sup>18</sup> *NZPD*, vol 56(1886), p.646.

introduced. And while he acknowledged the success with which the societies had stocked many rivers and streams with salmon and trout, Seddon did not believe that their success was proportionate to the public funding the societies had received in the past.<sup>19</sup> Seddon's criticisms, however, may have been politically motivated as much as they were influenced by the detrimental effects of acclimatisation. Himself an acclimatiser of note, Seddon perceived the acclimatisation societies to be operating solely in the interests of wealthy cityfolk rather than the entire colony. And in a manner that would typify Liberal politics over the ensuing period, Seddon pitted the interests of the 'small man' against those of the higher classes:

Who constituted the acclimatisation societies? Those in the towns who could afford to pay the £1 a year. These persons were given the same power as was possessed by the landowners in the Old Country - the lords of the manor - who claimed to be altogether superior beings to the common people. Were we in this country, who sprang from the people, going to pass laws which would give to these acclimatisation societies a power that was never intended? . . . . the wealthy people who compose these acclimatisation societies had brought pressure to bear on the Government to bring down a measure against the interests of the great bulk of Her Majesty's subjects in the colony.<sup>20</sup>

Seddon's views were shared by a number of his parliamentary contemporaries such as George Marchant of Taranaki. He believed that it would be 'a very easy matter to make up a long list of the evils they [acclimatisation societies] had done'.<sup>21</sup> Parliamentary criticism was later echoed in a more scholarly work, when in 1922 Thomson criticised the societies for their lack of foresight. Acclimatisation society enthusiasm, he believed, was unabated by scientific considerations or any overall scheme. As illustrated in chapter one of this thesis, it seemed that any importation was worth a try. Consequently, Thomson believed that the societies often did more damage than good.

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<sup>19</sup> *NZPD*, vol 65(1889), p.479.

<sup>20</sup> *NZPD*, vol 65(1889), pp.479-480.

<sup>21</sup> *NZPD*, vol 65(1889), p.505.

There has been no policy. This has largely been due to the total failure of the community to grasp the scientific aspect of the question, or even realise that there is a scientific side. This consistently British attitude towards things scientific . . . . has led to neglect of ordinary precautions in nearly all past acclimatisation experiments.<sup>22</sup>

The fiery criticisms of acclimatisation societies in 1889, and the introduction of accountability measures, were merely symptoms of the time. As a consequence of the collective acclimatisation society role in the introduction of imported pests, the esteem in which the societies were held began to diminish. And as the societies focused on the acclimatisation of game species, and the animals' protection policy was in the process of adjusting its focus from the acclimatisation and management of hunting resources to the preservation of native species, the policy became largely irrelevant to the societies. From 1889 it seemed that advice given to the legislature from acclimatisation societies was confined largely to the management of game and native game. But as the ensuing discussion will illustrate, the animals' protection policy developed a broader perspective.

The primary intention of the 1889 Act, however, was not to undermine the acclimatisation societies. Rather, the objective of the Bill was supposedly to abate the destruction and extermination of game and native game. Robert Bruce, the member for Rangitikei, believed that many of the country's beautiful native birds would become as rare as 'the flight of the white crane' if nothing were done.<sup>23</sup> So a number of amendments were enacted that, it was thought, would help conserve native game; restrictions were applied to the type of firearm that could be used to hunt protected birds, any person who intended to sell native game was required to purchase a licence, and licence holders were required to keep a register that specified the number and description of any game or native game that was bought or sold. These clauses were clearly designed to reduce the number of birds that were killed each season, and to

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<sup>22</sup> Thomson, pp.22.

<sup>23</sup> *NZPD*, vol 65(1889), p.474. [Bruce]

introduce more stringent control over the sale of native game. But the underlying objective of the 1889 Act was ambiguous.

Although the Animals Protection Bill 1889 was promoted in parliament as a conservation-oriented measure, the objective of many in the House was clearly sports preservation. The majority of MHRs appeared to consider killing for sport a more acceptable pastime than killing for money or, in the case of Maori, killing for food. This view was expressed by the member for Waimate, Major William Steward:

He [Steward] knew a number of worthy artisans in the town from which he hailed who were very glad to take the opportunity of a holiday to go out and have a day's shooting. No one had complained to him more than these sporting artisans of the mischief that was caused by two or three professional duck-destroyers, who, by the use of swivel guns and engines of that sort, rendered a day's sport to the artisan, or to any other person, almost an impossibility. There were in almost every locality one or two individuals who were not regularly employed, but who, by means of destroying game in this way, succeeded in making enough money, perhaps, to spend the rest of the year about publichouses. In the interests, therefore, of sporting artisans, as well as sporting gentlemen, he thought the clause which proposed to do away with the use of swivel guns, *et cetera*, ought to be passed into law.<sup>24</sup>

The popular term used to describe the 'duck-destroyers' characterised by Steward was pot-hunters. These professional hunters used devices such as swivel guns, which were capable of destroying a large number of birds in a very short period. And while Richard Taylor (the member for Sydenham) believed that these men sought to gratify their animal instinct by slaughtering countless birds in this way, the pot-hunters' main reason to shoot game was financial profit.<sup>25</sup> Steward's grievance with pot-hunters was not their supposed effect upon native game *per se*, but the effect they were having

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<sup>24</sup> NZPD, vol 65(1889), p.478.

<sup>25</sup> NZPD, vol 65(1889), p.474.

upon the sport of game hunting. The activities of pot-hunters were, therefore, to be arrested in order for sportsmen to enjoy an age-old pastime.

The extent to which MHRs such as Steward could be branded conservationists may, therefore, be questioned. At that stage, the animals' protection policy was still very much concerned with the preservation of game birds. And the predominant conservation ethic was based upon controlling the number of birds that were collected by Maori and other hunters. It did not recognise the effects of deforestation or predation; access to the resource was simply restricted. The prohibition of swivel-guns was, therefore, not inconsistent with the then popular conservation ethic or the purpose of the Act, which was the preservation of game. And although the 1889 Act was promoted as a conservation-oriented measure, Steward appeared to be representing the interests of sportsmen. Moreover, the emphasis placed upon pot-hunters in particular demonstrated clearly that the animals' protection policy at that stage was being used to reserve access to a diminishing resource rather than bird preservation *per se*. What is more, it promoted the preservation of sports birds for particular people, ie. sportsmen.

Although their influence was diminishing, the acclimatisation societies maintained an active interest in the management of the sporting side of the animals' protection policy; the societies supported the introduction of licences to sell native game. Rather than conservation, however, it appeared that the primary motivation of the societies was financial. The sale of licences to sell native game, it was believed, would provide:

additional funds for Acclimatisation Societies in order to enable them to carry out the intention of the law, namely not only the protection of game birds, but also the protection of absolutely protected birds.<sup>26</sup>

Although the sportsmen appeared to have the upper-hand in parliament, not all of the country's MHRs concurred with Steward, Bruce, and their allies; others were

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<sup>26</sup> Correspondence related to the protection of the kereru, [No date]. IA series file 1/25/12 Part 1.

opposed completely to *any* notion of restricting access to indigenous fauna. Such opposition was shrouded in egalitarian rhetoric; the main line of attack was centred on avoiding the game laws of England, maintaining the liberty of settlers, and freedom from aristocratic oppression, which was a founding principle of acclimatisation in New Zealand. Both Seddon and John Kerr of Motueka believed that native game was New Zealander's inheritance. Kerr believed that settlers came to New Zealand 'for the purpose of getting freedom, and not for the purpose of getting put in gaol for killing what *belonged* to them'.<sup>27</sup> In a similar vein, Seddon questioned the right of the government to pass laws that would prohibit a man from shooting a pigeon or a tui for his breakfast; the notion of punishing a person for killing native game, he believed, was reprehensible and should never be passed.<sup>28</sup>

The last faction that attempted to influence the 1889 Act represented the interests of Maori. For the first time, the Maori MHRs entered a debate relating to animals' protection legislation *en masse*; three of the four Maori members spoke of the 1889 Bill's potential to adversely affect their Maori constituents. Although the Maori MHRs were divided in their support for the Bill, their concerns were in many ways analogous. Tame Parata, the member for Southern Maori, had a number of grievances with the animals' protection policy as it stood. He advised the House that the designated hunting seasons for native game contradicted Maori custom. Rather than May and June, when the native game season was usually opened, Parata believed that September was a more appropriate time of the year to shoot native game because that was the season adopted by Maori in the past. Like the majority of Maori input from 1889 onward, however, Parata's views were overlooked by the legislature. The difference of opinion over the most appropriate time to shoot native game, merely reflected the different values of two cultures. Parata informed the house that Maori never killed native game unless the bird was in good condition, and that tui were never killed unless they were very fat.<sup>29</sup> The reason for this was that Maori intended to eat the bird. Sportsmen, however, preferred to shoot native game when it was smaller and more agile. A more sprightly bird made a more difficult target and,

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<sup>27</sup> NZPD, vol 65(1889), p.507. [Emphasis added]

<sup>28</sup> NZPD, vol 65(1899), p.479.

<sup>29</sup> NZPD, vol 65(1889), p.477.

therefore, better sport. In parliament the sportsmen had more support than Parata so his opinion was disregarded.

Another of the Maori MHRs, Hirini Taiwhanga, supported the 1889 Bill because it applied to 'Maori birds'. He also believed that the Maori system of rahui, which (amongst other things) restricted access to an endangered resource, was 'quite sufficient to protect the game'. He, therefore, advocated the return of control over native game to Maori upon their own land.<sup>30</sup> The member for Western Maori, Hoani Taipua, also commented upon the 'very excellent' methods that Maori used to protect native birds. He agreed that animals' protection laws should not apply to Maori. Rather than pot-hunters alone, he believed that the ultimate responsibility for the decimation of native birds rested with Europeans in general:

Europeans should devise laws to protect the game against the encroachments of Europeans. It was the Europeans who had to be looked after . . . . When Captain Cook came to this Island he placed on record how his heart was delighted at the number of native game to be found in New Zealand; but since the advent of Europeans the native birds had steadily diminished. They had been destroyed by the European rat; and now they were being destroyed wholesale by the use of poison. Another cause of the destruction of the birds was the willful waste of the forests of the country: hundreds of thousands of acres were destroyed annually. These were the real causes of the disappearance of native birds.<sup>31</sup>

Parata agreed with Taipua that forest clearing contributed significantly to the demise of native birds. He, therefore, hoped all Maori who owned forests would do their best to preserve game. For this reason, Parata was convinced that animals' protection legislation *should* apply to Maori land. If Maori-owned forests became one of the few remaining strongholds of native game, as he hoped they would, Parata was concerned that sportsmen would have the right to enter Maori land in pursuit of game because it

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<sup>30</sup> NZPD, vol 65(1889), p.482.

<sup>31</sup> *ibid.*

would not be protected by the trespass clause in the 1880 Act.<sup>32</sup> Although Parata's route was different, his intent was clearly the same as the other Maori MHRs. Regardless of constituency, political or tribal affiliation, these concerns were not exclusive to Maori in 1889, but were constantly reiterated by successive Maori MHRs.

The primary concern of Maori in parliament was securing continued Maori access to native species. They did not oppose native game protection *per se*, in fact the majority supported it. However, the Maori MHRs (and a number of their non-Maori contemporaries) clearly understood that hunting restrictions alone would not arrest the decline of native species. Moreover, they believed that traditional Maori methods, and current Maori resources (ie. native forestry), were more than adequate to ensure the survival of species. They, therefore, believed that autonomous control over native species upon Maori land should be returned to Maori. The Maori MHRs argued that if that were done, the species would be preserved, and an easily sustainable cultural harvest (as it has become known today) could be maintained. These requests, however, were scarcely recognised by others in the House; rather than argued against by non-Maori MHRs, the representations of Maori were simply ignored. Consequently, the same aspirations were shared by Maori MHRs in the twentieth century.

In 1895, yet another amendment Act was passed, and the diminishing influence of acclimatisation societies was eroded further. The Animals Protection Amendment Act 1895 stated that written consent from the Minister of Agriculture was required prior to the importation of any species into New Zealand.<sup>33</sup> As was the case in 1889, the enactment of this clause emanated from a general dissatisfaction with the work of acclimatisation societies. Early in 1895, a group of South Island farmers alerted the Agricultural Department of their local acclimatisation society's intention to liberate the (presumably imported) wood pigeon in their district. Although it would have undoubtedly provided superb sport for society members, the farmers claimed that the

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<sup>32</sup> NZPD, vol 65(1889), p.477. Any person who trespassed upon another person's land while in pursuit of game, committed an offence under section 26 of the 1880 Act.

<sup>33</sup> Animals Protection Amendment Act 1895, s2

acclimatisation of the bird in their district would have dire consequences for the agricultural industry. The farmers, therefore, believed that Ministerial consent should be sought before any animal was imported into any province in the colony.<sup>34</sup> McDowall was unsure whether the clause was enacted because of a general concern about the nature of the species being brought to New Zealand by the societies, or if it merely reflected the developing importance of the agriculture industry to New Zealand.<sup>35</sup> These interpretations, however, need not be mutually exclusive; it is very likely that both factors influenced the legislature. Despite descriptions of the clause as a 'left-handed compliment to the acclimatisation societies . . . which had rendered such excellent services to the colony', Thomson believed that the clause should have been enacted at a 'very much earlier date'.<sup>36</sup> The South Island farmers who had petitioned parliament would have undoubtedly concurred.

The Animals Protection Amendment Act 1895 also introduced a closed season for kereru in 1896 and every sixth year thereafter. This was a straight-forward provision, and was clearly oriented at the preservation of a sports bird. However, the implications were many, and the amendment created a number of problems for the legislature and for the administration of the Act. Under section seven of the Act, the Governor could exempt the Urewera County and any other Native districts from any closed season. At first glance, this provision might appear as a degree of recognition of Maori reliance upon the kereru as a food source. It might also appear to reflect broader concerns over control of the Urewera. In 1895, the finer details of the Urewera District Native Reserves Act (which was enacted in 1896) were still being devised. The primary function of that Act was to investigate the ownership of Tuhoe land, and facilitate the establishment of individual land title in the Urewera. Seddon negotiated the measure with Tuhoe. He was also responsible for the inclusion of the exemption clause. It may, therefore, be suggested that it was in his interest to state clearly in advance that Urewera Maori would not be adversely affected by the imposition of non-Maori laws in their rohe. Despite the repeated petitions of Maori in

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<sup>34</sup> NZPD, vol 87(1895), p.146.

<sup>35</sup> R M McDowall, *Gamekeepers for the Nation: the story of New Zealand's acclimatisation societies 1861-1990*, Canterbury University Press, Christchurch, 1994, p.57.

<sup>36</sup> NZPD, vol 87(1895), p.146; Thomson, p.545.

the district, however, the Urewera was in fact exempted from closed hunting seasons in 1901 and 1910 only.<sup>37</sup> Had the Maori MHRs known that in 1895, their response to the 1895 Bill may well have been more pronounced. Perhaps reassured by the provision that potentially excluded native districts from the operation of the clause, the Maori MHRs remained silent while the 1895 Bill was before parliament.

Although access to the kereru appeared to have been restricted after 1895, the reality may have been quite different in some districts. The primary source of acclimatisation society funding was the revenue collected from the sale of hunting licences, and it was those proceeds that were used to pay the salaries of rangers. During a closed season, however, no hunting licences were sold. The coffers of acclimatisation societies were, therefore, depleted. This possessed the potential to effect the policing of closed seasons, as less wealthy acclimatisation societies may have struggled to pay rangers at a time when regular patrols were required to ensure that closed seasons were being observed. The paradox could have been resolved if government funding was provided to make up any short-fall in society finances. Acclimatisation societies, however, were reluctant to accept government aid as that would add momentum to the erosion of their autonomy.<sup>38</sup>

While the autonomy of acclimatisation societies eroded, the sports preservation movement augmented its dominance over the policy. Section five of the 1895 Act, enabled the Governor to prohibit the sale of imported and native game in any district if the particular species was 'not sufficiently numerous' to withstand the large-scale venery of pot-hunters. In 1899, the sale of any native game species was prohibited in the Marlborough district.<sup>39</sup> By then the schedule of native game had been extended to include kokako, kiwi, kakapo, tieke, stitchbird, and korimako.<sup>40</sup> It was clear that, despite the enactment of provisions that did in fact preserve some species, the fundamental objective of the animals' protection policy was the preservation of

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<sup>37</sup>*New Zealand Gazette*, 16 May 1901, p.1068; 5 April 1910, pp.1222; 12 May 1910, p. 1418. In 1910 and 1911, Urewera Maori wrote to Apirana Ngata asking that the Urewera district be exempted from closed season for the kereru. IA series file 1/1910/887 and 1/1911/2882.

<sup>38</sup> McDowall, 1994, p.65.

<sup>39</sup> *New Zealand Gazette*, 25 March 1899, p.694.

<sup>40</sup> *ibid.*, 19 March 1896, p.475.

imported and native game birds. But those in parliament who advocated the preservation of species (rather than the preservation of sport) were able to secure some measure of native bird conservation, despite the dominance of sportsmen. The stringent nature of native game protection was used to the advantage of particular species that were perceived as warranting absolute protection. Kotuku, crested grebe, and huia were added to the schedule of native game in the 1890s. The practical effect of regular closed seasons for the species, however, rendered them absolutely protected throughout the decade. And as the years passed, and the colonial penchant for the indigenous in New Zealand developed, the race against extinction to preserve New Zealand's native birds intensified. As a consequence, continued Maori access to native game came under greater threat.

Further restrictions upon game and native game hunting were imposed in 1900. With the exception of the Otago provincial district, hunting seasons were standardised throughout the colony. Similarly, the provision that enabled hunting seasons to be altered in any way was repealed. A prescribed hunting season for game and native game facilitated the tighter management of hunting in general; hunting throughout the country could be controlled by central rather than local government. Rather than conservation purposes, however, the hunting season in Otago was opened a month earlier than the rest of the country to allow sportsmen to shoot game during the Easter holidays. Parata was one of the few South Island MHRs to oppose the clause. He and Hone Heke (Northern Maori) both took the opportunity to advise the House that the current hunting season ignored Maori custom. Parata believed that if the game season in Otago was going to differ from the rest of the country, it should start a month later because that was closer to when the birds matured. The introduction of the Otago exemption, therefore, merely reflected the influence that sportsmen ('or rather men going out with guns') maintained over the policy, and the inter-Island dynamic that had often divided parliament.<sup>41</sup>

Under the 1900 Act, the frequency of closed seasons for kereru, pukeko, and kaka was increased to every three years from 1901 onward. Native districts were still able to be

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<sup>41</sup> *NZPD*, vol 113(1900), p.36; *ibid.*, p.35. [Carroll]

exempted from closed seasons, but as we know they seldom were. The 1900 Act also made provision for game and native game seasons to be closed absolutely in any district.<sup>42</sup> Although native game seasons were closed in the Amuri and Kaikoura districts in 1904, that provision was used sparingly.<sup>43</sup> Rather, the legislature preferred to use its power (under the 1880 Act) to prohibit hunting in carefully defined regions within a district. In 1901, for example, the hunting season remained open for native game in the Waikato district, but a defined area surrounding lake Wakare (near Rangiriri) was established as a temporary reserve.<sup>44</sup> The conservation of game was paramount, but there appeared to be a willingness to provide some limited access for sportsmen and Maori to the resource.

In practice, the 1900 Act augmented the restricted hunting-based approach to bird conservation. While the 1900 Bill was before parliament, however, the first significant signs appeared that the colonial approach to the preservation of species was changing. John MacKenzie, member for Waihemo, suggested that the entire Westland country be reserved as a sanctuary for native birds.<sup>45</sup> He was not the first MHR to identify the relationship between the decline of native birds and the decline of native forests. The Maori MHRs highlighted it in 1889, and so too did a small number of non-Maori members. But these men constituted a diminutive minority in the House, and their efforts were uncoordinated. Prior to 1900, the vast majority of parliamentary members did *not* recognise (or perhaps admit) the effects of deforestation upon native bird species. Animals' protection legislation, therefore, made no provision for the reservation of land as bird sanctuaries on the mainland. But it did provide for the hunting season in a defined region district to be temporarily closed. In 1902, that provision was used to close indefinitely all game and native game seasons in the Milford Sound and Te Anau regions of Westland.<sup>46</sup> Hunting in those areas was prohibited, but there was no guarantee that land reserved in that

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<sup>42</sup> Animals Protection Amendment Act 1900, ss2, 4.

<sup>43</sup> *New Zealand Gazette*, 10 May 1904, p.1238.

<sup>44</sup> *ibid.*, 6 May 1910, p.1013.

<sup>45</sup> *NZPD*, vol 113(1900), p.26.

<sup>46</sup> *New Zealand Gazette*, 6 February 1902, p.240.

manner would not be developed. In 1903, however, the legislature took a significant step in redressing this problem.

In an effort to limit the number of people who shot native game, the Animals Protection Bill 1903 proposed to introduce licences to shoot native game. The clause was subsequently omitted because it was perceived as merely reserving native game for those who could afford to pay the licence fee. Moreover, many in the House had realised that shooting restrictions alone would not abate the decline of native species. The Animals Protection Amendment Act 1903 enabled the Governor to prohibit game and native game hunting in any forest reserve or public domain. Unlike reserves established under previous legislation, those lands *were* secure from cultivation. The 1903 Act also highlighted parliamentary recognition of the effects of predation upon native species. Section six of the Act provided for the previous protection of stoats and weasels, under the Rabbits Nuisance Act 1882, to be repealed in defined districts for defined periods. Just nineteen years after the introduction of the first mustalids, the species had become ‘a great curse to New Zealand’.<sup>47</sup> Stoats and weasels had been identified in the past as major contributors to the decline of native species, and as a pest to any person who kept poultry, but the species had remained protected because of their supposed role in the war against the rabbit nuisance.

Despite the fact that the 1903 amendments complemented some of what the Maori MHRs had been advocating since 1889, Heke still protested the timing of native game hunting seasons which he believed ‘would do a great injustice to the Maori’. The season that started in May, was aimed at providing the best possible sport for predominantly non-Maori hunters. Heke believed that sporting considerations should be secondary to the subsistence of Maori. For that reason, he thought, the season for hunting native game should be later in the year and should depend upon the condition of the birds.<sup>48</sup> The issue of Maori control over native game upon their own land was also addressed in 1903. Heke advocated this, and he received perhaps unexpected support from a small number of non-Maori MHRs. Archibald Willis, member for

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<sup>47</sup> NZPD, vol 126(1903), p. 587. [Trask].

<sup>48</sup> NZPD, vol 126(1903), p.476.

Wanganui, believed that Maori considered that they possessed 'certain rights' with regard to native game upon their own land. Rather than test that conviction, Willis was unsure that it was wise to prevent Maori from shooting 'under certain restrictions' on their own land. Despite the fact that Sir Joseph Ward believed that the 1903 Act did not 'speaking broadly . . . interfere with Natives shooting over their own land', however, no provision was made for any degree of Maori control over the resource.<sup>49</sup>

Further evidence that the non-Maori conservation ethic was changing, and the conservationists in parliament were gaining momentum, emerged in 1906. Forty-five species of indigenous birds were gazetted as protected absolutely in New Zealand, several of which were protected as native game at the time.<sup>50</sup> This reflected the development of an indigenous national sentiment, and reflected also the gradual realisation that the system of bird protection used to that point in time was not working. Ward was an ardent supporter of restricting hunters as a primary means of preserving birds, but in 1903 he conceded that aspects of 'the system [of bird preservation] in the past has not worked beneficially for the colony as a whole'. In 1905, he alerted the House to the continued decrease of native game in many parts of the country, and warned of the species complete extermination unless further restrictions on native game hunters were imposed.<sup>51</sup> In that year two attempts were made to introduce further restrictions upon native game hunters, but both were unsuccessful. The legislature appeared to have realised that, despite the regular enactment of hunting restrictions, the disappearance of native game continued nonetheless. Moreover, the 1905 Bills were perceived as too strict and akin to English game laws. Both Bills were, therefore, considered undesirable.<sup>52</sup>

In 1907, an Act was passed that consolidated all animals' protection statutes that had been enacted since 1880, along with a small number of significant amendments. Section six of the Animals Protection Act 1907 possessed significant implications for Maori. The only legal means of taking or killing game and native game under the Act

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<sup>49</sup> *NZPD*, vol 126(1903), pp.71, 74.

<sup>50</sup> *New Zealand Gazette*, 10 May 1906, p. 1191. [See appendix two for full list of species].

<sup>51</sup> *NZPD*, vol 126(1903), p.69.

<sup>52</sup> *NZPD*, vol 142(1907), pp.785-791.

was shooting; all other methods were prohibited. A similar clause was introduced in 1861, but that applied only to imported species. While the earlier clause had the potential to impact upon Maori, the 1907 variation possessed more immediate ramifications. Heke described the clause as an attempt to prevent Maori from gathering native birds. He explained the Maori preference for snares, which were silent and did not frighten birds as guns did, and expressed concern that the clause possessed the potential to prevent Maori from using their traditional food gathering techniques. Consistent with the short history of Maori representations relating to the animals' protection policy, however, his concern was completely ignored by non-Maori MHRs. Heke also restated his opposition to the timing of native game hunting seasons and the Bill's emphasis upon sport rather than subsistence. Heke's view was endorsed by Apirana Ngata, the member for Eastern Maori, who highlighted the fact that the same issue had been represented by numerous Maori MHRs in the past.<sup>53</sup> Despite the combined efforts of Heke and Ngata, however, the prescribed native game hunting season remained, and the Maori perspective was overlooked once more.

While Maori attempts to influence the 1907 Bill were ineffectual, those who sought the absolute protection of the country's indigenous birds achieved some success; the passing of the 1907 Act witnessed the emergence of a conservation movement in parliament that was distinct from the preservation of sports birds. Under section sixteen of the 1907 Act, hunting was not permitted upon any land that was reserved under previous legislation as a sanctuary for imported and native game. Prior to 1907, these reserves did not have any statutory recognition. Rather, reserves were established by closing hunting seasons over a defined region. The clause, therefore, developed earlier amendments, and provided further evidence that the legislature recognised the need to do more than restrict the activities of hunters as a primary means of preserving native birds.

While the 1907 Bill was before parliament, Henry Ell emerged as an outspoken advocate of the absolute protection of *all* native birds. Native game was protected by stringent laws, but Ell believed that 'there was not sufficient protection in this country

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<sup>53</sup> *NZPD*, vol 142(1907), pp. 786-788.

for birds that are not game birds'. Thomas MacKenzie, the member for Waikouaiti, denounced any curiosity in imported game, but he took an active interest in the protection of 'our beautiful native birds'.<sup>54</sup> These sentiments were reflected in the 1907 Act; section twenty-five of the Act provided for the absolute protection of a number of prescribed, and predominantly indigenous, species by notification in the *New Zealand Gazette*.<sup>55</sup> MacKenzie's hope was that the powers established under the 1907 Act would be enacted swiftly, and that a number of native birds would be protected absolutely in New Zealand. Although that did not appear to happen to any great extent, the implementation of the clause highlighted the beginning of a gradual dissipation of the emphasis that the policy placed upon sports preservation; despite the still fairly dominant influence of sportsmen, the absolute protection of the paradise duck in 1908 and 1909 highlighted the growing demand in parliament for the conservation of native birds.<sup>56</sup>

In 1908, the conservation movement gained momentum. Although the Animals Protection Act 1908 did little more than consolidate the 1907 Act and the Homing Pigeons Protection Act 1898, a very significant debate took place during that year which had a major bearing upon the future of animals' protection in New Zealand. The debate was prompted by Henry Ell who attempted to undermine the influence of those parties who sought access to native birds. The first group to incur his wrath were the sportsmen:

The [native] pigeon was the most beautiful bird we had in the country. It was readily and easily shot, and those who killed the pigeon were not sportsmen. There was no sport about it at all, because, unlike other birds, the pigeon was not quick on the wing. The time had certainly arrived when something should be done with the object of protecting those birds from absolute extinction.<sup>57</sup>

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<sup>54</sup> *NZPD*, vol 142(1907), pp.788, 790.

<sup>55</sup> Animals Protection Act 1907, s25. See the first schedule for a list of species which could be afforded absolute protection under this clause.

<sup>56</sup> *New Zealand Gazette*, 16 April 1908, p.1180.

<sup>57</sup> *NZPD*, vol 145(1908), p.62.

In relation to Maori, Ell believed that there was an abundance of food in New Zealand. He, therefore, dismissed the Maori argument that they required access to the native game for food as 'simply scandalous'. Rather, he asserted his view that there was 'absolutely no excuse for killing native birds which are becoming increasingly rare for food'.<sup>58</sup> Despite Maori protest, in practice it appeared that Maori access to native game for food was being denied in some districts. The area surrounding Mataora lagoon, near Wairau, was reserved as a native game sanctuary under the 1907 Act. The area was also an ancestral hunting ground for local Maori, and despite the 1907 Act's failure to differentiate between the application of the Act to Maori and Pakeha, the protection of native birds upon that land was enforced nonetheless.<sup>59</sup>

Ell received considerable support in the House of Representatives. Rather than emphasise sporting interests, these MHRs accentuated the beauty and peculiarity of New Zealand's native birds. Alexander Hogg, the member for Masterton, assured the House that native birds were seldom killed for any useful purpose. Hogg believed that many native birds 'were simply destroyed in the name of sport by men who seemed to take a pleasure in sacrificing bird or animal life whenever they got the chance'.<sup>60</sup> Ell advocated the absolute protection of native birds in New Zealand. Robert Rhodes, member for Ellesmere, agreed, and thought the system of native bird protection had been thus far inadequate:

The legislature should not go on tinkering with the matter [native bird protection] as it had done in the past. We have added, whenever an acclimatisation Bill was introduced, a few more birds to the list of those protected, but that was not enough, and the time had come when all should be protected, except those that were injurious, and we had not many of those in New Zealand.<sup>61</sup>

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<sup>58</sup> Letter from H. Ell to Dr. Findlay. 15.2.1908. IA series file 1/1908/383.

<sup>59</sup> Letter from Hapareta Rore Pukekohatu to James Carroll, 11 May 1908. IA series file 1/1908/1278.

<sup>60</sup> *NZPD*, vol 145(1908), p63.

<sup>61</sup> *NZPD*, vol 145(1908), p.62.

Rhodes believed that New Zealand should learn from the birds' protection model employed in the United States of America. With the exception of carefully defined game birds and others that were deemed injurious, all wild birds were protected absolutely in the United States. It seemed that in the space of one year, a significant conservation movement developed in parliament which provided formidable opposition to the sportsmen's influence, which had dominated the protection of animals during the 1880s and 1890s. The main reason for this it seemed was that a new generation of parliamentary members took an interest in the protection of animals. For the first time, names such as Alexander Hogg, Edmund Allen, Robert Rhodes, and Alexander Malcolm featured in relation to the protection of animals. Rather than the preservation of sport, however, these MHRs sought to protect absolutely New Zealand's native birds. Moreover, their concern was consistent with the development of an indigenous national identity, and came at a time when the proportion of colonial-born MHRs was undoubtedly increasing. And while the debate had little practical effect in 1908, these conservationists achieved some considerable success in 1910.

With the exception of native game, and any bird that was exempted by Order in Council, the Animals Protection Amendment Act 1910 prohibited the destruction, injury, or capture of any bird that was indigenous to New Zealand. Rather than protecting particular species, the legislature was required to proclaim which species were *not* protected by law. In 1911, the kereru, teal, grey duck, pukeko, kea hawk and shag were the only native species that were not absolutely protected in the country.<sup>62</sup> The enactment of the clause was testament to the determination of those MHRs who had advocated this approach to native bird protection in 1908; the 1910 amendment was proposed by Robert Rhodes who received overwhelming support from a number of MHRs who had supported him during the 1908 debate. Ell expressed the pleasure with which he witnessed parliament doing 'everything possible to preserve bird-life in the country'. Allen supported the amendment, and believed that 'something should be said to the school-children to induce them from their earliest years to respect our own

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<sup>62</sup> *New Zealand Gazette*, 13 February 1911, p.642; 6 April 1911, pp.1265-1268; 13 April 1911, p.1276.

flowers and plants, and our own New Zealand birds'.<sup>63</sup> For the first time, native birds were protected *ipso facto*. For that reason the 1910 Act may be considered the most influential amendment made to the animals' protection policy this century. Not only did the clause augment the conservation oriented developments that were enacted in 1886 and 1907, but it established the dominance of conservationists over the animals' protection policy and laid the foundation for the future of animals' protection in New Zealand. The enactment of the clause coincided with the establishment of an indigenous national sentiment, and from 1910 onward the primary emphasis of the animals' protection policy was the conservation of native species.

The Maori MHRs were particularly active while the 1910 Bill was before parliament. Considering the implications that the Bill possessed for Maori access to native birds, the Maori reaction was perhaps inevitable. Henare Kaihau, the member for Western Maori, advocated the return of control of native game to Maori upon their own land. In the light of that conviction, he was particularly concerned about the implications of the Act for his Maori constituents who were:

under the impression that they still possess the right conferred by- and held by them since- the Treaty of Waitangi to kill and take, for the purpose of food, native game and fish throughout the Dominion; but this seems to put an end to that . . . . The Government have already acquired practically the whole of the Maoris' lands, as it is, and why should they not restrict the application of such a measure as this to the lands which they have so acquired, and leave the lands now remaining in the hands of the Maoris exempt from its operations? And you have nearly the whole of the forests of the country; yet, in respect to the small balance that remains, the Maoris are expected to work them and grow wheat thereon, and live-stock. Seeing that the Native Land Board has got control and administration of their lands, I think, Mr. Speaker, that the only thing that is possible for me to do now is to weep for my Maori people.<sup>64</sup>

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<sup>63</sup> NZPD, vol 151(1910), p263; *ibid.*, vol 152(1910), p.325.

<sup>64</sup> NZPD, vol 151(1910), pp.260-261.

Section four of the Act amended the law relating to the possession of imported and native game, and made provision for Maori to store huahua (preserved birds) throughout the year. Other than that concession, however, the impassioned pleas of the Maori MHRs went unheeded.

The 1880 to 1910 period was clearly a busy era for the legislature in relation to the protection of animals. Although the frequency with which amendments were enacted had eased since the 1860s and 1870s, the changes that took place to the general disposition of the animals' protection policy were immense. The first significant transition took place in the early 1880s, and related to the enactment of the first of several pest control statutes. During the 1870s, the primary objective of the animals' protection policy was the acclimatisation of particular species for particular reasons. One of the most significant reasons was the preservation of game hunting. The only group to oppose parliament's sportsmen, during the conception of animals' protection laws, were those MHRs who represented the interests of small crop farmers. A number of protected species were damaging the crops of farmers in some regions. These MHRs' opposition to the animals' protection policy was, therefore, based upon ensuring that crop farmers were able to defend their produce from the depredations of protected species. To a large extent, the small birds nuisance policy and other pest control measures redressed this issue. Parliament's farmers, therefore, withdrew from the formulation of animals' protection policy.

The appeasement of crop-farming interests facilitated the complete domination of the animals' protection policy by parliament's sportsmen. In fact Thomson believed that all legislation related to the protection of animals that was enacted between 1861 and 1907 was primarily concerned with the preservation of sport.<sup>65</sup> The majority of amendments enacted between 1881 and 1900 were, therefore, aimed at the conservation of imported and native game birds. However, with the benefit of hindsight (and late twentieth-century scientific knowledge) it appeared that these attempts at bird conservation were somewhat misguided. The vast majority of sportsmen in parliament believed that large-scale hunting was the primary cause of the

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<sup>65</sup> Thomson, p.546.

extirpation of native game species. They did not recognise the effects of deforestation or predation. Their mode of conservation was simply to restrict access to the birds. The continual enactment of further restrictions for imported and native game hunters demonstrated that hunting restrictions alone would not abate the rapid destruction of native birds; it merely created a complicated and often confusing set of game laws that the public were perceived to have struggled to comprehend.<sup>66</sup>

Before long, the sport preservation approach to native game protection facilitated an increased Maori interest in the formulation of animals' protection legislation. Although a number of Maori MHRs opposed aspects of the animals' protection policy, they did not oppose native game protection as such. The majority supported it; they merely believed that incorrect methods of native game preservation were being employed. Moreover, their primary concern was to ensure continued Maori access to native game species. At first glance, it may appear that Maori wanted to have their cake and eat it too; they expected non-Maori to refrain from shooting native game while they continued to hunt the species. Some Maori believed that that was their right under the Treaty of Waitangi.<sup>67</sup> That interpretation, however, is incorrect. The Maori MHRs believed that a sustainable cultural harvest was achievable if the correct conservation methods were employed. What is more, they were prepared to preserve the birds that they desired to kill. The other Maori grievance with the animals' protection policy was the emphasis that it placed upon sport, and the timing of hunting seasons. That concern merely reflected the different values of each culture; while non-Maori believed that the native game hunting season should be designed to provide the best possible sport, Maori only killed birds when they were in the best possible condition for eating. These concerns were constantly represented in the House by various Maori MHRs. Rather than just an example of extended continuity, however, the constant reiteration of the same Maori concerns reflected the fact that the Maori perspective was usually overlooked by parliament.

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<sup>66</sup> *NZPD*, vol 142(1907), p.785. [Carroll].

<sup>67</sup> *NZPD*, vol 151(1910), pp.260-261. [Kaihau]

Despite the enactment of a small number of amendments in the late nineteenth century, a distinct conservation movement in parliament did not emerge until 1900. Not only did the conservationists advocate the absolute protection of native species, they also recognised the impact that imported predators and the destruction of native forests for farming had upon the country's indigenous bird-life; in the early twentieth century, a number of amendments were enacted to address these issues. Under the 1907 Act, forest reserves could be established for the sole purpose of providing sanctuary for native birds. The protection of stoats and weasels, under the Rabbit Nuisance Act, was removed altogether in 1910. The 1907 Act also enabled the Governor to protect absolutely a number of specified native birds and reptiles. The enactment of these clauses evidenced the emergence of the conservation lobby as a major influence upon the protection of animals in New Zealand. And in 1910, it achieved its most significant success thus far. Under the 1910 Act, the system of native bird protection used to that point was reversed; all indigenous birds were protected absolutely unless a species was explicitly excepted from the operation of the clause. By 1910, the conservation lobby had clearly established itself as a major influence upon the animals' protection policy. Their position was subsequently augmented, and the conservation movement as we know it today was born.

## CONCLUSION:

### Rapid transition, 1861-1910.

The protection of animals in New Zealand between 1861 and 1910 may be aptly described as a rapid transition. In less than fifty years, the emphasis of the animals' protection policy was completely transformed. And by 1910, its original emphasis upon the acclimatisation of *particular* imported species was replaced by a native bird conservation imperative. The forty-nine years between 1861 and 1910 were, therefore, the busiest and most turbulent period in the history of animals' protection in New Zealand; the development of the animals' protection policy was shaped by the rise and fall of a number of groups which attempted to influence the formulation of legislation. The story of the animals' protection policy, however, is much more complicated than the emergence of a native bird conservation movement in parliament. Rather, the evolution of the animals' protection policy reflected the growth and change of non-Maori society in New Zealand.

When European settlers first set foot on New Zealand shores, they would have recognised extraordinarily little that was familiar and for which a use was known.<sup>1</sup> Those who could not (or would not) return to their homeland were left with two options. And rather than adopt the 'savage' and 'barbarous' Maori lifestyle, the vast majority of European colonists set about adapting New Zealand conditions to suit their ideal way of life. This was part of any colonisation process, and most logical model for the reinvention of the New Zealand landscape was Great Britain. The indigenous terrain was, therefore, to be replaced by a predominantly British panorama; New Zealand became known as the Britain of the South. That was not an entirely accurate description, however, and the colonist dream was not a Britain of the South *per se*. In the age of urbanisation, industrial development, and the major population growth, New Zealand colonists sought to fabricate an Arcadian, romanticised, English countryside of myth that incorporated only the best of British.

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<sup>1</sup> R M McDowall, *Gamekeepers for the Nation: the story of New Zealand's acclimatisation societies 1861-1990*, Canterbury University Press, Christchurch, 1994, p.4.

Complemented by selective immigration and acclimatisation, the Britain of the South was to be a garden paradise and for some, a classless society. But nineteenth-century accounts of life in New Zealand conflicted, and not all colonists were convinced that New Zealand lived up to its reputation. Although some members of settler society sought to realise their Arcadian dream, in reality, the Britain of the South was little more than a myth. The reason for its proliferation, however, was quite clear. During the mid-nineteenth century, Australia and the Americas were in also in the market for British immigrants. Those places were all larger, more established, more familiar, and were closer. Moreover, they had less 'native problems'. New Zealand, therefore, required something that would set it apart from its competitors. It was here that the Britain of the South ethos was of assistance.

Despite the enormity of the assignment, many colonists persevered with the Britain of the South nonetheless; some measure of success was attainable. Selective immigration and acclimatisation, therefore, became central to successfully creating the Britain of the South. New Zealand's colonial relationship with the British Empire, and the organised immigration from England, ensured that the vast majority of New Zealand's colonists hailed from Great Britain or her dependencies. In the 1840s and 1850s, however, selective acclimatisation was not assisted by any pre-existing organisations or relationships. Moreover, the introduction of the *right* birds and animals was critical to the Britain of the South ideology. In this respect, the term 'desirable' took on a whole new meaning. Species like sheep, cattle, and horses largely satisfied the immediate requirements of European settlers such as food and labour. Domestic and agricultural animals received constant attention from their owners, so these species swiftly acclimatised to New Zealand conditions. The impetus quickly shifted, therefore, to acclimatising a number of wild animals and birds that would supposedly augment the characteristics of the Britain of the South.

As an Arcadian state based upon the English countryside, the introduction of the many small bird species that were considered to be reminiscent of the 'Old Country' was central to creating the Britain of South. The introduction of these species (it was thought) would create a decidedly English ambience in New Zealand, and would 'help

keep up those associations with the Old Country which it was desirable should be maintained'.<sup>2</sup> It would also provide some relief from the homesickness caused by colonists' unfamiliarity with their new home. For these reasons, the acclimatisation of a number of notably English birds (such as the sparrow, starling, thrush, and blackbird) was promoted. The fantail was to be replaced by the sparrow.

The garden paradise that was New Zealand was to be an egalitarian society; the Britain of the South was to avoid the divisive class structure that characterised English society. It could be argued, however, that any country whether new or old will have its share of rich and poor. The likelihood of achieving this goal was, therefore, doubtful. But superficial, though nevertheless significant, steps towards overcoming the inequalities of the Old World could be achieved. For that reason, the establishment of a sustainable game population became one of the keys to settler intent, and would contribute to the Arcadian imagery associated with New Zealand.

By the end of the 1850s, a number of New Zealand colonists had launched a concerted acclimatisation drive. The vast majority of these efforts, however, were unsuccessful. And in 1861, the first statutory attempts were made to assist the acclimatisation process. The Province of Nelson Protection of Animals Act 1861 and its colonial cousin the Protection of Certain Animals Act 1861 afforded protection to *particular* species which, it was thought, would augment the Britain of the South ideology. These were game species and birds that were nostalgic of England. And while the anticipatory nature of these early acts has been questioned in the past, it was entirely consistent with the purpose of the legislation. By affording protection to certain animals and birds, many of which were yet to be introduced to the colony, the government was trying to encourage individuals and groups to import those species to the colony.

The 1861 statutes also laid the foundation upon which an animals' protection policy developed. The emphasis was clearly placed upon *particular* imported species, and a number of stringent provisions were enacted to ensure success. And while the House

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<sup>2</sup> *New Zealand Parliamentary Debates (NZPD)*, 1861, p.290. [Stafford]

unanimously applauded a move that was designed to contribute to the 'pleasure and the profit' of colonists, the stringent nature of the early animals' protection statutes provoked comparison with the dreaded English game laws; the first real sign of discord in relation to the policy was incepted.<sup>3</sup> Prior to 1867, however, the perceived similarities with English laws caused concern rather than created any real opposition. But as the policy introduced more stringent measures, such opposition became more intense.

The encouragement offered to would-be acclimatisers since 1861 appeared to be working, and in 1867 the protection of animals in New Zealand was completely reorganised. While the fundamental principles of the animals' protection policy remained the same as they had been in the past, the Protection of Animals Act 1867 put a new spin on the policy. In the first instance, the policy emphasised the successful acclimatisation and establishment of desirable species rather than merely encouraging their introduction. The 1867 Act, therefore, afforded statutory recognition to acclimatisation societies. These groups were intended to introduce some much needed organisation to the acclimatisation process, and to advise the government on matters relating to the protection of animals. By the end of the 1870s, the societies had completely appropriated the acclimatisation process, and operated with a degree of autonomy that was unique to New Zealand. That position was highlighted by the government's wholesale acceptance of acclimatisation society recommendations in many cases.

The most significant feature of the 1867 Act, however, related to the focus of the policy. The protection of nostalgic birds was catered for in one clause that protected all such species unless they were specifically exempted from the provision. From 1867 onward, therefore, animals' protection statutes were primarily concerned with the preservation of game species and the management of game hunting. Game species were classified either as imported or native game, and different levels of protection were afforded to each category. By 1880, however, constant amendment had rendered the animals protection policy a complicated and often confusing set of laws. And

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<sup>3</sup> *NZPD*, 1861, p.290. [Stafford and Fox].

although MHRs were reluctant to admit as much, and a number of other MHRs fought tooth and nail to prevent it, the animals' protection policy became a colonial equivalent of England's game laws.

The protection of indigenous birds during this period depended upon European values. And as the animals' protection policy focused on game species (and to a diminishing extent birds that were nostalgic of England), the vast majority of New Zealand's indigenous birds remained unprotected in the nineteenth century; only those native birds which possessed game-like qualities were protected as native game. What is more, native game protection during this period did not ensure the survival of a species. In comparison to the strictly monitored protection of imported game, native game protection was an ancillary measure. In the case of the native quail at least, native game protection meant the management of hunting until the resource expired. This lack of protection, however, suited Maori who sought continued and undisturbed access to particular native birds. Moreover, evidence suggested that animals' protection laws did not appear to be enforced in areas that were populated largely by Maori. But as time passed, and the colonial penchant for the indigenous increased, the animals protection policy became more relevant to the interests of Maori.

The early 1880s witnessed another significant turning point in the development of the animals' protection policy. The enactment of a number of pest control statutes facilitated the withdrawal of farmers from the formulation of animals' protection legislation. In the past, the MHRs who represented the interests of small crop-farmers provided the only effective resistance to the growing dominance of sportsmen over the policy. After 1880, therefore, the sportsmen seized complete control of the animals' protection policy. And the primary objective of the animals' protection policy became the preservation of sport for the 'colonial gentry'.<sup>4</sup> The policy, therefore, maintained its emphasis upon the conservation of game birds. And while a number of additional indigenous birds were protected as native game, the majority of native birds remained unprotected until the turn of the century.

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<sup>4</sup> Ross Galbreath, *Working for Wildlife: a history of the New Zealand Wildlife Service*, Bridget Williams Books and the Historical Branch of the Department of Internal Affairs, Wellington, 1993, p.113.

With the benefit of hindsight, and contemporary scientific research, it is clear that the sportsmens' conservation ethic was somewhat misguided. Predation by a number of *exotic intruders* and the loss of habitat caused by deforestation were the primary causes of the decline of most native bird species. This was something that the Maori MHRs frequently drew to the House's attention. But the sportsmens' response was to merely restrict the access of humans to the resource. So although hunting restrictions could not possibly have hindered the preservation of species, it would have had little practical effect. Regardless of efficacy, however, the sportsmen persevered with this approach to the conservation of species for the remainder of the nineteenth century; the vast majority of amendments that were enacted between 1880 and the turn of the century imposed further restriction on game hunting. These restrictions, however, were not aimed at constricting the access of 'true sportsmen' to game species. Rather, it was the access of pot-hunters and Maori that was limited; killing for sport was considered to be more acceptable than killing for food or money.

But while the sportsmen enjoyed control over the animals' protection policy in the 1880s and 1890s, the first visible signs emerged of a native bird conservation movement which was clearly distinguishable from the sports preservation movement. The conservationists differed in two very significant ways from sportsmen. Rather than the sport that some species might offer, the conservationists considered native birds to be aesthetic marvels and a way of relating to the environment.<sup>5</sup> Consequently, they advocated the absolute protection of *all* indigenous birds. The conservationists in parliament also recognised the impact that deforestation and predation was having on protected species. During the 1880s and 1890s, however, the conservationists did not have enough support in the House to subjugate the interests of sportsmen. But as years passed, and the conservation movement gained momentum, the conservationists were able to secure some limited success. In 1903, the previous protection of stoats and weasels could be repealed in defined districts for defined periods. And where the conservationists were unable to influence legislation, they

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<sup>5</sup> James Feldman, *Treaty Rights and Pigeon Poaching: Alienation of Maori Access To Kereru*, Waitangi Tribunal Research Series, January 1998, p.93.

appeared to use the law as it stood to meet their own objectives. The legislation made no provision for the reservation of land as bird sanctuaries. But in effect, sanctuaries were established by closing the native game hunting season in a defined region for an indefinite period. This was augmented by the inclusion of additional native bird species in the schedule of native game. By 1910, the mood in government had also changed, and a distinct native bird conservation movement was established. This was marked by the enactment of the most significant conservation-oriented provision that had thus far been enacted, and every bird that was indigenous to New Zealand was protected absolutely unless it was exempted from the operation of the provision.

Clearly, the interests of both sportsmen and conservationists conflicted with Maori, who sought continued access to a traditional resource for traditional purposes. Moreover, as these interests asserted their influence over the animals' protection policy, the laws were more vigorously enforced in heavily populated Maori districts. Consequently, the Maori MHRs entered the debates relating to the protection of animals *en masse* for the first time in 1889. Their intent was clear. The primary concern of Maori was securing continued access to native species. They did not oppose native bird protection *per se*, the majority supported it. However, they did not believe that the laws should be enforced on Maori land. The Maori MHRs believed that autonomous control over native species upon Maori land should be returned to Maori. If traditional Maori conservation methods were employed, the Maori MHRs argued that a sustainable cultural harvest was achievable.

The other aspect of the animals' protection policy that Maori opposed vigorously was the timing of native game hunting seasons. They believed that the season should be opened when the birds were fat and were in the best condition to eat. The non-Maori preference for opening the hunting seasons when the birds were smaller merely reflected cultural differences; while Maori used the bird for food, smaller birds that were more agile provided better sport. At no stage did the Maori MHRs exercise any control over the animals' protection policy that resembled the influence of acclimatisers, sportsmen, or conservationists. Despite a number of minor concessions,

therefore, the Maori interest in the protection of native birds was generally overlooked. Consequently, Maori representations in parliament remained constant.

During the 1860s, 1870s, and the majority of the 1880s, the Maori MHRs did not contribute to the formulation of animals' protection statutes. That was because the laws simply did not apply to Maori in many areas. But at the end of the nineteenth century, Maori were increasingly affected by the animals' protection policy. Sportsmen sought access to a number of species that had provided Maori with food in the past. These interests led to the Maori MHRs involving themselves in the formulation of animals' protection statutes. The impact of the conservationists, however, was more wide-reaching because they wanted to protect absolutely *every* indigenous species. The reason for this was based upon the replacement of the Britain of the South ideology; as the proportion of colonial-born New Zealanders increased, and the proportion of English-born New Zealanders decreased, a more indigenous national sentiment emerged. Central to these notions of national identity was the colonial appropriation of the indigenous as symbols of nationhood. The peculiarity of New Zealand's native flora and fauna was used to symbolise the peculiarity of its people. Colonial society had taken its first steps toward becoming Pakeha.

By the mid 1900s, the colonial appropriation of the indigenous had made significant advances. Native avifauna was repeatedly referred to as '*our* beautiful native birds' in parliament, public submissions, and popular literature.<sup>6</sup> Colonial society had assumed complete *ownership* of native birds. It was only logical, therefore, that the animals' protection policy would eventually reflect the new role that indigenous fauna played in the way New Zealanders chose to identify themselves. As a consequence, the rights that Maori believed were guaranteed to them under the Treaty of Waitangi were consistently overlooked.

The evolution of the animals' protection policy has instituted a complicated and engaging history. In the same way that the Britain of the South ideology disregarded indigenous species, the development of a more indigenous national sentiment at the

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<sup>6</sup> NZPD, vol 142(1907), p.790. [T MacKenzie] [Emphasis added].

end of the nineteenth century facilitated the increased protection of native birds. In that respect, the protection of animals in New Zealand has merely reflected the values of non-Maori society. And although the animals' protection policy appeared to have undergone a massive transformation in the later half of the nineteenth century, the reality is less dramatic. Rather than the philosophy that underpinned the protection of animals for policy makers, it was the national sentiment of non-Maori society that was reconstructed. The rise of parliament's conservationists, therefore, merely reflected the augmentation of an indigenous national sentiment. And the protection of animals, as it is known today, was born.

The present controversy that surrounds the native bird conservation in New Zealand is very much a continuation of the nineteenth-century development. Claims to the Waitangi Tribunal by some Maori have resulted from a consistent denial of Maori rights in relation to native birds. The negative response that these Maori have received from organisations such as the Royal Forest and Bird Society and from the public at large (both Maori and Pakeha) merely reflects the extent to which New Zealand society has appropriated and now cherish indigenous fauna as a source of national pride. We no longer differentiate between colonists and colonials; we all identify as *kiwis*.

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APPENDIX 1: SPECIES PROTECTED BY ANIMALS PROTECTION STATUTES.

Species	Protection of Animals Act:															
	1861	1864	1865	1866	1867	1868	1872	1873	1875	1880	1889	1895	1900	1907	1908	1921
<i>Exotic Species</i>																
Antelope					G			G		G				G		
Australian tree-swallow																A
Avocet																A
Black Game				G	G			G		G				G		G
Black Swan														N		G
Blackbird	S		S	G												
Bustards				G												
Chamois																G
Deer	S		S	G	G			G		G				G		G
English Plover	S		S	G												
Grouse				G	G			G		G				G		G
Hare	S			G	G			G		G				G		
Heath				G												
Himalyan Thar																G
Landrail														A		
Magpie																A
Moor Game				G												
Moose														G		G
Partridge	S		S	G	G			G		G				G		G
Pheasant	S		S	G	G		B	B&G		G				G		G
Plover					G			G		G				G		A
Ptarmigan								G		G				G		R
Quail	S		S	G	G			G		G				G		G
Rook	S		S	G												
Southern Merganser																A
Starling	S		S	G												A
Swan	S			G	G			G		G				G		
Thrush	S		S	G												A
Wapiti																G
Wild Duck (Imported)	S		S	G	G			G		G				G		
Wild Goose (Imported)	S		S	G	N			N		N				N		G



al (Pateke)				N			N		N			N		
ern (Taranui)														A
eke (Saddleback)												a		A
wakawaka (Fantail)												a		A
omtit (Piropiro)												a		A
uatarā												a		A
ji						B	N		N			a		A
eka														A
ild Duck		S	S	G	N			N	N				N	
ren													a	A
ey														
Seasonal Protection (no differentiation between indigenous and exotic)									S					
Absolute Protection (no differentiation between indigenous and exotic)									A					
ported Game									G					
ative Game									N					
o Protection									O					
rotection Removed									R					
losed Seasons									C					
stricted sale									B					
ould be protected absolutely by Order in Council									a					

NOTE: This spreadsheet was taken from an unpublished database that is currently being designed for the Waitangi Tribunal's investigation into the Indigenous flora and fauna claim (WAI 262).

SOURCE: Emaan Aramakutu, 'Indigenous flora and fauna legislation', an unpublished database prepared for the Waitangi Tribunal, 1988.

Certain Native Birds absolutely protected.

PLUNKET, Governor.

IN pursuance of the powers vested in me by "The Animals Protection Act, 1880," and the Acts amending the same, I, William Lee, Baron Plunket, the Governor of the Colony of New Zealand, do by this notification prohibit absolutely the taking or killing of the birds mentioned in the Schedule hereto, being birds indigenous to the said Colony of New Zealand; and I do hereby declare that this notification shall take effect on the publication thereof in the *New Zealand Gazette*.

SCHEDULE.

- AVOCET (*Recurvirostra novæ-hollandiæ*).
- Bell-bird or Mocker (Makomako) (*Anthornis melanura*), and Chatham Island Bell-bird (*Anthornis melanocephala*).
- Bittern (Matuku-Hurepo) (*Botaurus pæcilotilus*), and Little Bittern (Kioriki) (*Ardetta pusilla*).
- Blue or Mountain Duck (Whio) (*Hymenolæmus malacorrhynchus*).
- Brown Creeper (Toitoi) (*Finschia novæ-zealandiæ*).
- Bush Canary (Mohua) (*Mohua ochrocephala*), and Whitehead Canary (Popokatea) (*Certhiiparus albicapillus*).
- North Island Crow (Kokako) (*Glaucoptis wilsoni*), and South Island Crow (Kokako) (*Glaucoptis cinerea*).
- Shining Cuckoo (Pipiwarauroa) (*Chalcococcyx lucidus*), and Long-tailed Cuckoo (Koekoea) (*Urodynamis taiensis*).
- Dotterel (Tuturiwatu) (*Ochthodromus obscurus*), and Banded Dotterel (Pohowera) (*Ochthodromus bicinctus*).
- Pied Fantail (Tiwakawaka) (*Rhipidura flabellifera*), and Black Fantail (Tiwakawaka) (*Rhipidura fuliginosa*).
- Fern-bird (Matata) (*Sphenæacus punctatus*), Tawny Fern-bird (*Sphenæacus fulvus*), and Chatham Island Fern-bird (*Sphenæacus rufescens*).
- Gannet (Takapu) (*Sula serrator*).
- Crested Grebe (*Podiceps cristatus*), and Little Grebe (Totokipio) (*Podiceps rufipectus*).
- Grey Warbler (Riro-riro) (*Pseudogerygone igata*), and Chatham Island Warbler (*Pseudogerygone albofrontata*).
- Red-billed Gull (Tarapunga) (*Larus scopulinus*), Black-billed Gull (*Larus bulleri*), Skua Gull (*Stercorarius crepidatus*), and Sea Hawk (Hakoakoa) (*Megalesteris antarctica*).
- White Heron (Kotuku) (*Herodias timoriensis*), White-fronted Heron (Matuku-Moana) (*Notophox novæ-hollandiæ*), Blue Heron (Matuku) (*Demiogretta sacra*), and Nankeen Night Heron (*Nycticorax caledonicus*).
- Huia (*Heteralocha acutirostris*).
- Kingfisher (Kotare) (*Halcyon vagans*).
- Brown Kiwi (*Apteryx mantelli*), Southern Kiwi (Rowi) (*Apteryx australis*), Grey Kiwi (*Apteryx oweni*), Spotted Kiwi (*Apteryx occidentalis*), and Great Spotted Kiwi (Roa-roa) (*Apteryx haasti*).
- Knot (*Tringa canutus*).
- Antipodes Lark (*Anthus steindachneri*).
- Southern Merganser (*Merganser australis*).
- Moho or Takahe (*Notornis hochstetteri*).
- Laughing Owl (Whekau) (*Sceloglaux albifacies*), and Morepork (Ruru) (*Ninox novæ-zealandiæ*).
- Pied Oyster-catcher or Red-bill (Torea) (*Hæmatopus longirostris*), and Black Oyster-catcher or Red-bill (Torea) (*Hæmatopus unicolor*).
- Antipodes Island Parrakeet (*Cyanorhamphus unicolor*), Kermadec Island Parrakeet (*Cyanorhamphus cyanurus*), Red-fronted Parrakeet (Kakariki) (*Cyanorhamphus novæ-zealandiæ*), Yellowish Parrakeet (*Cyanorhamphus erythrotis*), Yellow-fronted Parrakeet (*Cyanorhamphus auriceps*), Chatham Island Parrakeet (*Cyanorhamphus forbesi*), and Orange-fronted Parrakeet (*Cyanorhamphus malherbei*).
- Parson Bird (Tui) (*Prothemadera novæ-zealandiæ*).
- Ground Parrot (Kakapo) (*Stringops naborptilus*).
- King Penguin (*Aptenodytes patagonica*), Rock Hopper Penguin (*Pygoscelis papua*), Tufted Penguin (*Catarrhactes chrysome*), Crested Penguin (Tawaki) (*Catarrhactes pachyrhynchus*), Big Crested Penguin (*Catarrhactes sclateri*), Royal Penguin (*Catarrhactes schlegelii*), Yellow-eyed Penguin (Hoiho) (*Megadyptes antipodum*), Blue Penguin (Korora) (*Eudyptula minor*), and White-flipped Penguin (*Eudyptula albosignata*).
- Wilson's Storm Petrel (*Oceanites oceanicus*), Grey-backed Storm Petrel (*Garrodia neretis*), White-faced Storm Petrel (*Pelagodroma marina*), Black-bellied Storm Petrel (*Cymodroma melanogaster*), Brown Petrel (*Priofinns cinereus*), Silver-grey Petrel (*Priocella glacialisoides*), White-chinned Petrel (*Majaqueus equinoctialis*), Black Petrel (Toanui) (*Majaqueus parkinsoni*), Grey-faced Petrel (*Æstrelata macroptera*), White-headed Petrel (*Æstrelata lessoni*), Black-winged Petrel (*Æstrelata nigripennis*), Black-capped Petrel (*Æstrelata cervicalis*), Kermadec Island Mutton-bird (*Æstrelata neglecta*), Cook's Petrel (Titi) (*Æstrelata cooki*), Rain-bird (*Æstrelata inexpectata*), Chatham Island Petrel (*Æstrelata azillaris*), Giant Petrel or Nelly (*Ossifraga nianter*).

- (*Halobæna cærulea*), Whale-bird (*Prion vittatus*), Whale-bird (Whiroia) (*Prion banksi*, *Prion desolatus*, and *Prion ariel*), Diving Petrel (*Pelecanoides urinatrix*), and Diving Petrel (*Pelecanoides exsul*).
- Spotted Plover (*Charadrius dominicus*), Sand Plover (Kukuruatu) (*Thinornis novæ-zealandiæ*), Auckland Island Sand Plover (*Thinornis rossi*), and Wry-bill (*Anarhynchus frontalis*).
- Pectoral Rail (Mohopereru) (*Hypotaenidia philippensis*), Macquarie Island Rail (*Hypotaenidia macquariensis*), Auckland Island Rail (*Hypotaenidia muelleri*), Mangare Rail (*Cabalus modestus*), Dieffenbach's Rail (*Nesolimnas dieffenbachii*), Marsh Rail (Koitareki) (*Porzana affinis*), and Swamp Rail (Putoto) (*Porzana tabuensis*).
- South Island Wood Robin (Toutouwai) (*Miro albigrons*), North Island Wood Robin (Toutouwai) (*Miro australis*), Black Wood Robin (*Miro traversi*), Little Wood Robin (*Miro dannefordi*), White-breasted or Pied Tit (Miro-miro) (*Petræca toitoi*), and Yellow-breasted Tit (Ngiru-ngiru) (*Petræca macrocephala*).
- Saddle-back (Tieke) (*Creacion carunculatus*).
- Sandpiper (*Heteropygia acuminata*), and Red-necked Sandpiper (*Limonites ruficollis*).
- Shearwater (Hakoakoa) (*Puffinus gavia*), Dusky Shearwater (*Puffinus obscurus*), Allied Shearwater (*Puffinus assimilis*), Pink-footed Shearwater (*Puffinus carneipes*), Long-tailed Shearwater (*Puffinus bulleri*), and Wedge-tailed Shearwater (*Puffinus chlororhynchus*).
- Snare Snipe (*Gallinago hœgeli*), Auckland Island Snipe (*Gallinago aucklandica*), and Chatham Island Snipe (*Gallinago pusilla*).
- White-headed Stilt Plover (Poaka) (*Himantopus leucocephalus*), Pied Stilt Plover (Poaka) (*Himantopus picatus*), and Black Stilt Plover (Kaki) (*Himantopus melas*).
- Stitch-bird (Ihi) (*Pogonornis cincta*).
- Swallow (*Hirundo nigricans*).
- Caspian Tern (Tara-nui) (*Hydroprogne caspia*), Black-fronted Tern (Tara) (*Sterna albistriata*), and Swallow-tailed Tern (*Sterna vittata*).
- White-fronted Tern (Tara) (*Sterna frontalis*), Sooty Tern (*Sterna fuliginosa*), Little Tern (*Sterna nereis*), and White Tern (*Gygis candida*).
- South Island Thrush (Piopio) (*Turnagra crassirostris*), and North Island Thrush (Piopio) (*Turnagra tanagra*).
- Turnstone (*Arenaria interpres*).
- Green Wren (*Xenicus longipes*), Rock Wren (*Xenicus gilviventris*), and Bush Wren (Titipounamu) (*Acanthidosisita chloris*).

As witness the hand of His Excellency the Governor, this third day of May, one thousand nine hundred and six.

ALBERT PITT.

La<sup>n</sup> SOURCE: *New Zealand Gazette*, 10 May 1906, p.1191.  
PLUNKET, Governor.

WHEREAS by the two-hundred-and-thirty-fifth section of "The Land Act, 1892," it is enacted that the Governor may from time to time, either by general or particular description, and whether the same has been surveyed or not, reserve from sale temporarily, notwithstanding that the same may be then held under pastoral license, any Crown lands which in his opinion are required for any of the purposes in the said section mentioned:

Now, therefore, I, William Lee, Baron Plunket, the Governor of the Colony of New Zealand, in exercise and pursuance of the powers and authorities vested in me by the said Act, do hereby temporarily reserve from sale the land in the Auckland Land District described in the Schedule hereunder written, for the purpose in the said Schedule specified at the end of the description of the land so intended to be temporarily reserved.

SCHEDULE.

ALL that area in the Auckland Land District, containing by admeasurement 2 acres, more or less, being Section No. 8A of Block V, Kawhia South Survey District. Bounded towards the north-east by Section No. 8 of Block V, Kawhia South Survey District; towards the south-east by the Taumatotara Road; and towards the south-west and towards the north-west generally by the Mahoenui-Kawhia Road: as the same is delineated on the plan marked L. & S. 55210/1, deposited in the Head Office, Department of Lands and Survey, at Wellington, in the Wellington Land District, and thereon coloured purple. For a site for a public school.

As witness the hand of His Excellency the Governor, this seventh day of May, one thousand nine hundred and six.

T. V. DUNCAN